



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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July 1, 2020

Via Electronic Mail Only aonehauling@yahoo.com

Nicolette Burns
A-One Waste Solutions
771 Watsonstown Road
Berlin, NJ 08009

Re: I/M/O Bid Solicitation #20DPP00525 A-One Waste Solutions
Protest of Notice of Proposal Rejection
T0777 Snow Plowing and Spreading Services -- NJDOT

Dear Ms. Burns:

This letter is in response to your letter dated June 12, 2020, on behalf of A-One Waste Solutions (A-One) which was received by the Division of Purchase and Property's (Division) Hearing Unit on June 23, 2020. In that letter, A-One protests the Notice of Proposal Rejection issued by the Division's Proposal Review Unit on June 10, 2020 for Bid Solicitation #20DPP00525 - T0777 Snow Plowing and Spreading Services - NJDOT ("Bid Solicitation"). The record of this procurement reveals that A-One's Quote was rejected for failing to submit a signed *Disclosure of Investment Activities in Iran Form* with its submitted Quote.

By way of background, on April 9, 2020, the Division's Procurement Bureau (Bureau) issued the Bid Solicitation on behalf of the New Jersey Department of Transportation (NJDOT) to solicit Quotes from qualified Vendors {Bidders} to provide snow plowing and spreading services on all State interstates and highways under the jurisdiction of the NJDOT. Bid Solicitation §1.1 *Purpose and Intent*. In accordance with Bid Amendment #2, a revised Bid Solicitation, a Revised Attachment #1 – Experience of Vendor {Bidder}, and a Revised Bid Solicitation Checklist were all posted on May 28, 2020 to address those questions that were raised during the Question and Answer Period permitted by Bid Solicitation § 1.3.1 *Electronic Question and Answer Period*. It is the State's intent to award Statewide Master Blanket Purchase Orders (Blanket P.O.s) to those responsible Vendors {Bidders} whose Quotes, conforming to this Bid Solicitation are most advantageous to the State, price and other factors considered. Ibid.

On June 9, 2020, the Division's Proposal Review Unit opened Quotes which were received by the submission deadline of 2:00 pm eastern time. After conducting a review of the Quotes received, the Division's Proposal Review Unit issued a Notice of Proposal Rejection to A-One for failing to sign the *Disclosure of Investment Activities in Iran Form* which was submitted with the Quote.

In response to the Notice of Proposal Rejection, on June 12, 2020, A-One sent an email to the Division's Hearing Unit stating:

My apologies in having to compose this letter and send this protest, however, we have been a consistent vendor for NJ DOT for Snow Plowing and Spreading and wish to continue the relationship with you and in providing our services. On June 10, 2020 I received notification from [Proposal Review Unit] stating that our bid was being rejected due to it missing Disclosure of Investment Activities in Iran.

Due to COVID-19, I have been forced to work remotely from home while also educating our three children. I understand this has been a factor that most of the world has had to endure. That said, this has required me to utilize different operating systems, going amongst Mac-based and Windows-based programs. In uploading the documents through the NJSTART website, I feel as though there caused some corruption. Today, to be noted, I received notification from [the Procurement Specialist] saying that the files had some corruption and asked for them to be emailed. I believe this may also be what occurred when uploading the "missing" Disclosure of Investment Activities in Iran, as it appears on the uploads of NJSTART, but the signature is not showing up when I go back in the system via Windows-based programs.

To conclude, I am attaching the missing document – as well as all other forms that may have required any signature to then be scanned in and attached – for you for our Bid. Kindly accept this, as well as my apologies, and please consider our Proposal for Bid Solicitation # 20DPP00525. We have been so very happy to work with NJ DOT for the past twelve years, and wish to have a continuous and prosperous working relationship with you.

In consideration of A-One's protest, I have reviewed the record of this procurement, including the Bid Solicitation, A-One's Quote and protest, the relevant statutes, regulations and case law. The review of the record has provided me with the information necessary to determine the facts of this matter and to render an informed Final Agency Decision on the merits of the protest. I set forth herein the Division's Final Agency Decision.

The Division's administrative regulations that govern the advertised procurement process establish certain requirements that must be met in order for a Quote to be accepted. Those regulations provide in relevant part that:

- (a) In order to be eligible for consideration for award of contract, the bidder's proposal shall¹ conform to the following requirements or be subject to designation as a non-responsive proposal for non-compliance:
...
4. Contain all RFP-required certifications, forms, and attachments, completed and signed as required. An RFP may designate certain forms and/or certifications that need not be included in the bidder's proposal but

¹ "Shall Denotes that which is a mandatory requirement." Bid Solicitation Section 2.2 *General Definitions*.

that must be provided by a successful bidder upon request prior to an award of contract;

[N.J.A.C. 17:12-2.2(a), emphasis added.]

If the requirements of N.J.A.C. 17:12-2.2 are not met, a Quote must be rejected. This regulation mandates stringent enforcement to maintain the equal footing of all Vendors {Bidders} and to ensure the integrity of the State's bidding process.

The subject solicitation was comprised of the Bid Solicitation, other documents and mandatory forms which were specifically addressed in Bid Solicitation Section 4.0 *Quote Preparation and Submission* which states in pertinent part:

Vendor's {Bidder's} failure to complete, sign and submit the forms in Section 4.4.1.2 shall be cause to reject its Quote as non-responsive.

[Bid Solicitation § 4.4.1.2 *NJ Standard Bid Solicitation Forms Required With The Quote.*]

Among those forms required to be submitted with the Quote is the *Disclosure of Investment Activities in Iran Form* discussed in Bid Solicitation Section § 4.4.1.2.2 which states in part:

Pursuant to N.J.S.A. 52:32-58, the Vendor {Bidder} must utilize this *Disclosure of Investment Activities in Iran Form* to certify that neither the Vendor {Bidder}, nor one (1) of its parents, subsidiaries, and/or affiliates, is involved in any of the investments activities set forth in N.J.S.A. 52:32-56(f). If the Vendor {Bidder} is unable to so certify, the Vendor {Bidder} shall provide a detailed and precise description of such activities as directed on the form. A Vendor's {Bidder's} failure to submit the completed and signed form with its Quote will result in the rejection of the Quote as non-responsive and preclude the award of a Blanket P.O. to said Vendor {Bidder}.

Vendors {Bidders} using **NJSTART** to submit a Quote shall make the appropriate certification on the "Maintain Terms and Categories" Tab within its profile by checking the applicable box and, if required, completing and attaching the shortened Disclosure of Investment Activities in Iran form. Vendors {Bidders} not using **NJSTART** to submit a Quote must complete the full Disclosure of Investment Activities in Iran form located on the [Division's website](#).

Vendors {Bidders} may refer to the QRGs "Vendor Forms" and "Attaching Files" for instructions on submitting the forms required by this section of the Bid Solicitation through **NJSTART**. Vendors {Bidders} may also refer to the QRG "Vendor Categories and Certifications" for additional instructions on completing shortened versions of required forms by completing certifications on the "Maintain Terms and Categories" Tab within its profile in **NJSTART**. QRGs are located on the [NJSTART Vendor Support Page](#).

[Emphasis added.]

As an alternative to submission of the *Disclosure of Investment Activities in Iran Form*, as noted in Bid Solicitation § 4.4.1.2.2 above, Vendors {Bidders} using **NJSTART** to submit a Quote are required to make the appropriate certification regarding investment activities in Iran on the “Maintain Terms and Categories” Tab within its profile. A-One did not complete the Disclosure of Investment in Iran category in the “Maintain Terms and Categories” Tab.

Because A-One did not complete the Disclosure of Investment Activities in Iran category within **NJSTART**, it was required to submit the *Disclosure of Investment Activities in Iran Form* with its Quote, or attach the form to its Vendor Profile within **NJSTART**. As shown in the screenshot below, A-One did not attach the *Disclosure of Investment Activities in Iran Form* to its **NJSTART** profile.

The screenshot displays the 'Vendor Profile - A-One Waste Solutions' interface. The 'Attachments' tab is selected, showing a list of profile attachments. The table below contains the following data:

Download	File	Description	Size	Uploaded By	Uploaded Date
	Attachment 2.T0777 - Snow Plowing and Spreading Services-NJDOT.doc	A-One Hauling 2018 Part 1 - T0777 - Snow Plowing and Spreading Services-NJDOT	36,864 bytes	Nicolette Burns	03/13/2018 01:23:45 PM
	Offer and Acceptance Page T0777.pdf	A-One Hauling 2018 Part 2 - Offer and Acceptance Page T0777	277,491 bytes	Nicolette Burns	03/13/2018 01:24:18 PM
	Price Schedule T0777 Snow Plowing and Spreading Services-NJDOT-1.xlsx	A-One Hauling 2018 Part 3 - Price Schedule T0777 Snow Plowing and Spreading Services-NJDOT-1	159,896 bytes	Nicolette Burns	03/13/2018 01:24:45 PM
	Snow Plowing Bid 1 (Section 5411261).pdf	A-One Hauling 2018 Part 4 - Snow Plowing Bid 1 (Section 5411261)	143,019 bytes	Nicolette Burns	03/13/2018 01:25:11 PM
	Snow Plowing Bid 1 (Section 5411262).pdf	A-One Hauling 2018 Part 5 - Snow Plowing Bid 1 (Section 5411262)	139,723 bytes	Nicolette Burns	03/13/2018 01:27:39 PM
	Snow Plowing Bid 1 (Section 5468262).pdf	A-One Hauling 2018 Part 6 - Snow Plowing Bid 1 (Section 5468262)	140,471 bytes	Nicolette Burns	03/13/2018 01:28:06 PM
	Spreading Bid 411 Cherry Hill Yard.pdf	A-One Hauling 2018 Part 7 - Spreading Bid 411 Cherry Hill Yard	141,007 bytes	Nicolette Burns	03/13/2018 01:29:16 PM
	Spreading Bid 415 Berlin Yard.pdf	A-One Hauling 2018 Part 8 - Spreading Bid 415 Berlin Yard	141,713 bytes	Nicolette Burns	03/13/2018 01:29:40 PM
	Spreading Bid 434 Red Lion Yard.pdf	A-One Hauling 2018 Part 9 - Spreading Bid 434 Red Lion Yard	143,596 bytes	Nicolette Burns	03/13/2018 01:29:58 PM

Below the table, there is a 'Forms' section with a message: 'No Form Attachments'. A 'Close Window' button is visible at the bottom of the screenshot.

As part of the review of this protest, the Hearing Unit reviewed each of the documents contained in A-One’s **NJSTART** Profile, none of the documents attached contained a completed and signed *Disclosure of Investment Activities in Iran*.

The record of this procurement reveals that A-One did submit the *Disclosure of Investment Activities in Iran Form* with its Quote. However, as shown in the screenshot below, the submitted form was not signed as required.

	<p>STATE OF NEW JERSEY DEPARTMENT OF THE TREASURY DIVISION OF PURCHASE AND PROPERTY</p> <p>33 WEST STATE STREET, P.O. BOX 230 TRENTON, NEW JERSEY 08625-0230</p>
<p>DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN FORM</p>	
<p>BID SOLICITATION #: <u>20DPP00525</u> VENDOR/BIDDER: <u>A-One Waste Solutions, LLC</u></p>	
<p>PART 1 CERTIFICATION VENDOR/BIDDER MUST COMPLETE PART 1 BY CHECKING ONE OF THE BOXES FAILURE TO CHECK ONE OF THE BOXES WILL RENDER THE PROPOSAL NON-RESPONSIVE</p>	
<p>Pursuant to Public Law 2012, c. 25, any person or entity that submits a bid or proposal or otherwise proposes to enter into or renew a contract must complete the certification below to attest, under penalty of perjury, that neither the person nor entity, nor any of its parents, subsidiaries, or affiliates, is identified on the Department of the Treasury's Chapter 25 list as a person or entity engaged in investment activities in Iran. The Chapter 25 list is found on the Division's website at http://www.state.nj.us/treasury/purchase/pdf/Chapter25_list.pdf. Vendors/Bidders must review this list prior to completing the below certification. Failure to complete the certification will render a Vendor's/Bidder's proposal non-responsive. If the Director of the Division of Purchase and Property finds a person or entity to be in violation of the law, s/he shall take action as may be appropriate and provided by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and seeking debarment or suspension of the party.</p>	
<p>CHECK THE APPROPRIATE BOX</p>	
<p><input checked="" type="checkbox"/> A. I certify, pursuant to Public Law 2012, c. 25, that neither the Vendor/Bidder listed above nor any of its parents, subsidiaries, or affiliates is listed on the N.J. Department of the Treasury's list of entities determined to be engaged in prohibited activities in Iran pursuant to P.L. 2012, c. 25 ("Chapter 25 List"). Disregard Part 2 and complete and sign the Certification below.</p> <p>OR</p> <p><input type="checkbox"/> B. I am unable to certify as above because the Vendor/Bidder and/or one or more of its parents, subsidiaries, or affiliates is listed on the Department's Chapter 25 list. I will provide a detailed, accurate and precise description of the activities in Part 2 below and sign and complete the Certification below. Failure to provide such information will result in the proposal being rendered as nonresponsive and appropriate penalties, fines and/or sanctions will be assessed as provided by law.</p>	
<p>PART 2</p>	
<p>PLEASE PROVIDE ADDITIONAL INFORMATION RELATED TO INVESTMENT ACTIVITIES IN IRAN</p> <p>If you checked Box "B" above, provide a detailed, accurate and precise description of the activities of the Vendor/Bidder, or one of its parents, subsidiaries or affiliates, engaged in the investment activities in Iran by completing the boxes below.</p>	
<p>ENTITY NAME: _____</p> <p>RELATIONSHIP TO VENDOR/BIDDER: _____</p> <p>DESCRIPTION OF ACTIVITIES: _____</p> <p>DURATION OF ENGAGEMENT: _____</p> <p>ANTICIPATED CESSATION DATE: _____</p> <p>VENDOR/BIDDER CONTACT NAME: _____</p> <p>VENDOR/BIDDER CONTACT PHONE No.: _____</p> <p><i>Attach Additional Sheets If Necessary.</i></p>	
<p>CERTIFICATION</p>	
<p>I, the undersigned, certify that I am authorized to execute this certification on behalf of the Vendor/Bidder, that the foregoing information and any attachments hereto, to the best of my knowledge are true and complete. I acknowledge that the State of New Jersey is relying on the information contained herein, and that the Vendor/Bidder is under a <u>continuing obligation</u> from the date of this certification through the completion of any contract(s) with the State to notify the State in writing of any changes to the information contained herein; that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification. If I do so, I will be subject to <u>criminal prosecution</u> under the law, and it will constitute a material breach of my agreement(s) with the State, permitting the State to declare any contract(s) resulting from this certification void and unenforceable.</p>	
<p>Signature _____</p> <p><small>Nicolette Burns - Managing Member</small></p> <p>Print Name and Title</p>	<p>_____/____/____</p> <p>Date</p>

The requirement that a Vendor {Bidder} certify that it is not engaged in certain prohibited activities in Iran is set forth in N.J.S.A. 52:32-58. The New Jersey Legislature, in implementing N.J.S.A. 52:32-58, mandated requirements that a Vendor {Bidder} must comply with in order to enter into a contract with the State. N.J.S.A. 52:32-58 states:

A State agency shall require a person or entity that submits a bid or Quote or otherwise proposes to enter into or renew a [Blanket P.O.] to certify, at the time the bid is submitted or the [Blanket P.O.] is renewed, that the person or entity is not identified on a list created pursuant to subsection b. of section 3 [C.52:32-57] of this act as a person or entity engaging in investment activities in Iran described in subsection f. of section 2 [C.52:32-56] of this act."
N.J.S.A. 52:32-58(a).

[Emphasis added.]

In order to make this process of certifying easier, the Division provides to the bidding community the *Disclosure of Investment Activities in Iran* form to be completed and signed in order for Vendor {Bidder} to comply with the statutory requirements. Unless otherwise specified, forms must contain an original, physical signature, or an electronic signature. Here, unfortunately, the signature line on the submitted form was left blank. Because A-One submitted the Quote without the *Disclosure of Investment*

Activities in Iran form being signed, it was not in compliance with the Legislative requirement that mandates that a Vendor {Bidder} certify at the time of bid submission that it is not engaged in investment activities in Iran.²

In reviewing Quote submitted, the Division does not have the power to waive the legislative requirement that a Vendor {Bidder} certify with its Quote that it is not engaged in investment activities in Iran. Only the New Jersey Legislature can change a requirement it has mandated. If the requirements of N.J.S.A. 52:32-58 and N.J.A.C. 17:12-2.2 are not met, a Quote must be rejected. The statute and regulation mandate stringent enforcement to maintain the equal footing of all Vendors {Bidders} and to ensure the integrity of the State's bidding process. The **NJSTART** system does not prevent a Vendor {Bidder} from submitting a Quote without all of the required forms and documents attached as mandated by the specifications. The responsibility for ensuring that all necessary forms and other submittals, are uploaded into **NJSTART** necessarily and appropriately rests solely with the Vendor {Bidder}. Bid Solicitation § 1.4.2 *Vendor {Bidder} Responsibility*.

Here, unfortunately, A-One submitted a Quote without the *Disclosure of Investment Activities in Iran Form* signed as required. Accordingly, A-One's Quote was properly rejected by the Division's Proposal Review Unit. This is an unfortunate situation for the State as the Division encourages competition and appreciates the time and effort put forth in preparing and submitting the Quote. However, in light of the findings set forth above, I have no choice but to deny your request for eligibility to participate in the competition for the subject Bid Solicitation. This is my final agency decision on this matter.

Thank you for your company's interest in doing business with the State of New Jersey and for registering your business with **NJSTART** at www.njstart.gov, the State of New Jersey's eProcurement system.

Sincerely,



Rachel Doobrajh
Acting Chief Hearing Officer

RUD: TCR

- c. M. Dunn
- R. Regan
- K. Popso
- K. Centofanti

² For the sake of completeness I note that the *Disclosure of Investment Activities in Iran Form* was opened using both mac and window computer. The form did not contain a signature on either program.