



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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July 5, 2017

Via Electronic Mail [ptruncellito@premiersafety.com] and USPS Regular Mail

Paul J. Truncellito, QSSP
Business Development Manager
Premier Safety & Service, Inc.
37 Crest Circle
Matawan, New Jersey 07747

Re: Reconsideration of Protest of Notice of Proposal Rejection
Solicitation #17DPP00046: Law Enforcement Firearms, Equipment and Supplies

Dear Mr. Truncellito:

This letter is in response to your email of June 7, 2017, on behalf of Premier Safety & Service, Inc. (hereinafter "Premier") seeking a reconsideration of the Division of Purchase and Property's (hereinafter "Division") June 2, 2017, Final Agency Decision, which upheld the Division's Proposal Review Unit's rejection of the Quote {Proposal} (hereinafter "Proposal") submitted by Argus Group Holding d/b/a Argus - Hazco (hereinafter "Argus") based upon Argus' failure to submit a completed and signed *Ownership Disclosure Form* with its proposal.

By way of background, on February 7, 2017, the Division's Procurement Bureau (hereinafter "Bureau") issued the above referenced RFP on behalf of State Using Agencies and Cooperative Purchasing Partners, to solicit Proposals for sixteen categories of law enforcement equipment and supplies identified in the RFP. RFP § 1.1 *Purpose and Intent* and RFP § 3.1 *Law Enforcement Equipment and Supplies Categories*. The State intends to make two (2) Statewide awards, one primary and one secondary, for each price line listed in Categories 1 through 11 and up to five (5) Statewide awards for each price line listed in Categories 12 through 16. RFP § 1.1 *Purpose and Intent*.

On April 20, 2017, the Proposal Review Unit opened the Proposals received by the submission deadline of 2:00 p.m. After conducting an initial review of the Proposals submitted, the Proposal Review Unit found that Argus' Proposal did not include the *Ownership Disclosure Form* or the *Offer and Acceptance {Signatory} Page*. Accordingly, the Proposal Review Unit issued a Notice of Proposal Rejection. On May 30, 2017, Argus wrote to the Division stating "[p]lease accept the following 2 forms with signature that were missed from the original quote submission. Please let me know if this is acceptable, or if I need to do anything additional to be considered for the bid." With the protest, Argus submitted the completed and signed *Ownership Disclosure Form* and the *Offer and Acceptance {Signatory} Page*.

On June 2, 2017, the Division issued a Final Agency Decision upholding the Division's Proposal Review Unit's rejection of Argus' proposal for failure to submit a completed and signed *Ownership*

Disclosure Form with its Proposal. Specifically, the decision noted “to allow Argus to submit a completed and signed *Ownership Disclosure Form* after bid opening would violate the Legislative requirement outlined in N.J.S.A. 52:25-24.2, would un-level the Bidder’s playing field and would provide Argus with disclamation options not available to other Bidders.”

On June 7, 2017, a request for reconsideration was received from Premier. In that request for reconsideration Premier states,

I am writing in response to our rejection of Quote # 00000809 for Bid # 17DPP00046 - Law Enforcement Firearms Equipment.¹ I am the new employee on board tasked with providing this quote to help serve my home state of NJ with competitive pricing. The rejection was due to not having the Ownership Disclosure Form.

At the time of the Bid, our company had been going through a transition and I was working under both the Argus Holding Group Name, Vendor ID: V00023650, and A.J. Abrams Co, Vendor ID: V00001759. Argus Holdings and A.J. Abrams have been registered and through acquisitions, we are one company now and the ownership forms are accurate.

The letter stated that our information of Ownership Disclosure was missing but with the A.J. Abrams Co information on file, this would show our registration as we were part of the last Blanket PO index: T0106 for Police and Homeland Security safety equipment.

With this information we feel that our protest is valid and satisfies the issue of ownership to be eligible for award of contract.

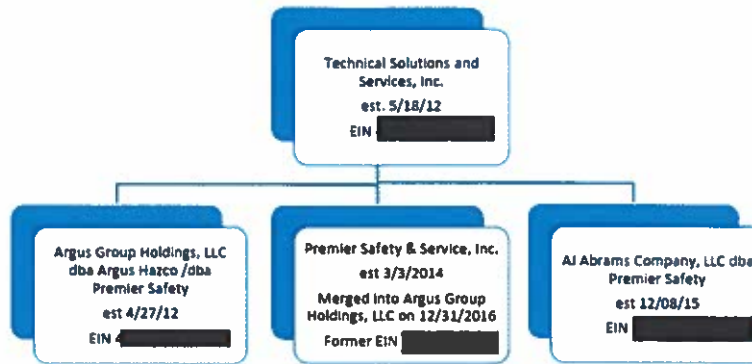
On June 14, 2017 the Division’s Hearing Unit wrote to Premier asking that the company clarify the relationship between Premier, Argus, and AJ Abrams Co. (hereinafter “AJ”). On June 15, 2017, Premier responded noting the following:

Argus Group Holdings, LLC (“Argus”) and AJ Abrams (“AJ”) are subsidiaries of Technical Solutions and Services, Inc. (“TSS”) Premier Safety & Service, Inc. (“PSS”) is also a former subsidiary of TSS. PSS merged into Argus at the end of 2016. In 2017, AJ and Argus assumed an additional dba of Premier Safety.

Currently, any work originating out of the North East is handled by AJ. Below I have included an Organization Chart of our current structure which includes formation dates, merger dates, and EINs/former EINs.

¹ Quote # 00000809 was submitted by Argus Group Holding d/b/a Argus – Hazco.

In addition, Premier provided the following organization chart:



In consideration of this request for reconsideration I have reviewed the record of this procurement, including the Bid Solicitation {Request for Proposal} (hereinafter “RFP”), Argus’ Proposal, documents on file for AJ, the relevant statutes, regulations, and case law. This 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.

As noted the Division’s June 2, 2017, Final Agency Decision, the *Ownership Disclosure Form* is a statutorily required document that must be submitted with the Bidder’s Proposal. The New Jersey Legislature, in implementing N.J.S.A. 52:25-24.2, mandated the requirements that a bidder must comply with in order to enter into a contract with the State. N.J.S.A. 52:25-24.2 states in pertinent part:

No corporation, partnership, or limited liability company shall be awarded any contract nor shall any agreement be entered into for the performance of any work or the furnishing of any materials or supplies, the cost of which is to be paid with or out of any public funds, by the State, or any county, municipality or school district, or any subsidiary or agency of the State, or of any county, municipality or school district, or by any authority, board, or commission which exercises governmental functions, unless prior to the receipt of the bid or accompanying the bid, of said corporation, said partnership, or said limited liability company there is submitted a statement setting forth the names and addresses of all stockholders in the corporation who own 10 percent or more of its stock, of any class, or of all individual partners in the partnership who own a 10 percent or greater interest therein, or of all members in the limited liability company who own a 10 percent or greater interest therein, as the case may be. If one or more such stockholder or partner or member is itself a corporation or partnership or limited liability company, the stockholders holding 10 percent or more of that corporation's stock, or the individual partners owning 10 percent or greater interest in that partnership, or the members owning 10 percent or greater interest in that limited liability company, as the case may be, shall also be listed. The disclosure shall be continued until names and addresses of every noncorporate stockholder, and individual partner, and member, exceeding the 10 percent ownership criteria established in this act, has been listed.

The *Ownership Disclosure Form* is specifically addressed in RFP Section 4.4.1.2.1 *Ownership Disclosure Form* which states in part:

Pursuant to N.J.S.A. 52:25-24.2, in the event the Vendor {Bidder} is a corporation, limited liability company, or partnership, the Vendor {Bidder} must complete an Ownership Disclosure Form.

A current completed Ownership Disclosure Form must be received prior to or accompany the submitted Quote {Proposal}. A Vendor's {Bidder's} failure to submit the completed and signed form with its Quote {Proposal} will result in the rejection of the Quote {Proposal} as non-responsive and preclude the award of a Blanket P.O. {Contract} to said Vendor {Bidder} unless the Division has on file a signed and accurate Ownership Disclosure Form dated and received no more than six (6) months prior to the Quote {Proposal} submission deadline for this procurement. If any ownership change has occurred within the last six (6) months, a new Ownership Disclosure Form must be completed, signed and submitted with the Quote {Proposal}.

The record indicated that Argus did not submit the *Ownership Disclosure Form* with the proposal, nor was a signed form contained within Argus' *NJSTART* Vendor Profile, or previously submitted within six (6) months prior to the Proposal opening deadline. Accordingly, the June 2, 2017, Final Agency Decision upheld the Proposal Review Unit's decision to reject Argus' proposal.

In the request for reconsideration Premier states that "Argus Holdings and AJ Abrams have been registered and through acquisitions, we are one company." See, Premier June 7, 2017 email. Further, in response to the Hearing Unit's request, Premier notes that "Argus Group Holdings, LLC ("Argus") and AJ Abrams ("AJ") are subsidiaries of Technical Solutions and Services, Inc. ("TSS") Premier Safety & Service, Inc. ("PSS") is also a former subsidiary of TSS. PSS merged into Argus at the end of 2016. In 2017, AJ and Argus assumed an additional dba of Premier Safety." See, Premier June 15, 2017 email.

First, I note that neither TSS nor Premier is registered as a vendor with State's new eProcurement system *NJSTART*, neither was registered with the State's prior eProcurement system, neither had a prior contract with the State or filed previous ownership disclosure information. Therefore, with respect to these two (2) companies, the State has no information on file from which Argus' ownership could be ascertained.

Second, with respect to Argus, as previously noted, Argus did not submit the *Ownership Disclosure Form* with its proposal, nor was a signed form contained within Argus' *NJSTART* Vendor Profile, or previously submitted within six (6) months prior to the Proposal opening deadline. Moreover, I note that with its original protest, Argus submitted a completed and signed *Ownership Disclosure Form*. That form indicated that there are no individuals, corporations, partnerships, or limited liability companies which own a 10% or greater interest of the company. However, in connection with its request for reconsideration, Argus advised that TSS owns approximately 95% of Argus. Therefore, the information provided on the *Ownership Disclosure Form* submitted out of time with Argus' original protest is inconsistent with that later provided in connection with this request for reconsideration.

Third, a review of the records on file with the Division for AJ reveals that AJ does not have a current *Ownership Disclosure Form* on file. A review of AJ's *NJSTART* profile reveals that AJ did not make any selection on the "Terms and Categories Tab" for Ownership Disclosure nor was an *Ownership Disclosure Form* uploaded as an attachment to its *NJSTART* profile. While AJ was previously a contractor with the State, its contract expired on October 31, 2016. The last *Ownership Disclosure Form* submitted to the Division by AJ was in 2009, well outside of the Division's six (6) month window for the submission of an *Ownership Disclosure Form* prior to the Proposal opening date; and, that *Ownership Disclosure Form*

appears to have been submitted prior to AJ's acquisition by TSS. See, In re Scheduled Award of Term Contract T2813 RFP 12-X-22361 Lab. Testing Serv., 2013 N.J. Super. Unpub. LEXIS 1698 (App. Div. July 10, 2013).

Moreover, I note that with respect to mergers and acquisitions, the State of New Jersey Standard Terms and Conditions state:

5.10 MERGERS, ACQUISITIONS - If, during the term of this contract, the contractor shall merge with or be acquired by another firm, the contractor shall give notice to the Director as soon as practicable and in no event longer than thirty (30) days after said merger or acquisition. The contractor shall provide such documents as may be requested by the Director, which may include but need not be limited to the following: corporate resolutions prepared by the awarded contractor and new entity ratifying acceptance of the original contract, terms, conditions and prices; updated information including ownership disclosure and Federal Employer Identification Number. The documents must be submitted within thirty (30) days of the request. Failure to do so may result in termination of the contract for cause.

Based upon the information provided in connection with the request for reconsideration, AJ merged or was acquired by TSS in December 2015, prior the expiration of its contract with the State in October 2016. However, at no time did AJ provide the State with notice of its merger/acquisition or any of the necessary information including ownership disclosure. Therefore, with respect to this company, the State has no information on file from which Argus' ownership could be ascertained.

With the information on file with the Division as of the Proposal opening date, the Division is unable to establish that Argus, AJ, TSS and PSS are operating as one company and is therefore unable to establish Argus' ownership as required by the N.J.S.A. 52:25-24.2. The Division has no authority to waive a legislative requirement that a Bidder provide its ownership information prior to or accompanying the Proposal submission.

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 Proposal. However, in reviewing proposals submitted in response to an RFP, the Division does not have the power to waive the legislative requirement as only the New Jersey Legislature can change a requirement it has mandated. Therefore, 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 contract. This is my Final Agency Decision on this matter.

Sincerely,


Maurice A. Griffin
Acting Director

MAG: RUD

c: K. Malzahn
J. Kerchner
K. Thomas
J. Karamali