



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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July 2, 2015

Via Electronic Mail [mcannon@hillwallack.com] and USPS Regular Mail

Ms. Maeve Cannon, Esq.
Hill Wallack LLP
21 Roszel Road
P.O. Box 5226
Princeton, NJ 08543

RE: Request for Reconsideration of Final Agency Decision
RFP #15-X-23841 OEM and Non-OEM Maintenance and Repair Services for Light/Medium Duty
Vehicles, 15,000 lb. GVWR or Less (T-0126)

Dear Ms. Cannon:

This letter is in response to your request for reconsideration, dated June 17, 2015, submitted on behalf of Joe's Transmission Service, Inc. ("JTS") to the Division of Purchase and Property ("the Division"). The record of this procurement notes that the Division issued a final agency decision on June 4, 2015, upholding the determination of the Proposal Review Unit to reject JTS's proposal submission in response to the subject RFP due to JTS' failure to submit a properly signed *Ownership Disclosure Form* and *Disclosure of Investment Activities in Iran Form*. Notwithstanding this determination, you request the Division reconsider its rejection of JTS's proposal and, among other things, ask the Division to accept JTS's PIN as a certifying signature on these forms.

As noted in my final agency decision, the RFP expressly required that the *Ownership Disclosure Form* and *Disclosure of Investment Activities in Iran Form* be signed in one of two ways if submitted electronically: 1) by downloading the document, physically signing the form, scanning the completed document, and then uploading it; or 2) by typing the name of the signatory in the space designated for certification signature and uploading the document. I reiterate the relevant text of the RFP below:

4.4.1.2 NJ STANDARD RFP FORMS

One of the downloadable RFP documents is titled NJ STANDARD RFP FORMS. It is comprised of three separate forms, two of which (*Ownership Disclosure* and *Disclosure of Investment Activities in Iran*) discussed below, must be completed, signed and submitted with the bidder's proposal. **The bidder is cautioned that failure to complete, sign and submit either of these two forms will be cause to reject its proposal as non-responsive as noted below.** If the bidder submits a hard copy proposal, each of the two forms must be physically signed.

If the bidder is submitting an electronic proposal through the Division's eBid system, there are only two acceptable forms of signature for the two forms:

1. The bidder may download the document, physically complete and sign each form, scan the completed document and then upload it, or
2. The bidder may download the document, type the name of the signatory in the space designated for certification signature in each of the forms and then upload the document.

Note: A bidder's entry of a Personal Identification Number (PIN) shall not suffice as a certifying signature on the forms comprising the NJ STANDARD RFP FORMS document.

4.4.1.2.1 OWNERSHIP DISCLOSURE FORM

Pursuant to N.J.S.A. 52:25-24.2, in the event the bidder is a corporation, partnership or sole proprietorship, the bidder must complete and sign the attached Ownership Disclosure Form. A current completed Ownership Disclosure Form must be received prior to or accompany the submitted proposal. A bidder's failure to submit the completed and signed form with its proposal will result in the rejection of the proposal as non-responsive and preclude the award of a contract to said bidder unless the Division has on file a signed and accurate Ownership Disclosure Form dated and received no more than six months prior to the proposal submission deadline for this procurement. If any ownership change has occurred within the last six months, a new Ownership Disclosure Form must be completed, signed and submitted with the proposal.

4.4.1.2.2 DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN FORM

Pursuant to N.J.S.A. 52:32-58, the bidder must utilize this Disclosure of Investment Activities in Iran form to certify that neither the bidder, nor one of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32-56(e)(3)), is listed on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither the bidder, nor one of its parents, subsidiaries, and/or affiliates, is involved in any of the investment activities set forth in N.J.S.A. 52:32-56(f). If the bidder is unable to so certify, the bidder shall provide a detailed and precise description of such activities as directed on the form. A bidder's failure to submit the completed and signed form with its proposal will result in the rejection of the proposal as nonresponsive and preclude the award of a contract to said bidder.

Also as noted in my final agency decision, the Division provided a Proposal Checklist as an accompaniment to the RFP, which advised all bidders of the following:

FORMS THAT MUST BE SUBMITTED WITH YOUR PROPOSAL:

- RFP Signatory Page with physical signature or PIN (PIN is for eBid submission ONLY)
- Completed Price Sheets as instructed in Section 4.4.5 of the RFP
- Completed and signed Ownership Disclosure Form*
- Completed and signed Disclosure of Investments in Iran Form*

....

** The Ownership Disclosure, Disclosure of Investigations and Other Actions Involving Bidder, and the Disclosure of Investments in Iran forms MUST each contain either a physical or typed signature (typed signatures are only acceptable for eBid submissions). . . .*

In addition, the RFP provided additional guidance to bidders on electronic signatures in RFP Sections

1.3.4 *Electronic Signatures* and 4.4.1.1 *Signatory Page*:

1.3.4 ELECTRONIC SIGNATURES

Bidders submitting proposals through the eBid system may sign the following forms electronically by typing the name of the authorized signatory in the "Signature" block as an alternative to downloading, physically signing the form, scanning the form and uploading the form to the eBid system:

- Ownership Disclosure Form;
- Disclosure of Investigations and Other Actions Involving Bidder Form; and
- Disclosure of Investment Activities in Iran Form

This practice applies only to proposals submitted through the eBid system and the forms listed above. Both electronic signatures and scanned physical signatures will be accepted, provided that the forms are otherwise properly completed.

....

4.4.1.1 SIGNATORY PAGE

The bidder shall complete, including signature of an authorized representative of the bidder, and submit the Signatory Page accompanying this RFP. If the bidder is a limited partnership, the Signatory Page must be signed by a general partner. If the bidder is a joint venture, the Signatory Page must be signed by a principal of each party to the joint venture. Failure to comply will result in rejection of the proposal.

Note: A bidder's written signature on the Signatory Page, or entry of a Personal Identification Number (PIN) if using the eBid system, shall not serve as a certifying signature on the forms comprising the NJ STANDARD RFP FORMS document. (See 4.4.1.2)

[(Emphasis in original.)]

JTS concedes that its proposal submission contained an *Ownership Disclosure Form* and a *Disclosure of Investment Activities in Iran Form* that both included a PIN rather than a typed name or handwritten signature as required by the RFP. Nevertheless, you request, on behalf of JTS, that the Division consider three arguments as to why JTS's proposal should be reinstated: 1) JTS submitted an accurate *Ownership Disclosure Form* in response to a previous solicitation in 2012, RFP #13-X-22425, that remains accurate to date; 2) JTS's PIN "qualifies as a valid signature" because a PIN shows an intent to "sign," and 3) JTS submitted physically signed versions of the forms in question to the Division's Ch. 51 Unit on the date of the proposal opening. I address each of your arguments below.

Concerning your first argument, the requirement to fully disclose corporate ownership is dictated by N.J.S.A. 52:25-24.2. The statute provides that "[n]o corporation or partnership shall be awarded any contract . . . by the State . . . unless prior to the receipt of the bid or accompanying the bid . . . there is submitted a statement setting forth the names and addresses of all stockholders . . . who own 10% or more of its stock[.]" While the statute does provide that the ownership disclosure requirement may be completed prior to proposal submission, RFP Section 4.4.1.2.1, reproduced in full above, specified that the Division would only accept an *Ownership Disclosure Form* submitted "no more than six months prior to the proposal submission deadline for this procurement."

Therefore, although JTS may have submitted an *Ownership Disclosure Form* in response to RFP #13-X-22425 more than two years ago, in 2012, the Division cannot accept this form in response to the subject RFP, which closed on April 17, 2015.

Second, you contend that “the filing of the PIN ‘evinced [JTS’s] intent to be bound’” and therefore JTS’s PIN should suffice as a certifying signature. In support of your argument, you cite N.J.A.C. 17:12-1.3 and N.J.S.A. 46:14-4.2.

In determining whether the use of a PIN or electronic signature by bidders on particular forms is acceptable, the Division relies on the Uniform Electronic Transactions Act (“UETA”), N.J.S.A. 12A:12-1 et seq., which defines an “electronic signature” as “an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.” N.J.S.A. 12A:12-2. The UETA specifies that “each governmental agency shall determine whether, and the extent to which, it will send and accept electronic records and electronic signatures to and from other persons, and otherwise create, generate, communicate, store, process, use and rely upon electronic records and electronic signatures.” N.J.S.A. 12A:12-18(a). Critically, each governmental agency may specify:

- (1) the manner and format in which the electronic records must be created, generated, sent, communicated, received and stored and the system established for those purposes;
- (2) if electronic records must be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record, and the identity of, or criteria that must be met by, any third party used by a person filing a document to facilitate the process;
- (3) control processes and procedures appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality and auditability of electronic records; and
- (4) any other required attributes for electronic records which are currently specified for corresponding nonelectronic records, or reasonably necessary under the circumstances.

[N.J.S.A. 12A:12-18(b).]

Based on the UETA, the Division specified which of the eBid processes and forms may accept a PIN rather than a different form of electronic signature, and which required a different form of signature. JTS did not comply with the Division’s specific directions.¹ In sum, the Division established the manner of electronic signature for the *Ownership Disclosure Form* and *Disclosure of Investment Activities in Iran Form* and JTS did not comply. Thus under the UETA, the forms are not considered to be signed and cannot be accepted.

In response to your third argument, as noted in my final agency decision, a review of the Division’s records do indicate that JTS included different versions of the forms in question in a certified mailing to the Division’s Chapter 51 Review Unit. These forms were completed correctly and contained a physical signature next to the

¹ Although it is not necessary, I note that the Division had specific reasons for the differing directions. A vendor’s PIN is stored in its vendor contact record; however, if a company has more than one vendor contact, each individual contact is assigned a unique PIN. This PIN data is stored as an encrypted value and is not searchable by Division employees to discover which individual vendor contact may have typed a PIN on a given form. In addition, a vendor can change its PIN at any time, and the Division’s electronic system does not store a history of PINs for each vendor. Only the current PIN is stored. For example, if a vendor was to submit a proposal through the Division’s eBid system and then go into its account and change its PIN, the Division would not be able to link the two PINs together. Therefore, a PIN cannot be used to verify the identity of a vendor, or of an individual vendor contact. For this reason, the Division cannot accept the entry of a PIN as a certifying signature on the *Ownership Disclosure Form* and *Disclosure of Investment Activities in Iran Form*, as each of these forms requires a signature that corresponds to the name of the individual person certifying to the information contained on the forms.

typed PIN.² However, although JTS may have mailed these documents on April 17, 2015, the Division did not receive the certified mailing until April 20, 2015, three days following the proposal submission deadline of April 17, 2015. (See attachments.) The RFP is clear that “[i]n order to be considered for award, the proposal must be received by the Procurement Bureau of the Division of Purchase and Property at the appropriate location by the required time.” RFP Section 1.3.2 *Submission of Proposal*.

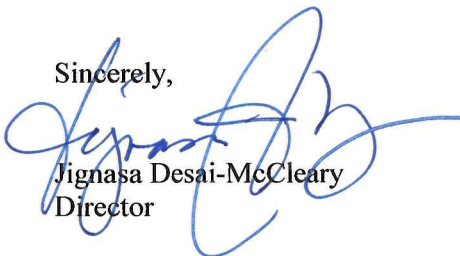
Furthermore, as noted in RFP Section 4.4.7.12, “Proposals may be withdrawn, modified, and re-submitted prior to proposal opening. Modifications submitted in any other manner will not be considered.” RFP Section 6.5 stated that following proposal opening and review, a bidder “cannot correct any deficiencies or material omissions or revise or modify a proposal, except to the extent that correction of apparent clerical mistakes results in a modification.”

Courts have reiterated that proposals may not be supplemented after the proposal submission deadline. “Allowing alteration of the original proposal, post-opening, contradicts our public bidding scheme and undermines the integrity of the bidding process.” In re Jasper Seating Co., Inc., 406 N.J. Super. 213, 224 (App. Div. 2009); see also In re Protest of Award of On-Line Games Prod. and Operation Servs. Contract, 279 N.J. Super. 566, 598-603 (App. Div. 1995).

The acceptance of JTS's forms under these circumstances would be contrary to the principles governing State procurement and would provide JTS with options to modify its proposal that were not available to those bidders whose proposals were fully responsive and submitted before the proposal opening deadline stated in the RFP. Accordingly, the Division may not accept the forms received from JTS after the deadline.

Based on the foregoing, I must deny JTS's request for reconsideration. This is my Final Agency Determination regarding the points you have submitted on JTS' behalf.

Sincerely,



Jignasa Desai-McCleary
Director

JD-M:DF

c: M. Griffin
K. Thomas
V. Bequer
D. Rodriguez
A. Nelson

² JTS also submitted an email to the Chapter 51 Review Unit at cd134@treas.state.nj.us on April 16, 2015, which contained duplicate Standard RFP forms as those included with its eBid submission, i.e., forms including a PIN in the place of a proper signature.