



## State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
OFFICE OF THE DIRECTOR  
33 WEST STATE STREET  
P. O. BOX 039  
TRENTON, NEW JERSEY 08625-0039

Telephone (609) 292-4886 / Facsimile (609) 984-2575

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

ANDREW P. SIDAMON-ERISTOFF  
*State Treasurer*

JIGNASA DESAI-MCCLEARY  
*Director*

April 22, 2015

Via Electronic Mail [cnix.metrodist@att.net] and USPS Regular Mail

Chris Nix  
Robert's and Son Inc.  
P.O. Box 110  
20 Jewel Street  
Garfield, NJ 07026

RE: Protest of Proposal Rejection  
RFP #15-X-23842 – Automotive Parts for Heavy Duty Vehicles  
(Class 5 or Higher, Over 15,000 lb. GVWR) (T2085)

Dear Mr. Nix:

This letter is in response to your April 13, 2015 emailed letter, referencing the subject Request for Proposal (“RFP”) and regarding the proposal electronically submitted by Robert’s and Son Inc. (“RSI”) to the Division of Purchase and Property (“the Division”). By way of a Notice of Proposal Rejection issued by the Division’s Proposal Review Unit, RSI was advised that its proposal was rejected promptly after the March 31, 2015 formal opening of timely submitted proposals, because the *Ownership Disclosure Form* included with RSI’s proposal did not contain an essential signature. RSI’s letter of protest asserts that for the *Ownership Disclosure Form* submitted with RSI’s proposal, the “only thing missing was the Date of Birth of the owner.”

In regard to the issue before me, I have reviewed the record of this procurement, including the RFP and RSI’s electronically submitted proposal, with consideration of relevant statutes, regulations, and case law. This review has provided me with the information necessary to determine the facts of this matter and to render an informed determination on the merits of RSI’s protest.

The required submission of a completed and signed *Ownership Disclosure Form* is set forth in RFP Section 4.0, *Proposal Preparation and Submission*, and specifically, within RFP Paragraph 4.4.1, *Forms, Registrations and Certifications Required with Proposal*. The relevant text reads as follows:

#### **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. A signed RFP Signatory Page is also not an acceptable substitute for signature on these two forms.**

#### **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.

[Emphasis in original]

Pursuant to the Division's regulations, specifically N.J.A.C. 17:12-2.2,<sup>1</sup> a bidder's proposal must "[c]ontain all RFP-required certifications, forms, and attachments, completed and signed as required" or "be subject to automatic rejection." As set forth in RFP segments 4.4.1.2 and 4.4.1.2.1, the submission of a completed and signed *Ownership Disclosure Form* prior to or as part of the proposal was required, as this statutorily required signatory certification is not covered by a bidder's use of its Personal Identification Number used to submit its electronic proposal.

Regarding the RFP's provisions for completing and submitting this essential form, the signature requirements were also set forth in the Proposal Checklist included as a guide to aid bidders in the completion of their proposals. This guide listed the Ownership Disclosure Form on the checklist with an asterisk, which, near the bottom of the Checklist, advised bidders as follows in pertinent part:

---

<sup>1</sup> The Division's administrative rules governing its procurement programs are set forth in N.J.A.C. 17:12 et seq. These rules can be accessed at <http://www.state.nj.us/treasury/purchase/AdminCode.shtml>.

**\*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).**

My review of the record of electronically submitted proposals confirms that RSI's electronic submission contained an unsigned *Ownership Disclosure Form*. Because a certifying signature on this form is essential to meet statutory, regulatory and RFP requirements for such a certification, the rejection of RSI's proposal by the Division's Proposal Review Unit was proper and necessary. As affirmed by New Jersey courts, the deficiency at issue cannot be remedied after the proposal submission deadline. Allowing the acceptance of RSI's proposal under these circumstances would be contrary to the provisions of the governing statutes and would provide RSI with disclamation options not available to those bidders whose proposals are fully responsive, thereby disturbing the equal footing standard of public bidding. In light of the findings, I uphold the Proposal Review Unit's rejection of Robert's proposal as it did not contain the requisite signature on the *Ownership Disclosure Form*. This is my final agency decision on this matter.

This is an unfortunate situation for the State, as the Division encourages competition and appreciates the time and effort DMI applied in preparing and submitting its proposal. Thank you in anticipation of your continuing interest in doing business with the State of New Jersey. In that regard, thank you for registering your business entity with ~~the~~ the State of New Jersey's eProcurement system.

Sincerely,



Ronald G. Wengerd  
Chief Hearing Officer

c: G. Olivera  
K. Thomas  
V. Bequer  
D. Rodriguez