



# 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  
<https://www.njstart.gov>  
Telephone (609) 292-4886 / Facsimile (609) 984-2575

ELIZABETH MAHER MUOIO  
*State Treasurer*

MAURICE A. GRIFFIN  
*Acting Director*

PHILIP D. MURPHY  
*Governor*

SHEILA Y. OLIVER  
*Lt. Governor*

April 25, 2018

Via Electronic Mail [scott@lutzkycontracting.com] and USPS Regular Mail

Scott Lutzky  
Lutzky Contracting, Inc.  
332 Longhill Road  
Hillsborough, NJ 08844

Re: I/M/O Bid Solicitation #: 18DPP00205 Lutzky Contracting, Inc.  
Protest of Notice of Proposal Rejection  
Bid Solicitation Title: T0777 Snow Plowing and Spreading Services - NJDOT

Dear Mr. Lutzky:

This letter is in response to your fax of April 18, 2018, on behalf of Lutzky Contracting, Inc. ("Lutzky Contracting") to the Division of Purchase and Property's ("Division") Hearing Unit. In that fax, Lutzky Contracting protests the Notice of Proposal Rejection issued by the Division's Proposal Review Unit for Bid Solicitation #18DPP00205 - T0777 Snow Plowing and Spreading Services ("Bid Solicitation"). The record of this procurement reveals that Lutzky Contracting's Quote was rejected for failing to submit the *Ownership Disclosure Form* with its Quote.

By way of background, on January 30, 2018, 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 NJDOT. Bid Solicitation § 1.1 *Purpose and Intent*. It is the State's intent to award Statewide Master Blanket Purchase Orders ("Blanket P.O.s")<sup>1</sup> to those responsible Vendors

<sup>1</sup> For consistency, this final agency decision uses terminology employed by the State of New Jersey's *NJSTART* eProcurement system. For ease of reference, the following is a table which references the *NJSTART* term and the statutory, regulatory and/or legacy term.

<i>NJSTART</i> Term	Statutory, Regulatory and/or Legacy Term
Bid Solicitation	Request For Proposal
Bid Amendment	Addendum
Change Order	Contract Amendment
Master Blanket Purchase Order	Contract
Offer and Acceptance Page	Signatory Page
Quote	Proposal
Vendor {Bidder}	Bidder
Vendor {Contractor}	Contractor

{Bidders} whose Quotes, conforming to this Bid Solicitation are most advantageous to the State, price and other factors considered. Ibid.

On February 28, 2018, the Bureau issued Bid Amendment #1 responding to the questions posed by potential Vendors {Bidders}. On March 16, 2018, the Division's Proposal Review Unit opened 136 Quotes submitted through the State's *NJSTART* eProcurement system and 41 Quotes received in hardcopy format by the submission deadline of 2:00 pm eastern time.

A review of the Quotes submitted by the submission deadline reveals Lutzky Contracting uploaded a Quotes via *NJSTART* at 9:44:29 p.m. on March 15, 2018. Lutzky Contracting's Quote included the following documents:

- An *AA302 Employee Information Report* dated March 15, 2018,
- Bid Solicitation Attachment 1 Vendor {Bidder} Equipment Form & Attachment 2 Vendor {Bidder} Experience Form,
- Copies of the Bid Solicitation, Bid Amendment #1, and the State-supplied Price Sheet/Schedule,
- A *Disclosure of Investigations and Other Actions Involving the Vendor/Bidder Form* dated March 15, 2018,
- A *Disclosure of Investment Activities in Iran Form* dated March 15, 2018,
- A copy of the *NJSTART* Procurement Program Checklist,
- A completed *Offer and Acceptance Page*,
- A file containing a Certificate of Insurance, proof of Business Registration, and a certificate of Public Works Contractor Registration.

After review, the Division issued Lutzky Contracting a Notice of Proposal Rejection, advising that its Quote was rejected because it was missing required certifications, forms, and attachments. Specifically, Lutzky Contracting's Quote was missing a completed *Ownership Disclosure Form*.

On April 18, 2018, in response to the Notice of Proposal Rejection, Lutzky Contracting sent the Division the following fax:

I am writing today in response to an email that I received regarding the above referenced bid. It states that I am missing the Ownership Disclosure Form on my bid. On the checklist provided in the bid package, the ownership disclosure form does not open. The other attached forms did and were filled out and provided in our bid package. Not being able to open the disclosure attachment, we assumed that it was not required for our bid. We have acquired a disclosure form from the NJ Start web site and attached it for your reference. We would appreciate it if you would consider our bid as complete. Thank you for your time and consideration.

Accompanying the fax, Lutzky Contracting included an *Ownership Disclosure Form* dated March 15, 2018. The Division has accepted Lutzky Contracting's email as a protest of the Notice of Proposal Rejection.

In consideration of Lutzky Contracting's protest, I have reviewed the record of this procurement, including the Bid Solicitation, Lutzky Contracting's protest, 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 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 shall<sup>2</sup> 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 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*.]

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 {Proposal} 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 {Proposal} as non-responsive.

[Bid Solicitation § 4.4.1.2 *NJ Standard Bid Solicitation {RFP} Forms Required With The Quote {Proposal}*.]

Among those forms required to be submitted with the Quote are the *Ownership Disclosure Form* discussed in Bid Solicitation Section 4.4.1.2.1.

With respect to ownership, the New Jersey Legislature, in implementing N.J.S.A. 52:25-24.2, mandated that a Vendor {Bidder} must supply its ownership information, prior to or with its Quote, to be eligible to enter into a Blanket P.O. 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 [Blanket P.O.] 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

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<sup>2</sup> "Shall or Must – Denotes that which is a mandatory requirement. Failure to meet a mandatory material requirement will result in the rejection of a Quote {Proposal} as non-responsive." Should or May – "Denotes that which is permissible or recommended, not mandatory." Bid Solicitation § 2.2 *General Definitions*.

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 Bid Solicitation Section 4.4.1.2.1 *Ownership Disclosure Form* which states:

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}.

Vendors {Bidders} using ***NJSTART*** to submit a Quote {Proposal} 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 Ownership Disclosure Form. Vendors {Bidders} not using ***NJSTART*** to submit a Quote {Proposal} must complete the full Ownership Disclosure Form located on the Division's website. This form is also available in NJSTART ([www.njstart.gov](http://www.njstart.gov)).

In order to make this process of complying with the legislative requirement easier, the Division provides to the bidding community with an *Ownership Disclosure Form* to be completed, signed and submitted with the Quote.

As an alternative to the submission of the *Ownership Disclosure Form*, as noted in Bid Solicitation Section 4.4.1.2.1 above, Vendors {Bidders} using ***NJSTART*** to submit a Quote are required to make the appropriate certification regarding ownership disclosure on the "Maintain Terms and Categories" Tab within its profile. As shown in the screenshot below, Lutzky Contracting did not complete the Ownership Disclosure category.

The screenshot shows the 'Vendor Profile - S.F. Lutzky Contracting Inc.' interface. The 'Terms & Categories' tab is selected. Under 'Terms', there are fields for 'Payment Terms:', 'Freight Terms:', 'Shipping Method:', and 'Shipping Terms:'. Under 'Categories & Certifications', several categories are listed with 'MANDATORY FIELD' labels: 'Category: 1. Primary Business Function', 'Category: 3. Business Formation', 'Category: 4. Electronic Funds Transfer Certification', and 'Category: 5. Tax ID Certification (Substitute W9)'. Each category has a description and a checkbox for agreement. The 'Category: Certification: Business Registration' section also has a description and a checkbox. The 'Active' checkbox is also present.


Because Lutzky Contracting did not complete the Ownership Disclosure category within *NJSTART*, it was required to submit the form with its Quote, or attach the form to its Vendor Profile within *NJSTART*. As shown in the screenshot below, Lutzky Contracting did not upload the *Ownership Disclosure Form* to its profile.




The screenshot shows the 'Vendor Profile - S.F. Lutzky Contracting Inc.' interface. The 'Attachments' tab is selected. Under 'Attachments Information', it states 'No Attachments found for this vendor.' Under 'Forms', it states 'No Form Attachments'.

Similarly, as outlined above, Lutzky Contracting did not submit and *Ownership Disclosure Form* with its Quote.

In reviewing a Quote submitted in response to a Bid Solicitation, the Division does not have the power to waive the legislative requirement that a Vendor {Bidder} provide its ownership information prior to or accompanying the Quote submission. Only the New Jersey Legislature can change a requirement it has mandated. Unfortunately, Lutzky Contracting did not comply with any of the options available to it for the submission of ownership information. Accordingly, Lutzky Contracting's Quote was properly rejected by the Division's Proposal Review Unit for failure to submit the mandatory *Ownership Disclosure Form* with its Quote.

Lutzky Contracting states that the "form was inactive in the Vendor's checklist." It is noted that the Bureau included a *NJSTART* Procurement Program Checklist along with the Bid Solicitation to aid Vendors {Bidders} in submitting all required forms and certifications. With regard to the *Ownership Disclosure Form* requirements, the Checklist provides as follows:

Forms with an **NJSTART** icon can be accessed through the Maintain General Information section of the Vendor Profile. Forms that have a  icon next to them can be accessed on the Division website or by clicking on the icon.

FORMS, REGISTRATIONS AND CERTIFICATIONS REQUIRED BY SECTION 4.4.1 THAT MUST BE SUBMITTED WITH THE VENDOR {BIDDER} QUOTE {PROPOSAL}		
	Offer and Acceptance – <b>MUST BE PHYSICALLY OR ELECTRONICALLY SIGNED AND COMPLETED. SEE RFP SECTIONS 1.3.4 AND 4.4.1.1</b>	 PDF
	Disclosure of Investment Activities in Iran - Full Version - <b>SEE SECTION 4.4.1.2.2</b>	<b>NJ START</b>  PDF
	Disclosure of Investment Activities in Iran - <b>Use with completed NJSTART Category ONLY SEE SECTION 4.4.1.2.2</b>	<b>NJ START</b>
	Ownership Disclosure - Full Version – <b>SEE SECTION 4.4.1.2.1</b>	<b>NJ START</b>  PDF
	Ownership Disclosure - <b>Use with completed NJSTART Category ONLY - SEE SECTION 4.4.1.2.1</b>	<b>NJ START</b>

If using the Internet Explorer, the link provided to the pdf file of the “Ownership Disclosure – Full Version” successfully pulls up the *Ownership Disclosure Form*. However, using Chrome or Edge as an internet browser, the Hearing Unit independently verified that the link provided to the pdf file of the “Ownership Disclosure – Full Version,” would not work.<sup>3</sup> Notwithstanding this issue, the Checklist and Bid Solicitation Section 4.4.1.2.1 *Ownership Disclosure* advised all Vendors {Bidders} of the obligation to submit an *Ownership Disclosure Form* and referenced the Division’s website. The Hearing Unit confirmed that the Ownership Disclosure Form link provided on the Division’s website opens the form, even where Chrome or Edge browsers are used. To aid Vendors {Bidders} regarding this issue, as well as other frequently asked **NJSTART** questions, the Division maintains a “**NJSTART** Frequently Asked Questions” page on its website, available at <http://www.nj.gov/treasury/purchase/NJStart-FAQ.shtml>. In relevant part, this site provides the following guidance:

**I can’t open your forms:**  
 Try Internet Explorer. If you are using Chrome, download the form and save it to your desktop or other folder, then open it from there. All of our forms are available in PDF [online](#).  
 You can also download many of them from within **NJSTART** by logging in and using the Reference Guide titled [Vendor Forms](#).

If the requirements of N.J.S.A. 52:25-24.2 and N.J.A.C. 17:12-2.2 are not met, a Quote must be rejected. These statutes and regulations 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, Lutzky Contracting submitted a Quote without the *Ownership Disclosure Form* attached and the Division is prohibited from accepting them after the Quote submission deadline. Notwithstanding Lutzky Contracting’s interest in competing for this procurement, to allow Lutzky Contracting to submit the completed and signed *Ownership Disclosure Form* after bid opening would

<sup>3</sup> It is noted that this link functionality issue did not impact the *Disclosure of Investment Activities in Iran Form*.

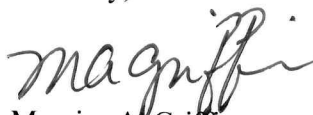


violate the Legislative requirements outlined in N.J.S.A. 52:25-24.2, requirements that the Division is not authorized to waive.

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 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.

Thank you for your company's continuing interest in doing business with the State of New Jersey and for registering your business with *NJSTART* at [www.njstart.gov](http://www.njstart.gov), the State of New Jersey's new eProcurement system.

Sincerely,



Maurice A. Griffin  
Acting Director

MAG:REG

c: P. Michaels  
L. Spildener  
M. Groninger