



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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March 9, 2018

Patsy Pilcher
Evenflo Company, Inc.
Institutional / Special Market Sales
P.O. Box 1046
Cullman, AL 35056

Re: I/M/O RFP #18DPP000178 Evenflo Company, Inc.
Protest of Notice of Proposal Rejection
M2002 Child Safety Seats: NASPO ValuePoint Master Agreement

Dear Ms. Pilcher:

This letter is in response to your two emails and letter of March 6, 2018, on behalf of Evenflo Company, Inc. (“Evenflo”) which were received by the Division of Purchase and Property’s (“Division”) Hearing Unit. In those correspondences, Evenflo protests the Notice of Proposal Rejection issued by the Division’s Proposal Review Unit for Bid Solicitation #18DPP000178: M2002 Child Safety Seats: NASPO ValuePoint Master Agreement (“Bid Solicitation”)¹. The record of this procurement reveals that Evenflo’s Quote was rejected because Evenflo did not submit the completed and signed *Ownership Disclosure Form* with its Quote submission.

¹ 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.

NJSTART 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

By way of background, on December 22, 2017, the Division's Procurement Bureau (hereinafter "Bureau") issued the Bid Solicitation on behalf of the National Association of State Procurement Officials' ("NASPO") ValuePoint Cooperative Purchasing Program, various state agencies and Cooperative Purchasing Program Participants. The purpose of the Bid Solicitation was to solicit Quotes to establish a NASPO ValuePoint Master Agreement (Master Agreement) with qualified manufactures and/or distributors to provide child safety seats and other child transport mechanisms for all participating states and using agencies. Bid Solicitation § 1.1 *Purpose and Intent*.

The intent of the Bid Solicitation is to award Master Blanket Purchase Orders (Blanket P.O.s or Contracts) to those responsible Vendors {Bidders} whose Quotes, conforming to this Bid Solicitation are most advantageous to the State, price and other factors considered. *Ibid.* Specifically, the intent is to award at least one (1) Contract per region. *Ibid.*, See also, Bid Solicitation § 1.2.1 *Geographical Regions*. At award, the State intends to identify one (1) Prime Vendor {Contractor} and at least one (1) Alternate Vendor {Contractor}, if possible. Bid Solicitation § 1.1 *Purpose and Intent*. Using Agencies will purchase all items from the Prime Vendor {Contractor} for the specified region, pursuant to the Method of Engagement outlined in Bid Solicitation Section 1.2.2. The Master Agreement resulting from this Bid Solicitation may be used by other state governments (including state departments, agencies, institutions), institutions of higher education, political subdivisions (i.e., colleges, school districts, counties, cities, etc.), and other eligible entities subject to approval of the individual state's procurement director and compliance with local statutory and regulatory provisions. Bid Solicitation § 1.1 *Purpose and Intent*.

On February 23, 2018, the Division's Proposal Review Unit opened four Quotes 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 Evenflo for failure to submit the *Ownership Disclosure Form* with its Quote.

On March 6, 2018, the Division's Hearing Unit received an email from Evenflo stating as follows:

Per the attached rejection letter, we inadvertently omitted one document. Attached is the signed ownership disclosure form that we missed. Can you please remove our status from proposal of rejection? Or let us know if there is anything else we need to [do].

Later that same day, Evenflo submitted a supplemental protest letter stating in pertinent part as follows:

...We were notified via email on 2/28/18 of a missing document, Ownership Disclosure. This was a simple oversight and was corrected on the NJStart web site as well as a PDF version of the form was signed and emailed. While we understand that this was indeed included on the Procurement Checklist it was not a required area to be completed on the NJStart profile when registration was completed.

...

Please consider our submission now that this oversight has been corrected. This one oversight in no way will hamper our future performance in continuing to provide great service to the many accounts we have developed over the years on behalf of this contract as well as all the required reporting that is part of this solicitation. We do not request an opportunity for an in-person presentation at this time but will be willing to provide this per your request if necessary.

With the supplemental email, Evenflo submitted a completed and signed *Ownership Disclosure Form*.

In consideration of Evenflo's protest, I have reviewed the record of this procurement, including the Bid Solicitation, Evenflo's Proposal, 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 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 Contract with the State. N.J.S.A. 52:25-24.2 states in 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.

[Emphasis added.]

In 2016, the New Jersey Legislature amended the statute to permit publically traded companies to comply with the disclosure requirements by relying upon the "last annual filing with the federal Securities and Exchange Commission or the foreign equivalent." N.J.S.A. 52:25-24.2. Specifically, N.J.S.A. 52:25-24.2 was amended to include the following additional paragraph:

To comply with this section, a bidder with any direct or indirect parent entity which is publicly traded may submit the name and address of each publicly traded entity and the name and address of each person that holds a 10 percent or greater beneficial interest in the publicly traded entity as of the last annual filing with the federal Securities and Exchange Commission or the foreign equivalent, and, if there is any person that holds a 10 percent or greater beneficial interest, also shall submit links to the

websites containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest.

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 shall² 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*.]

Here, the subject procurement 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}*.]

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

² "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*.

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 \(www.njstart.gov\)](#).

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, Evenflo did not complete the Ownership Disclosure category by the Quote opening deadline and in fact has admitted the same in its protest.

Vendor Profile - EVENFLO	
Organization Information Users Address Commodity Codes and Services Regions Terms & Categories Attachments Vendor Performance	
Terms and Categories Information	
Terms	
Payment Terms: Freight Terms: Shipping Method: Shipping Terms:	
Categories & Certifications	
Category: 1. Primary Business Function - (MANDATORY FIELD) <input type="text"/>	
<input type="checkbox"/> Provides Any Other Types of Goods	
Category: 3. Business Formation (MANDATORY FIELD) <input type="text"/> Corporation including Professional Corporation/Government Entity	
Category: 4. Electronic Funds Transfer Certification (MANDATORY FIELD) Description: I certify that I am an appointed agent of the vendor referenced and that I hereby authorize the State of NJ to initiate payments to the bank acct and bank named in the electronic funds transfer (if and when the information is provided). This authority is to remain in full force and effect until the State of NJ receives notification of any changes, and in such a manner as to afford the State of NJ a reasonable opportunity to Act. <input type="checkbox"/> Select if you intend to enter the data for EFT payment and agree with the statement above. To enter banking data, you must log in after the initial registration process has been completed, add or edit a Remit address, and check the EFT Enabled box.	
Category: 5. Tax ID Certification (Substitute W9) (MANDATORY FIELD) Description: Under Penalties of Perjury, I certify that (1) The number provided via this registration process is my correct taxpayer ID number AND (2) I am not subject to backup withholding AND (3) I am a U. S. Citizen or a defined U. S. Person for federal tax purposes. <input type="checkbox"/> Select if you agree with the statement above.	
Category: Disclosure of Investment Activities in Iran Description: P.L. 2012, c. 25 requires that an authorized representative of the bidder certify, under penalty of perjury, that the bidder and its parents, subsidiaries and affiliates are not identified on the Department of the Treasury's list of entities engaged in prohibited investment activities in Iran ("Chapter 25 List"). <input type="checkbox"/> Yes, the bidder and its parents, subsidiaries and affiliates are not on the Chapter 25 List. (No Disclosure of Investment Activities in Iran form is required.)	
Category: Disclosure of Investigations and Other Actions Involving Bidder Description: Within the past 5 years, no named individual or business entity has been implicated in any criminal or disorderly persons matter; prohibited from contracting with any government agency; or the subject of a complaint involving a public sector client. <input type="checkbox"/> Yes, the bidder makes this certification on behalf of the individual or business entities named on its Statement of Bidder Ownership or list of Non-Profit Officers and Directors. (No Disclosure of Investigations form is required.)	

Because Evenflo did not complete the Ownership Disclosure category within **NJSTART** by the Quote opening deadline, it was required to submit the *Ownership Disclosure Form* with its Quote, have one on file with the Division within a six (6) month window prior to the Quote opening deadline, attach the form to its Vendor Profile within **NJSTART**, or advise the Division that it is a publically traded entity and was therefore relying upon its “last annual filing with the federal Securities and Exchange Commission or the foreign equivalent,” and provide the website link where the information could be located in its Quote. N.J.S.A. 52:25-24.2. Unfortunately, Evenflo did not comply with any of these options.

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, including the *Ownership Disclosure Form*, are uploaded into **NJSTART** necessarily and appropriately rests solely with the Vendor {Bidder}. Bid Solicitation § 1.4.2 *Vendor {Bidder} Responsibility*. Here, unfortunately, Evenflo submitted a Quote without the completed and signed *Ownership Disclosure Form* attached as required.

Notwithstanding Evenflo’s interest in competing for this procurement, to allow Evenflo to submit a completed and signed *Ownership Disclosure Form* after Quote opening would violate the Legislative requirement outlined in N.J.S.A. 52:25-24.2, a requirement that this 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 Quote. However, in light of the findings set forth above, I have no choice but to uphold the Proposal Review Unit’s Notice of Proposal Rejection issued to Evenflo. This is my final agency decision on this matter.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

c: A. Davis
K. Anderson-Thomas
A. Nelson
D. Rodriguez