



# State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
OFFICE OF THE DIRECTOR  
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July 7, 2015

Via Electronic [info@bellmawrtruck.com] and USPS Regular Mail

Edmond Niemann, Jr.  
Bellmawr Truck Center  
781 Creek Road  
Bellmawr, NJ 08031

Re: Protest of Notice of Proposal Rejection  
RFP 15-X-23841: OEM & Non-OEM Maintenance and Repair Services

Dear Mr. Niemann:

This letter is in response to your June 16, 2015 email, on behalf of Bellmawr Truck Center (Bellmawr), in which you protest the Notice of Proposal Rejection for Solicitation # 15-X-23841 (RFP) which was issued by the Proposal Review Unit of the Division of Purchase and Property (Division) on May 4, 2014. In the protest, you have asked that the Division reconsider the rejection of Bellmawr's proposal

By way of background, this RFP was issued by the Division's Procurement Bureau (Bureau) on behalf of State Agencies to solicit proposals for OEM and Non-OEM Maintenance and Repair Services for Light/Medium Duty Vehicles, 15,000 lb. GVWR or less. Proposals were received and opened on April 17, 2015. After conducting the intake review of the proposals submitted, the Proposal Review Unit issued a Notice of Proposal Rejection to Bellmawr. That Notice indicates that Bellmawr submitted an unsigned *Disclosure of Investment Activities in Iran* form.

In the June 16, 2015 protest email, Bellmawr contends that it submitted the *Disclosure of Investment Activities in Iran* form and "did check the box denying any dealing with Iran; however, it was confusing because the signature box appeared to apply only "if" one had dealings with Iran as it was associated with the Part 2 box visually." (Bellmawr June 16, 2015 email).

I have reviewed the record of this procurement, including the RFP, Bellmawr's proposal, and 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 submitted by Bellmawr. I set forth herein my Final Agency Decision.

First, I note that Bellmawr's protest was filed out of time. Pursuant to the Division's Administrative regulations,

A bidder, having submitted a proposal in response to an advertised RFP and finding cause to protest the award decision pursuant to (a)1 or 2 above, shall make written request to the Director, setting forth, in detail,

the specific grounds for challenging the rejection of its proposal or for challenging the scheduled contract award, as applicable. The protest shall be filed within 10 business days following the bidder's receipt of written notification that its proposal is non-responsive or of notice of the intent to award, as applicable, or, pursuant to (e) below, prior to the deadline specified in the Division's notice of intent to award communication to the bidder, whichever date is earlier.

[N.J.A.C. 17:12-3.3(b), *emphasis added*.]

As noted in your June 16, 2015 email, Bellmawr received the Notice of Proposal Rejection from the Proposal Review Unit on May 4, 2015. As such, for a protest to be timely filed, it must have been submitted no later than May 18, 2015. Bellmawr's protest was not received by the Division's Hearing Unit until June 16, 2015, almost a month out of time. Further, I note that the protest filing requirements are referenced on the Notice of Proposal Rejection,

...

N.J.A.C. 17:12 can be viewed at the Division of Purchase and Property's website at [www.state.nj.us/treasury/purchase/AdminCode.shtml](http://www.state.nj.us/treasury/purchase/AdminCode.shtml).

...

A deficiency causing rejection of a proposal is not subject to remedy after the opening of the proposals. The Division's administrative rules at N.J.A.C. 17:12-3.3, *Protest Procedures*, specifically item (a)(1), addresses a bidder's recourse. Signed letters of protest must be timely filed with the Division's Hearing Unit [ ].

[Bellmawr Notice of Proposal Rejection form.]

Therefore, Bellmawr should have been aware of the timeframe for filing a timely protest. As such, the Division is not compelled to accept or consider Bellmawr's untimely protest as "[t]he Director may disregard any protest of award filed after the 10 day protest period and proceed with the award of contract(s)." N.J.A.C. 17:12-3.3(b)(3).

Notwithstanding the untimeliness of Bellmawr's protest, with respect to the merits the protest, I find as follows:

Pursuant to the Division's administrative regulations, a bidder's proposal must "contain all RFP-required certifications, forms, and attachments, completed and signed as required" or "be subject to automatic rejection." N.J.A.C. 17:12-2.2. This solicitation was comprised of the RFP and other documents, one of which was the three-part document entitled *NJ Standard RFP Forms*. This document is comprised of three expandable forms, namely an *Ownership Disclosure Form*, a *Disclosure of Investigations and Other Actions Involving Bidder Form*, and a *Disclosure of Investment Activities in Iran* form. These forms are addressed in RFP Section 4.0, *Proposal Preparation and Submission*. 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 must 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.**

[RFP Section 4.0, Proposal Preparation and Submission, *emphasis in the original.*]

Specifically, as to the *Disclosure of Investment Activities in Iran* form, the RFP states:

**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 Person 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 in 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 non-responsive and preclude the award of a contract to said bidder.**

[RFP Section 4.0, Proposal Preparation and Submission, *emphasis added.*]

In accordance with RFP sections 4.4.1.2 and 4.4.1.2.2, the submission of a completed and signed *Disclosure of Investment Activities in Iran* form as part of a bidder's proposal was required.

The record of this procurement reveals that Bellmawr submitted a proposal through the Division's eBid system by the proposal submission date of April 17, 2015. A review of the proposal submitted reveals that the *Disclosure of Investment Activities in Iran* form, which was uploaded to the eBid system, was not signed. Bellmawr acknowledges that it uploaded a completed, yet unsigned document to the eBid system. However, Bellmawr's contends that its failure sign the document was due to confusion "because the signature box appeared to apply only "if" one had dealings with Iran as it was associated with the Part 2 box visually". (Bellmawr June 16, 2015 email).

A careful reading of the *Disclosure of Investment Activities in Iran* form indicates that a signature is required on the form upon completing Part 1 of the Certification even if the completion of Part 2 is not required. Adjacent to the box checked by Bellmawr, the *Disclosure of Investment Activities in Iran* form states:

**I certify, pursuant to Public Law 2012, c. 25, that neither the bidder listed above nor any of the bidder's parents, subsidiaries, or affiliates is listed on the N.J. Department of the Treasury's list of entities determined to be engaged in prohibited activities in Iran pursuant to P.L. 2012, c. 25 ("Chapter 25 List"). I further certify that I am the person listed above, or I am an officer or representative of the entity listed above and am authorized to make this certification on its behalf. I will skip Part 2 and sign and complete the Certification below.**

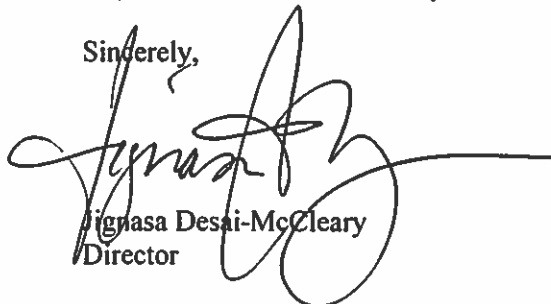
*[Disclosure of Investment Activities in Iran form, emphasis in the original.]*

The responsibility for the contents of the proposal or submittal necessarily and appropriately rests with the bidder. The requirement of a signature on the form is clearly noted in the RFP as well as on the form itself. Here, the *Disclosure of Investment Activities in Iran* form uploaded to the eBid system was not signed. Therefore, I sustain the Proposal Review Unit's rejection of Bellmawr's proposal for non-compliance with the mandatory RFP requirements.

Notwithstanding Bellmawr's interest in competing for this procurement, it would not be in the State's best interest to allow a bidder who did not provide the required information to be eligible to participate in the procurement process. Such acceptance would un-level the bidder's playing field as the State received responsive proposals in which all necessary documents and information were provide as required. The deficiency at issue cannot be remedied after the proposal submission deadline as acceptance of Bellmawr's proposal under these circumstances would be contrary to the provisions of the governing statute and provide Bellmawr with disclamation options not available to those bidders whose proposals where fully responsive. In light of the findings set forth above, I must deny your request for eligibility to participate in the competition for the subject contract. 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 put forth in preparing and submitting Bellmawr's proposal. Thank you for your company's continuing interest in doing business with the State of New Jersey and for registering your company with *NJ START* at [www.njstart.gov](http://www.njstart.gov), the State of New Jersey's new eProcurement system.

Sincerely,



Jignasa Desai-McCleary  
Director

JD-M: RUD

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