



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

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

ROBERT A. ROMANO
Acting State Treasurer

JIGNASA DESAI-MCCLEARY
Director

August 11, 2015

Via Electronic Mail [sendziklaw@comcast.net] and USPS Regular Mail

Jay C. Sendzik, Esq.
Sendzik & Sendzik, P.C.
1808 Route 88
Brick, NJ 08724

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 Mr. Sendzik:

This letter is in response to your request for reconsideration dated July 13, 2015, submitted on behalf of EL-Bo, Inc., dba Lepore's Service Center ("EL-Bo") to the Division of Purchase and Property ("the Division"). The record of this procurement reveals that the Division issued a final agency decision on July 7, 2015, upholding the determination of the Proposal Review Unit to reject EL-Bo's proposal submission in response to the subject RFP due to EL-Bo's 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 EL-Bo's proposal in light of the contention that a "computer glitch" contributed to the "mishap" of the forms appearing unsigned and that the RFP does not "mandatorily cause rejection of the proposal" under these circumstances.

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 completed, signed, and submitted with a proposal. These forms may 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.

[(Third and fourth emphasis added.)]

Also as noted in my final agency decision, 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." N.J.A.C. 17:12-2.2. As set forth in RFP 4.4.1.2, 4.4.1.2.1, and 4.4.1.2.2, the submission of a completed and signed *Ownership Disclosure Form* prior to or as part of the proposal and a completed and signed *Disclosure of Investment Activities in Iran Form* as part of a bidder's proposal was required. The RFP clearly specified that a bidder's failure to submit completed and signed versions of these forms "with its proposal will result in the rejection of the proposal."

In EL-Bo's original letter of protest, it conceded that upon reviewing the *Ownership Disclosure Form* and *Disclosure of Investment Activities in Iran Form* it uploaded and submitted through the Division's eBid system, "the signature were not visible on the portal." As explained in the July 7, 2015 final agency decision, the eBid system cannot differentiate between what documents are uploaded or what information is contained within a document. Rather, eBid accepts any document the bidder uploads in a required document field. Furthermore, once a proposal is submitted, the only way a document can be altered is if a bidder goes back into its submission prior to the proposal submission deadline, withdraws the entire proposal using a PIN, uploads a new document, and resubmits the entire proposal using a PIN. The responsibility for the contents of the proposal or submittal necessarily and appropriately rests solely with the bidder.

Upon receiving this request for reconsideration, a hearing officer reviewed all the forms contained within EL-Bo's electronic proposal submission. While not contributing to the proposal's rejection, this review revealed

that, not only did the *Ownership Disclosure Form* and *Disclosure of Investment Activities in Iran Form* contain blank signature blocks, but also that the *Cooperative Purchasing Form* and *Signatory Page* contained blank signature blocks. I do note that the *Two-Year Chapter 51/ Executive Order 117 Vendor Certification and Disclosure of Political Contributions* and RFP document uploaded by EL-Bo did contain proper physical signatures.

In response to your query whether the Division's website was "having difficulty . . . interfacing with Internet Explorer," I note the Division did receive numerous complete proposals in response to this solicitation. A member of the Department of Treasury's Division of Revenue and Enterprise Services (DORES) also confirmed that the eBid system was properly functioning during this time.

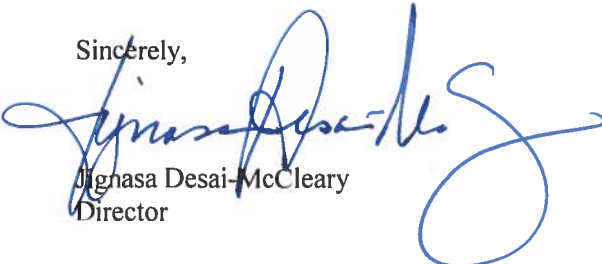
Finally, although EL-Bo submits that it has "numerous" *Ownership Disclosure Forms* and *Disclosure of Investment Activities in Iran Forms* on file with the Division and that there has been no change in its ownership, a review of the Division's records indicate that prior to the current solicitation, EL-Bo's most recent *Ownership Disclosure Form* was dated April 9, 2012. As explained above, a bidder's failure to include a completed *Ownership Disclosure Form* will render a proposal non-responsive, 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." RFP §4.4.1.2.1. Accordingly, because the current solicitation closed on April 17, 2015, the Division cannot accept the April 9, 2012 *Ownership Disclosure Form* for the current solicitation. I note that even if EL-Bo did have a valid *Ownership Disclosure Form* on file at the time of the proposal submission deadline, a completed *Disclosure of Investment Activities in Iran Form* is required **with each proposal submission**.

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 EL-Bo's forms under these circumstances would be contrary to the principles governing State procurement and would provide EL-Bo 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 EL-Bo after the deadline.

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

Sincerely,



Jignasa Desai-McCleary
Director

JD-M:DF

c: D. Reiner
K. Thomas
V. Bequer
D. Rodriguez
A. Nelson