



# State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
OFFICE OF THE DIRECTOR  
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September 25, 2015

Via Electronic [LPallante@essexgrain.com] and USPS Regular Mail

Luke Pallante, President  
Essex Grain Products, Inc.  
9 Lee Blvd.  
Frazer, PA 19355

Re: Protest of Notice of Proposal Rejection  
RFP# 16-X-23859: Food/Non-Food: Bulk Food Items, etc. – DOC

Dear Mr. Pallante:

This letter is in response to your email of September 9, 2015, to the Hearing Unit of the Division of Purchase and Property (Division) on behalf of Essex Grain Products, Inc. (Essex). In that correspondence, Essex protests the Notice of Proposal Rejection issued by Division's Proposal Review Unit regarding Solicitation# 16-X-23859. The record of this procurement reveals that Essex's proposal was rejected for failing to include a signed *Ownership Disclosure Form*. With the protest email, Essex submitted a revised and signed *Ownership Disclosure Form*. Essex requests that the Division accept the completed form as a complement to its proposal.

By way of background, the Division's Procurement Bureau (Bureau) issued the subject Request for Proposal (RFP) on behalf of Distribution and Support Services (DSS) to solicit proposals for various bulk food and non-food items. The Proposal Review Unit opened proposals following the submission deadline of September 3, 2015 at 2:00 p.m.

In consideration of Essex's protest, I have reviewed the record of this procurement, including the RFP, Essex'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. I set forth herein the Division's Final Agency Decision.

The above referenced solicitation was comprised of the RFP and other documents, one of which was the three-part document entitled *NJ Standard RFP Forms* which includes the *Ownership Disclosure Form*. This form is addressed in RFP Section 4.0, *Proposal Preparation and Submission*, which provides in pertinent part:

#### 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 the 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.

*[Emphasis in the original.]*

Moreover, pursuant to N.J.A.C. 17:12-2.2, a bidder's proposal must "contain all RFP-required certifications, forms, and attachments, completed and signed as required" or "be subject to automatic rejection." As a courtesy to all bidders, the Division provided a *Proposal Checklist* as an accompaniment to the RFP. The relevant portion of the checklist includes the following:

**N.J. Department of the Treasury  
Division of Purchase and Property  
PROPOSAL CHECKLIST**

Solicitation Number: 16-X-23859      Solicitation Title: Food/Non Food Bulk Food Items, including Cookies

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The checklist was created to provide a prompt checklist for preparing a complete and responsive proposal. It is the bidder's responsibility to ensure that all requirements of the RFP have been met.

**FORMS THAT MUST BE SUBMITTED WITH YOUR PROPOSAL:**

|                          |   |
|--------------------------|---|
| <input type="checkbox"/> | RFP Signatory Page with physical signature or PIN (PIN is for eBid submission ONLY) |
| <input type="checkbox"/> | Completed Price Sheets as instructed in Section 4.4.5 of the RFP*                   |
| <input type="checkbox"/> | Completed and signed Ownership Disclosure Form*                                     |
| <input type="checkbox"/> | Completed and signed Disclosure of Investments in Item Form*                        |

\* 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). The forms are found in the Standard RFP Forms Packet, which can be downloaded at <http://www.state.nj.us/treasury/purchase/Forms/StandardRFPForms.pdf>

The record of this procurement reveals that Essex submitted its proposal by the proposal submission deadline of September 3, 2015. With its submission, Essex did include a copy of the *Ownership Disclosure Form*; however, that document did not contain a physical or typed signature. With the protest, Essex acknowledges that the *Ownership Disclosure Form* was not signed. As noted above, the only permissible ways to sign the form is: 1) downloading the document, physically signing the form, scanning the completed document and then uploading it; or 2) typing the name of the signatory in the space designated for the certification signature and uploading the document. (RFP § 4.4.1.2 *N.J. Standard RFP Forms*). Based upon Essex's failure to sign the *Ownership Disclosure Form*, the proposal must be deemed non-responsive.

I do note that if 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" then a bidder's failure to submit a completed and signed form with its current proposal will not result in a rejection of the proposal as non-responsive. (RFP § 4.4.1.2.1 *Ownership Disclosure Form*). However, the last *Ownership Disclosure Form* on file with the Division from Essex is from June 2007. Therefore, the Division cannot accept the previously submitted *Ownership Disclosure Form* as a complement to Essex's proposal to the subject RFP.

Additionally, I note that the *Ownership Disclosure Form* submitted by Essex with its protest was not properly completed. N.J.S.A. 52:25-24.2 addresses when ownership must be disclosed and states in pertinent part that:

No corporation or partnership 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 or said partnership, there is submitted a statement setting forth the names and addresses of all stockholders in the corporation or partnership who own 10% or more of its stock, of any class or of all individual partners in the partnership who own a 10% or greater interest therein, as the case may be. If one or more such stockholder or partner is itself a corporation or partnership, the stockholders holding 10% or more of that corporation's stock, or the individual partners owning 10% or greater interest in that partnership, 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, exceeding the 10% ownership criteria established in this act, has been listed.

With this backdrop, New Jersey Courts have consistently held that strict compliance with the ownership disclosure requirements of N.J.S.A. 52:25-24.2 is necessary. As such, a proposal is properly rejected where it contains inaccurate ownership information. See, Impac, Inc. v. City of Paterson, 178 N.J. Super. 195, 200-01 (App. Div. 1981); Muirfield Const. Co., Inc. v. Essex County Imp. Authority, 336 N.J. Super. 126 (App. Div. 2000).

By requiring the identity disclosure statement to be submitted with the bid (or prior thereto) the Legislature evinced an intention that any bid not

containing such a statement would not be a valid bid. No bidder submitting such an invalid bid is eligible to be awarded the public contract. Any other interpretation of the statute would render nugatory the meaning of the clear language used. The character of the legislation and a reading thereof in context justifies a mandatory, imperative construction.

...

There is no provision in the statute permitting a [government entity] to waive the requirement of disclosure or to allow a bidder additional time following the acceptance of bids to cure an invalid bid. . .The policy of the State is to guard against favoritism and unfair competition by demanding integrity of the bidding process through strict construction of bidding standards...The policy of the State is to guard against favoritism and unfair competition by demanding integrity of the bidding process through strict construction of bidding standards...

Strict construction is essential if integrity of bidding is to be achieved. The action by the [government entity] in waiving noncompliance with the identity disclosure state has created precisely the type of result which the Legislature sought to avoid in enacting a statute designed to preserve fair competition through conformance with an established framework for public contract bidding.

[George Harms Constr. Co. v. Lincoln Park, 161 N.J. Super. 367, 372-74 (Law Div. 1978); citing, Assembly Bill 22 (1976), "Statement of Assembly Municipal Government Committee"; Assembly Bill 22 (1976), "Statement of Senate State Government, Federal and Interstate Relations and Veterans Affairs Committee."]

With the protest, Essex submitted a completed and signed *Ownership Disclosure Form*. In response to Question 1 in Part 1 of the *Ownership Disclosure Form*, which asks "Are there any individuals, corporations or partnerships owning a 10% or greater interest in the bidder/offer?" Essex responded "No." However, in Part 2 Essex listed an individual with a 90% ownership interest in the company. This protest *Ownership Disclosure Form* contains inconsistent statements regarding ownership. Further, the *Ownership Disclosure Form* submitted with the protest contradicts the information provided by Essex on the *Ownership Disclosure Form* submitted with its proposal. With the proposal, in response to Question 1 in Part 1 of the *Ownership Disclosure Form*, which asks "Are there any individuals, corporations or partnerships owning a 10% or greater interest in the bidder/offer?" Essex responded "No." No other detailed ownership information was provided on the form. Because strict compliance with the ownership disclosure statute is required, the Division has no choice but to find that the proposal submitted is non-responsive.

Notwithstanding Essex's interest in competing for this procurement, it would not be in the State's best interest to allow a bidder who did not appropriately complete and submit all of the required forms with its proposal as required by the RFP to be eligible to participate in the procurement process. Such acceptance would unlevel 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 Essex's proposal under these circumstances would be contrary to the provisions of the governing statute and provide Essex with disclamation options not available to those bidders whose proposals where fully responsive. In light of the finding 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.

Thank you for your interest in doing business with the State of New Jersey. I invite you to take this opportunity to register your business with **NJ START** at [www.njstart.gov](http://www.njstart.gov), the State of New Jersey's new eProcurement system.

Sincerely,



Maurice A. Griffin  
Acting Chief Hearing Officer

MAG: RUD

c: G. Gerstenacker  
J. Kemery  
D. Reinert  
A. Nelson  
D. Rodriguez