



# 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>

FORD M. SCUDDER  
*Acting State Treasurer*

JIGNASA DESAI-MCCLEARY  
*Director*

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

Telephone (609) 292-4886 / Facsimile (609) 984-2575

May 12, 2016

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

Deborah L. Karkosky, Office Manager  
Ted Slack Environmental Services  
180 Market Street  
Kenilworth, New Jersey 07033

RE: Protest of Notice of Proposal Rejection  
RFP #16-X-24189 Maintenance & Repair of Fuel Dispensing Equipment

Dear Ms. Karkosky:

This letter is in response to your email dated April 27, 2016, referencing the subject Request for Proposal ("RFP") and regarding the proposal submitted by Ted Slack Environmental Services ("T.Slack") to the Division of Purchase and Property ("Division"). The record of this procurement reveals that T.Slack's proposal was rejected by the Division's Proposal Review Unit for failing to include a properly completed *Ownership Disclosure Form* and *Disclosure of Investment Activities in Iran Form*. In your correspondence, you state that T.Slack submitted these forms and that the forms are part of the Standard RFP Forms. You ask that the Division recheck your submission and advise. The Division treats T.Slack's email as a protest of the rejection of its proposal.

I have reviewed the record of this procurement, including the RFP, T.Slack's proposal, and relevant statutes, regulations, and case law. This review has provided me with the information necessary to determine the facts of this matter and to render an informed determination on the merits of T.Slack's protest.

By way of background, the subject RFP was issued by the Division's Procurement Bureau ("Bureau") on behalf of the New Jersey Department of Transportation, the New Jersey State Police and various State Agencies "for maintenance and repair of fuel dispensing units on an as required basis." RFP § 1.1 *Purpose and Intent*. The intent of the RFP is "to award one (1) contract per region to the responsible Bidder whose proposals, conforming to this RFP are most advantageous to the State, price and other factors considered." *Ibid.* Regions are broken into North, Central, and South, serving the 21 New Jersey counties. RFP § 3.2 *Geographic Area*. This is a procurement of services similar to those offered by term contract T-0869.

The above-referenced solicitation was comprised of the RFP and other documents, one of which was the three-part document titled *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 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.**

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#### **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.

[(Emphasis in original.)]

Furthermore, as a courtesy to all bidders, the Division provided a Proposal Checklist as an accompaniment to the RFP. The Checklist included the following:

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

- RFP Signatory Page with physical signature or PIN (PIN is for eBid submission ONLY)
- Completed Price Sheets as instructed in Section 4.4.5 of the RFP
- Completed and signed Ownership Disclosure Form\*
- Completed and signed Disclosure of Investments in Iran Form\*

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*\* 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).*

Pursuant to N.J.A.C. 17:12-2.2,<sup>1</sup> 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." 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.

In this case, the record indicates that T.Slack's proposal did not include the *Ownership Disclosure Form* or the *Disclosure of Investment Activities in Iran* Form. Although T.Slack asserts that the forms in question were submitted, a review of the documents submitted by T.Slack through the Division's eBid system confirms these forms were not provided by T.Slack. A review of the eBid system reveals that in the location for the "NJ Standard RFP Forms," T.Slack instead uploaded the RFP document. Although the eBid system requires that all forms be uploaded before the proposal can be submitted, the eBid system cannot differentiate between documents that are uploaded or what information is contained within a document. Rather, the eBid system accepts any document the bidder uploads in a required document field and will notify a bidder that its submission is complete regardless of what information is contained in that document field. Furthermore, once a proposal is submitted, the Division can only download the forms submitted as part of a complete proposal after the proposal submission deadline. The responsibility for the contents of the proposal, forms, or submittals necessarily and appropriately rests solely with the bidder. Here unfortunately, T.Slack uploaded the RFP document in place of the NJ Standard RFP Forms, and therefore no

<sup>1</sup> The Division's administrative rules governing its procurement programs are set forth in N.J.A.C. 17:12. These rules can be accessed at <http://www.state.nj.us/treasury/purchase/AdminCode.shtml>.

*Ownership Disclosure Form or Disclosure of Investment Activities in Iran* Form was uploaded with T.Slack's proposal.

Notwithstanding T.Slack's interest in competing for this procurement, it would not be in the State's best interests to allow a bidder who did not provide the required information to be eligible to participate in the procurement process. Such acceptance would unlevel the bidders' playing field, as the State received responsive proposals in which all necessary documents and information were provided as required. The deficiency at issue cannot be remedied or waived after the proposal submission deadline, as acceptance of T.Slack's proposal under these circumstances would be contrary to the provisions of the governing statute and would provide T.Slack with disclamation options not available to those bidders whose proposals were fully responsive. In light of the findings set forth above, T.Slack is not eligible 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 T.Slack's proposal. 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 Griffin  
Chief Hearing Officer

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c: G. Olivera  
K. Woolford  
D. Delaney  
A. Nelson