



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
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November 3, 2016

Via Electronic Mail [Aristotelis.Mpougas@orafol.com] and USPS Regular Mail

Aristotelis Mpougas
Director of Sales and Marketing
Orafol Americas Inc. - Reflective Solutions
120 Darling Drive
Avon, CT 06001-4217

RE: Protest of Notice of Proposal Rejection
Bid Solicitation {Request for Proposal} #16DPP00018 – Sheeting, Reflective

Dear Mr. Mpougas:

This letter is in response to your email of September 22, 2016, on behalf of Orafol Americas, Inc. (Orafol), acknowledging receipt of a Notice of Proposal Rejection (Rejection Notice) sent by the Division of Purchase and Property's (Division) Proposal Review Unit. The Rejection Notice indicated that Orafol failed to include a signed/completed *Ownership Disclosure Form* with its Quote {Proposal} (proposal). I treat your September 22, 2016 email as Orafol's protest of the Rejection Notice.

I have reviewed the record of this procurement, including the Bid Solicitation ({Request for Proposal} (RFP)), Orafol's proposal and September 22, 2016 email in protest, the 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 Orafol'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 (NJDOT) and the New Jersey Department of Corrections (NJDOC) for Sheeting Reflective. RFP § 1.1 *Purpose and Intent*. The intent of the RFP is "to award multiple Master Blanket Purchase Orders (Blanket POs) {Contracts} [(hereinafter contract)] to those responsible Vendors {Bidders} [(hereinafter bidder)] whose proposals, conforming to this [RFP] are most advantageous to the State, price and other factors considered." *Ibid*. Twenty-seven different groups of price lines will be awarded to bidders, and a bidder must bid all line items within each group in order to be considered for an award of that group. *Ibid*. This is a procurement of services similar to those offered by term contract T-0210. RFP § 1.2 *Background*.

On September 9, 2016, the Proposal Review Unit opened the proposals received by the submission deadline of 2:00 p.m. After conducting a review of the proposals submitted, the Proposal Review Unit found that Orafol failed to sign the *Ownership Disclosure Form* submitted with its proposal. Accordingly, the Proposal Review Unit issued a Rejection Notice. In response to the Rejection Notice, on September 22, 2016, Orafol submitted an email protesting the rejection of its proposal for failing to submit a signed *Ownership Disclosure Form*. Orafol's protest email states in pertinent part as follows:

. . . I have received a notice of rejection of our bid/proposal offer because of a single signature missing in a single form; the Ownership Disclosure form. We hereby protest such determination.

This is a complicated and extensive package and as a supplier to the government industry we know how to be diligent and prepare these bids thoroughly. I believe my signature was lost in the NJSTART formatting or emails and therefore could not be read properly by the Proposal Review team. Furthermore I do not see it as a fair consideration of our bid offer to keep this job competitive when there are only a very small number of suppliers or manufacturers that can participate.

I respectfully request that we are allowed to submit a hard copy of the [Ownership Disclosure Form] with my signature in ink, since the electronic form is not working properly or its format cannot be opened or is ineligible (sic). . . .

The above-referenced procurement was comprised of the RFP and other documents, one of which was the *Ownership Disclosure Form*. This form is addressed in RFP Section 4.0, *Quote {Proposal} Preparation and Submission*. The relevant text of the RFP reads as follows:

4.4.1.2 NJ STANDARD BID SOLICITATION {RFP} FORMS REQUIRED WITH THE QUOTE {PROPOSAL}

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.

4.4.1.2.1 OWNERSHIP DISCLOSURE FORM

Pursuant to N.J.S.A. 52:25-24.2, in the event the Vendor {Bidder} is a corporation, partnership or sole proprietorship, 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 preclude the award of a Blanket PO {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 box applicable to it and completing the shortened NJSTART form if necessary. Vendors {Bidders} not using NJSTART to submit a Quote {Proposal} must complete the full version of the form located on the Division's website. The full version of the form is also available in NJSTART (www.njstart.gov).

Vendors {Bidders} may refer to the QRGs “Vendor Forms” and “Attaching Files” for instructions on submitting the forms required by this section of the Bid Solicitation {RFP} through NJSTART. Vendors {Bidders} may also refer to the QRG “Vendor Categories and Certifications” for additional instructions on completing shortened versions of required forms by completing certifications on the “Maintain Terms and Categories” Tab within its profile in NJSTART. QRGs are located on the NJSTART Vendor Support Page.

Furthermore, as a courtesy to all bidders, the Division provided a Checklist as an accompaniment to the RFP. This Checklist is a resource showing, among other things, forms required to be submitted with the bidder’s proposal. The relevant portion of the Checklist is captured below. As indicated on the Checklist, one of the forms required to be submitted with the bidder’s proposal is the *Ownership Disclosure Form*.


**New Jersey Department of the Treasury
Division of Purchase and Property**




NJ START PROCUREMENT PROGRAM CHECKLIST


Solicitation Number: 16DPP00018 Solicitation Title: Sheeting Reflective

This checklist was created as a guide to assist Bidders in preparing a complete and responsive proposal (quote) as part of the *NJ START* Procurement Program. It is only advisory in nature.

It is the Bidder's responsibility to ensure that all requirements of the RFP/Bid Solicitation have been met.

Forms with an *NJ START* icon can be accessed through the Maintain General Information section of the Vendor Profile. Forms that have a  icon next to them can be accessed on the Division website or by clicking on the icon.

FORMS, REGISTRATIONS AND CERTIFICATIONS REQUIRED BY SECTION 4.4.1 THAT MUST BE SUBMITTED WITH THE VENDOR QUOTE (PROPOSAL)		
Offer and Acceptance – MUST BE PHYSICALLY SIGNED AND COMPLETED. SEE RFP SECTIONS 1.3.4 AND 4.4.1.1		
Disclosure of Investment Activities in Iran - Full Version - SEE SECTION 4.4.1.2.2	<i>NJ START</i>	
Disclosure of Investment Activities in Iran - Use with completed <i>NJSTART</i> Category ONLY - SEE SECTION 4.4.1.2.2	<i>NJ START</i>	
Ownership Disclosure - Full Version – SEE SECTION 4.4.1.2.1	<i>NJ START</i>	
Ownership Disclosure - Use with completed <i>NJSTART</i> Category ONLY - SEE SECTION 4.4.1.2.1	<i>NJ START</i>	

FORMS, REGISTRATIONS AND CERTIFICATIONS REQUIRED BY SECTION 4.4.2 THAT SHOULD BE SUBMITTED WITH THE VENDOR QUOTE (PROPOSAL) REQUIRED PRIOR TO CONTRACT AWARD		
Disclosure of Investigations and Other Actions Involving Bidder - Full Version - SEE SECTION 4.4.2.2	<i>NJ START</i>	
Disclosure of Investigations and Other Actions Involving Bidder - Use with completed <i>NJSTART</i> Category ONLY - SEE SECTION 4.4.2.2	<i>NJ START</i>	

Additionally, pursuant to N.J.A.C. 17:12-2.2,¹ 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 and 4.4.1.2.1, and as noted above, the submission of a completed *Ownership Disclosure Form* as part of a bidder’s proposal was required.

In this case, the record indicates that the *Ownership Disclosure Form* submitted with Orafol’s proposal did not include a signature as evidenced by a review of the documents submitted by Orafol through the Division’s NJSTART eProcurement (NJSTART) system, nor was a signed Form contained within Orafol’s NJSTART Vendor Profile. N.J.S.A. 52:25-24.2 and the RFP require that the information contained in the *Ownership Disclosure Form* be submitted prior to or at the time a proposal is submitted to the Division. The two permissible ways to sign this form are either: 1) downloading the documents, physically signing the form, scanning the completed document, then uploading it; or 2) typing the name of the signatory in the space designated for certification signature and uploading the document. The NJSTART system does not prevent a bidder from submitting a proposal without all required signatures, forms and documentation. The

¹ 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>.

responsibility for the contents of the proposal, forms, or submittals necessarily and appropriately rests solely with the bidder. Here, unfortunately, although Orafol’s protest indicates “I believe my signature was lost in the NJSTART formatting or emails and therefore could not be read properly by the Proposal Review team[,]” as shown on the below screen shot of second page of Orafol’s submitted *Ownership Disclosure Form*, there was no signature in the “Signature” box on the form (part of the form containing information personally identifiable to Orafol is not included on the figure).

Partnerships/Corporations	
Entity Name: ORAFOL International Partner Name: Business Address: 1100 ORACAL Pkwy City: Black Creek State: GA Zip Code: 31308 Are there additional entities holding 10% or greater ownership interest in the bidder/officer and its parent corporation/partnership? <input type="checkbox"/> Yes or <input type="checkbox"/> No	Delete Entry
Entity Name: ORAFOL Europe (Germany) Partner Name: Business Address: Orafolstrasse 2 City: Oranienburg State: Zip Code: 16515 Are there additional entities holding 10% or greater ownership interest in the bidder/officer and its parent corporation/partnership? <input type="checkbox"/> Yes or <input checked="" type="checkbox"/> No	Delete Entry
Add An Additional Partnerships/Corporations Entry	
<small> Certification: I, being duly sworn upon my oath, hereby represent that the foregoing information and any attachments thereto to the best of my knowledge are true and complete. I acknowledge that I am authorized to execute this certification on behalf of the bidder, that the State of New Jersey is relying on the information contained herein and that I am under a continuing obligation from the date of this certification through the completion of any contracts with the State to notify the State in writing of any changes to the information contained herein; that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification, and if I do so, I am subject to criminal prosecution under the law and that it will constitute a material breach of my agreement(s) with the State, permitting the State to declare any contract(s) resulting from this certification void and unenforceable. </small>	
Full Name (Print): Aristotelia Mpougas	Signature: Do Not Enter PIN as a Signature
Title: Director, Sales & Marketing - Reflective	Date: 09/09/2016

The requirement that a bidder indicate its ownership structure is set forth in N.J.S.A. 52:25-24.2. The New Jersey Legislature, in implementing N.J.S.A. 52:25-24.2, mandated requirements that a bidder must comply with in order to enter into a contract with the State. N.J.S.A. 52:25-24.2 states, in pertinent part:

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 out of any public funds by the State . . . 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. . . .

[(Emphasis added.)]

In reviewing proposals submitted in response to an RFP, the Division does not have the power to waive this legislative requirement, as only the New Jersey Legislature can change a requirement it has mandated. In order to make this process easier, the Division provides to the bidding community an *Ownership Disclosure Form* to be completed in order for bidders to comply with the statutory requirement of N.J.S.A. 52:25-24.2. Here, because Orafol uploaded its proposal without a signed *Ownership Disclosure Form* or other document identifying its ownership structure as required by statute, it was not in compliance with the Legislative requirements.

Were the Division to allow Orafol to submit a completed and signed *Ownership Disclosure Form* after bid opening, it would be in violation of the Legislative requirement outlined in N.J.S.A. 52:25-24.2. Notwithstanding Orafol's interest in competing for this procurement, to allow a bidder who did not provide the required information to be eligible to participate in the procurement process would unlevel the bidders' playing field, as the State received responsive proposals in which all necessary information and documents were provided as required. The deficiency at issue cannot be remedied or waived after the proposal submission deadline, as acceptance of Orafol's proposal under these circumstances would be contrary to the provisions of the governing statute and would provide Orafol with disclamation options not available to those bidders whose proposals were fully responsive. In light of the findings set forth above, Orafol 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 Orafol'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 *NJ START* at www.njstart.gov, the State of New Jersey's new eProcurement system.

Sincerely,



Maurice Griffin
Chief Hearing Officer

c: J. Kerchner
K. Thomas
A. Nelson