



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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October 30, 2018

Via Electronic Mail [Nathan.Teodoro@gamberjohnson.com] and USPS Regular Mail

Nathan Teodoro, Northeast Sales Manager – Public Sector
Gamber-Johnson, LLC
3001 Borham Avenue
Steven Point, WI 54481

Re: I/M/O Bid Solicitation # 17DPP00046 Gamber-Johnson, LLC
Protest of Notice of Intent to Award
T0106 Law Enforcement Firearms, Equipment and Supplies

Dear Mr. Teodoro:

This letter is in response to your email of October 19, 2018, on behalf of Gamber-Johnson, LLC, Inc. (Gamber) which was received by the Division of Purchase and Property’s (Division) Hearing Unit. In that correspondence, Gamber protests the October 19, 2018, Notice of Intent to Award (NOI) issued by the Division’s Procurement Bureau (Bureau) for Bid Solicitation #17DPP00046: Law Enforcement Firearms, Equipment and Supplies (Bid Solicitation).¹

By way of background, on February 7, 2017, the Bureau issued the Bid Solicitation on behalf of State Using Agencies and Cooperative Purchasing Partners to solicit Quotes for sixteen categories for law enforcement equipment and supplies. Bid Solicitation § 1.1 *Purpose and Intent* and Bid Solicitation § 3.1 *Law Enforcement Equipment and Supplies Categories*.

¹ This final agency decision uses terminology employed by the State of New Jersey’s **NJSTART** eProcurement system. For ease of reference, the following is a table which references the **NJSTART** term and the statutory, regulatory and/or legacy term.

NJSTART Term	Statutory, Regulatory and/or Legacy Term
Bid Solicitation	Request For Proposal
Bid Amendment	Addendum
Change Order	Contract Amendment
Master Blanket Purchase Order	Contract
Offer and Acceptance Page	Signatory Page
Quote	Proposal
Vendor {Bidder}	Bidder
Vendor {Contractor}	Contractor

On April 20, 2017, the Proposal Review Unit opened 102 Quotes received by the submission deadline of 2:00 p.m. After conducting a preliminary review of the Quotes received, those Quotes which conformed to the administrative requirements for Quote submission were forwarded to the Bureau for review and evaluation consistent with the requirements of Bid Solicitation Section 6.7 *Evaluation Criteria*.

The record of this procurement reveals that after conducting a review of the Quote submitted by Gamber, the Proposal Review Unit found that while Gamber's Quote did include an *Ownership Disclosure Form*, the form was not signed. Accordingly, on July 20, 2017, the Proposal Review Unit issued a Notice of Proposal Rejection. On August 4, 2017, Gamber wrote to the Division stating:

In reference to your letter of rejection of our bid for the DPP Solicitation 17DPP00046, we would like to protest and submit an amended Ownership Disclosure for your review. We are sorry for the omission of the signature on the original document and appreciate your consideration of our corrected form.

On August 8, 2017, the Division issued its final agency decision in response to Gamber's protest. That decision stated in part:

Notwithstanding Gamber's interest in competing for this procurement, to allow Gamber to submit a completed and signed *Ownership Disclosure Form* after bid opening would violate the Legislative requirement outlined in N.J.S.A. 52:25-24.2, a requirement that this Division is not authorized to waive. 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 the Proposal. However, in light of the findings set forth above, I have no choice but to deny your request for eligibility to participate in the competition for the subject contract. This is my final agency decision on this matter.

[August 8, 2017, Final Agency Decision, p. 5.²]

On September 13, 2018, the Bureau completed a Recommendation Report which recommended Blanket P.O. awards to those responsible Vendors {Bidders} whose Quotes, conforming to the Bid Solicitation are most advantageous to the State, price and other factors considered. On October 19, 2018, the NOI was issued advising all Vendors {Bidders} that it was the State's intent to award Blanket P.O.s. Later that same day, Gamber emailed the Division's Hearing Unit stating:

We sent this corrected submission last year after receiving the attached Notice of Proposal Rejection, and wanted to ensure that it was received and reviewed. Can someone please contact me regarding Solicitation #17DPP00046 and let me know what we need to do to ensure that our resellers and company's products are available to New Jersey public safety agencies? Gamber-Johnson LLC is one of the largest manufacturers of mobile mounting for public safety agencies in the United States, with a many customers in the State of New Jersey. We appreciate your assistance in this important matter.

² The August 8, 2017, Final Agency Decision was sent by email and regular mail via the United States Postal Services.

Because the Division did receive and review a protest, and issued a decision with respect to Gamber's August 4, 2017 protest, the Division will consider Gamber's October 19, 2018, email raising the same issue as a request for reconsideration.

In consideration of Gamber's reconsideration request, I have reviewed the record of this procurement, including the Bid Solicitation, the submitted Quotes, Gamber's protest and request for reconsideration, the relevant statutes, regulations, and case law. The record reflects Gamber's request for reconsideration did not present any new or additional information that was not previously considered in the Division's August 8, 2017 final agency decision. See, *Cummings v. Bahr*, 295 N.J. Super. 374, 384 (App. Div. 1996), quoting, *D'Atria v. D'Atria*, 242 N.J. Super. 392, 401-02 (Ch. Div. 1990) (explaining reconsideration should only be utilized where new information not available on the first application must be considered in the interest of justice, or where "1) the [tribunal] has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the [tribunal] either did not consider, or failed to appreciate the significance of probative, competent evidence"). Accordingly, for the reasons set forth in Division's August 8, 2017 final agency decision, I find no reason to disturb the Proposal Review Unit's Notice of Proposal Rejection or the October 19, 2018 NOI. However, I add the following comments regarding Gamber's request for reconsideration.

The *NJSTART* system does not prevent a Vendor {Bidder} from submitting a Quote without all of the required forms and documents completed and attached as mandated by the specifications. The responsibility for ensuring that all necessary forms and other submittals, are uploaded into *NJSTART* necessarily and appropriately rests solely with the Vendor {Bidder}.

The Vendor {Bidder} assumes sole responsibility for the complete effort required in submitting a Quote {Proposal} in response to this Bid Solicitation {RFP}. No special consideration will be given after Quotes {Proposals} are opened because of a Vendor's {Bidder's} failure to be knowledgeable as to all of the requirements of this Bid Solicitation {RFP}.

[Bid Solicitation § 1.4.2 *Vendor {Bidder} Responsibility.*]

With respect to ownership, the New Jersey Legislature in implementing N.J.S.A. 52:25-24.2, mandated the requirements that a Vendor {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, partnership, or limited liability company 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, said partnership, or said limited liability company there is submitted a statement setting forth the names and addresses of all stockholders in the corporation who own 10 percent or more of its stock, of any class, or of all individual partners in the partnership who own a 10 percent or greater interest therein, or of all members in the limited liability company who own a 10 percent or greater interest therein, as the case may be. If one or more such stockholder or partner or member is itself a corporation or

partnership or limited liability company, the stockholders holding 10 percent or more of that corporation's stock, or the individual partners owning 10 percent or greater interest in that partnership, or the members owning 10 percent or greater interest in that limited liability company, 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, and member, exceeding the 10 percent ownership criteria established in this act, has been listed.

[Emphasis added.]

The Division's administrative regulations that govern the advertised procurement process further require that in submitting a Quote, the Vendor {Bidder} must include all required certifications, forms and attachments completed and signed as required by the Bid Solicitation. Specifically, N.J.A.C. 17:12-2.2 provides:

- (a) In order to be eligible for consideration for award of contract, the bidder's proposal shall³ conform to the following requirements or be subject to designation as a non-responsive proposal for non-compliance:

...

4. Contain all RFP-required certifications, forms, and attachments, completed and signed as required. An RFP may designate certain forms and/or certifications that need not be included in the bidder's proposal but that must be provided by a successful bidder upon request prior to an award of contract;

[N.J.A.C. 17:12-2.2(a), emphasis added.]

The subject solicitation was comprised of the Bid Solicitation, other documents and mandatory forms which were specifically addressed in Bid Solicitation Section 4.0 *Quote {Proposal} Preparation and Submission* which states in pertinent part:

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.

[Bid Solicitation § 4.4.1.2 *NJ Standard Bid Solicitation {RFP} Forms Required With The Quote {Proposal}*.]

Among those forms required to be submitted with the Quote is the *Ownership Disclosure Form* discussed in Bid Solicitation Section 4.4.1.2.1 *Ownership Disclosure Form* which states in pertinent part:

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}

³ "Shall or Must – Denotes that which is a mandatory requirement. Failure to meet a mandatory material requirement will result in the rejection of a Quote {Proposal} as non-responsive." Should or May – "Denotes that which is permissible or recommended, not mandatory." Bid Solicitation § 2.2 *General Definitions*.

will result in the rejection of the Quote {Proposal} as non-responsive and preclude the award of a Blanket P.O. {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}.

[Emphasis added.]

As an alternative to the submission of the *Ownership Disclosure Form*, Bid Solicitation Section 4.4.1.2.1 advises that Vendors {Bidders} using *NJSTART* to submit a Quote may make the appropriate certification regarding ownership disclosure on the “Maintain Terms and Categories” Tab within its profile. In completing the ownership category, Vendors {Bidders} are able to select one of the following descriptors:

<p>Category: Ownership Disclosure</p> <p>Description: N.J.S.A. 52:25-24.2 requires disclosure of the names and addresses of those individuals, partnerships and/or corporations owning a 10% or greater interest in the bidding entity (“interest owners”). Further, if any of these interest owners is itself a partnership or corporation, you must disclose the names and addresses of the interest owners of that partnership or corporation.</p> <p><i>Please select at most one category value</i></p> <p>Select</p> <p><input type="checkbox"/> The bidder is a non-profit entity and is exempt from the ownership disclosure requirement. See Disclosure of Non-Profit Officers and Directors below. (No Ownership Disclosure form is required.)</p> <p><input type="checkbox"/> There are no individuals, partnerships or corporations with a 10% or greater interest in the bidding entity, therefore the bidder is exempt from the ownership disclosure requirement. (No Ownership Disclosure form is required.)</p> <p><input type="checkbox"/> Neither statement is applicable. A current, true and complete Statement of Bidder Ownership on the attached form has been or will be uploaded to the vendor profile prior to the submission deadline and is intended to accompany the bidder’s submission.</p>
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In making its selection for ownership category, as shown below, Gamber selected the third option:

<p>Category: Ownership Disclosure</p> <p>Description: N.J.S.A. 52:25-24.2 requires disclosure of the names and addresses of those individuals, partnerships and/or corporations owning a 10% or greater interest in the bidding entity (“interest owners”). Further, if any of these interest owners is itself a partnership or corporation, you must disclose the names and addresses of the interest owners of that partnership or corporation.</p> <p>Neither statement is applicable. A current, true and complete Statement of Bidder Ownership on the attached form has been or will be uploaded to the vendor profile prior to the submission deadline and is intended to accompany the bidder’s submission.</p>

Based upon the selection made, Gamber was required to submit a signed *Ownership Disclosure Form* with its Quote, have one on file with the Division within the six (6) month window prior to the Quote opening date, or attach the form to its Vendor Profile within *NJSTART*. Bid Solicitation § 4.4.1.2.1 *Ownership Disclosure Form*. In this case, the record indicates that Gamber did not submit the signed *Ownership Disclosure Form* with the Quote, nor was a signed form contained within Gamber’s *NJSTART* Vendor Profile, or previously submitted within six (6) months prior to the Quote opening deadline.

In reviewing a Quote submitted in response to a Bid Solicitation, the Division does not have the power to waive the legislative or regulatory requirements that a Vendor {Bidder} provide its ownership information prior to or accompanying the Quote submission or that the Vendor {Bidder} submit all required forms completed and signed as required by the Bid Solicitation. N.J.S.A. 52:25-24.2, N.J.A.C. 17:12-2.2(a), Bid Solicitation § 4.4.1.2.1 *Ownership Disclosure Form*. Notwithstanding Gamber’s interest in

competing for this procurement, to allow Gamber to submit a completed and signed *Ownership Disclosure Form* after bid opening would violate the legislative and regulatory mandates.

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 the Quote. However, in light of the findings set forth above, I find no reason to overturn the Proposal Review Unit's Notice of Proposal Rejection, the Division's August 8, 2017 final agency decision, or the October 19, 2018 Notice of Intent to Award.

Thank you for your company's continuing interest in doing business with the State of New Jersey and for registering your company with *NJSTART* at www.njstart.gov, the State of New Jersey's eProcurement system. I encourage you to log into *NJSTART* to select any and all commodity codes for procurements you may be interested in submitting a Quote for so that you may receive notification of future bidding opportunities. Also, for future Bid Solicitations I encourage you to review the Division's Quick Reference Guide entitled "How to Review a Submitted Quote." This Quick Reference Guide provides Vendors {Bidders} with step-by-step instructions on how to review those documents uploaded and submitted as part of a Quote in response to an advertised Bid Solicitation in *NJSTART* to ensure that all necessary documents have been uploaded as part of the submitted Quote.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

c: J. Kerchner
K. Thomas