



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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August 24, 2018

Via Electronic Mail [gianzatrucking@gmail.com] and USPS Regular Mail

Claudia Gallego
Gianza Trucking
31D W. Blackwell St.
Dover NJ 0801

Re: I/M/O Bid Solicitation #18DPP00205 Gianza Trucking
T0777 Snow Plowing and Spreading Services
Protest of Notice of Intent to Award

Dear Ms. Gallego:

This letter is in response to your correspondence of August 24, 2018, on behalf of Gianza Trucking (Gianza Trucking) to the Division of Purchase and Property's (Division) Hearing Unit. In that correspondence Gianza Trucking protests the August 24, 2018 Notice of Intent to Award (NOI) issued by the Division's Procurement Bureau (Bureau) indicating an intent to award a Master Blanket Purchase Orders (Blanket P.O.s)¹ to several Vendors {Bidders} for Bid Solicitation #18DPP00205 - T0777 Snow Plowing and Spreading Services (Bid Solicitation). The record of this procurement reveals that Gianza Trucking's Quote was rejected for failing to submit the *Ownership Disclosure Form* with its Quote.

By way of background, on January 30, 2018, the Division's Procurement Bureau ("Bureau") issued the Bid Solicitation on behalf of the New Jersey Department of Transportation (NJDOT), to solicit Quotes from qualified Vendors {Bidders} to provide snow plowing and spreading services on all State interstates

¹ For consistency, 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.

<i>NJSTART</i> 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

and highways under the jurisdiction of NJDOT. Bid Solicitation § 1.1 *Purpose and Intent*. It is the State’s intent to award Statewide Master Blanket Purchase Orders (“Blanket P.O.s”)² to those responsible Vendors {Bidders} whose Quotes, conforming to this Bid Solicitation are most advantageous to the State, price and other factors considered. Ibid.

On February 28, 2018, the Bureau issued Bid Amendment #1 responding to the questions posed by potential Vendors {Bidders}. On March 16, 2018, the Division’s Proposal Review Unit opened 164 Quotes received through the State’s *NJSTART* eProcurement system and/or hardcopy format by the submission deadline of 2:00 pm eastern time. Thirty-two Quotes were automatically rejected by the Proposal Review Unit for failure to conform to the mandatory administrative requirements for Quote submission, including Gianza Trucking’s Quote which was rejected for failure to include an *Ownership Disclosure Form* with the Quote.

A review of the Quotes submitted by the submission deadline reveals Gianza Trucking uploaded a Quote via *NJSTART* at 01:58:13 p.m. on March 16, 2018. Gianza Trucking uploaded seven files as Quote 00002089, comprised of the following documents:

- *An Offer and Acceptance Page*;
- A Bid Solicitation Attachment 2, Vendor {Bidder} Experience Form;
- *A Disclosure of Investment Activities in Iran Form*;
- *A Disclosure Form of Investigations and Other Actions Involving the Vendor/Bidder Form*;
- A Form AA302 *Employee Information Report*;
- State Supplied Price Sheet/Schedule; and
- A Bid Solicitation Attachment 1, Vendor {Bidder} Equipment Form.

On April 17, 2018, the Division issued Gianza Trucking a Notice of Proposal Rejection, advising that its Quote was rejected because it was missing required certifications, forms, and attachments. Specifically, Gianza Trucking’s Quote was missing a completed *Ownership Disclosure Form*. On August 24, 2018 Gianza Trucking sent the Division an email protesting the rejection. Gianza Trucking included a completed *Ownership Disclosure Form* dated July 30, 2018, and requested its proposal be considered.

In consideration of Gianza Trucking’s protest, I have reviewed the record of this procurement, including the Bid Solicitation, Gianza Trucking’s protest, the relevant statutes, regulations, and case law. This review of the record has provided me with the information necessary to determine the facts of this

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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 Division's administrative regulations that govern the advertised procurement process establish certain requirements that must be met in order for a Quote to be accepted. Those regulations provide in relevant part that:

- (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.

In implementing N.J.S.A. 52:25-24.2, the New Jersey Legislature mandated that a Vendor {Bidder} must supply its ownership information, prior to or with its Quote, to be eligible to enter into a Blanket P.O. 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 [Blanket P.O.] 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

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*.

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.

The *Ownership Disclosure Form* is specifically addressed in Bid Solicitation Section 4.4.1.2.1 *Ownership Disclosure Form* which states:

Pursuant to N.J.S.A. 52:25-24.2, in the event the Vendor {Bidder} is a corporation, partnership or limited liability company, 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 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}.

In the alternative, to comply with this section, a Vendor {Bidder} with any direct or indirect parent entity which is publicly traded may submit the name and address of each publicly traded entity and the name and address of each person that holds a 10 percent or greater beneficial interest in the publicly traded entity as of the last annual filing with the federal Securities and Exchange Commission or the foreign equivalent, and, if there is any person that holds a 10 percent or greater beneficial interest, also shall submit links to the websites containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest. N.J.S.A. 52:25-24.2.

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 applicable box and, if required, completing and attaching the shortened Ownership Disclosure Form. Vendors {Bidders} not using **NJSTART** to submit a Quote {Proposal} must complete the full Ownership Disclosure Form located on the Division’s website. This 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.

Vendors {Bidders} utilizing **NJSTART** should designate one (1) version of the Ownership Disclosure Form as the Primary Form. In the event that a Vendor {Bidder} fails to attach an Ownership Disclosure Form, or the attached Ownership Disclosure Form is deemed deficient, the Division may access the Primary Form and consider it as part of the Quote {Proposal}. Note: The Primary Form must have a Date Created within six (6) months of the Quote {Proposal} submission deadline to be considered valid.

In order to make this process of complying with the legislative requirement easier, the Division provides to the bidding community with an *Ownership Disclosure Form* to be completed, signed and submitted with the Quote. But, as an alternative to the submission of the *Ownership Disclosure Form*, as noted in Bid Solicitation Section 4.4.1.2.1 above, Vendors {Bidders} using **NJSTART** to submit a Quote are required to make the appropriate certification regarding ownership disclosure on the “Maintain Terms and Categories” Tab within its profile. As shown below, Gianza Trucking did not complete the Ownership Disclosure category:

Vendor Profile - Gianza Trucking

Organization Information Users Address Commodity Codes and Services Regions **Terms & Categories** Attachments Vendor Performance

Terms and Categories Information

Terms

Payment Terms:
Freight Terms:
Shipping Method:
Shipping Terms:

Categories & Certifications

Category: 1. Primary Business Function - (MANDATORY FIELD)

Provides Any Other Type of Services

Category: 3. Business Formation (MANDATORY FIELD)

Limited Liability Company

Because Gianza Trucking did not complete the Ownership Disclosure category within **NJSTART**, it was required to submit the form with its Quote, or attach the form to its Vendor Profile within **NJSTART**. As shown in the screenshot below, Gianza Trucking did not upload the *Ownership Disclosure Form* to its profile.

Vendor Profile - Gianza Trucking

Organization Information Users Address Commodity Codes and Services Regions Terms & Categories **Attachments** Vendor Performance

Attachments Information

No Attachments found for this vendor.

Forms

No Form Attachments

Close Window

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Neither did Gianza Trucking submit the form with its Quote, as noted above.

In reviewing a Quote submitted in response to a Bid Solicitation, the Division does not have the power to waive the legislative requirement that a Vendor {Bidder} provide its ownership information prior to or accompanying the Quote submission. Only the New Jersey Legislature can change a requirement it has mandated. Unfortunately, Gianza Trucking did not comply with any of the options available to it for the submission of ownership information. Accordingly, Gianza Trucking's Quote was properly rejected by the Division's Proposal Review Unit for failure to submit the mandatory *Ownership Disclosure Form* with its Quote.

If the requirements of N.J.S.A. 52:25-24.2 and N.J.A.C. 17:12-2.2 are not met, a Quote must be rejected. These statutes and regulations mandate stringent enforcement to maintain the equal footing of all Vendors {Bidders} and to ensure the integrity of the State's bidding process. The **NJSTART** system does not prevent a Vendor {Bidder} from submitting a Quote without all of the required forms and documents 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}. Bid Solicitation § 1.4.2 *Vendor {Bidder} Responsibility*.

Here, unfortunately, Gianza Trucking submitted a Quote without the *Ownership Disclosure Form* attached and the Division is prohibited from accepting it after the Quote submission deadline. Notwithstanding Gianza Trucking's interest in competing for this procurement, to allow Gianza Trucking to submit the completed and signed *Ownership Disclosure Form* after bid opening would violate the Legislative requirements outlined in N.J.S.A. 52:25-24.2 that the ownership information must be submitted prior to or with the Quote, a requirement that the 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.

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, the State of New Jersey's new eProcurement system. Please monitor the **NJSTART** website for additional information regarding bidding opportunities for these services.

Sincerely,



Maurice A. Griffin
Acting Director

MAG:REG

c: P. Michaels
L. Spildener
M. Groninger