



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
PROCUREMENT BUREAU
33 WEST STATE STREET
P. O. BOX 039
TRENTON, NEW JERSEY 08625-0039
<https://www.njstart.gov>

PHILIP D. MURPHY
Governor

ELIZABETH MAHER MUOIO
Acting State Treasurer

SHEILA Y. OLIVER
Lt. Governor

MAURICE A. GRIFFIN
Acting Director

July 13, 2018

Via Electronic Mail [mmacera@dublinmetals.com] and USPS Regular Mail

Marie Macera
Dublin Scrap Metal, Inc.
489 Frelinghuysen Ave.
Newark, NJ 07114

Re: I/M/O Bid Solicitation #: 18DPP00213 Dublin Scrap Metal, Inc.
Protest of Notice of Proposal Rejection
Bid Solicitation Title: T2634 – Scrap Metal Collection and Recycling/Disposal: Statewide

Dear Ms. Macera:

This letter is in response to your email of July 10, 2018, on behalf of Dublin Scrap Metal, Inc. (“Dublin Scrap Metal”) to the Division of Purchase and Property’s (“Division”) Hearing Unit. In that communication, Dublin Scrap Metal protests the Notice of Proposal Rejection issued by the Division’s Proposal Review Unit for Bid Solicitation #18DPP00213 – T2634 Scrap Metal Collection and Recycling/Disposal: Statewide (“Bid Solicitation”).¹ The record of this procurement reveals that Dublin Scrap Metal’s Quote was rejected for failing to submit an *Ownership Disclosure Form* and because required pricing information was missing from the Quote.

By way of background, on May 7, 2018, the Division’s Procurement Bureau (“Bureau”) issued the Bid Solicitation on behalf of the State of New Jersey and Cooperative Purchasing Program Participants to

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.

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

solicit Quotes from qualified Vendors {Bidders} to provide the recycling and disposal of wood pallets,² light iron, steel, aluminum, cooper, stainless steel, brass, lead, lead acid batteries, crushed steel drums, and other surplus scrap metal through a Rebate Program. Bid Solicitation § 1.1 *Purpose and Intent*. It is the State's intent to award one Master Blanket Purchase Order ("Blanket P.O.") per region, with the State separated into the following three regions: North, Central, and South. *Ibid.* Awards will be made to those Vendors {Bidders} whose Quotes, conforming to this Bid Solicitation are most advantageous to the State, price and other factors considered. *Ibid.*

On June 7, 2018, the Bureau issued Bid Amendment #1 responding to the questions posed by potential Vendors {Bidders}, posting a revised Bid Solicitation, State-Supplied Price Sheet, and Bid Solicitation Checklist. Substantively, the revised Bid Solicitation removed wood pallet removal, recycling, and disposal from the scope of work and otherwise made corrections and updates to various provisions of the Bid Solicitation, including updating the State of New Jersey Standard Terms and Conditions. Bid Amendment #1 also extended the Quote Submission Due Date from June 15, 2018 to June 29, 2018.

On June 29, 2018, the Division's Proposal Review Unit opened three Quotes, two of which were received in hardcopy format by the submission deadline of 2:00 pm eastern time. Dublin Scrap Metal uploaded Quote 00002341 via *NJSTART* at 11:32:53 a.m. on June 29, 2018, which included the following documents:

- *An Offer and Acceptance Page;*
- *A Vendor/Bidder Certification and Political Contribution Disclosure Form Public Law 2005, Chapter 271 Form;*
- *A Cooperative Purchasing Form;*
- *A Disclosure Form of Investigations and Other Actions Involving the Vendor/Bidder Form;*
- *A Disclosure of Investment Activities in Iran Form;*
- *A Source Disclosure Form;*
- *A Subcontractor Utilization Plan Form;*
- *A Revised Price Schedule as of 06/07/18, Southern Region;*
- *A Vendor {Bidder} Quote Overview Form;* and
- A cover letter from Dublin Scrap Metal dated June 29, 2018.

Dublin Scrap Metal also uploaded all of these documents to its vendor profile page in *NJSTART*, except for the *Revised Price Schedule as of 06/07/18* file and cover letter.

On July 9, 2018, the Division issued Dublin Scrap Metal a Notice of Proposal Rejection, advising that the Quote was rejected because it was missing required RFP certifications, forms, and attachments. Specifically, Dublin Scrap Metal's Quote was missing a completed *Ownership Disclosure Form*. The Notice of Proposal Rejection also advised that Dublin Scrap Metal's Quote was missing pricing information.

On July 10, 2018, Dublin Scrap Metal sent the Division an email stating:

² As noted below, this requirement was removed by Bid Amendment #1.

Please accept our reply as to allowing our bid, we did upload pricing as required I did verify that in NJ Start. As for Ownership Disclosure form, we believe that was uploaded as well. Please accept the documents attached.

Please if there is anything further I am standing by. We appreciate your acceptance.

Attached to Dublin Scrap Metal's July 10, 2018 email were (1) a *Revised Price Schedule as of 06/07/2018, Southern Region*, and (2) an *Ownership Disclosure Form*. Dublin Scrap Metal's email and the attachments have been accepted as a protest of the July 9, 2018 Notice of Proposal Rejection.

In consideration of Dublin Scrap Metal's protest, I have reviewed the record of this procurement, including the Bid Solicitation, Dublin Scrap Metal Quote and subsequent 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 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 and 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 as non-responsive.

[Bid Solicitation § 4.4.1.2 *NJ Standard Bid Solicitation Forms Required With The Quote*.]

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*.

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*, and the State-Supplied Price Sheet discussed in Bid Solicitation Section 4.4.5 *State-Supplied Price Sheet*.

Upon review of Dublin Scrap Metal's Quote, it is confirmed that State-Supplied Price Sheet was included within the Quote, as required by the Bid Solicitation. As noted above, Dublin Scrap Metal uploaded documents within its Quote, while also uploading the documents to its vendor profile within *NJSTART*. While Dublin Scrap Metal did not include the *State-Supplied Price Sheet* within its vendor profile, Dublin Scrap Metal correctly included it within the Quote. Accordingly, Dublin Scrap Metal's Quote should not have been rejected on the basis of missing pricing information.

With regard to ownership, however, 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. In pertinent part, N.J.S.A. 52:25-24.2 states:

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 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. A Vendor's {Bidder's} failure to submit the completed and signed form with its Quote will result in the rejection of the Quote as non-responsive and preclude the award of a Blanket P.O. 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 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.

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 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 must complete the full Ownership Disclosure Form located on the [Division’s website](#).

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 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. Note: The Primary Form must have a Date Created within six (6) months of the Quote 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, Dublin Scrap Metal did not complete the Ownership Disclosure category within its vendor profile:

Vendor Profile - Dublin Scrap Metal Inc.

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)

Other - Enter Description of Business in Notes Below

Category: 3. Business Formation (MANDATORY FIELD)

Corporation Including Professional Corporation/Government Entity

Category: 4. Electronic Funds Transfer Certification (MANDATORY FIELD)

Description: I certify that I am an appointed agent of the vendor referenced and that I hereby authorize the State of NJ to initiate payments to the bank acct and bank named in the electronic funds transfer (if and when the information is provided). This authority is to remain in full force and effect until the State of NJ receives notification of any changes, and in such a manner as to afford the State of NJ a reasonable opportunity to Act.

Select if you prefer a paper check instead and do not want to receive payment via EFT. (Any banking information entered as part of your remittance address will be disregarded and remain inactive.)

Category: 5. Tax ID Certification (Substitute W9) (MANDATORY FIELD)

Description: Under Penalties of Perjury, I certify that (1) The number provided via this registration process is my correct taxpayer ID number AND (2) I am not subject to backup withholding AND (3) I am a U. S. Citizen or a defined U. S. Person for federal tax purposes.

Select if you agree with the statement above.

Category: Certification: Business Registration

Description: This Certification status is updated daily. If your business is not registered, or if your registration is not active, please see the following link:

Active

Because Dublin Scrap Metal 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, Dublin Scrap Metal did not upload an *Ownership Disclosure Form* to its profile:

Vendor Profile - Dublin Scrap Metal Inc.

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

Attachments Information

Profile Attachments

Download	File	Description	Size	Uploaded By	Uploaded Date
	DUBLINSCRAPMETAAL18DPP00213 OFFER AND ACCEPTANCE T2634--1.pdf		829,693 bytes	Marie Macera	06/28/2018 03:09:27 PM
	DUBLINSCRAPMETAAL18DPP00213CHAPTS1 POLITICAL--1.pdf		949,013 bytes	Marie Macera	06/28/2018 03:09:37 PM
	DUBLINSCRAPMETAAL18DPP00213COOPERATIVEPURCHASING--1.pdf		855,308 bytes	Marie Macera	06/28/2018 03:09:47 PM
	DUBLINSCRAPMETAAL18DPP00213DISCLOSURE INVEST T2634--1.pdf		1,841,906 bytes	Marie Macera	06/28/2018 03:09:57 PM
	DUBLINSCRAPMETAAL18DPP00213DISCLOSUREINVESTIRAN T2634--1.pdf		292,579 bytes	Marie Macera	06/28/2018 03:10:12 PM
	DUBLINSCRAPMETAAL18DPP00213SOURCE DISCLOSURE T2634--1.pdf		281,204 bytes	Marie Macera	06/28/2018 03:10:21 PM
	DUBLINSCRAPMETAAL18DPP00213SUBCONTRACTOR T2634--1.pdf		294,402 bytes	Marie Macera	06/28/2018 03:10:30 PM
	DUBLINSCRAPMETAAL18DPP00213VENDOR OVERVIEW FORM--1.pdf		1,055,742 bytes	Marie Macera	06/28/2018 03:10:38 PM

Forms

No Form Attachments

Neither did Dublin Scrap Metal submit the *Ownership Disclosure Form* with its Quote.

As an incumbent vendor on this contract, the Hearing Unit investigated whether Dublin Scrap Metal had an *Ownership Disclosure Form* on file with the Procurement Bureau or the Division’s Chapter 51 Unit. The Procurement Bureau did not have a form on file from Dublin Scrap Metal in connection any recent extensions of T2634. However, the Division’s Chapter 51 Unit had a form on file dated June 11, 2014. While the Division has an *Ownership Disclosure Form* on file from Dublin Scrap Metal, it is dated June 11, 2014, beyond the six month look-back window referenced in Bid Solicitation Section 4.4.1.2.1.

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, Dublin Scrap Metal did not comply with any of the options available to it for the submission of ownership information. Accordingly, Dublin Scrap Metal’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, Dublin Scrap Metal submitted a Quote without including an *Ownership Disclosure Form* and the Division is prohibited from accepting it after the Quote submission deadline. Notwithstanding Dublin Scrap Metal's interest in competing for this procurement and its longstanding service to the State, to allow Dublin Scrap Metal 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. Accordingly, Dublin Scrap Metal's Quote was properly rejected by the Proposal Review Unit.

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.

Sincerely,



Maurice A. Griffin
Acting Director

MAG:REG

c: A. Davis
K. Anderson-Thomas