



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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September 10, 2018

Via Electronic Mail [cnunespena@aol.com] and USPS Regular Mail

Ondina Nunes, Vice President
Pena II, Inc.
1 Miara Street
Parlin, NJ 08859

Re: I/M/O Bid Solicitation #18DPP00222 Pena II, Inc.
Protest of Notice of Proposal Rejection
T2924 Snow Plowing Services by Area - NJDOT

Dear Ms. Nunes:

This letter is in response to your correspondence dated September 4, 2018, on behalf of Pena II, Inc. (Pena) which was received by the Division of Purchase and Property's (Division) Hearing Unit. In that correspondence, Pena protests the August 23, 2018 Notice of Intent to Award (NOI) issued by the Division's Procurement Bureau (Bureau) for Bid Solicitation #18DPP00222 – T2924 Snow Plowing Services by Area - NJDOT (Bid Solicitation).

By way of background, on February 13, 2018, the 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 services for areas of State interstates and highways under the jurisdiction of the 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)¹ to those responsible Vendors {Bidders} whose

¹ For consistency, this 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

Quotes, conforming to this Bid Solicitation are most advantageous to the State, price and other factors considered. Ibid.

On March 16, 2018, the Bureau issued Bid Amendment #1 responding to the questions posed by potential Vendors {Bidders}. On April 12, 2018, the Division's Proposal Review Unit opened 21 Quotes which were received by the submission deadline of 2:00 pm eastern time. After conducting a review of the Quotes received, the Division's Proposal Review Unit issued a Notice of Proposal Rejection to Pena for failing to submit the *Ownership Disclosure Form* and the *Disclosure of Investment Activities in Iran Form* with its Quote.

In response to the Notice of Proposal Rejection, on April 25, 2018, Pena submitted the completed and signed *Disclosure of Investment Activities in Iran Form* and *Ownership Disclosure Form* with a copy of the Notice of Proposal Rejection to the Division's Hearing Unit. The Hearing Unit accepted the submission of those documents as a protest. On May 23, 2018, the Division issued its final agency decision stating in part:

...unfortunately, Pena submitted a Quote without the required *Ownership Disclosure Form* and the *Disclosure of Investment Activities in Iran Form* attached. Notwithstanding Pena's interest in competing for this procurement, to allow Pena to submit the completed and signed *Ownership Disclosure Form* or the *Disclosure of Investment Activities in Iran Form* after bid opening would violate the Legislative requirements outlined in N.J.S.A. 52:25-24.2 and N.J.S.A. 52:32-58, requirements that the Division is not authorized to waive.

[May 23, 2018, final agency decision, p. 7.]

The remaining Quotes were forwarded to the Bureau for review and evaluation consistent with the requirements of Bid Solicitation Section 6.7 *Evaluation Criteria*. On August 20, 2018, the Bureau completed its 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 August 23, 2018, the NOI was issued advising all Vendors {Bidders} that it was the State's intent to award a Blanket P.O.s consistent with the Bureau's Recommendation Report.

On September 4, 2018 the Division's Hearing Unit received Pena's letter, protesting the August 23, 2018 NOI. In that letter, Pena stated:

I Ondina Nunes writing (sic) this letter protesting against Bid Solicitation#: 18DPP00222. The reason for my protest is because I send all the documentation that was on NJ START, then they send me a letter that a had (sic) miss *Ownership Disclosure Form* and the *Disclosure of Investment Activities in Iran Form*, where I send right away. Please look into this matter.

As noted above, Pena's Quote was automatically rejected for failing to submit the *Ownership Disclosure Form* and *Disclosure of Investment Activities in Iran Form* with its Quote. On April 25, 2018 Pena submitted a protest, and on May 23, 2018, the Division issued its Final Agency Decision sustaining the Notice of Proposal Rejection. If Pena was dissatisfied with that decision, its recourse was to file an appeal with the Appellate Division. The Division's governing regulations state in part that "final agency determinations by the Director on matters of protest are appealable to the Appellate Division of the Superior Court of New Jersey." N.J.A.C. 17:12-3.1. Further, "appeals from final decisions or actions of state

administrative agencies or officers...shall be taken within 45 days from the date of service of the decision or notice of the action taken.” New Jersey Court Rule 2.4-1(b). As such, Pena should have submitted its appeal of the Division’s May 23, 2018, Final Agency Decision to the Appellate Division by July 9, 2018.

Rather, Pena waited until the issuance of the August 23, 2018 NOI to file a second protest seeking a reconsideration of the Division’s May 23, 2018, Final Agency Decision. Though it was is not required to do so, the Division has reviewed Pena’s September 4, 2018, request for reconsideration. In consideration of Pena’s request for reconsideration, I have reviewed the record of this procurement, including the Bid Solicitation, the submitted Quotes, 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 a decision on the merits of Pena’s request for reconsideration.

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 shall² 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 are the *Ownership Disclosure Form* and the *Disclosure of Investment Activities in Iran Form* discussed in Bid Solicitation Section 4.4.1.2.1 and 4.4.1.2.2 respectively.

² “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*.

The record of this procurement indicates that Pena's Quote did not include a completed and signed *Ownership Disclosure Form* or *Disclosure of Investment Activities in Iran Form*, nor was the form contained within Pena's **NJSTART** Vendor Profile.

As noted in the Division's May 23, 2018 decision, 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 and certify with its Quote that it is not engaged in investment activities in Iran. Only the New Jersey Legislature can change a requirement it has mandated. If the requirements of N.J.S.A. 52:25-24.2, N.J.S.A. 52:32-58, 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*. Unfortunately, Pena submitted a Quote without the required *Ownership Disclosure Form* and the *Disclosure of Investment Activities in Iran Form* attached.³ Accordingly, Pena's Quote was properly rejected by the Division's Proposal Review Unit.

Accordingly, I sustain the May 23, 2018 final agency decision which upheld the Proposal Review Unit's Notice of Proposal Rejection and sustain the August 23, 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.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

c: P. Michaels
L. Spildener
M. Groninger

³ Please visit the **NJSTART** Vendor Support Page and review the Division's Quick Reference Guide entitled "How to Review a Submitted Quote" which provides information and instructions on how to review your company's submitted Quote.