



## State of New Jersey

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*Governor*

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MAURICE A. GRIFFIN  
*Acting Director*

June 19, 2019

Via Electronic Mail [Joe.Sutkus@sigsauer.com] and USPS Regular Mail

Joseph W. Sutkus, Inside Sales Manager  
Sales Operations, Law Enforcement  
Sig Sauer, Inc.  
72 Pease Blvd.  
Newington, NH 03801

Re: I/M/O Bid Solicitation # 17DPP00046 Sig Sauer, Inc.  
Protest of Notice of Intent to Award  
T0106 Law Enforcement Firearms, Equipment and Supplies

Dear Mr. Sutkus:

This letter is in response to your email of June 12, 2019, on behalf of Sig Sauer, Inc. (Sig Sauer) which was received by the Division of Purchase and Property's (Division) Hearing Unit. In that correspondence, Sig Sauer requests permission to protest 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).

By way of background, on February 8, 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*.

On April 20, 2017, the Division's 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 § 6.6 *Evaluation Criteria*.

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. On May 15, 2019, the Bureau completed the Blanket P.O. awards.

On May 22, 2019, Sig Sauer wrote to the Bureau stating:

It has come to our attention that State of New Jersey Contract for T0106 went out for bid / renewal and we (SIG SAUER, Inc.) were never notified. It would appear that the contract (T0106 17DPP00046) has been awarded and SIG SAUER is *not* listed.

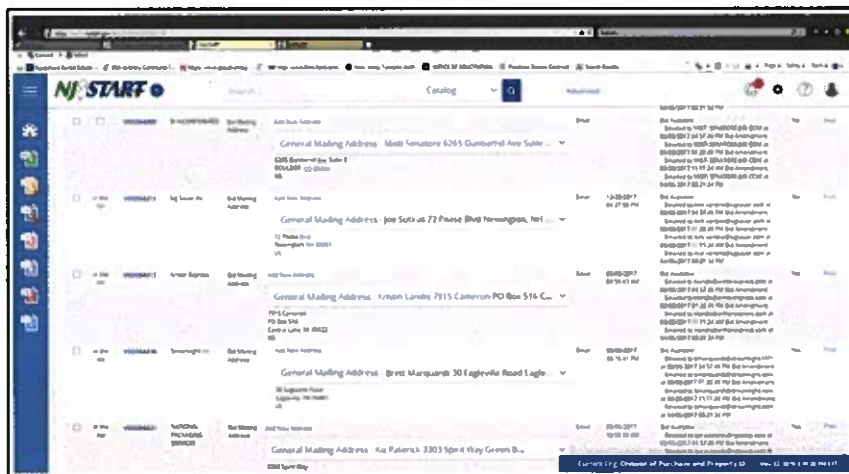
Since we were given no formal or informal notification(s) that the contract was out for bid / renewal, I'm requesting we be giving the opportunity to reestablish our company on the state contract. I have cc'd the Executive Vice president of SIG SAUER Law Enforcement Sales (Tom Jankiewicz) on this email.

On that day, the Bureau responded stating:

Thank you for your communication.

The Bid Solicitation (17DPP00046) was publicly advertised and published in the Division's NJSTART system ([www.njstart.gov](http://www.njstart.gov)) and notice of the Bid Solicitation, and subsequent amendments to the Bid Solicitation, was published in the Star Ledger newspaper.

Your firm received notifications from NJSTART regarding the Bid Solicitation and bid amendment publications. The notifications were sent to the contact information in the NJSTART system: [nick.vantine@sigbauer.com](mailto:nick.vantine@sigbauer.com). Please see the screen shot below from NJSTART:



The Bid Solicitation included price lines specifically for the Sig Sauer brand under Categories 2 (Firearms and Firearm Repair Parts) and 3 (Firearm Accessories), since the brand was identified as a brand used by Agencies.

The Bid Solicitation opened on 4/20/17. New Blanket P.O. (Contract) awards were made on 5/15/19. No Blanket P.O. award was made for the Sig Sauer brand under T0106 since no Quotes were received.

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Agencies may utilize their statutory procurement authority to order the Sig Sauer brand, if desired, but they will not be able to do so utilizing the T0106 Blanket P.O.s (Contracts).

We appreciate your firm's interest in the State's procurement process and welcome your firm's continued interest and participation in future procurements.

The following day, May 23, 2019, Sig Sauer wrote to the Bureau stating "need to find a way to protest this." The Division's Hearing Unit responded stating:

Your email below was forwarded to the Division of Purchase and Property's Hearing Unit for review. As you were previously advised, this contract was advertised on the Division's e-procurement website in April 2017. Contract awards were made in May 2019. At this juncture the opportunity to protest the award of contracts has passed.

Based upon your email below, it appears that your company takes issue with the advertisement and or notification of the solicitation to potential bidders. To that extent, the Division's Hearing Unit will accept a protest from your company related to that issue. Please note that the submission of a protest at this late date will not affect the current contract awards.

Should your company wish to submit a protest, please submit the protest to the Hearing Unit via email at [DPP.Protest@treas.nj.gov](mailto:DPP.Protest@treas.nj.gov) by close of business on Thursday, May 30, 2019.

As noted above, Sig Sauer's protest was not received until June 12, 2019. In that email, Sig Sauer states in part:

My name is Joseph Sutkus and I'm the Inside Sales & Contrasts Manager for SIG SAUER, Inc. Law Enforcement Sales. We wish to file a formal protest in the award of T0106 17DPP00046 Notice of Intent to Award as SIG SAUER, Inc. (SIG) was not notified that this contract was out for renewal. SIG – representing itself as the manufacturer - has been on the NJ State Contract for several years and we wish to continue our long standing relationship with the State of New Jersey. Over the past two and half years we have made every responsible attempt to work with the NJ Division of Purchase and Property to ensure the current & proper account information has been update on a regular basis. Despite our attempts and reasonable efforts, the NJ Division of Purchase and Property electronic procurement web portal (NJSTART) still has an individual listed as the primary POC (Nicholas Vantine) who has not been employed with the company for over 4 years. I assumed the role of POC for the state of NJ for bids and contracts approximately 2 and half years ago and have been receiving regular correspondences from NJ Division of Purchase and Property...regarding & requesting we extend our open contact for additional periods of time – to which we acknowledged, supported and accommodated. When the T0106 17DPP00046 went out for renewal / rebid, I received no formal or informal notification to participate.

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Sig Sauer's protest is out of time. Pursuant to the Division's governing regulations, Sig Sauer's protest should have been filed within ten days of the issuance of the Notice of Intent to Award. N.J.A.C. 17:12-3.3(b). At the latest, it should have been filed by May 30, 2019, as permitted by the Division's Hearing Unit in response to Sig Sauer's May 23, 2019 email.

Nonetheless, the Division has reviewed Sig Sauer's protest as if it was timely received. In consideration of Sig Sauer's protest, I have reviewed the record of this procurement, including the Bid Solicitation, Sig Sauer'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 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 public procurement program reflects the New Jersey statutory and regulatory requirements that have been affirmed by New Jersey courts. A basic precept of the Division's governing statutes and regulations requires that Quotes must be submitted by the deadline specified in the public advertisement and website notice. The Division's regulations set forth procurement notification requirements at N.J.A.C. 17:12-2.1 Advertising which states in pertinent part:

- (a) Advertising is required when the contract amount is expected to exceed the public bidding threshold or is not subject to the relevant exceptions of N.J.S.A. 52:34-6, 9, or 10. Public notice of the bidding opportunity shall be placed on the Division's website and with other media, including newspapers, as required by law at N.J.S.A. 52:34-12 and determined by the State Treasurer to provide best notice thereof to bidders. Advertisements shall be made a minimum of seven business days in advance of the announced deadline for receipt of proposals to encourage free and open competition.
- (b) If, during the course of an advertised procurement pursuant to (a) above, it becomes necessary to alter any of the terms, conditions, or requirements of the request for proposal, such alterations shall be set forth in addenda to the RFP and shall be advertised a minimum of seven business days in advance of the announced deadline for receipt of proposals.
- (c) In addition to statutorily mandated public advertising, the Division shall also publish notices of bidding opportunities on the Division's website.

The record of this procurement shows that the procurement was conducted in full accordance with the Division's governing statutes and regulations and by its standard announcement procedures and practices. Notice of the subject Bid Solicitation was publicly advertised on the Division's **NJSTART** eProcurement site, and as shown below, notice was also published in The Star-Ledger on February 8, 2017 as required by the applicable regulation. N.J.A.C. 17:12-2.1(a) and (c)

NOTICE OF NJSTART  
BID SOLICITATION

NOTICE IS HEREBY GIVEN THAT  
SEALED QUOTES (PROPOSALS) WILL  
BE RECEIVED IN THE PROCUREMENT  
BUREAU RECEPTION ROOM, 9TH  
FLOOR, 33 WEST STATE STREET, P.O.  
BOX 230, TRENTON, N.J., 08625-  
0230, UNTIL 2:00 PM ON MARCH 9,  
2017 AND WILL BE PUBLICLY  
OPENED AND ANNOUNCED FOR  
THE FOLLOWING NJSTART PRO-  
CUREMENT PROGRAM SOLICITA-  
TION:

17DPP00046 (T-0106) - Law Enforce-  
ment Firearms, Equipment and  
Supplies

BIDDERS ARE REQUIRED TO COMPLY  
WITH THE  
TERMS AND CONDITIONS CON-  
TAINED IN THE BID SOLICITATION.

INFORMATION ON THE NJSTART  
PROCUREMENT PROGRAM AND BID  
SOLICITATION DOCUMENTS ARE  
AVAILABLE AT: [www.njstart.gov](http://www.njstart.gov)

AND ON THE DIVISION'S WEBSITE  
AT:  
[www.state.nj.us/treasury/purchase](http://www.state.nj.us/treasury/purchase)

STATE OF NEW JERSEY  
DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND  
PROPERTY  
2/8/2017 560.45

Additionally, notice of the Bid Amendments {Addendum} were similarly published in The Star-Ledger and publicly advertised on the Division's **NJSTART** eProcurement site.

With respect to electronic procurement notification, the Division's governing regulations state in pertinent part:

As a service to vendors interested in competing for State contracts to be awarded by the Division and to any other parties seeking information about bidding opportunities available via the Division's competitive contract procurement program, the Division provides an on-line self-registration service [NJSTART]. Vendors and other interested parties can register to receive direct e-mail notices pertaining to the Division's procurements for goods or services based upon specific commodity classes or codes. As this is a self-registration process, it does not create an entitlement for any party to receive notice of any particular solicitation of proposals, and the Division and the State shall not be liable for any losses, claims, or damages of any kind if a vendor or other party, for any reason, is not registered or does not receive an e-mail notice. It is the responsibility at all times for [NJSTART] registrants to exercise due diligence in reviewing the notices on the Division's website to assure their awareness of State bidding opportunities announced by the Division.

[N.J.A.C. 17:12-2.1(d).]

In keeping with regulation, all Vendors {Bidders} who were registered with **NJSTART** for any of the NIGP Commodity Codes associated with this procurement received electronic notification of the procurement. The responsibility of registration, selection of commodity codes, and maintenance of the business entity's contact information, necessarily rests solely with the potential Vendor {Bidder} who will only receive an electronic notification for procurements associated with those commodity codes for which it is registered, sent to the email address on file in the **NJSTART** eProcurement system. A review of record of this



procurement reveals that Sig Sauer was registered for at least one of the NIGP Commodity Codes associated with this procurement, and did in fact receive electronic notice of the procurement, sent to the email address listed in its Vendor Profile at the time of this procurement.<sup>1</sup>

V00004311 Sig Sauer Inc.	Email	Bid Available:	No
		Emailed to nick.vantne@sigbauer.com at 02/08/2017 04:57:45 PM Bid Amendment	
		Emailed to nick.vantne@sigbauer.com at 03/02/2017 01:22:49 PM Bid Amendment	
		Emailed to nick.vantne@sigbauer.com at 03/28/2017 11:11:24 AM Bid Amendment	
		Emailed to nick.vantne@sigbauer.com at 04/06/2017 03:21:34 PM	

Additionally, as noted above, this Bid Solicitation was publically advertised and as such was open and available for review and submission of a Quote by any potential Vendor {Bidder}, regardless of whether the potential Vendor {Bidder} was registered in *NJSTART* or not.

Prior to the advertisement of subject Bid Solicitation, the Bureau put Vendors on notice that the reprocurement of the subject contract might occur during the extension term. Specifically, on October 24, 2016, the Bureau sent a letter to Sig Sauer requesting that it extend its then current contract for a period of six months from November 1, 2016 through April 30, 2017, the time frame covering the advertisement of the subject Bid Solicitation. That letter specifically advised that the Vendor {Contractor} as follows:

**REMINDER: Be mindful that, if this term contract is extended, reprocurement bidding may occur during this extension period. Because hardcopy notices of bidding opportunities are no longer routinely mailed to vendors, including incumbent contractors, you are encouraged to visit the Division of Purchase and Property's website at [www.state.nj.us/treasury/purchase](http://www.state.nj.us/treasury/purchase) and to register with the Division's RFP Notification Service for complimentary e-mail notice when a relevant bidding opportunity is announced.**

[Emphasis in the original.]

On October 25, 2016, Sig Sauer responded to the Bureau's letter agreeing to extend its then current contract through April 30, 2017.<sup>2</sup>

Although Sig Sauer requests that it be permitted to participate in the procurement process, the administrative regulations that govern the Division's advertised procurement process establish certain requirements that must be met in order for a Quote to be accepted. The Division's governing regulations provide in relevant part: "[i]n order to be eligible for consideration for award of [Blanket P.O.], the bidder's [Quote] shall ... [b]e submitted on or before the due date and time and at the place specified in the [Bid Solicitation]." *N.J.A.C. 17:12-2.2(a)*, *emphasis added*. If the requirements of *N.J.A.C. 17:12-2.2* are not met, a Quote must be rejected. These regulations are stringently enforced to maintain the equal footing of all Bidders and to ensure the integrity of the State's bidding process.

<sup>1</sup> On June 21, 2018, over a year after bid opening date, Sig Sauer updated the contact information in its *NJSTART* Vendor Profile. From that date forward, notifications of new bidding opportunities would have been sent to the new email address provided. This change however, had no impact on the notices associated with advertisement of subject Bid Solicitation. Had Sig Sauer updated the contact information in its *NJSTART* Vendor Profile prior to the April 20, 2017, Quote opening deadline, it would have received notification of the subject Bid Solicitation.

<sup>2</sup> The extension letters included by Sig Sauer with its protest did not include the language reminding Vendors of the potential for the reprocurement, as those extensions were put in place after the Quote opening date for the subject Bid Solicitation had already occurred.

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Further, as Sig Sauer is aware, the Blanket P.O. awards for the subject Bid Solicitation have already been made. If the Division were to permit Sig Sauer to submit a Quote at this late date, over two years after the Quote opening deadline, Sig Sauer would be placed in a position of advantage over all other Vendors {Bidders} as it would have the advantaged of knowing all other brands and pricing submitted. Under the provisions set forth above, the statutory procurement laws, and the regulations of the State of New Jersey, the Division cannot accept a late Quote from Sig Sauer or any other Vendor {Bidder}. Such acceptance would un-level the Vendor's {Bidder's} playing field.

In light of the findings set forth above, I must deny your request for eligibility to participate in the competition for the subject Blanket P.O. This is my final agency decision. This is an unfortunate situation for the State, as we encourage competition and appreciate your expertise in the field. However, should the Using Agency determine that it needs an expanded variety of brands, it can request a supplemental procurement for these additional product offerings.

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](http://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, and to ensure that contact information is up to date, so that you may receive notification of future bidding opportunities.

Sincerely,



Maurice A. Griffin  
Acting Director

MAG: RUD

c: J. Kerchner  
K. Thomas