



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
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October 31, 2014

Via Electronic Mail [steve@gracieharrigan.com] and USPS Regular Mail

Steve Kalleser, CF
Gracie & Harrigan Consulting Foresters, Inc.
23 Dumont Rd.
P.O. Box 316
Far Hills, NJ 07931

RE: Protest of Notice of Proposal Rejection
RFP #15-X-23647 State Forest Inventory

Dear Mr. Kalleser:

This letter is in response to your email and fax, both dated and received October 30, 2014, referencing the subject Request for Proposal ("RFP") and regarding the proposal submitted by Gracie & Harrigan Consulting Foresters, Inc., Inc ("G&H") to the Division of Purchase and Property ("the Division"). The record of this procurement notes that G&H's proposal was rejected for absence of a signed *Ownership Disclosure Form* and *Disclosure of Investment Activities in Iran* form. Your letter contends these forms were submitted through the Division's ebid system and were therefore signed through your PIN. Your letter also contends that a representative from your company was denied the ability to submit a hard copy proposal by the original proposal opening deadline.

I have reviewed the record of this procurement, including the RFP, G&H's proposal, and relevant statutes, regulations, and case law. This review has provided me with the information necessary to determine the facts of this matter and to render an informed determination on the merits of G&H's protest. Therefore, I am denying your request for an in-person presentation. See N.J.A.C. 17:12-3.3(d)(1) (stating the "Director has sole discretion to determine if an in-person presentation by the protester is necessary to reach an informed decision on the matter(s) of the protest").¹

The above-referenced solicitation was comprised of the RFP and other documents, one of which was the three-part document titled *NJ Standard RFP Forms*. This document is comprised of three expandable forms, including an *Ownership Disclosure Form*, a *Disclosure of Investigations and Other Actions Involving Bidder Form*, and a *Disclosure of Investment Activities in Iran* form.

The text of the RFP addresses these forms in Section 4.0, *Proposal Preparation and Submission*. The relevant text reads as follows:

¹ The Division's administrative rules governing its procurement programs are set forth in N.J.A.C. 17:12. These rules can be accessed at <http://www.state.nj.us/treasury/purchase/AdminCode.shtml>.

4.4.1.2 NJ Standard RFP Forms

One of the downloadable RFP documents is titled NJ STANDARD RFP FORMS. It is comprised of three separate forms, two of which (Ownership Disclosure and Disclosure of Investment Activities in Iran) discussed below, must be completed, signed and submitted with the bidder's proposal. **The bidder is cautioned that failure to complete, sign and submit either of these two forms will be cause to reject its proposal as non-responsive as noted below.** If the bidder submits a hard copy proposal, each of the two forms must be physically signed.

If the bidder is submitting an electronic proposal through the Division's eBid system, there are only two acceptable forms of signature for the two forms:

1. The bidder may download the document, physically complete and sign each form, scan the completed document and then upload it, or
2. The bidder may download the document, type the name of the signatory in the space designated for certification signature in each of the forms and then upload the document.

Note: A bidder's entry of a Personal Identification Number (PIN) shall not suffice as a certifying signature on the forms comprising the NJ STANDARD RFP FORMS document.

4.4.1.2.1 Ownership Disclosure Form

Pursuant to N.J.S.A. 52:25-24.2, in the event the bidder is a corporation, partnership or sole proprietorship, the bidder must complete and sign the attached Ownership Disclosure Form. A current completed Ownership Disclosure Form must be received prior to or accompany the submitted proposal. A bidder's failure to submit the completed and signed form with its proposal will result in the rejection of the proposal as non-responsive and preclude the award of a contract to said bidder unless the Division has on file a signed and accurate Ownership Disclosure Form dated and received no more than six months prior to the proposal submission deadline for this procurement. If any ownership change has occurred within the last six months, a new Ownership Disclosure Form must be completed, signed and submitted with the proposal.

4.4.1.2.2 Disclosure of Investment Activities in Iran Form

Pursuant to N.J.S.A. 52:32-58, the bidder must utilize this Disclosure of Investment Activities in Iran form to certify that neither the bidder, nor one of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32-56(e)(3)), is listed on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither the bidder, nor one of its parents, subsidiaries, and/or affiliates, is involved in any of the investment activities set forth in N.J.S.A. 52:32-56(f). If the bidder is unable to so certify, the bidder shall provide a detailed and precise description of such activities as directed on the form. A bidder's failure to submit the completed and signed form with its proposal will result in the rejection of the proposal as nonresponsive and preclude the award of a contract to said bidder.

[(Emphasis in original.)]

Furthermore, as a courtesy to all bidders, the Division provided a Proposal Checklist as an accompaniment to the RFP. The Checklist included the following:

FORMS THAT MUST BE SUBMITTED WITH YOUR PROPOSAL:

- RFP Signatory Page with physical signature or PIN (PIN is for eBid submission ONLY)
- Completed Price Sheets as instructed in Section 4.4.5 of the RFP
- Completed and signed Ownership Disclosure Form*
- Completed and signed Disclosure of Investments in Iran Form*

....

** The Ownership Disclosure, Disclosure of Investigations and Other Actions Involving Bidder, and the Disclosure of Investments in Iran forms MUST each contain either a physical or typed signature (typed signatures are only acceptable for eBid submissions). . . .*

Pursuant to N.J.A.C. 17:12-2.2, a bidder's proposal must "[c]ontain all RFP-required certifications, forms, and attachments, completed and signed as required" or "be subject to automatic rejection." As set forth in RFP Sections 4.4.1.2, 4.4.1.2.1, and 4.4.1.2.2 listed above, the submission of a completed and signed *Ownership Disclosure Form* prior to or as part of the proposal and a completed and signed *Disclosure of Investment Activities in Iran* form as part of a bidder's proposal was required for the subject RFP.

In response to your claim that no notice was given to alert potential bidders that the proposal due date had been postponed, the coversheet of the RFP explained: "Dates are subject to change. All changes will be reflected in Addenda to the RFP posted on the [Division's] website." RFP Section 1.4.1 *Addenda: Revisions to this RFP* also stated:

In the event that it becomes necessary to clarify or revise this RFP, such clarification or revision will be by addendum. Any addendum to this RFP will become part of this RFP and part of any contract awarded as a result of this RFP.

ALL RFP ADDENDA WILL BE ISSUED ON THE DIVISION OF PURCHASE AND PROPERTY WEB SITE. TO ACCESS ADDENDA, THE BIDDER MUST SELECT THE PROPOSAL NUMBER ON THE WEB PAGE AT <http://www.state.nj.us/treasury/purchase/bid/summary/bid.shtml>.

There are no designated dates for release of addenda. Therefore interested bidders should check the Division's "Bidding Opportunities" website on a daily basis from time of RFP issuance through the proposal submission opening.

It is the sole responsibility of the bidder to be knowledgeable of all addenda related to this procurement. [(Emphasis added.)]

Addendum #2, dated October 14, 2014, was posted to the Division's website, stating: "Please be advised the Proposal due Date has been revised from October 15, 2014, to October 29, 2014, at 2PM ET. The Subcontractor Utilization Plan Form has been added to the advertised solicitation as a downloadable RFP document. It is the bidders' responsibility to ensure that all changes are incorporated into the original RFP." Furthermore, the public notice posted in the Department of the Treasury, Procurement Bureau, on October 15, 2014, advised all bidders that the subject RFP had been postponed to October 29, 2014. However, it is Division policy to accept a proposal at any time prior to a proposal due date and the Division's employees are instructed to abide by this policy. Therefore, your company would not have been denied the ability to submit a hardcopy proposal on this date.

In this case, the record indicates that G&H's proposal submission did not include a properly signed *Ownership Disclosure Form* or *Disclosure of Investment Activities in Iran* form. Rather, the signature lines on these forms were left blank. As noted above, the two permissible ways to sign these forms were either: 1) downloading the document, physically signing it form, scanning the completed document, and then uploading it; or 2) typing the name of the signatory in the space designated for certification signature and uploading the document. Notwithstanding G&H's interest in competing for this procurement, it would not be in the State's best interests to allow a bidder who did not provide the required completed and signed certifications of these statutorily required forms to be eligible to participate in the procurement process. Such an allowance would be contrary to governing law and would unlevel the 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 contract. This is my final agency decision on this matter.

This is an unfortunate situation for the State, as we encourage competition and appreciate the time and effort put forth in G&H's proposal. Thank you for your interest in doing business with the State of New Jersey. I invite you to take this opportunity to register your business with **NJ START** at www.njstart.gov, the State of New Jersey's new eProcurement system, which is scheduled to go live this fall and will provide a "one-stop shop" for vendors to submit proposals, maintain required forms and certifications, and present purchase orders and invoices for payment

Sincerely,



Ronald G. Wengerd
Chief Hearing Officer

RGW:DF

c: L. DuBois
M. Griffin
D. Fantini
S. Laidlaw
D. Rodriguez