



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
33 WEST STATE STREET
P. O. BOX 039

TRENTON, NEW JERSEY 08625-0039
<https://www.njstart.gov>
Telephone (609) 292-4886 / Facsimile (609) 984-2575

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

FORD M. SCUDDER
Acting State Treasurer

JIGNASA DESAI-MCCLEARY
Director

December 31, 2015

Via Electronic Mail [ddecongelio@stanssportsctr.com] and USPS Regular Mail

Daniel DeCongelio, President
Stan's Sports Center
528 Washington Street
Hoboken, NJ 07030

RE: Protest of Notice of Proposal Rejection
RFP #16-X-24078 Sporting Goods - Statewide

Dear Mr. DeCongelio:

This correspondence is in response to your letter of protest dated and received December 28, 2015, referencing the subject Request for Proposal (RFP) and regarding the proposal submitted by Stan's Sports Center (SSC) to the Procurement Bureau (Bureau) of the Division of Purchase and Property (Division). The record of this procurement notes that SSC received a Notice of Proposal Rejection for submitting supplemental information past the proposal submission deadline. In your correspondence, you state that "an error was made" and that SSC properly uploaded its proposal by the submission deadline and subsequently mailed a copy of its Small Business Set-Aside Certificate following the deadline as proof that it had received a new certificate. As such, you request the Division reconsider the rejection of SSC's proposal as untimely.

I have reviewed the record of this procurement, including the RFP, SSC'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 SSC's protest.

By way of the background, the subject RFP was issued by the Bureau on behalf of using agencies to solicit proposals for sporting goods. RFP § 1.1 *Purpose and Intent*. The intent of the RFP is to award one "contract per brand, per category to those responsible [b]idders whose proposals, conforming to this RFP are most advantageous to the State, price and other factors considered." Ibid.

All bidders were instructed to submit proposals in accordance with RFP Section 4.2 *Proposal Delivery and Identification*, which specified: "In order to be considered, a proposal must arrive at the Division in accordance with the instructions on the RFP signatory page accompanying this RFP." The *Signatory Page* mandated that "Proposals must be received at or before the public opening time of 2:00 p.m. Eastern Time on December 2, 2015 . . ."

Furthermore, the RFP specified that the resulting contract for the subject solicitation is a Category I, II, and III Small Business Set-Aside. Accordingly, bidders were advised as follows:

4.4.1.4 SMALL BUSINESS REGISTRATION FOR SET-ASIDE CONTRACTS

....

Inasmuch as this is a full or partial set-aside contract, the Bidder **should**¹ provide, as part of its response to this solicitation, proof of its current registration as a qualifying small business with the New Jersey Division of Revenue and Enterprise Services, Small Business Registration and M/WBE Certification Services Unit. Application and registration requirements are presented on the web at <http://www.nj.gov/njbusiness/contracting/> or by contacting that agency during business hours as indicated below.

....

4.4.1.4.1 SMALL BUSINESS SET-ASIDE CONTRACTS

This is a Set-Aside Contract for **Categories I, II, and III** for Small Businesses. The Bidder must be registered as a qualifying small business with the Division of Revenue and Enterprise Services, Small Business Registration and M/WBE Certification Services Unit by the date the proposal is received and opened. Evidence that the Bidder has registered as a small business **should** be submitted with the proposal.

[(First and third emphasis added.)]

In this case, the record reveals that SSC was not required to submit evidence it was registered as a small business at the time of proposal submission, but was only recommended to submit such evidence. SSC properly submitted a complete electronic proposal by the submission deadline of December 2, 2015. SSC submitted a copy of its Small Business Set-Aside Certificate on December 7, 2015, after the public opening deadline. The certificate submission, however, was not a requirement for bidders and SSC's proposal should not have been rejected for submitting the certificate after the bid opening. Therefore, SSC's proposal is accepted as a timely submission and the Procurement Bureau is directed to include its proposal in evaluations. This is my final agency decision on this matter.

Thank you for your interest in doing business with the State of New Jersey and thank you for registering your business with **NJ START** at www.njstart.gov, the State of New Jersey's new eProcurement system.

Sincerely,



Maurice Griffin
Chief Hearing Officer

MG:DF

c: D. Reinert
J. Kemery
A. Miller
A. Nelson

¹ As defined in RFP Section 2.1 *General Definitions*, "should" denotes "that which is recommended, not mandatory." "Shall or must" denote "that which is a mandatory requirement."