



# State of New Jersey

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June 13, 2018

Via Electronic Mail [btumulty@watchungspring.com] and USPS Regular Mail

Brian Tumulty  
Director of Finance  
Watchung Spring Water Co. Inc.  
Lakewood, NJ 08701

Re: I/M/O Bid Solicitation #: 18DPP00228 Watchung Spring Water Co. Inc.  
Protest of Notice of Proposal Rejection  
Bid Solicitation Title: T0002 Bottled Spring Water/Cooler Rental - Statewide

Dear Mr. Tumulty:

This letter is in response to your June 11, 2018 correspondence on behalf of Watchung Spring Water Co. Inc. (“Watchung Spring”) to the Division of Purchase and Property’s (“Division”) Hearing Unit. In that communication, Watchung Spring protests the Notice of Proposal Rejection issued by the Division’s Proposal Review Unit for Bid Solicitation #18DPP00228 – T0002 Bottled Spring Water/Cooler Rental - Statewide (“Bid Solicitation”). The record of this procurement reveals that Watchung Spring’s Quote was rejected for failing to submit the *Ownership Disclosure Form* and the *Disclosure of Investment Activities in Iran Form* with its Quote.

By way of background, on April 25, 2018, the Division’s Procurement Bureau (“Bureau”) issued the Bid Solicitation on behalf of the State of New Jersey and Cooperative Purchasing Participants to solicit Quotes from qualified Vendors {Bidders} to provide bottled water and cooler rental services. Bid Solicitation § 1.1 *Purpose and Intent*. It is the State’s intent to award Statewide Master Blanket Purchase Orders (“Blanket P.O.s”)<sup>1</sup> to those responsible Vendors {Bidders} whose Quotes, conforming to this Bid Solicitation are most advantageous to the State, price and other factors considered. Ibid.

<sup>1</sup> 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.

<b>NJSTART Term</b>	<b>Statutory, Regulatory and/or Legacy Term</b>
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

On May 22, 2018, the Bureau issued Bid Amendment #1, revising the Quote Submission Due Date from May 22 to June 6, 2018, and issuing a revised Bid Solicitation reflecting the revised Quote Submission Due Date. On June 6, 2018, the Division's Proposal Review Unit opened four Quotes submitted through the State's *NJSTART* eProcurement system by the 2:00 p.m. submission deadline. A review of the Quotes reveals Watchung Spring uploaded its Quote via *NJSTART* at 4:52:15 p.m. on May 21, 2018 which contained single attachment titled "T0002 18DPP00XXX Price Sheet (2)(1) LP.xlsx," Watchung Spring's completed State-supplied price sheet.

After review, the Division issued Watchung Spring a Notice of Proposal Rejection, advising that its Quote was rejected because it was missing required certifications, forms, and attachments. Specifically, Watchung Spring's Quote was missing a completed *Ownership Disclosure Form* and a *Disclosure of Investment Activities in Iran Form*.

In response to the Notice of Proposal Rejection, Watchung Spring wrote to the Division on June 11, 2018, stating:

Good Morning,

Thank you for the opportunity to protest our rejected bid. We were very excited about the opportunity to challenge for this business as we had proudly served the State account for several years in the past.

I personally completed and uploaded all required documents on May 22. Attached is a PDF file that contains those documents. I appreciate your understanding on this matter and am looking forward to hearing of our inclusion in the bidding process.

Attached to the protest correspondence were the following documents:

- A *Ownership Disclosure Form* dated May 22, 2018;
- A *Disclosure of Investment Activities in Iran Form* dated May 22, 2018;
- A *Bidder Data Sheet*;
- A *Cooperative Purchasing Form* dated May 22, 2018;
- A *MacBride Principles Form* dated May 22, 2018;
- A *Disclosure of Investigations and Other Actions Involving the Vendor/Bidder Form* dated May 22, 2018; and
- An *Offer and Acceptance Page*.

Watchung Spring's correspondence was accepted as a formal protest of the Notice of Proposal Rejection.

In consideration of Watchung Spring's protest, I have reviewed the record of this procurement, including the Bid Solicitation, Watchung Spring'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 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 shall<sup>2</sup> 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 as non-responsive.

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

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.

### 1. Ownership Disclosure Form

With respect to ownership, the New Jersey Legislature, in implementing N.J.S.A. 52:25-24.2, 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 states in pertinent part:

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

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<sup>2</sup> "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.*



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](#).

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, Watchung Spring did not complete the Ownership Disclosure category:

Vendor Profile - Watchung Spring Water

Registration Information    Bank    Agency    **Categories & Certifications**    My Profile    Logout    My Profile

### 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 Note Below:  
None  
Bottled water and Cooler Delivery

**Category: 3. Business Formation (MANDATORY FIELD)**

Individually Owned including Sole Proprietorship

**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 intend to enter the data for EFT payments and agree with the statement above. To enter banking data, you must login after the initial registration process has been completed, add or edit a Remit address, and check the EFT Enabled box.

**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:  
None

**Category: Certification: AA/EEOC Compliance**

Description: This Certification status is updated daily. If your business does not have a certification, or if your certification has expired, please see the following link:  
None

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Because Watchung Spring 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, Watchung Spring did not upload the *Ownership Disclosure Form* to its profile.

Vendor Profile - Watchung Spring Water

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

**Attachments Information**

No Attachments found for this vendor.

**Forms**

No Form Attachments

Similarly, as noted above, Watchung Spring did not submit an *Ownership Disclosure Form* with its Quote:

Quote 00002332 - Watchung Spring Water

General Items Questions Subcontractors Terms & Conditions **Attachments(1)** Evaluations Preference Reminders Summary

**Files**

Name	Description	Confidential	Order	Attached By	Attached Date
<a href="#">T0002 18DPP00XXX Price Sheet (2) (1) LP.xlsx</a> <a href="#">(view details)</a>	Watchung Spring Water Bid for Bottled Water Delivery	<input type="checkbox"/>	0	Larry Pearl	05/21/2018

**Forms**

No Form Attachments

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, Watchung Spring did not comply with any of the options available to it for the submission of ownership information. While Watchung Spring could have submitted a hand-written hard-copy *Ownership Disclosure Form* along with its Quote, or uploaded a scan of the hand-written form, it did not do so. Accordingly, Watchung Spring's Quote was properly rejected by the Division's Proposal Review Unit for failure to submit the mandatory *Ownership Disclosure Form* with its Quote.

## 2. Disclosure of Investment Activities in Iran Form

Similarly, with respect to the submission of the *Disclosure of Investment Activities in Iran Form*, the New Jersey Legislature has mandated that "[a] State agency shall require a person or entity that submits a bid or Quote or otherwise proposes to enter into or renew a [Blanket P.O.] to certify, at the time the bid is submitted or the [Blanket P.O.] is renewed, that the person or entity is not identified on a list created pursuant to subsection b. of section 3 [C.52:32-57] of this act as a person or entity engaging in investment activities in Iran described in subsection f. of section 2 [C.52:32-56] of this act." N.J.S.A. 52:32-58(a).

The *Disclosure of Investment Activities in Iran Form* is specifically addressed in Bid Solicitation Section 4.4.1.2.2 *Disclosure of Investment Activities in Iran Form* which states:

Pursuant to N.J.S.A. 52:32-58, the Vendor {Bidder} must utilize this Disclosure of Investment Activities in Iran form to certify that neither the Vendor {Bidder}, nor one (1) 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 Vendor {Bidder}, nor one (1) 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 Vendor {Bidder} is unable to so certify, the Vendor {Bidder} shall provide a detailed and precise description of such activities as directed on the form. 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}.

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 Disclosure of Investment Activities in Iran form. Vendors {Bidders} not using **NJSTART** to submit a Quote must complete the full Disclosure of Investment Activities in Iran 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](#).

Again, in order to make this process of complying with the legislative requirement easier, the Division provides to the bidding community a *Disclosure of Investment Activities in Iran Form* to be completed, signed and submitted with the Quote.

As an alternative to the submission of the *Disclosure of Investment Activities in Iran Form*, as noted in Bid Solicitation Section 4.4.1.2.2 above, Vendors {Bidders} using **NJSTART** to submit a Quote are required to make the appropriate certification regarding investment activities in Iran on the "Maintain Terms and Categories" Tab within its profile. As shown in the first screenshot above, Watchung Spring did not complete the Disclosure of Investment Activities in Iran category. Because Watchung Spring did not complete the Disclosure of Investment Activities in Iran category within **NJSTART**, it was required to submit the *Disclosure of Investment Activities in Iran Form* with its Quote, or attach the form to its Vendor Profile within **NJSTART**. As shown above, the record indicates that Watchung Spring's Quote did not include a completed and signed *Disclosure of Investment Activities in Iran Form*, nor was the form contained within Watchung Spring's **NJSTART** Vendor Profile.

The Division does not have the power to waive the legislative requirement that a Vendor {Bidder} 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. Accordingly, Watchung Spring's Quote was properly rejected by the Division's Proposal Review Unit for failure to submit the mandatory *Disclosure of Investment Activities in Iran Form* with its Quote.

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*.

Here, unfortunately, Watchung Spring submitted a Quote without the *Ownership Disclosure Form* or the *Disclosure of Investment Activities in Iran Form* attached and the Division is prohibited from accepting them after the Quote submission deadline. Notwithstanding Watchung Spring's interest in competing for this procurement, and the fact that Watchung Spring submitted a completed *Ownership Disclosure Form* and *Disclosure of Investment Activities in Iran Form* with its protest, to allow Watchung Spring 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.

As referenced in Bid Solicitation Section 1.0 *Information for Vendors {Bidders}*, please note that the Division maintains a number of Quick Reference Guides on its website at [www.nj.gov/treasury/purchase/njstart/vendor.shtml](http://www.nj.gov/treasury/purchase/njstart/vendor.shtml). These Guides include step-by-step "how-to" direction on how to manage "Company Information & User Access," "Vendor Categories & Certifications," "Vendor Forms," and "Attaching Files," to name a few. I encourage Watchung Spring to review these Quick Reference Guides to become familiar with the **NJSTART** procurement system.

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](http://www.njstart.gov), the State of New Jersey's new eProcurement system.

Sincerely,



Maurice A. Griffin  
Acting Director

MAG:REG

c: J. Kerchner  
K. Thomas  
A. Puza