



## State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
OFFICE OF THE DIRECTOR  
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February 17, 2022

*Via Electronic Mail Only* [JRabiea@newyorkpackaging.com](mailto:JRabiea@newyorkpackaging.com)

Jeffrey Rabiea  
New York Packaging II LLC  
135 Fulton Avenue  
New Hyde Park, NY 11040

Re: I/M/O Bid Solicitation #22DPP00711 New York Packaging II LLC  
Protest of Notice of Proposal Rejection  
T1187 Bags: Plastic for Bakery Goods - Bayside State Prison Bakery

Dear Mr. Rabiea:

This final agency decision is in response to your protest of February 11, 2022, on behalf of New York Packaging LLC (New York Packaging) which was received by the Division of Purchase and Property's (Division) Hearing Unit. In that email, New York Packaging protests the Notice of Proposal Rejection issued by the Division's Proposal Review Unit for Bid Solicitation No. 20DPP00711 - T1187 Bags: Plastic for Bakery Goods - Bayside State Prison Bakery (Bid Solicitation). The record of this procurement reveals that New York Packaging's Quote was rejected for failing to submit a completed *Ownership Disclosure Form* with its Quote.

By way of background, on December 22, 2021, the Division's Procurement Bureau (Bureau) issued the Bid Solicitation on behalf of the Department of Corrections - Bureau of State Use Industries (DEPTCOR). Bid Solicitation §1.1 *Purpose and Intent*. The purpose of the Bid Solicitation was to solicit Quotes for plastic bags to be used for bakery goods (bread, rolls, etc.) for Bayside State Prison Bakery (BSPB). *Ibid*. It is the State's intent to award a Master Blanket Purchase Order (Blanket P.O.) to the responsible Vendor {Bidder} whose Quote, conforming to this Bid Solicitation, is most advantageous to the State, price and other factors considered. *Ibid*.

On February 8, 2022, the Division's Proposal Review Unit opened two Quotes that 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 New York Packaging for failing to submit a completed *Ownership Disclosure Form* with its Quote. In response to the Notice of Proposal Rejection, on February 11, 2022, New York Packaging submitted a letter of protest to the Division stating in part:

We would like to protest the attached Bid Rejection:  
We electronically filed our bid timely and complete.  
The rejection states that the ownership disclosure form is missing

Please see attached printing of the quote on your website  
The ownership disclosure form is in your website but it is blank.  
Attached is the form we uploaded which appears blank on your website due to a system issue  
The form we uploaded is complete and is not blank as we are attaching it to this letter.  
We would request that this form be submitted and our bid be considered complete And (sic) fully responsive so that is could be considered.

With the protest, New York Packaging submitted a completed *Ownership Disclosure Form* which it alleges was submitted with its Quote.

In consideration of New York Packaging's protest, I have reviewed the record of this procurement, including the Bid Solicitation, New York Packaging's Quote and protest, the relevant statutes, regulations and case law. The 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.

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>1</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.]

If the requirements of N.J.A.C. 17:12-2.2 are not met, a Quote must be rejected. This regulation mandates stringent enforcement to maintain the equal footing of all Vendors {Bidders} and to ensure the integrity of the State's bidding process.

The subject procurement was comprised of the Bid Solicitation, other documents and mandatory forms which were specifically addressed in Bid Solicitation Section 4.0 *Quote 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 is the *Ownership Disclosure Form*. With respect to ownership, the New Jersey Legislature, in implementing N.J.S.A. 52:25-24.2, mandated that a

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<sup>1</sup> "Shall - Denotes that which is a mandatory requirement." Bid Solicitation Section 2.2 *General Definitions*.

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 corporations, 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 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 for 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 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, 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.

[Emphasis added.]

The *Ownership Disclosure Form* is specifically discussed in Bid Solicitation Section 4.4.1.2.1 which states in relevant part:

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.

To make complying with this statutorily-required certification process easier, the Division provides the *Ownership Disclosure Form* to the bidding community to be completed by the Vendor {Bidder}. In the protest, New York Packaging asserts that it submitted the completed *Ownership Disclosure Form* with its Quote, but due to a system issue, the form now appears blank. New York Packaging Protest, p. 2. In support of its assertion that it uploaded the *Ownership Disclosure Form* with its Quote, New York Packaging included the following screenshot with its protest:

2/11/22, 9:53 AM NJSTART

Documents

Bid Solicitation: 22DPP00711

**Header Information**

<b>Bid Number:</b>	22DPP00711	<b>Description:</b>	T1187 Bags: Plastic for Bakery Goods - Bayside State Prison Bakery	<b>Bid Opening Date:</b>	02/08/2022 02:00:59 PM
<b>Purchaser:</b>	Anna Marie Miller	<b>Organization:</b>	Division of Purchase and Property		
<b>Department:</b>	DPP - Division of Purchase and Property	<b>Location:</b>	FOOD - Commodities/Food & Clothing		
<b>Fiscal Year:</b>	22	<b>Type Code:</b>	01 - 01 - RFP	<b>Allow Electronic Quote:</b>	Yes
<b>Alternate Id:</b>		<b>Required Date:</b>		<b>Available Date:</b>	12/22/2021 09:00:00 AM
<b>Info Contact:</b>		<b>Bid Type:</b>	OPEN	<b>Informal Bid Flag:</b>	No
<b>Purchase Method:</b>	Blanket				
<b>Blanket/Contract Begin Date:</b>	08/01/2022	<b>Blanket/Contract End Date:</b>	07/31/2025		

**Pre Bid Conference:** Please refer to the Bid Solicitation.

**Bulletin Desc:**

<b>Ship-to Address:</b>	Division of Purchase and Property 33 West State Street Trenton, NJ 08625 US Email: njstart@treas.nj.gov Phone: (609)341-3500	<b>Bill-to Address:</b>	Division of Purchase and Property 33 West State Street Trenton, NJ 08625 US Email: njstart@treas.nj.gov Phone: (609)341-3500	<b>Print Format:</b>	Bid Print New
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**File Attachments:** T1187 Ownership Disclosure Form 12.20.21  
 T1187 Disclosure of Investments in Iran Form 12.20.21  
 T1187 Disclosure of Investigations Form 12.20.21  
 T1187 Confidentiality Form 12.20.21  
 T1187 Specification Conformance Form 12.20.21  
 T1187 Attachment 01 Plastic Bag D

Current Company: NEW YORK PACKAGING II LLC

<https://www.njstart.gov/bso/seller/bidDetail.sdo?status=Closed&bidId=22DPP00711>

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The screenshot submitted by New York Packaging however, is not a record of the documents comprising New York Packaging’s Quote. Rather, the screenshot is the **NJSTART** summary page for the subject Bid Solicitation inclusive of general background information and blank templates of the documents required to be submitted by a Vender {Bidder}.

A review of the record for this procurement reveals that on December 29, 2021, New York Packaging submitted Quote No. 00005860 with the attachments listed below.

Name	Description	Confidential	Order	Attached By	Attached Date
BID FORM	BID FORM	<input checked="" type="checkbox"/>	0	jeffrey rabiea	12/24/2021
T1187 State Supplied Price Sheet 12.20.21_2~1.xlsx	BID FORM	<input checked="" type="checkbox"/>	0	jeffrey rabiea	12/24/2021
T1187 State Supplied Price Sheet 12.20.21_2~2.xlsx	BID FORM	<input checked="" type="checkbox"/>	0	jeffrey rabiea	12/24/2021
bid solicitation checklist.pdf	bid solicitation checklist.pdf	<input checked="" type="checkbox"/>	0	jeffrey rabiea	12/29/2021
bidder data sheet.pdf	bidder data sheet.pdf	<input checked="" type="checkbox"/>	0	jeffrey rabiea	12/29/2021
confidentiality form.pdf	confidentiality form.pdf	<input checked="" type="checkbox"/>	0	jeffrey rabiea	12/29/2021
price form.pdf	price form.pdf	<input checked="" type="checkbox"/>	0	jeffrey rabiea	12/29/2021
redactions form.pdf	redactions form.pdf	<input checked="" type="checkbox"/>	0	jeffrey rabiea	12/29/2021
specification conformance cert.pdf	specification conformance cert.pdf	<input checked="" type="checkbox"/>	0	jeffrey rabiea	12/29/2021
T1187 State Supplied Price Sheet 12.20.21_2.xlsx		<input checked="" type="checkbox"/>	0	jeffrey rabiea	12/29/2021
offer and acceptance	offer and acceptance	<input checked="" type="checkbox"/>	1	jeffrey rabiea	12/29/2021
iran disclosure	iran disclosure	<input checked="" type="checkbox"/>	2	jeffrey rabiea	12/29/2021

**Files**

**Forms**  
No Form Attachments

**Required Attachments**  
No required attachments

Save & Continue Add Form Close Window

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Unfortunately, the *Ownership Disclosure Form* is not one of the listed attachments, nor was it included as with any of the items attached to the Quote submitted by New York Packaging.<sup>2</sup>

As an alternative to 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 able to make the appropriate certification regarding ownership disclosure on the “Maintain Terms and Categories” Tab within its profile. With respect to ownership, Vendors {Bidders} are able to select one of the following descriptors:

<sup>2</sup> If New York Packaging has questions regarding the document included with its submitted Quote, it may visit the **NJSTART** Vendor Support Page and review the Division’s Quick Reference Guide entitled “How to Review a Submitted Quote,” located at <https://www.state.nj.us/treasury/purchase/njstart/pdf/HowtoReviewaSubmittedQuote.pdf>, which provides information and instructions on how to review created and/or submitted Quotes.

**Category: Ownership Disclosure**

**Description:** N.J.S.A. 52:25-24.2 requires disclosure of the names and addresses of those individuals, partnerships and/or corporations owning a 10% or greater interest in the bidding entity ("interest owners"). Further, if any of these interest owners is itself a partnership or corporation, you must disclose the names and addresses of the interest owners of that partnership or corporation.

Please select at most one category value

Select

The bidder is a non-profit entity and is exempt from the ownership disclosure requirement. See Disclosure of Non-Profit Officers and Directors below. (No Ownership Disclosure form is required.)

There are no individuals, partnerships or corporations with a 10% or greater interest in the bidding entity, therefore the bidder is exempt from the ownership disclosure requirement. (No Ownership Disclosure form is required.)

Neither statement is applicable. A current, true and complete Statement of Bidder Ownership on the attached form has been or will be uploaded to the vendor profile prior to the submission deadline and is intended to accompany the bidder's submission.

New York Packaging did not complete the Ownership Disclosure category or upload the *Ownership Disclosure Form* to its *NJSTART* Vendor profile.

Further, as shown on the screenshot below, New York Packaging did not attach the *Ownership Disclosure Form* to its *NJSTART* Vendor profile.<sup>3</sup>

Vendor Profile - NEW YORK PACKAGING II LLC

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

**Attachments Information**

**Profile Attachments**

Download	File	Description	Size	Uploaded By	Uploaded Date
	ADP Client Service Agreement 092120.pdf	ADP Client Service Agreement	4,900,511 bytes	jeffrey rabiea	09/23/2020 11:35:11 AM

**Forms**

No Form Attachments

Close Window

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The *NJSTART* system does not prevent a Vendor {Bidder} from submitting a Quote without all of the required forms and documents completed and/or attached as mandated by the specifications. The responsibility for ensuring that all necessary forms and other submittals, are completed and uploaded into *NJSTART* necessarily and appropriately rests solely with the Vendor {Bidder}. Bid Solicitation § 1.4.2 *Vendor {Bidder} Responsibility*. Here, unfortunately, New York Packaging submitted a Quote without a completed *Ownership Disclosure Form* attached.

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, New York Packaging did not comply with any of the options available to it for the submission of ownership information. Accordingly, New York Packaging' Quote was properly rejected by the Division's Proposal Review Unit for failure to submit the mandatory *Ownership Disclosure Form* with its Quote.

Finally, as noted above, with the protest, New York Packaging submitted a completed *Ownership Disclosure Form*, and requests "that this form be submitted and our bid be considered complete And (sic) fully responsive so this is could be considered." However, allowing New York Packaging to submit the completed *Ownership Disclosure Form* after the Quote opening date would result in an impermissible

<sup>3</sup> The document attached to New York Packaging's *NJSTART* Vendor profile is entitled "ADP TotalSource Client Services Agreement" for New York Packaging II LLC, and does not include the *Ownership Disclosure Form* or any statement of ownership as required by N.J.S.A. 52:25-24.2.

change or correction to its Quote, which the Division cannot allow as doing so would be contrary to the Court's holding in *In re Protest of Award of On-Line Games Prod. & Operation Servs. Contract*, Bid No. 95-X-20175, 279 N.J. Super. 566, 597 (App. Div. 1995) (holding that "in clarifying or elaborating on a proposal, a bidder explains or amplifies what is already there. In supplementing, changing or correcting a proposal, the bidder alters what is there. It is the alteration of the original proposal which was interdicted by the RFP"); see also, *Twp. of River Vale v. Longo Constr. Co.*, 127 N.J. Super. 207, 222 (Law Div. 1974) (stating "If the non-compliance is substantial and thus non-waivable, the inquiry is over because the bid is non-conforming and a non-conforming bid is no bid at all.")

Notwithstanding New York Packaging's interest in competing for this procurement, to allow New York Packaging to submit the *Ownership Disclosure Form* after Quote opening would violate the Legislative requirement outlined in N.J.S.A. 52:25-24.2, a requirement that this Division is not authorized to waive. 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 Quote. In light of the findings set forth above, I sustain the Proposal Review Unit's Notice of Proposal Rejection.

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). 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 so that you may receive notification of future bidding opportunities. This is my final agency decision on this matter.

Sincerely,



Rachel Doobrajh  
Chief Hearing Officer

RUD: CKK

- c. J. Kerchner
- A. Miller
- A. Nelson
- D. Rodriguez