



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
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June 14, 2017

Via Email [brianne.cooke@jesco.us] and regular USPS Mail

Brianne Cooke, Sales Operations Analyst
JESCO, Inc.
1260 Centennial Ave.
Piscataway, New Jersey 08854

RE: Protest of Notice of Proposal Rejection
Solicitation #17DPP00123: T3060 Crawler/Dozer, Screened Cab Enclosure, Low Ground
Pressure, Diesel, with Min. 2 Cu. Yd. Blade

Dear Ms. Cooke:

This letter is in response to your email of April 28, 2017 on behalf of JESCO, Inc. (hereinafter "JESCO") to the Hearing Unit of the Division of Purchase and Property (hereinafter "Division") in which you ask for information on "the process to protest [the] Proposal rejection for the above mentioned bid." The Division has accepted your email as a protest of the Notice of Proposal Rejection. A review of the record of this procurement reveals that JESCO's Quote {Proposal} (hereinafter "Proposal") was rejected for the failure to include a completed and signed *Disclosure of Investment Activities in Iran Form*.

At the outset, I note that the Division's Procurement Bureau (hereinafter "Bureau") did not receive any Proposals which were responsive and responsible to the specifications; accordingly, the Bureau canceled this solicitation on June 9, 2017. All Bidders are advised to review the Division's website for future solicitations related to the vehicle sought in this solicitation. In light of the Bureau's cancellation of this procurement, I find that JESCO's protest is moot; however, for the sake of completeness, I will address the merits of JESCO's protest here.

By way of background, this Bid Solicitation {Request for Proposal} (hereinafter "RFP"), was issued by the Bureau on behalf of the New Jersey Department of Transportation (hereinafter "NJDOT") to solicit Proposals for a Crawler/Dozer with a Screened Cab Enclosure, Low Ground Pressure, Diesel Engine, Minimum 2 Cu. Yd. Capacity Blade and Hydraulic System for Rear Mounted Attachments. RFP § 1.1 *Purpose and Intent*. The intent of the Bureau was to award one (1) Statewide Master Blanket Purchase Order (Blanket P.O.) {Contract} (hereinafter "Contract") to that Vendor {Bidder} (hereinafter "Bidder") whose Proposal was most advantageous to the State, price and other factors considered. *Ibid*. The State intended to extend the Contract awarded to cooperative purchasing partners. *Ibid*.

On April 13, 2017, the Proposal Review Unit opened three (3) Proposals which were received by the submission deadline. Two of the Proposals received were rejected by the Proposal Review Unit for the failure to include a mandatory form. As noted above, the Proposal received from JESCO was rejected for the failure to include a completed and signed *Disclosure of Investment Activities in Iran Form*.

Pursuant to N.J.A.C. 17:12-2.2¹, 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." The subject solicitation was comprised of the RFP, other documents and mandatory forms which are specifically addressed in RFP § 4.0 *Quote {Proposal} Preparation and Submission* which states in pertinent part:

4.4.1.2.1 NJ STANDARD BID SOLICITATION {RFP} FORMS REQUIRED WITH THE QUOTE {PROPOSAL}

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 {Proposal} as non-responsive.

...

4.4.1.2.2 DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN FORM

Pursuant to N.J.S.A. 52:32-58², the Vendor {Bidder} must utilize this Disclosure of Investment Activities in Iran form to certify that neither the Vendor {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 Vendor {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 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 {Proposal} will result in the rejection of the Quote {Proposal} as non-responsive and preclude the award of a Blanket P.O. {Contract} to said Vendor {Bidder}.

Vendors {Bidders} using **NJSTART** to submit a Quote {Proposal} 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 {Proposal} must complete the full Disclosure of Investment Activities in Iran form located on the [Division's website](#). **The full version of the form is also available in [NJSTART \(www.njstart.gov\)](http://www.njstart.gov).**

[*Emphasis added.*]

¹ The Division's administrative rules governing its procurement process 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>.

² N.J.S.A. 52:32-58(a) states "[a] State agency shall require a person or entity that submits a bid or proposal or otherwise proposes to enter into or renew a contract to certify, at the time the bid is submitted or the contract 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."

Furthermore, as a courtesy to all Bidders, the Division provided a Proposal Checklist with the solicitation which in pertinent part states the following:


**New Jersey Department of the Treasury
 Division of Purchase and Property**




NJ START PILOT PROCUREMENT PROGRAM CHECKLIST

Solicitation Number: 17DPP00123 Solicitation Title: Crawler/Dozer with Screened Cab Enclosure Low

This checklist was created as a guide to assist bidders in preparing a complete and responsive proposal (quote) as part of the **NJ START** Pilot Procurement Program. It is only advisory in nature.

It is the bidder's responsibility to ensure that all requirements of the RFP/Bid Solicitation have been met.

Forms with an **NJ START** icon can be accessed through the Maintain General Information section of the Vendor Profile. Forms that have a  icon next to them can be accessed on the Division website or by clicking on the icon.

FORMS, REGISTRATIONS AND CERTIFICATIONS REQUIRED BY SECTION 4.4.1 THAT MUST BE SUBMITTED WITH THE VENDOR QUOTE (PROPOSAL)		
Offer and Acceptance – MUST BE PHYSICALLY SIGNED AND COMPLETED. SEE RFP SECTIONS 1.3.4 AND 4.4.1.1		 PDF
Disclosure of Investment Activities in Iran - Full Version - SEE SECTION 4.4.1.2.2	NJ START	 PDF
Disclosure of Investment Activities in Iran - Use with completed NJSTART Category ONLY SEE SECTION 4.4.1.2.2	NJ START	
Ownership Disclosure - Full Version - SEE SECTION 4.4.1.2.1	NJ START	 PDF
Ownership Disclosure - Use with completed NJSTART Category ONLY - SEE SECTION 4.4.1.2.1	NJ START	

As set forth in N.J.S.A. 52:32-58, RFP §§ 4.4.1.2 and 4.4.1.2.2, and as noted in the checklist above, the submission of a completed and signed *Disclosure of Investment Activities in Iran Form* as part of a Bidder's Proposal was required. In your April 28, 2017 email, you indicate that the *Disclosure of Investment Activities in Iran Form* "was not provided as part of the bid packet which is why it was not submitted." Although this form was not provided as part of the bid packet, a review of the record of this procurement reveals that as stated in the RFP and on the checklist, the *Disclosure of Investment Activities in Iran Form* was available for download on the Division's website located at <http://www.state.nj.us/treasury/purchase/forms.shtml>.

In this case, the record indicates that JESCO's Proposal did not include a completed and signed *Disclosure of Investment Activities in Iran Form* as evidenced by a review of the documents submitted by JESCO through the Division's **NJSTART** eProcurement system, nor was the form contained within JESCO's **NJSTART** Vendor Profile. The **NJSTART** system does not prevent a Bidder from submitting a proposal without all required forms and documentation. The responsibility for the contents of the Proposal, forms, or submittals necessarily and appropriately rests solely with the Bidder.

Notwithstanding JESCO's interest in competing for this procurement, it would not be in the State's best interest to allow a Bidder who did not provide the required information to be eligible to participate in the procurement process. Further, the deficiency at issue cannot be remedied or waived after the Proposal submission deadline, as acceptance of JESCO's Proposal under these circumstances would be contrary to the provisions of the governing statute. The Division does not have the power to waive this legislative requirement, as only the New Jersey Legislature can change a requirement it has mandated. In order to make this process of certifying easier, the Division provides to the bidding community with the *Disclosure of Investment Activities in Iran* form to be completed and signed in order for Bidders to comply with statutory requirement. Unfortunately, JESCO submitted its Proposal without the completed *Disclosure of Investment Activities in Iran Form* or other form of certification, and therefore it was not in compliance with the Legislative requirement that mandates that a Bidder certify at the time of bid submission that it is not engaged in investment activities in Iran.

Additionally, I note that the third Proposal received was forwarded to the Bureau for review and evaluation for conformance with the mandatory requirements of the specifications. That Bidder however took exceptions to the specifications which were not acceptable to the Bureau or NJDOT; therefore, the Bureau found that the Proposal was non-responsive to the specifications.

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, the State of New Jersey's new eProcurement system.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

c: J. Kerchner
K. Thomas
A. Nelson
D. Rodriguez