



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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January 10, 2014

Via Electronic Mail [ampd@kensmarine.net] and USPS Regular Mail

Raymond Huckemeyer
Operations Supervisor
Ken's Marine Service, Inc.
117-119 East 22nd St.
P.O. Box 4001
Bayonne, NJ 07002

RE: Protest of Notice of Proposal Rejection
RFP #14-X-22866 NJDEP Non-Emergency Remedial Action Services
Term Contract — T2656

Dear Mr. Huckemeyer:

This letter is in response to your letter received January 8, 2014, referencing the subject Request for Proposal ("RFP") and regarding the proposal submitted by Ken's Marine Service, Inc. ("KMS") to the Division of Purchase and Property ("the Division"). The record of this procurement notes that KMS's proposal was rejected for the absence of a signed *Ownership Disclosure Form* and *Disclosure of Investment Activities in Iran* form. In your letter, you request that I reconsider the rejection of KMS's proposal and permit KMS to complement its proposal by acceptance of the signed *Ownership Disclosure Form* and *Disclosure of Investment Activities in Iran* form included as an attachment to your letter.

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

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, namely an *Ownership Disclosure Form*, a *Disclosure of Investigations and Other Actions Involving Bidder Form*, and a *Disclosure of Investment Activities in Iran form*. The *Ownership Disclosure Form* states: "Once you have identified all parties having a 10% or greater ownership interest in the bidder/offeror and its parent corporation/partnerships, please sign and date below and proceed to the disclosure of investigations form." That language is followed by a closing certification statement with an area for date and signature entry. In addition, Box 1 on the *Disclosure of Investment Activities in Iran form* states in part: "I will skip Part 2 and sign and complete the Certification below."

These forms are addressed in RFP Section 4.0, *Proposal Preparation and Submission*. The relevant text reads as follows:

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:

- a. The bidder may download the document, physically complete and sign each form, scan the completed document and then upload it, or
- b. 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) will not suffice as a signature on these two forms. A signed RFP Signatory Page is also not an acceptable substitute for signature on these two forms.

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.)]

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 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.

In this case, the record indicates that KMS's proposal submission did not include a signed *Ownership Disclosure Form* or *Disclosure of Investment Activities in Iran* form. Notwithstanding KMS'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 certifications to be eligible to participate in the procurement process. Such acceptance would unlevel the bidders' playing field, as the State received responsive proposals in which certifications were provided as required. The deficiency at issue cannot be remedied after the proposal submission deadline, as acceptance of KMS's proposal under these circumstances would be contrary to the provisions of the governing statute and would provide KMS with disclamation options not available to those bidders whose proposals were fully responsive. 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.

Thank you for your interest in this procurement. I look forward to your company's continuing interest in doing business with the State of New Jersey.

Sincerely,



Ronald G. Wengerd
Chief Hearing Officer

RGW:DF

c: L. DuBois
E. Mackay
R. Hambrecht
J. Cross
D. Rodriguez