



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

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

ANDREW P. SIDAMON-ERISTOFF
State Treasurer

JIGNASA DESAI-MCCLEARY
Director

Telephone (609) 292-4886 / Facsimile (609) 984-2575

May 13, 2014

Via Electronic Mail [ecaprioni@aol.com] and USPS Regular Mail

Thomas Caprioni, President
Caprioni Portable Toilets, Inc.
188 Head of the River Road
Belleplaine, NJ 08270

RE: Protest of Scheduled Award of SBE Set-Aside Contract T0208
RFP #14-X-23149 - Fabricated & Prefabricated Structures: Portable Sanitation Units

Dear Mr. Caprioni:

This letter is in response to your letter of protest dated April 1, 2014, received in this office on April 7, 2014, referencing the subject Request for Proposal ("RFP"). Your letter challenges the announcement by the Division of Purchase and Property's Procurement Bureau that it intends to award the subject T0208 contract to ARF Rental Services, Inc. ("ARF") as a responsible bidder which, as an approved New Jersey Small Business Enterprise ("SBE"), submitted the most favorably priced responsive proposal for each of the three RFP-designated regions (North, Central, South) of the State. On behalf of Caprioni Portable Toilets, Inc. ("CPT"), whose proposal was deemed non-responsive for the absence of signed certification documents,¹ you contend that the scheduled award to ARF should not proceed, citing your belief that the New Jersey Department of the Treasury's Division of Revenue and Enterprise Services ("DORES") may have mistakenly designated ARF, a Philadelphia, Pennsylvania-based business entity which, according to its website, is "the third largest privately owned portable restroom and restroom trailer Rental Company in the USA", to be a New Jersey-based SBE. In further support of this assertion, you included with your letter of protest a copy of an April 1, 2014 email communication from ARF's Alexandra Townsend responding to a same-day email inquiry from an individual with a *yahoo.com* address seeking a quote from ARF for a restroom trailer for an event in Millville, New Jersey. The email response from Ms. Townsend advised that individual

¹ A final agency decision letter dated February 25, 2014, issued in response to CPT's appeal for reconsideration of the rejection of its proposal, affirmed the Division's rejection based upon statutory and RFP-stipulated requirements for duly signed certifications.

that “we don’t service that area of NJ”, which may imply that the Procurement Bureau’s announced intent to award a single contract to ARF only for all three regions of the State may not be a prudent action relative to the State’s intent for the T0208 contract to serve all State agencies and local government entities throughout New Jersey.

I have reviewed the record of this procurement, including the RFP, ARF’s proposal, and relevant statutes and regulations. 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 CPT’s protest.

With regard to your challenge of the veracity of ARF’s status as a small business, the New Jersey Administrative Code, specifically N.J.A.C. 17:13, *Goods and Services Contracts for Small Businesses*, attends to the State’s SBE program, including eligibility, registration and challenge requirements and procedures as well as the set-aside contracting program requirements for State agencies. N.J.A.C. 17:13-3.3, *Procedures for challenging a business registered as a small business*, set forth below in its entirety, provides specific steps to be taken in the event an entity or person seeks to challenge the SBE status of a particular entity (NOTE: the term “Division” in this section of the Department of the Treasury’s regulations refers to the Division within Treasury which administers the registration of small business enterprises, namely, DORES, not the Division of Purchase and Property:

(a) The qualification under these rules of a business as a small business may be challenged by any third party.

1. A registration challenge shall be made in writing to the Division, setting forth the factual basis for the challenge. The Division shall provide a copy of the challenge and a notice granting the opportunity for a hearing to the challenged business. Where a particular contract is at issue, the Division shall also provide a copy of the challenge to the contracting agency.

2. A registration challenge to the Division may concern only the qualification of the business under these rules as a small business. Any challenge to a business’s qualifications to perform a contract shall be referred to the appropriate State contracting agency.

(b) When the Division receives a challenge, upon request of the business whose registration is at issue, a designee of the Director shall conduct a hearing on the matter as follows:

1. The Division shall notify all interested parties of the time and place of the hearing, and of the right to attend and be represented at the hearing.

2. The burden of proof lies with the challenger. However, the Division may use its own resources to ascertain the validity of a challenge and the status of a business.

3. The hearing will be conducted by a designee of the Director. This designee will issue a written report to the Director within seven working days following the close of the hearing.
4. At the discretion of the Director's designee, participants at the hearing may be permitted to file written exceptions to the designee's report no later than five working days after the date on which the report is made available to the business.
5. Thereafter, the Director shall issue a final decision on the challenge and notify the parties by certified letter.
6. A challenge to a business's eligibility shall not stay the contract award process.

As is forthrightly established in the quoted text above, CPT's assertion concerning ARF's eligibility/status as an approved SBE is not a matter for the Division of Purchase and Property to address and does not serve as a cause to rescind or curtail the scheduled award of contract to ARF. Thus, if CPT opts to pursue the matter of ARF's current SBE status, the course to take is to follow the instructions provided above in Subsection (a) of N.J.A.C. 17:13-3.3. As provided in Paragraph 6 of the code above, CPT's challenge of ARF's eligibility will not stay the T0208 contract award process.

The record of the subject procurement indicates that the Procurement Bureau contacted DORES to inquire about ARF's SBE status and was assured that ARF's status as an approved SBE was considered in full accord with DORES's SBE program procedures. Based upon these findings and circumstances, I must deny CPT's challenge concerning ARF's status as a duly registered SBE.

With regard to CPT's suggestion that more than one contractor should be engaged to provide greater assurance that all users of the T0208 contract will be served as intended, I am guided by the provisions of N.J.S.A. 52:34-12.1, which provide that multiple awards be made by the Division of Purchase and Property only when and to the extent necessary to meet specific, identified needs. The record indicates that the Procurement Bureau's research for this procurement determined that past usage of the T0208 contract awarded to three contractors did not support a continuance of the multiple awards. CPT's mention of an understanding that there is past Procurement Bureau practice of awarding more than one contract when the award is being made to a contractor not previously engaged by the State is not accurate or supported by the record. In light of these findings, and with no substantive cause to determine otherwise, I accept the Procurement Bureau's determination that the award to a single contractor for the next term of the T0208 contract will satisfactorily address the anticipated usage during that term. Therefore, I must sustain the scheduled award of a single contract to ARF.

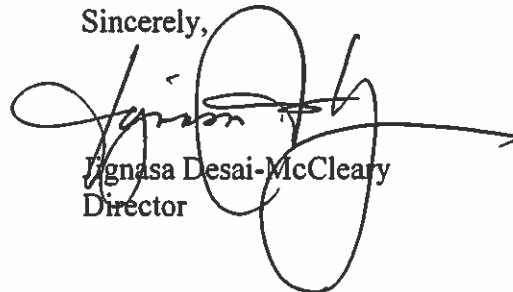
The RFP/Contract expressly requires the contractor to service all eligible contract users in each awarded region. Should there be a circumstance when the product and/or service is not provided in line with the time and other requirements set forth in the RFP/Contract, the contractor risks the filing of formal complaints by ill-served or unsatisfied users and, if complaints are adjudicated

against the contractor and there is no remedial action, contract termination. Notwithstanding ARF's April 1, 2014 email communication to a non-State address indicating that it does not serve the Millville, New Jersey area, ARF's accepted proposal constitutes its commitment to serve all contract users throughout the State of New Jersey.

In its closing remark, CPT expresses frustration based upon its perception that the procurement of the subject T0208 contract emphasized price factors over quality of service factors and a disregard of the benefits of engaging in-State vendors. In response, I will advise that the subject procurement was conducted as a SBE set-aside procurement, which, in most cases, results in awards to businesses headquartered or located in New Jersey. The provisions of the State's SBE registration program do provide for businesses with headquarters or locations in other states to secure status as a New Jersey SBE under certain specific conditions, which, according to DORES, CPT has met. In line with the statutes governing the Division's competitive procurement program², price is always a factor in the Procurement Bureau's evaluation of proposals. The "other factors", which are expressly set forth in the RFP, are taken into account as well and applied as part of the evaluation of conforming proposals submitted by responsible bidders. My review of the record of this procurement finds insufficient reason to overturn the intended award of contract to ARF. This is my final agency decision on the matter.

While I understand that you are disappointed with the outcome of this matter, I will appreciate your continuing interest in doing business with the State and trust that you will continue to participate in contracting opportunities offered by the Division of Purchase and Property.

Sincerely,



Ignasa Desai-McCleary
Director

JD-M:RW

c: A. Townsend, Sales Manager, ARF ([Via eMail \[Alexandra@aroyalflush.com\]](mailto:Alexandra@aroyalflush.com) Only)
J. Fruscione, Director, DORES
L. DuBois
R. Sharbaugh
J. Signoretta

² New Jersey Statutes Annotated (N.J.S.A.) 52:34-12 requires the Division of Purchase and Property to conduct its competitive procurements in a manner that results in an award of contract ". . . to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the State, price and other factors considered".