



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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April 15, 2015

Via Electronic Mail [michaelpepe@deluxeinternationaltrucks.com] and USPS Regular Mail

Michael Pepe
Parts Department Manager
Deluxe International Trucks, Inc.
600 South River Street
Hackensack, NJ 07601

RE: Protest of Notice of Proposal Rejection
RFP #15-X-23842 Automotive Parts for Heavy Duty Vehicles (Class 5 or Higher, Over 15,000 lbs. GVWR) T-2085

Dear Mr. Pepe:

This letter is in response to your email¹ received April 13, 2015, referencing the subject Request for Proposal ("RFP") and regarding the proposal submitted by Deluxe International Trucks, Inc. ("Deluxe") to the Division of Purchase and Property ("the Division"). The record of this procurement notes that Deluxe's proposal was rejected for failing to include an *Ownership Disclosure Form* and *Disclosure of Investment Activities in Iran* form. In your email, you contend that Deluxe's proposal was complete and all documents were properly uploaded through the Division's eBid system.

I have reviewed the record of this procurement, including the RFP, Deluxe'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 Deluxe'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.

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

¹ Your email correspondence is accepted as a formal protest.

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:

1. The bidder may download the document, physically complete and sign each form, scan the completed document and then upload it, or
2. 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) shall not suffice as a certifying signature on the forms comprising the NJ STANDARD RFP FORMS document.

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. 17:12-2.2,² 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, 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.

The record of this procurement shows that Deluxe submitted a proposal through the Division's eBid system by the proposal submission date of March 31, 2015. However, a review of the electronic records reveals that in the place of the *NJ Standard RFP Forms*, Deluxe's submission contained a pdf file entitled

² The Division's administrative rules governing its procurement programs 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>.

“15-X-23842RFP,” which contained a copy of the RFP document. (See attachment.) Although Deluxe contends the eBid system does not allow for proposal submission until all forms have been filled out and uploaded, the eBid system cannot differentiate what documents are uploaded. Rather, it accepts any document the bidder uploads in a required document field. The responsibility for the contents of the proposal or submittal necessarily and appropriately rests solely with the bidder.

A review of the Division’s database shows there was a valid *Ownership Disclosure Form* on file with the Division as of October 6, 2014. Because this form is valid for six months from the time of filing, Deluxe’s proposal is only deficient with respect to the missing *Disclosure of Investment Activities in Iran* form, which has no extended validity period.

Notwithstanding Deluxe’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 information 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 all necessary documents and information were provided as required. The deficiency at issue cannot be remedied after the proposal submission deadline, as acceptance of Deluxe’s proposal under these circumstances would be contrary to the provisions of the governing statute and would provide Deluxe 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.

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 Deluxe’s proposal. Thank you for your company’s continuing interest in doing business with the State of New Jersey and for registering your business with **NJ START** at www.njstart.gov, the State of New Jersey’s new eProcurement system.

Sincerely,



Ronald G. Wengerd
Chief Hearing Officer

RGW:DF

Enclosure

c: G. Olivera
K. Thomas
V. Bequer


 eBid Openings

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Submitted eBids

eBids submitted						
New Upload Actions						View: All Documents
	Name	eBid Document Name	Bid File Opened On	eBid Document Type	eBid File ID	
	143992_15-X-23842ResponsestoElectron.pdf		3/31/2015 02:03 PM	Attachment	143992	
	143686_15-X-23842SignatoryPage(1).pdf	Signatory Page	3/31/2015 02:03 PM	Required	143686	
	143687_15-X-23842Pricesheet.pdf	Price Sheet	3/31/2015 02:03 PM	Required	143687	
	143688_BiddersDataPacketV3.pdf	Bidder Data Packet	3/31/2015 02:03 PM	Required	143688	
	143689_CooperativePurchaseV4.pdf	Cooperative Purchase Form	3/31/2015 02:03 PM	Required	143689	
	143690_15-X-23842RFP.pdf	NJ Standard RFP Forms	3/31/2015 02:03 PM	Required	143690	
	143691_NJStandardTermsandConditionsV.pdf	NJ Standard Terms and Conditions	3/31/2015 02:03 PM	Required	143691	
	143990_Scan10002.PDF		3/31/2015 02:03 PM	Attachment	143990	
	143991_Scan10003.PDF		3/31/2015 02:03 PM	Attachment	143991	
	143988_PL-308-EA_B-PDC Major Fleet C.pdf		3/31/2015 02:03 PM	Attachment	143988	
	143989_Scan10001.PDF		3/31/2015 02:03 PM	Attachment	143989	

For assistance with Access Web Datasheet, see [Help](#).