



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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December 31, 2015

Via Electronic Mail [mark@phillipssport.com] and USPS Regular Mail

Mark Phillips, Owner
Phillips Sport
404 Tower Drive
Edgewater, NJ 07020

RE: Protest of Notice of Proposal Rejection
RFP #16-X-24078 Sporting Goods - Statewide

Dear Mr. Phillips:

This letter is in response to your letter of protest dated and received December 15, 2015, referencing the subject Request for Proposal (RFP) and regarding the proposal submitted by Phillips Sport to the Procurement Bureau (Bureau) of the Division of Purchase and Property (Division). The record of this procurement notes that Phillips Sport's proposal was rejected for failing to include a properly completed *Ownership Disclosure Form* and *Disclosure of Investment Activities in Iran Form* and that hard copy documents were received after the proposal submission deadline. In your correspondence, you request to submit the missing documents to fully complete Phillips Sport's proposal.

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

By way of the background, the subject RFP was issued by the Bureau on behalf of using agencies to solicit proposals for sporting goods. RFP § 1.1 *Purpose and Intent*. The intent of the RFP is to award one "contract per brand, per category to those responsible [b]idders whose proposals, conforming to this RFP are most advantageous to the State, price and other factors considered." Ibid.

All bidders were instructed to submit proposals in accordance with RFP Section 4.2 *Proposal Delivery and Identification*, which specified: "In order to be considered, a proposal must arrive at the Division in accordance with the instructions on the RFP signatory page accompanying this RFP." The *Signatory Page* mandated that "Proposals must be received at or before the public opening time of 2:00 p.m. Eastern Time on December 2, 2015 . . ."

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 includes the *Ownership Disclosure Form* and *Disclosure of Investment Activities in Iran Form*. These forms are addressed in RFP Section 4.0 *Proposal Preparation and Submission*, which 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:

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.)]

Furthermore, as a courtesy to all bidders, the Division provided a Proposal Checklist as an accompaniment to the RFP. The Checklist included the following:

FORMS THAT MUST BE SUBMITTED WITH YOUR PROPOSAL:

- RFP Signatory Page with physical signature or PIN (PIN is for eBid submission ONLY)
- Completed Price Sheets as instructed in Section 4.4.5 of the RFP
- Completed and signed Ownership Disclosure Form*
- Completed and signed Disclosure of Investments in Iran Form*

....

** The Ownership Disclosure, Disclosure of Investigations and Other Actions Involving Bidder, and the Disclosure of Investments in Iran forms MUST each contain either a physical or typed signature (typed signatures are only acceptable for eBid submissions). . . .*

Pursuant to N.J.A.C. 17:12-2.2,¹ 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 Sections 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. Furthermore, N.J.A.C. 17:12-2.2(a)(2) specified that "[i]n order to be eligible for consideration for award of contract, the bidder's proposal shall" be "submitted on or before the due date and time and at the place specified in the RFP" or "be subject to designation as a non-responsive proposal for non-compliance[.]"

In this case, the record reveals that Phillips Sport submitted an electronic proposal by the submission deadline of December 2, 2015. However, this proposal failed to include both the *Ownership Disclosure Form* and the *Disclosure of Investment Activities in Iran* Form. Phillips Sport also attempted to submit a hard copy proposal; however, this submission was not received until December 3, 2015—one day following the submission deadline. I also note the hard copy submission did not contain the missing forms. Nonetheless, as stated above, materials submitted after the submission deadline shall not be considered for evaluation.

Notwithstanding Phillips Sport'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 Phillips Sport's proposal under these circumstances would be contrary to the provisions of governing statutes and would provide Phillips Sport 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 Phillips Sport's proposal. I invite you to take this time to register your business with **NJ START** at www.njstart.gov, the State of New Jersey's new eProcurement system.

Sincerely,



Maurice Griffin
Chief Hearing Officer

MG:DF

c: D. Reinert
J. Kemery
A. Miller
A. Nelson

¹ 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>.