



# State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
OFFICE OF THE DIRECTOR  
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May 23, 2018

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

Ondina Nunes, Vice President  
Pena II, Inc.  
1 Miara Street  
Parlin, NJ 08859

Re: I/M/O Bid Solicitation #18DPP00222 Pena II, Inc.  
Protest of Notice of Proposal Rejection  
T2924 Snow Plowing Services by Area - NJDOT

Dear Ms. Nunes:

This letter is in response to your correspondence of April 25, 2018, on behalf of Pena II, Inc. (“Pena”) which was received by the Division of Purchase and Property’s (“Division”) Hearing Unit. In that email, Pena protests the Notice of Proposal Rejection issued by the Division’s Proposal Review Unit for Bid Solicitation #18DPP00222 – T2924 Snow Plowing Services by Area - NJDOT (“Bid Solicitation”). The record of this procurement reveals that Pena’s Quote was rejected for failing to submit the *Ownership Disclosure Form* and the *Disclosure of Investment Activities in Iran Form* with its Quote.

By way of background, on February 13, 2018, the Division’s Procurement Bureau (“Bureau”) issued the Bid Solicitation on behalf of the New Jersey Department of Transportation (NJDOT), to solicit Quotes from qualified Vendors {Bidders} to provide snow plowing services for areas of State interstates and highways under the jurisdiction of the NJDOT. Bid Solicitation § 1.1 *Purpose and Intent*. It is the State’s intent to award Statewide Master Blanket Purchase Orders (“Blanket P.O.s”)<sup>1</sup> to those responsible

<sup>1</sup> For consistency, this final agency decision uses terminology employed by the State of New Jersey’s **NJSTART** eProcurement system. For ease of reference, the following is a table which references the **NJSTART** term and the statutory, regulatory and/or legacy term.

<b>NJSTART Term</b>	<b>Statutory, Regulatory and/or Legacy Term</b>
Bid Solicitation	Request For Proposal
Bid Amendment	Addendum
Change Order	Contract Amendment
Master Blanket Purchase Order	Contract
Offer and Acceptance Page	Signatory Page
Quote	Proposal
Vendor {Bidder}	Bidder
Vendor {Contractor}	Contractor

Vendors {Bidders} whose Quotes, conforming to this Bid Solicitation are most advantageous to the State, price and other factors considered. Ibid.

On March 16, 2018, the Bureau issued Bid Amendment #1 responding to the questions posed by potential Vendors {Bidders}. On April 12, 2018, the Division's Proposal Review Unit opened 21 Quotes which were received by the submission deadline of 2:00 pm eastern time. After conducting a review of the Quotes received, the Division's Proposal Review Unit issued a Notice of Proposal Rejection to Pena for failure to submit the *Ownership Disclosure Form* and the *Disclosure of Investment Activities in Iran Form* with its Quote.

In response to the Notice of Proposal Rejection, on April 25, 2018, Pena submitted the completed and signed *Disclosure of Investment Activities in Iran Form* and *Ownership Disclosure Form* with a copy of the Notice of Proposal Rejection to the Division's Hearing Unit. The Hearing Unit has accepted the submission of these documents as a protest.

In consideration of Pena's protest, I have reviewed the record of this procurement, including the Bid Solicitation, Pena's proposal and protest, the relevant statutes, regulations, and case law. This review of the record has provided me with the information necessary to determine the facts of this matter and to render an informed Final Agency Decision on the merits of the protest. I set forth herein the Division's Final Agency Decision.

The Division's administrative regulations that govern the advertised procurement process establish certain requirements that must be met in order for a Quote to be accepted. Those regulations provide in relevant part that:

- (a) In order to be eligible for consideration for award of contract, the bidder's proposal shall<sup>2</sup> conform to the following requirements or be subject to designation as a non-responsive proposal for non-compliance:

...

4. Contain all RFP-required certifications, forms, and attachments, completed and signed as required. An RFP may designate certain forms and/or certifications that need not be included in the bidder's proposal but that must be provided by a successful bidder upon request prior to an award of contract;

[N.J.A.C. 17:12-2.2(a), *emphasis added.*]

The subject solicitation was comprised of the Bid Solicitation, other documents and mandatory forms which were specifically addressed in Bid Solicitation Section 4.0 *Quote {Proposal} Preparation and Submission* which states in pertinent part:

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.

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<sup>2</sup> "Shall or Must – Denotes that which is a mandatory requirement. Failure to meet a mandatory material requirement will result in the rejection of a Quote {Proposal} as non-responsive." Should or May – "Denotes that which is permissible or recommended, not mandatory." Bid Solicitation § 2.2 *General Definitions.*

[Bid Solicitation § 4.4.1.2 *NJ Standard Bid Solicitation {RFP} Forms Required With The Quote {Proposal}.*]

Among those forms required to be submitted with the Quote are the *Ownership Disclosure Form* and the *Disclosure of Investment Activities in Iran Form* discussed in Bid Solicitation Section 4.4.1.2.1 and 4.4.1.2.2 respectively.

### 1. Ownership Disclosure Form

With respect to ownership, the New Jersey Legislature, in implementing N.J.S.A. 52:25-24.2, mandated that a Vendor {Bidder} must supply its ownership information, prior to or with its Quote, to be eligible to enter into a Blanket P.O. with the State. N.J.S.A. 52:25-24.2 states in pertinent part:

No corporation, partnership, or limited liability company shall be awarded any [Blanket P.O.] nor shall any agreement be entered into for the performance of any work or the furnishing of any materials or supplies, the cost of which is to be paid with or out of any public funds, by the State, or any county, municipality or school district, or any subsidiary or agency of the State, or of any county, municipality or school district, or by any authority, board, or commission which exercises governmental functions, unless prior to the receipt of the bid or accompanying the bid, of said corporation, said partnership, or said limited liability company there is submitted a statement setting forth the names and addresses of all stockholders in the corporation who own 10 percent or more of its stock, of any class, or of all individual partners in the partnership who own a 10 percent or greater interest therein, or of all members in the limited liability company who own a 10 percent or greater interest therein, as the case may be. If one or more such stockholder or partner or member is itself a corporation or partnership or limited liability company, the stockholders holding 10 percent or more of that corporation's stock, or the individual partners owning 10 percent or greater interest in that partnership, or the members owning 10 percent or greater interest in that limited liability company, as the case may be, shall also be listed. The disclosure shall be continued until names and addresses of every noncorporate stockholder, and individual partner, and member, exceeding the 10 percent ownership criteria established in this act, has been listed.

The *Ownership Disclosure Form* is specifically addressed in Bid Solicitation Section 4.4.1.2.1 *Ownership Disclosure Form* which states:

Pursuant to N.J.S.A. 52:25-24.2, in the event the Vendor {Bidder} is a corporation, limited liability company, or partnership, the Vendor {Bidder} must complete an Ownership Disclosure Form.

A current completed Ownership Disclosure Form must be received prior to or accompany the submitted Quote {Proposal}. 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} unless the Division has on file a signed and accurate Ownership Disclosure

Form dated and received no more than six (6) months prior to the Quote {Proposal} submission deadline for this procurement. If any ownership change has occurred within the last six (6) months, a new Ownership Disclosure Form must be completed, signed and submitted with the Quote {Proposal}.

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 Ownership Disclosure Form. Vendors {Bidders} not using **NJSTART** to submit a Quote {Proposal} must complete the full Ownership Disclosure Form located on the [Division’s website](#). This form is also available in [NJSTART \(www.njstart.gov\)](#).

In order to make this process of complying with the legislative requirement easier, the Division provides to the bidding community an *Ownership Disclosure Form* to be completed, signed and submitted with the Quote.

As an alternative to the submission of the *Ownership Disclosure Form*, as noted in Bid Solicitation Section 4.4.1.2.1 above, Vendors {Bidders} using **NJSTART** to submit a Quote are required to make the appropriate certification regarding ownership disclosure on the “Maintain Terms and Categories” Tab within its profile. As shown in the screenshot below, Pena did not complete the Ownership Disclosure category.

Vendor Profile - pena ii inc

Organization Information | Users | Address | Company, Dates and Services | Regions | **Terms & Categories** | Attachments | Vendor Performance

### Terms and Categories Information

#### Terms

Payment Terms:  
Freight Terms:  
Shipping Method:  
Shipping Terms:

#### Categories & Certifications

**Category: 1. Primary Business Function (MANDATORY FIELD)**

Provide Any Other Type of Service:

**Category: 2. Business Formation (MANDATORY FIELD)**

Organization including Professionals Corporation Government Entity:

**Category: 4. Electronic Funds Transfer Certification (MANDATORY FIELD)**

Description: I certify that I am an appointed agent of the vendor referenced and that I hereby authorize the State of NJ to initiate payments to the bank acct and bank named in the electronic funds transfer (EFT) and when the information is provided). This authority is to remain in full force and effect until the State of NJ receives notification of any changes, and in such a manner as to afford the State of NJ a reasonable opportunity to A/C.

Select if you intend to enter the data for EFT payment and agree with the statement above. To enter banking data you must log in after the initial registration process has been completed, add or edit a Permit address, and check the EFT Enable checkbox.

**Category: 5. Tax ID Certification (Substantive W9) (MANDATORY FIELD)**

Description: Under Penalties of Perjury, I certify that (1) The number provided via this registration process is my correct taxpayer ID number AND (2) I am not subject to backup withholding AND (3) I am a U. S. Citizen or a defined U. S. Person for federal tax purposes.

Select if you agree with the statement above.

**Category: Certification: Business Registration**

Description: This Certification status is updated daily. If your business is not registered, or if your registration is not active, please see the following link:

Active

**Category: Certification: ANEEOC Compliance**

Description: This Certification status is updated daily. If your business does not have a certification, or if your certification has expired, please see the following link:

Yes

Because Pena did not complete the Ownership Disclosure category within **NJSTART**, it was required to submit the form with its Quote, or attach the forms to its Vendor Profile within **NJSTART**. As shown in the screenshot below, Pena did not upload the *Ownership Disclosure Form* to its profile.

Vendor Profile - pena ii inc

Organization Information | Users | Address | Company, Dates and Services | Regions | Terms & Categories | **Attachments** | Vendor Performance

### Attachments Information

No Attachments found for this vendor.

#### Forms

No Form Attachments

Close Window

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Nor did Pena include the *Ownership Disclosure Form* with its submitted Quote. In uploading its Quote, Pena attached 1 document entitled "Pena II Inc.pdf" which consists of 11 pages with the following documents:

- Offer and Acceptance Page (page 1)
- Bid Amendment 1 (pages 2 - 4)
- Attachment 1 (pages 5 and 8)
- Attachment 2 (pages 6 and 7)
- Procurement Program Checklist (page 9)
- Price Sheet (page 10 - 11)

None of the information included in Pena's Quote provides the ownership information required by N.J.S.A. 52:25-24.2.

In reviewing a Quote submitted in response to a Bid Solicitation, the Division does not have the power to waive the legislative requirement that a Vendor {Bidder} provide its ownership information prior to or accompanying the Quote submission. Only the New Jersey Legislature can change a requirement it has mandated. Unfortunately, Pena did not comply with any of the options available to it for the submission of ownership information. Accordingly, Pena's Quote was properly rejected by the Division's Proposal Review Unit for failure to submit the mandatory *Ownership Disclosure Form* with its Quote.

## 2. Disclosure of Investment Activities in Iran Form

Similarly, with respect to the submission of the *Disclosure of Investment Activities in Iran Form*, the New Jersey Legislature has mandated that "[a] State agency shall require a person or entity that submits a bid or Quote or otherwise proposes to enter into or renew a [Blanket P.O.] to certify, at the time the bid is submitted or the [Blanket P.O.] 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." N.J.S.A. 52:32-58(a).

The *Disclosure of Investment Activities in Iran Form* is specifically addressed in Bid Solicitation Section 4.4.1.2.2 *Disclosure of Investment Activities in Iran Form* which states:

Pursuant to N.J.S.A. 52:32-58, 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)).

Again, in order to make this process of complying with the legislative requirement easier, the Division provides to the bidding community a *Disclosure of Investment Activities in Iran Form* to be completed, signed and submitted with the Quote.

As an alternative to the submission of the *Disclosure of Investment Activities in Iran Form*, as noted in Bid Solicitation Section 4.4.1.2.2 above, Vendors {Bidders} using **NJSTART** to submit a Quote are required to make the appropriate certification regarding investment activities in Iran on the "Maintain Terms and Categories" Tab within its profile. As shown in the first screenshot above, Pena did not complete the Disclosure of Investment Activities in Iran category. Because Pena did not complete the Disclosure of Investment Activities in Iran category within **NJSTART**, it was required to submit the *Disclosure of Investment Activities in Iran Form* with its Quote, or attach the form to its Vendor Profile within **NJSTART**. The record indicates that Pena's Quote did not include a completed and signed *Disclosure of Investment Activities in Iran Form*, nor was the form contained within Pena's **NJSTART** Vendor Profile.

The Division does not have the power to waive the legislative requirement that a Vendor {Bidder} certify with its Quote that it is not engaged in investment activities in Iran. Only the New Jersey Legislature can change a requirement it has mandated. Accordingly, Pena's Quote was properly rejected by the Division's Proposal Review Unit for failure to submit the mandatory *Disclosure of Investment Activities in Iran Form* with its Quote.

If the requirements of [N.J.S.A. 52:25-24.2](#), [N.J.S.A. 52:32-58](#), and [N.J.A.C. 17:12-2.2](#) are not met, a Quote must be rejected. These statutes and regulations mandate stringent enforcement to maintain the equal footing of all Vendors {Bidders} and to ensure the integrity of the State's bidding process. The **NJSTART** system does not prevent a Vendor {Bidder} from submitting a Quote without all of the required forms and documents attached as mandated by the specifications. The responsibility for ensuring that all necessary forms and other submittals, are uploaded into **NJSTART** necessarily and appropriately rests solely with the Vendor {Bidder}. Bid Solicitation § 1.4.2 *Vendor {Bidder} Responsibility*.

Here, unfortunately, Pena submitted a Quote without the required *Ownership Disclosure Form* and the *Disclosure of Investment Activities in Iran Form* attached. Notwithstanding Pena's interest in competing for this procurement, to allow Pena to submit the completed and signed *Ownership Disclosure Form* or the *Disclosure of Investment Activities in Iran Form* after bid opening would violate the Legislative requirements outlined in [N.J.S.A. 52:25-24.2](#) and [N.J.S.A. 52:32-58](#), requirements that the Division is not authorized to waive.

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 the Proposal. However, in light of the findings set forth above, I have no choice but to 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 company's continuing interest in doing business with the State of New Jersey and for registering your business with **NJSTART** at [www.njstart.gov](http://www.njstart.gov), the State of New Jersey's new eProcurement system.

Sincerely,

A handwritten signature in blue ink that reads "magriff". The signature is written in a cursive, flowing style.

Maurice A. Griffin  
Acting Director

MAG: RUD

c: P. Michaels  
L. Spildener  
M. Groninger