



State of New Jersey

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June 21, 2019

Via Electronic Mail [eric.dowson@turtle.com] and USPS Regular Mail

Eric Dowson
Data Communications Manager
Turtle & Hughes Inc.
188 Foothill Road,
Bridgewater, NJ 08807

Re: I/M/O Bid Solicitation #: 19DPP00293 Turtle & Hughes Inc.
Protest of Notice of Proposal Rejection
Bid Solicitation Title: T1778 Communications/ Telecommunications Cable, Wire, and Associated Products

Dear Mr. Dowson:

This letter is in response to your email of May 20, 2019, on behalf of Turtle & Hughes Inc. (Turtle & Hughes) to the Division of Purchase and Property's (Division) Hearing Unit. The email was received by the Division's Hearing Unit on May 20, 2019 and was accepted as a protest of the Notice of Proposal Rejection issued by the Division's Proposal Review Unit for Bid Solicitation #19DPP00293 – T1778 Communications/Telecommunications Cable, Wire, and Associated (Bid Solicitation). The record of this procurement reveals that Turtle & Hughes's Quote was rejected for failing to submit the *Ownership Disclosure Form* with its Quote.

By way of background, on October 19, 2018, the Division's Procurement Bureau ("Bureau") issued the Bid Solicitation on behalf of the State of New Jersey and Cooperative Purchasing Program Participants to solicit Quotes from qualified Vendors {Bidders} for the purchase of telecommunication cable, wire, and associated equipment and services including, but not limited to:

- A. Category 1 – Cable, Wire, and Optical Fiber;
- B. Category 2 – Custom Length Cables;
- C. Category 3 – Associated Cable and Wire Hardware;
- D. Category 4 – Test Equipment;
- E. Category 5 – Installation Tools;
- F. Category 6 – Training; and
- G. Category 7 – Data Center Management Solutions and Installation.

Bid Solicitation § 1.1 *Purpose and Intent*. The intent of this Bid Solicitation is to award Master Blanket Purchase Orders (Blanket P.O.s) to those responsible Vendors {Bidders} whose Quotes, conforming to this Bid Solicitation are most advantageous to the State, price and other factors considered. Ibid.

A number of Bid Amendments {Addenda} were issued following the posting of the Bid Solicitation. On November 19, 2018, the Bureau posted Bid Amendment {Addendum} #1, providing answers to questions received and posting a revised Bid Solicitation. On December 6, 2018, the Bureau posted Bid Amendment {Addendum} #2, postponing the Quote Submission Due Date from December 14, 2018 to January 31, 2019. On January 23, 2019, the Bureau posted Bid Amendment {Addendum} #3 postponing the Quote Submission Due Date from January 31, 2019 to February 14, 2019. Also, on January 23, 2019, the Bureau posted a Revised Bid Solicitation and Revised Price Sheet.

On February 14, 2019, the Division's Proposal Review Unit opened five Quotes submitted through the State's *NJSTART* eProcurement system and received by the submission deadline of 2:00 p.m. eastern time. Turtle & Hughes submitted a Quote via *NJSTART* at 09:50:12 a.m. on February 14, 2019, which included the following documents:

- Proof of Business Registration,
- Ownership Disclosure Form signed on March 1, 2017.
- Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions,
- Disclosure of Investment Activities in Iran Form,
- An *Offer and Acceptance* page,
- A Certificate of Employee Information Report,
- A signed "Bid Solicitation"/Sample P.O.
- Price Sheet

After conducting preliminary review, the Division issued Turtle & Hughes a Notice of Proposal Rejection on May 17, 2019, advising that its Quote was rejected because it was missing required certifications, forms, and attachments. Specifically, Turtle and Hughes' Quote was missing a completed and signed *Ownership Disclosure Form*.

On May 20, 2019, in response to the Notice of Proposal Rejection, Turtle & Hughes sent the Division an email, advising that the "Ownership Disclosure Form was on file at the State of New Jersey. We currently do business with the State of NJ, we are on the State Contract with Avaya. So this form was on file for Turtle & Hughes to get on this contract, please look at the file, "Avaya State of NJ Paperwork". Please reconsider Turtle & Hughes bid for T1778, Bid Solicitation #19DPP00293, and reinstate our Bid." State of NJ Paperwork."

In consideration of Turtle & Hughes's protest, I have reviewed the record of this procurement, including the Bid Solicitation, Turtle & Hughes's Quote and protest, the relevant statutes, regulations, and case law. The issues raised in Turtle & Hughes's protest with respect to the conformity of Turtle & Hughes's Quote to the Bid Solicitation are sufficiently clear on the written record such that review of the written record 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.

Pursuant to the Division's governing regulations, a Quote must "[c]ontain all [Bid Solicitation]-required certifications, forms, and attachments, completed and signed as required", (here at the time of bid submission or not more than six (6) months earlier) or "be subject to automatic rejection." N.J.A.C. 17:12-2.2 (*Emphasis added*.)

The Disclosure of Vendor's {Bidder's} Ownership is statutorily required information that must be submitted with the Bidder's Quote. The New Jersey Legislature, in implementing N.J.S.A. 52:25-24.2,

mandated the requirements that a bidder must comply with in order to enter into a contract 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 contract 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.

[*Emphasis added.*]

To make the process of complying with the statutory requirements easier, the Division provides the bidding community with the *Ownership Disclosure Form*. The *Ownership Disclosure Form* is specifically addressed in Bid Solicitation Section 4.4.1.2.1 *Ownership Disclosure Form* which states in part:

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. A Vendor's {Bidder's} failure to submit the completed and signed form with its Quote will result in the rejection of the Quote as non-responsive and preclude the award of a Blanket P.O. 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 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.*

[*Emphasis added.*]

In this case, Turtle & Hughes did comply with the requirements of N.J.S.A. 52:25-24.2, the record indicates that Turtle & Hughes submitted an *Ownership Disclosure Form* by uploading the form with its

Quote on **NJSTART** on February 14, 2019. Even though the *Ownership Disclosure Form* that it submitted was dated more than six (6) months prior to the Quote submission deadline required by the Bid Solicitation, Turtle & Hughes uploaded its *Ownership Disclosure Form* to **NJSTART** on February 13, 2019, along with all other required forms; essentially confirming that the information was accurate.

The Appellate Division in In re Scheduled Award of Term Contract T2813 Rfp 12-X-22361 Lab. Testing Serv. held that the Division “is charged with fulfilling its statutory duties, which includes ensuring compliance with N.J.S.A. 52:25-24.2.” 2013 N.J. Super. Unpub. LEXIS 1698, *29-30. In In re Scheduled Award of Term Contract T2813 Rfp 12-X-22361 Lab. Testing Serv., a disappointed bidder filed a protest, alleging, among other issues, that the Division should have rejected another bidder’s, Truesdail’s, proposal, because Truesdail did not provide answers to the five questions printed at the top of the *Ownership Disclosure Form*. Id. at *8-9. In that case, the Appellate Division indicated that

While Truesdail did not answer the five questions on the ODF submitted with its bid, Truesdail did answer the same questions for the prior failed procurement of the same contract approximately four months earlier, and confirmed to the DPP that its answers were still accurate. As the Director noted in her final agency decision, it is the DPP's standard policy to check its records to determine whether a bidder has submitted a completed ODF within the previous six months. This policy is consistent with the requirement of N.J.S.A. 52:25-24.2 that the bidder submit the required ownership information "prior to" or "accompanying" a submitted proposal. Moreover, the ODF stated that "[i]f this form has previously been submitted to the Purchase Bureau in connection with another bid, indicate changes, if any, where appropriate.

[Id. at *30-31.]

The Appellate Division upheld Director’s Final Agency Decision and held that because there was no statutory provision requiring bidder to answer five questions posted on page two of the *Ownership Disclosure Form*, but rather information requested by the questionnaire has been “‘deem[ed] desirable’ by DPP pursuant to N.J.S.A. 52:25-24.1”, the Division “properly relied on the answers on Truesdail’s previously submitted ODF.” Id. at *31.

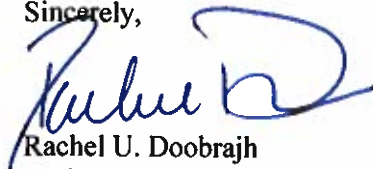
Similarly here, while the Bid Solicitation required that the *Ownership Disclosure Form* to be “dated and received no more than six (6) months prior to the Quote submission deadline for this procurement”, there is no statutory requirement for the *Ownership Disclosure Form* to be dated no more than six (6) months prior to Quote submission deadline. Turtle & Hughes did submit their *Ownership Disclosure Form* along with their Quote. The Division accepts Turtle & Hughes’ action of attaching and submitting the *Ownership Disclosure Form* with its Quote on February 14, 2019 as an affirmation that the contents of the *Ownership Disclosure Form* were accurate as of the Quote opening date. As such, pursuant to N.J.A.C. § 17:12-2.7(d), the Director may waive minor irregularities or omissions in a proposal and accept the *Ownership Disclosure Form* as properly filed.¹

In light of the findings set forth above, I direct the Bureau to reinstate Turtle & Hughes Quote and to evaluate it along with all other Quotes received. This is my final agency decision on this matter.

¹ Had Turtle & Hughes not attached the *Ownership Disclosure Form* to the Quote, The Division could not accept the old *Ownership Disclosure Form* on file because it was more the 6 months old. In that situation, there would be no contemporaneous affirmation that the contents of the *Ownership Disclosure Form* were accurate as of Quote opening date. In re Scheduled Award of Term Contract T2813 Rfp 12-X-22361 Lab. Testing Serv. 2013 N.J. Super. Unpub. LEXIS 1698, *30-31.

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, the State of New Jersey's new eProcurement system.

Sincerely,



Rachel U. Doobraj
Acting Chief Hearing Officer

RUD: RD

c: L. Leonardi
M. Tagliaferri
A. Giaquinto