



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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August 24, 2021

Via Electronic Mail Only jking@synergemtech.com

Joel King, V.P. Business Development
Synergem Technologies, Inc.
371 Windrush Lane
Mount Airy, NC 27030

Re: I/M/O Bid Solicitation #20DPP00439 Synergem Technologies, Inc.
Protest of Notice of Proposal Rejection
T3075 Next Generation 9-1-1 Services

Dear Mr. King:

This final agency decision is in response to your email of August 23, 2021, on behalf of Synergem Technologies, Inc. (Synergem) which was received by the Division of Purchase and Property's (Division) Hearing Unit. In that email, Synergem protests the Notice of Proposal Rejection issued by the Division's Proposal Review Unit for Bid Solicitation #20DPP00439 T3075 Next Generation 9-1-1 Services (Bid Solicitation). The record of this procurement reveals that Synergem's Quote was rejected for failing to submit a completed *Ownership Disclosure Form* with its Quote.

By way of background, on April 9, 2020, the Division's Procurement Bureau (Bureau) issued the Bid Solicitation on behalf of the New Jersey Office of Information Technology (OIT), Office of Emergency Telecommunications Services (OETS). Bid Solicitation §1.1 *Purpose and Intent*. The purpose of the Bid Solicitation was to solicit Quotes for an all-inclusive integrated network services with "end-to-end" operational and total fiscal accountability for the operation of a Next Generation 9-1-1 (NG9-1-1) call delivery network currently serving the Public Safety Answering Points (PSAPs) of the State. *Ibid*. It is the State's intent to award a Master Blanket Purchase Orders (Blanket P.O.) to the responsible Vendor {Bidder} whose Quote, conforming to this Bid Solicitation is most advantageous to the State, price and other factors considered. *Ibid*.

On August 20, 2021, the Division's Proposal Review Unit opened six 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 Synergem for failing to submit a completed *Ownership Disclosure Form* with its Quote. In response to the Notice of Proposal Rejection, on August 23, 2021, Synergem sent an email to the Division's Hearing Unit stating in part:

Synergem Technologies, Inc. is formally protesting the *Notice of Proposal Rejection* received by me on August 20th, 2021...Synergem acknowledges that the Bid Solicitation rules required that this form be submitted by the

Bid Solicitation deadline (2:00 PM Eastern Time on Friday, August 20th, 2021) and concur that our submission did not include the *Ownership Disclosure Form*, a one-page document. We are submitting this document now as an attachment to this email...and hope you will be able to accept this document at this time and to overturn the rejection of our submission.

With the protest, Synergem included the completed *Ownership Disclosure Form*.

In consideration of Synergem's protest, I have reviewed the record of this procurement, including the Bid Solicitation, Synergem's Quote and protest, the relevant statutes, regulations and case law. The 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.

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 shall¹ 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.]

If the requirements of N.J.A.C. 17:12-2.2 are not met, a Quote must be rejected. This regulation mandates stringent enforcement to maintain the equal footing of all Vendors {Bidders} and to ensure the integrity of the State's bidding process.

The subject procurement was comprised of the Bid Solicitation, other documents and mandatory forms which were specifically addressed in Bid Solicitation Section 4.0 *Quote 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 as non-responsive.

[Bid Solicitation § 4.4.1.2 *NJ Standard Bid Solicitation Forms Required With The Quote*.]

Among those forms required to be submitted with the Quote is the *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:

¹ "Shall - Denotes that which is a mandatory requirement." Bid Solicitation Section 2.2 *General Definitions*.

No corporations, 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 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 for 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, 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.]

The *Ownership Disclosure Form* is specifically discussed in Bid Solicitation Section § 4.4.1.2.1 which states in relevant part:

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

In the alternative, to comply with this section, a Vendor {Bidder} with any direct or indirect parent entity which is publicly traded may submit the name and address of each publicly traded entity and the name and address of each person that holds a 10 percent or greater beneficial interest in the publicly traded entity as of the last annual filing with the federal Securities and Exchange Commission or the foreign equivalent, and, if there is any person that holds a 10 percent or greater beneficial interest, also shall submit links to the websites containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest. N.J.S.A. 52:25-24.2.

Vendors {Bidders} using **NJSTART** to submit a Quote 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 must complete the full Ownership Disclosure Form located on the Division’s website.

In order to make this process of certifying easier, the Division provides to the bidding community the *Ownership Disclosure Form* to be completed in order for Vendor {Bidder} to comply with the statutory requirements. As an alternative to submission of the *Ownership Disclosure Form*, as noted in Bid Solicitation § 4.4.1.2.1 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.

A review of the record of this procurement reveals that on August 20, 2021, Synergem submitted Quote No. 000056928. Synergem did not upload the *Ownership Disclosure Form* with the Quote. Rather, in the narrative Quote, Synergem indicated that it had made the required certification **NJSTART**.

As noted in Bid Solicitation Section 4.4.1.2.1 above, Vendors {Bidders} using **NJSTART** to submit a Quote are able to make the appropriate certification regarding ownership disclosure on the “Maintain Terms and Categories” Tab within its profile. With respect to ownership, Vendors {Bidders} are able to select one of the following descriptors:

<p>Category: Ownership Disclosure</p> <p>Description: N.J.S.A. 52:25-24.2 requires disclosure of the names and addresses of those individuals, partnerships and/or corporations owning a 10% or greater interest in the bidding entity (“interest owners”). Further, if any of these interest owners is itself a partnership or corporation, you must disclose the names and addresses of the interest owners of that partnership or corporation.</p> <p><i>Please select at most one category value</i></p> <p>Select</p> <p><input type="checkbox"/> The bidder is a non-profit entity and is exempt from the ownership disclosure requirement. See Disclosure of Non-Profit Officers and Directors below. (No Ownership Disclosure form is required.)</p> <p><input type="checkbox"/> There are no individuals, partnerships or corporations with a 10% or greater interest in the bidding entity, therefore the bidder is exempt from the ownership disclosure requirement. (No Ownership Disclosure form is required.)</p> <p><input type="checkbox"/> Neither statement is applicable. A current, true and complete Statement of Bidder Ownership on the attached form has been or will be uploaded to the vendor profile prior to the submission deadline and is intended to accompany the bidder’s submission.</p>
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Synergem did complete the Ownership Disclosure category or upload the *Ownership Disclosure Form* to its **NJSTART** Vendor profile.

The **NJSTART** system does not prevent a Vendor {Bidder} from submitting a Quote without all of the required forms and documents completed and/or attached as mandated by the specifications. The responsibility for ensuring that all necessary forms and other submittals, are completed and uploaded into **NJSTART** necessarily and appropriately rests solely with the Vendor {Bidder}. Bid Solicitation § 1.4.2 *Vendor {Bidder} Responsibility*. Here, unfortunately, Synergem submitted a Quote without a completed *Ownership Disclosure Form* attached.

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, Synergem did not comply with any of the options available to it for the submission of ownership information. Accordingly, Synergem’s Quote was properly rejected by the Division’s Proposal Review Unit for failure to submit the mandatory *Ownership Disclosure Form* with its Quote.

In the protest, Synergem acknowledges that the *Ownership Disclosure Form* was not submitted with the Quote and requests that the Division accept the *Ownership Disclosure Form* submitted with the protest. Allowing Synergem to submit the completed *Ownership Disclosure Form* after the Quote opening date would result in an impermissible change or correction to its Quote, which the Division cannot allow as doing so would be contrary to the Court's holding in *In re Protest of Award of On-Line Games Prod. & Operation Servs. Contract*, Bid No. 95-X-20175, 279 N.J. Super. 566, 597 (App. Div. 1995) (holding that "in clarifying or elaborating on a proposal, a bidder explains or amplifies what is already there. In supplementing, changing or correcting a proposal, the bidder alters what is there. It is the alteration of the original proposal which was interdicted by the RFP".)

Notwithstanding Synergem's interest in competing for this procurement, to allow Synergem to submit the *Ownership Disclosure Form* after Quote opening would violate the Legislative requirement outlined in N.J.S.A. 52:25-24.2, a requirement that this 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 Quote. In light of the findings set forth above, I sustain the Proposal Review Unit's Notice of Proposal Rejection.

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. I encourage you to log into *NJSTART* to select any and all commodity codes for procurements you may be interested in submitting a Quote for so that you may receive notification of future bidding opportunities. This is my final agency decision on this matter.

Sincerely,



Rachel Doobrajh
Chief Hearing Officer

- c. L. Leonardi
- J. Pastuzyn
- A. Nelson
- D. Rodriguez