



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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February 9, 2015

Via Electronic (guentherstowing@yahoo.com) and USPS Regular Mail

Frank Guenther, President
Guenther's Mobil Service, Inc.
407 S. New Road
Pleasantville, NJ 08232

***Re: Reconsideration of Proposal Rejection
RFP # 15-X-23440: Maintenance and Repair Services for Heavy Duty Vehicles
(Class 5 or Higher, Over 15,000 lb. GVWR) (T-2108)***

Dear Mr. Guenther:

This letter is in response to your letter dated December 25, 2014, on behalf of Guenther's Mobil Service, Inc. ("Guenther's Mobil"), by which you express interest in competing for the award of the subject term contract, notwithstanding Guenther's Mobil's receipt of a Notice of Proposal Rejection from the Division of Purchase and Property's Proposal Review Unit. This notice indicates that Guenther's Mobil submitted an improperly signed *Ownership Disclosure* form and *Disclosure of Investment Activities in Iran* form as the PIN was used in the signature block on these forms. You contend that Guenther's Mobil complied with the requirements of the RFP by placing its PIN number in the signature block on each form. You further assert that Guenther's Mobil used this practice for previous proposal submissions without rejection.

I have reviewed the record of this procurement, including the RFP, Guenther's Mobil's proposal for the subject RFP, Guenther's Mobil's previous proposal submissions and 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 submitted by Guenther's Mobil. I set forth herein my Final Agency Determination.

Despite Guenther's Mobil's contention that this practice was accepted in its previous proposal submissions by the Proposal Review Unit, I was unable to substantiate this assertion with respect to its specific electronic submissions. However, a review of the procurement record for RFP #10-X-20973, *Maintenance and Repair Services for Vehicles with 15,000 lb. GVWR or Less*, revealed that the practice of accepting bidder PIN numbers as digital signatures was allowable. Addendum #1, issued on October 7, 2009, contained responses to bidder questions pertaining to this RFP. One of the questions (question 6(a)) asked if it was acceptable if a bidder was "not able to 'sign' a document." The Procurement Bureau's response to this question stated:

No, all eBid submissions must have a digital signature (**your PIN number is considered a digital signature.**) (Emphasis added)

Therefore, it is clear that Guenther's Mobil's assertion that use of a bidder's PIN to electronically sign RFP documents was an acceptable practice in previous procurements. However, this does not obviate the fact that Guenther's Mobil's use of its PIN number to electronically sign its Standard RFP Forms did not comply with Section 4.4.1.2 of the RFP, which states that

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. (Emphasis in original)

This section of the RFP sets forth the two acceptable methods for bidders to sign the Standard RFP Forms when submitting electronic proposals through the eBid system. Further, this section explicitly states that a bidder's entry of a Personal Identification Number, or PIN, is not an acceptable method of signature.

On the PIN Entry page of the Division's eBid system, the bidder is advised as follows: "By clicking "Submit" below, I thereby certify that I have read and understand all the terms and conditions set forth herein and specifically affirm the bidder's compliance with the attestation set forth above item 25 of the RFP signatory page." The attestation reads in relevant part that

SIGNATURE OF THE BIDDER ATTESTS THAT THE BIDDER HAS READ, UNDERSTANDS, AND AGREES TO ALL TERMS, CONDITIONS, AND SPECIFICATIONS SET FORTH IN THE REQUEST FOR PROPOSAL, INCLUDING ALL ADDENDA[.] FURTHERMORE, SIGNATURE BY THE BIDDER SIGNIFIES THAT THE REQUEST FOR PROPOSAL AND THE RESPONSIVE PROPOSAL CONSTITUTES A CONTRACT IMMEDIATELY UPON NOTICE OF ACCEPTANCE OF THE PROPOSAL BY THE STATE OF NEW JERSEY FOR ANY OR ALL OF THE ITEMS BID, AND FOR THE LENGTH OF TIME INDICATED IN THE REQUEST FOR PROPOSAL.

The absence of specific mention of, or reference to, the *NJ Standard RFP Forms* as inclusively covered by a signature on the RFP Signatory Page or by entry of a PIN within the instructional text set forth on each of the subject forms is intentional. Separate New Jersey statutes require disclosure of ownership and certification of no investment activity in Iran. These disclosures represent an integral aspect of the Division's ability to conduct due diligence to ensure that a bidder is a responsible business entity as required by the Division's primary governing statute. For these reasons, the Division has had to modify its past practice of allowing the PIN to serve as signature on all RFP forms and separated these certifications from the more generic certifications and declarations that can be covered by a bidder's signature on the Signatory Page or by its entry of its eBid PIN.

Section 4.4.1.2.1, *Ownership Disclosure Form*, states

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. (Emphasis added)

A review of the attachments provided by Guenther's Mobil found a completed and signed Ownership Disclosure Form submitted within the timeframe specified above. This submission would satisfy the ownership disclosure requirement set forth in Section 4.4.1.2.1; however, there is not a parallel rule with respect to the *Disclosure of Investment Activities in Iran* form.

Section 4.4.1.2.2, *Disclosure of Investment Activities in Iran Form*, states

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 non-responsive and preclude the award of a contract to said bidder.** (Emphasis added)

The administrative rules which govern the Division's procurement programs, as set forth at N.J.A.C. 17:12, and specifically, Paragraph (a) of Subchapter 2.2 of these rules, establish 10 base requirements in order for proposals to be eligible for consideration for award of contract. The fourth item of that list of base requirements mandates that a responsive proposal "[c]ontain all RFP-required certifications, forms and attachments, completed and signed as required."

The deficiencies at issue cannot be remedied after the proposal submission deadline. Acceptance of Guenther's Mobil's proposal under these circumstances would upset the equal footing standard that is a basic precept of public procurement programs since it would provide Guenther's Mobil 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 of the subject contract. This is my final agency decision on this matter.

Thank you for your interest in doing business with the State of New Jersey and for registering your business with *NJ START*, our new eProcurement system, which will soon provide a "one-stop shop" for vendors to submit proposals, maintain required forms and certifications, and present purchase orders and invoices for payment.

Sincerely,



Ronald G. Wengerd
Chief Hearing Officer

RGW:KW

c: V. Bequer
K. Thomas
R. Sharbaugh
D. Rodriguez
A. Nelson