



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
33 WEST STATE STREET
P. O. BOX 039

TRENTON, NEW JERSEY 08625-0039
<https://www.njstart.gov>
Telephone (609) 292-4886 / Facsimile (609) 984-2575

FORD M. SCUDDER
State Treasurer

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

JIGNASA DESAI-MCCLEARY
Director

November 2, 2016

Via Electronic Mail [ely@pa.net] and USPS Regular Mail

George W. Ely
President
George Ely Associates, Inc.
P.O. Box 396
Carlisle, Pa 17013

RE: Protest of Notice of Proposal Rejection
Bid Solicitation {Request for Proposal} #16DPP00019 – Park and Playground Equipment

Dear Mr. Ely:

This correspondence is in response to your letters of August 1, 2016 and August 2, 2016, sent on behalf of George Ely Associates, Inc. (GEA) in response to the Notice of Proposal Rejection (Rejection Notice) sent by the Division of Purchase and Property's (Division) Proposal Review Unit. The Notice indicated that the Quote {Proposal} (proposal) submitted by GEA failed to contain an *Offer and Acceptance Page*. I treat your August 1, 2016 and August 2, 2016 letters as GEA's protest of the Rejection Notice.

I have reviewed the record of this procurement, including the Bid Solicitation ({Request for Proposal} (RFP)), the Rejection Notice, GEA's proposal, GEA's August 1, 2016 and August 2, 2016 letters in protest, 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 this protest.

By way of background, the subject RFP was issued by the Division's Procurement Bureau (Bureau) on behalf of New Jersey Agencies and State Cooperative Purchasing Program Participants for various types of park and playground equipment. RFP § 1.1 *Purpose and Intent*. The intent of the RFP is "to award multiple Master Blanket Purchase Orders (Blanket POs) {Contracts} [(hereinafter contract)] to those responsible Vendors {Bidders} [(hereinafter bidder)] whose proposals, conforming to this [RFP] are most advantageous to the State, price and other factors considered." *Ibid.* The State intends to make one award per brand per region for each of the categories listed in the RFP. *Ibid.* Regions are broken into North, Central, and South, serving the 21 New Jersey counties. RFP § 3.3 *Regional Jurisdiction*. This is a reprourement of commodities similar to those offered by term contract T-0103. RFP § 1.2 *Background*.

On July 29, 2016, the Proposal Review Unit opened the proposals received by the submission deadline of 2:00 p.m. After conducting a review of the proposals submitted, the Proposal Review Unit found that GEA's proposal did not contain an *Offer and Acceptance Page*. Accordingly, the Proposal

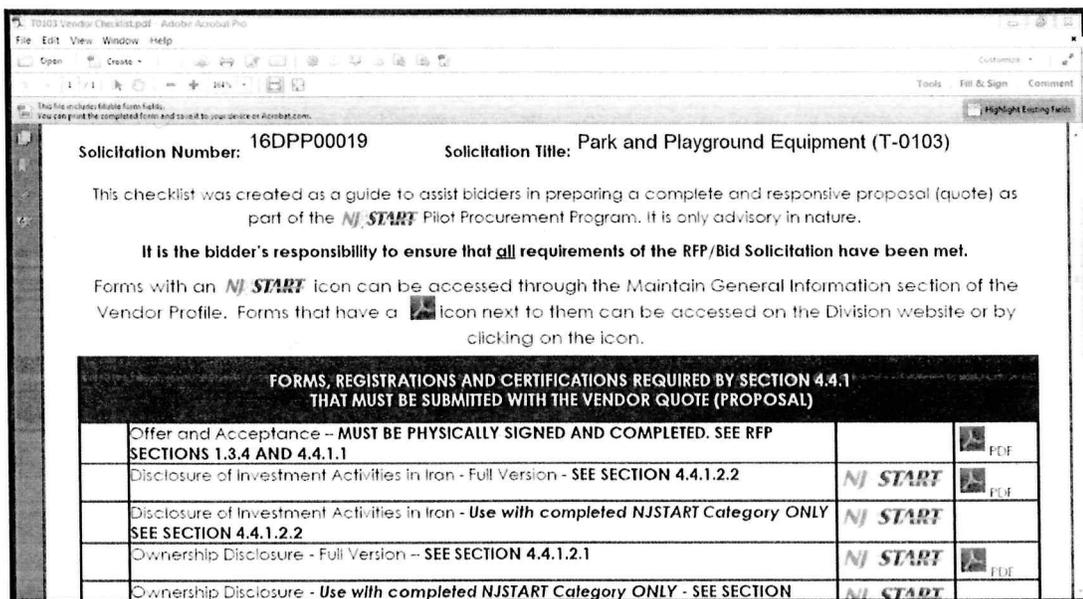
Review Unit issued the Rejection Notice to GEA. In response to the Rejection Notice, you sent letters dated August 1, 2016, and August 2, 2016, to the Division, on behalf GEA, protesting the proposal rejection. In your August 1, 2016 letter you indicate that you believed that you had printed, manually signed and uploaded the *Offer and Acceptance Page*. You include a copy of the completed and executed *Offer and Acceptance Page* with this letter. However, in your August 2, 2016 letter, you acknowledge that GEA did not actually upload the *Offer and Acceptance Page* and ask that, despite this inadvertent omission, the Division accept the *Offer and Acceptance Page* sent subsequent to the proposal opening deadline and evaluate GEA’s proposal for award of a contract.

The subject solicitation was comprised of the RFP and other documents, including the *Offer and Acceptance Page*. All RFP-required documents were available on the Division’s website as downloadable documents. The *Offer and Acceptance Page* is addressed in numerous locations in the RFP and is specifically listed under RFP Section 4.4.1, *Forms, Registrations and Certifications Required with Quote {Proposal}*, more specifically RFP Section 4.4.1.1, which states:

4.4.1.1 OFFER AND ACCEPTANCE {SIGNATORY} PAGE

The Vendor {Bidder} shall complete, including signature of an authorized representative of the Vendor {Bidder}, and submit the Offer and Acceptance Page {Signatory Page} accompanying this Bid Solicitation {RFP} (whether submitted through NJSTART or as a hard copy). If the Vendor {Bidder} is a limited partnership, the Offer and Acceptance Page {Signatory Page} must be signed by a general partner. All information requested must be submitted. If the Vendor {Bidder} is a joint venture, the Offer and Acceptance Page {Signatory Page} must be signed by a principal of each party to the joint venture. Failure to comply will result in rejection of the Quote {Proposal}.

Furthermore, as a courtesy to all bidders, the Division provided a Checklist as an accompaniment to the RFP. This Checklist is a resource showing, among other things, forms required to be submitted with the bidder’s proposal. The relevant portion of the Checklist is captured below. As indicated on the Checklist, one of the forms required to be submitted with the bidder’s proposal is the *Offer and Acceptance Page*.



Pursuant to N.J.A.C. 17:12-2.2, 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 Section 4.4.1.1 and the Checklist, the submission of a completed and signed *Offer and Acceptance Page* with the bidder's proposal was required. As shown on the figure below, the *Offer and Acceptance Page* for this solicitation also notified the bidder that the form must be submitted with the proposal, otherwise the bidder's proposal would be deemed non-responsive.

OFFER AND ACCEPTANCE		State of New Jersey Department of the Treasury Division of Purchase and Property 33 West State Street, P.O. Box 230 Trenton, New Jersey 08625-0230
Bid Solicitation #:	16DPP00019	
Solicitation Title:	Park and Playground Equipment (T-0103)	<input checked="" type="checkbox"/> Open to Cooperative Purchasing
Bidder Name:		Contract Term: 3 Years
OFFER		
TO THE STATE OF NEW JERSEY:		
The Undersigned hereby offers and agrees to furnish the goods, products, or services in compliance with all terms of this Contract (Master Blanket Purchase Order) as defined in Section 2.1.1 of the Solicitation (Bid Solicitation).		
Company Name	E-Mail Address	
Address	Phone Number	
City, State, ZIP	Fax Number	
FEIN	Authorized Signature	
Printed Name	Title	
By signing and submitting this Offer, the Bidder (Vendor) certifies and confirms that:		
<ol style="list-style-type: none"> 1. Neither the Bidder (Vendor), nor its representatives, agents or lobbyists have initiated any inappropriate contact with any Executive Branch employee during the procurement to attempt to affect the bidding process and shall not do so after submission of its proposal (quote). 2. The Bidder (Vendor) has read, understands, and agrees to all terms, conditions, and specifications set forth in the Request for Proposal/Bid Solicitation, including but not limited to the acceptance of the State of New Jersey Standard Terms and Conditions, the provisions set forth in Section 4.4.1.1.1 (MacBride Principles Certification), Section 4.4.1.1.2 (No Subcontractor Certification), Section 4.4.1.1.3 (Non-Collusion), and Section 4.4.1.1.4 (New Jersey Business Ethics Guide Certification); 3. The Bidder's (Vendor's) failure to meet any terms and conditions of the contract (master blanket purchase order) as defined in the Request for Proposal/Bid Solicitation shall constitute a breach and may result in suspension or debarment from further State bidding; 4. A defaulting Contractor (Vendor) may also be liable, at the option of the State, for the difference between the contract (master blanket purchase order) price and the price bid by an alternate vendor of the goods or services in addition to other remedies available; and 5. By signing and submitting this Offer, the Bidder (Vendor) consents to receipt of any and all documents related to this Request for Proposal/Bid Solicitation and the resulting contract (master blanket purchase order) by electronic medium or facsimile. 		
THIS FORM MUST BE SIGNED, COMPLETED AND INCLUDED WITH THE BIDDER'S PROPOSAL (VENDOR'S QUOTE); OTHERWISE, THE BIDDER'S PROPOSAL (VENDOR'S QUOTE) WILL BE DEEMED NON-RESPONSIVE AND NOT ELIGIBLE FOR A CONTRACT AWARD.		
Bid Security Included	Amount	Payment Security Included
		Amount

Here, the Hearing Unit has confirmed that the *Offer and Acceptance Page* was available to all bidders for download and submission. However, the record indicates that GEA's proposal failed to include the required *Offer and Acceptance Page*. Notwithstanding GEA's interest in competing for this procurement, to allow a bidder who did not provide the required information to be eligible to participate in the procurement process would unlevel the bidders' playing field, as the State received responsive proposals in which all necessary information and documents were provided as required. The deficiency at issue cannot be remedied or waived after the proposal submission deadline, as acceptance of GEA's proposal under these circumstances would provide GEA with disclamation options not available to those bidders whose proposals were fully responsive. In light of the findings set forth above, GEA is not eligible 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 GEA's proposal. Thank you for your company's continuing interest in doing business with the State of New Jersey and for registering with *NJ START* at www.njstart.gov, the State of New Jersey's new eProcurement system.

Sincerely,

A handwritten signature in cursive script, appearing to read "Maurice Griffin".

Maurice Griffin
Chief Hearing Officer

c: J. Kerchner
K. Thomas
A. Nelson