



# State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
OFFICE OF THE DIRECTOR  
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February 26, 2018

Via Electronic Mail [Kristin.Yelverton@dssmith.com] and USPS Regular Mail

Kristin Yelverton, NE Regional Sales Manager  
Rapak, Inc. - Plastics Division  
1201 Windham Parkway, Suite D  
Romeoville, IL 60446

Re: I/M/O Bid Solicitation #18DPP00193 Rapak, Inc.  
Protest of Notice of Proposal Rejection  
T2923 – Liquid Packaging Bags

Dear Ms. Yelverton:

This letter is in response to your email of January 23, 2018, on behalf of DSS Rapak, Inc. (hereinafter “Rapak”) which was received by the Division of Purchase and Property’s (hereinafter “Division”) Hearing Unit. In that correspondence, Rapak protests the Notice of Proposal Rejection issued to Parish Manufacturing, Inc. (hereinafter “Parish”) by the Division’s Proposal Review Unit for Bid Solicitation #18DPP00193: T2923 – Liquid Packaging Bags (hereinafter “Bid Solicitation”)<sup>1</sup>.

By way of background, on December 14, 2017, the Division’s Procurement Bureau (hereinafter “Bureau”) issued the Bid Solicitation on behalf of the New Jersey Department of Corrections Agri-Industries (hereinafter “DOC”), to solicit Quotes for liquid packing bags for processed milk and fruit juices. Bid Solicitation § 1.1 *Purpose and Intent*. It is the State’s intent to award a Master Blanket Purchase Order

<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

(hereinafter "Contract") to that responsible Vendor {Bidder}, whose Quote, conforming to the Bid Solicitation, is most advantageous to the State, price, and other factors considered. Ibid.

On January 12, 2018, the Division's Proposal Review Unit opened three Quotes 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 Parish for failure to submit the *Ownership Disclosure Form, Disclosure of Investment Activities in Iran Form* and pricing information with its Quote.<sup>2</sup>

On January 23, 2018, the Division's Hearing Unit received an email, not from Parish, but from Rapak, challenging the Notice of Proposal Rejection issued to Parish. The email stated in pertinent part as follows:

In reference to solicitation #18DPPP00193 for liquid packaging bags, we received Notice of Proposal Rejection on Thursday, January 18, 2018, due to the following missing pieces of information.

- Ownership Disclosure Form
- Disclosure of Investment Activities in Iran
- Missing pricing information

We apologize for the oversight. Attached to this email are the three missing pieces of information.

Please note the company submitting this bid is DSS Rapak, Inc. Vendor #00023569.

With the protest, Rapak submitted a completed *Ownership Disclosure Form, Disclosure of Investment Activities in Iran Form*, the State-Supplied Price Sheet and the Notice of Proposal Rejection issued to Parish. Each of the forms submitted references DSS Rapak as the Vendor {Bidder}.

In consideration of the letter of protest submitted by Rapak, I have reviewed the record of this procurement, including the Bid Solicitation, the submitted Quotes, 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.

#### **A. Rapak's Protest and Document Submission**

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: "[i]n order to be eligible for consideration for award of contract, the bidder's proposal shall ... [b]e submitted on or before the due date and time and at the place specified in the RFP." 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. These regulations are stringently enforced to maintain the equal footing of all Vendors {Bidders} and to ensure the integrity of the State's bidding process.

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<sup>2</sup> No other Notices of Proposal Rejection were issued related to this procurement.

Consistent with the requirements of the Division's administrative regulations, the Bid Solicitation advised all potential Vendors {Bidders} of the requirements for proper and timely Quote submission noting:

In order to be considered for award, the Quote {Proposal} must be received by the Procurement Bureau of the Division at the appropriate location by the required time. Vendors {Bidders} shall submit a quote {proposal} either electronically through **NJSTART** or via hard copy.

Hard copy quote {proposal} must be submitted to the physical location noted below:

PROPOSAL RECEIVING ROOM – 9TH FLOOR  
DIVISION OF PURCHASE AND PROPERTY  
DEPARTMENT OF THE TREASURY  
33 WEST STATE STREET, P.O. BOX 230  
TRENTON, NJ 08625-0230

Directions to the Division are available on the web at  
<http://www.state.nj.us/treasury/purchase/directions.shtml>.

**QUOTES {PROPOSALS} NOT RECEIVED PRIOR TO THE QUOTE {PROPOSAL} OPENING DEADLINE SHALL BE REJECTED. THE DATE AND TIME OF THE QUOTE {PROPOSAL} OPENING ARE INDICATED ON THE BID SOLICITATION {RFP} COVER SHEET AND IN THE "SUMMARY" PAGE OF THE BID SOLICITATION IN **NJSTART**.**

Note: A Vendor {Bidder} using U.S. Postal Service regular or express mail services should allow additional time since the U.S. Postal Service does not deliver directly to the Procurement Bureau. A Vendor {Bidder} should make every effort to submit its quote {proposal} well ahead of the quote {proposal} submission deadline to mitigate unforeseen delays or issues. The Vendor {Bidder} is solely responsible for the timely submission of its quote {proposal} in response to this Bid Solicitation {RFP}.

[Bid Solicitation § 1.3.2 *Submission of Quotes {Proposals}*.]

With respect Rapak's protest email, the Division has no record of a Quote having been submitted by Rapak in response to the subject Bid Solicitation. Under the provisions set forth above, the statutory procurement laws, and the regulations of the State of New Jersey, the Division cannot accept Rapak's document submission to the Division's Hearing Unit as a timely submitted Quote. Such acceptance would un-level the Vendor's {Bidder's} playing field as the Division received Quotes from other Vendors {Bidders} by the submission deadline.

In light of the findings set forth above, I must deny Rapak's request for eligibility to participate in the competition for the subject Bid Solicitation.

## B. Parish's Submitted Quote

As noted above, with its January 23, 2018 email, Rapak included a copy of the Notice of Proposal Rejection issued to Parish. From the documents before me it is unclear why Rapak is protesting the Notice of Proposal Rejection issued to Parish; however, for the sake of completeness I will address the Quote submitted by and the Notice of Proposal Rejection issued to Parish.<sup>3</sup>

On January 8, 2018, Parish submitted a Quote to the Division in response to the subject Bid Solicitation.

**Quote 00001633 - Parish Manufacturing Inc.**

General Items Questions Subcontractors Terms & Conditions Attachments Evaluations Preference Reminders Summary

**Quote #:** 20001433 **Bid #:** 18DPP00193 **Status:** Submitted

**Organization:** Division of Purchase and Property **Delivery Days:** 28 **Discount Percent:** 0.0

**Description:** 72023 Liquid Petstrapping Bags **Alternate Bid:** No **Shipping Terms:** F.O.B. Destination

**Bid Flag:** via **Ship Via Terms:** **Payment Terms:** Net 30

**Freight Terms:** **Info Contact:** Kristin Valerston 734-530-0911 Kristin\_Valerston@perscope.com **Quote Total:** 2018

**Promised Date:** **User last Updated:** Kristin Valerston **User Created:** Kristin Valerston

**Comments:** **Print Format:** Quote

**Data Last Updated:** 2/16/2018 01:18:22 PM **User last Updated:** Kristin Valerston

Vendor accepts the terms & conditions with no exceptions.

Agency Files:  
Agency Forms:  
Vendor Files:  
Vendor Forms:

**Print Sequence # 1.0: (245 - 50) The Vendor (Bidder) must enter a Unit Cost of \$1.00 for each price line item on the Items Tab. The Vendor (Bidder) must submit its pricing as an attachment using the State supplied price sheets/schedules(s) accompanying this Bid Solicitation (REP) and located on the Attachments Tab. Please refer to Bid Solicitation (REP) section 4.4.5 for more information.**

Quantity	UOM	Unit Cost	Discount %	Tax Rate	Freight	Extended Amount	Net Bid	Net Charge
1.2	CASE	\$2.696	0.0%	0.0%	\$0.00	\$3.235	no	no

Print Close Window

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However, as shown in the screenshot below, Parish did not include any attachments with its submitted Quote.

**Quote 00001633 - Parish Manufacturing Inc.**

General Items Questions Subcontractors Terms & Conditions Attachments Evaluations Preference Reminders Summary

**Files**

No File Attachments

**Forms**

No Form Attachments

Close Window

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Specifically, as set forth in the Notice of Proposal Rejection, Parish did not submit the *Ownership Disclosure Form*, the *Disclosure of Investment Activities in Iran Form*, or the required pricing information with its Quote.

<sup>3</sup> With its protest email, Rapak did not provide any documents or information that could establish a relationship between itself and Parish such that the Quote submitted by Parish could be attributed to Rapak. A review of the records maintained by the State of New Jersey indicate that Rapak and Parish are separate entities. Rapak and Parish have distinct Federal Employee Information Numbers; have separate New Jersey Business Registration Certificates; and, are registered as separate vendors in *NJSTART*. Further, Parish was a vendor on the prior solicitation for similar goods which expired in November 2017. At no time during that Contract term did Parish submit a request for a Contract assignment to the Division or otherwise notify the Division that it had been acquired by Rapak or any other entity.

As previously noted, 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>4</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*.]

If the requirements of N.J.S.A. 52:25-24.1, N.J.S.A. 52:32-58(a), 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 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.

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

In order to make the process of complying with the regulatory and Bid Solicitation requirements easier, as shown in the screenshot below, an *Ownership Disclosure Form*, *Disclosure of Investment Activities in Iran Form* and the State-Supplied Price Sheet, along with other documents, were uploaded to **NJSTART** for use by Vendors {Bidders} in preparing and submitting Quotes.

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<sup>4</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*.

Blanket Bid 18DPP00193	
<a href="#">General</a> <a href="#">Items</a> <a href="#">Address</a> <a href="#">Accounting</a> <a href="#">Routing</a> <a href="#">Attachments(9)</a> <a href="#">Notes</a> <a href="#">Bidders</a> <a href="#">Questions</a> <a href="#">Amendments</a> <a href="#">Q &amp; A</a> <a href="#">Reminders(2)</a> <a href="#">Summary</a>	
Files	
Name	Description
<a href="#">T2923 RFP</a>	T2923 RFP
<a href="#">T2923 Bidder Data Form</a>	T2923 Bidder Data Form
<a href="#">T2923 Offer and Acceptance Page</a>	T2923 Offer and Acceptance Page
<a href="#">T2923 Source Disclosure</a>	T2923 Source Disclosure
<a href="#">T2923 Disclosure and Investigation Form</a>	T2923 Disclosure and Investigation Form
<a href="#">T2923 Ownership Disclosure Form</a>	T2923 Ownership Disclosure Form
<a href="#">T2923 Disclosure of Investigation in Iran Form</a>	T2923 Disclosure of Investigation in Iran Form
<a href="#">T2923 Vendor Checklist</a>	T2923 Vendor Checklist
<a href="#">T2923 Price Sheet</a>	T2923 Price Sheet

Furthermore, as a courtesy to all Vendors {Bidders}, the Division provided a Checklist as a guide to assist Vendors {Bidders} in preparing Quotes.

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, including the State-Supplied Price Sheet, are uploaded into **NJSTART** necessarily and appropriately rests solely with the Vendor {Bidder}. Bid Solicitation § 1.4.2 *Vendor {Bidder} Responsibility*. Here, unfortunately, Parish submitted a Quote without any documents or forms attached as required.

With respect to each of the missing forms identified on the Notice of Proposal Rejection, I note the following:

### 1. Ownership Disclosure

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 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.

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 \(www.njstart.gov\)](#).

Vendors {Bidders} may refer to the QRGs "Vendor Forms" and "Attaching Files" for instructions on submitting the forms required by this section of the Bid Solicitation {RFP} through [NJSTART](#). Vendors {Bidders} may also refer to the QRG "Vendor Categories and Certifications" for additional instructions on completing shortened versions of required forms by completing certifications on the "Maintain Terms and Categories" Tab within its profile in [NJSTART](#). QRGs are located on the [NJSTART Vendor Support Page](#).

Vendors {Bidders} utilizing [NJSTART](#) should designate one (1) version of the Ownership Disclosure Form as the Primary Form. In the event that a Vendor {Bidder} fails to attach an Ownership Disclosure Form, or the attached Ownership Disclosure Form is deemed deficient, the Division may access the Primary Form and consider it as part of the Quote {Proposal}. Note: The Primary Form must have a Date Created within six (6) months of the Quote {Proposal} submission deadline to be considered valid.

In order to make this process of complying with the legislative requirement easier, the Division provides to the bidding community with 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, Parish did not complete the Ownership Disclosure category.

The screenshot displays the 'Vendor Profile - Parish Manufacturing Inc.' interface. The 'Terms and Categories Information' tab is active. Under 'Categories & Certifications', the following categories are listed as mandatory fields but are currently empty:

- Category: 1. Primary Business Function (MANDATORY FIELD)
- Category: 3. Business Formation (MANDATORY FIELD)
- Category: 4. Electronic Funds Transfer Certification (MANDATORY FIELD)
- Category: 5. Tax ID Certification (Substitute WS) (MANDATORY FIELD)
- Category: Certification: Business Registration

The 'Business Registration' section shows the status as 'Active'.

Because Parish did not complete the Ownership Disclosure category within **NJSTART**, it was required to submit the *Ownership Disclosure Form* with its Quote, have one on file with the Division within the six (6) month window prior to the Quote opening deadline, or attach the form to its Vendor Profile within **NJSTART**.<sup>5</sup> Unfortunately, Parish did not comply with any of these options.

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. Accordingly, Parish’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

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 contract to certify, at the time the bid is submitted or the contract 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).

<sup>5</sup> The last *Ownership Disclosure Form* received from Parish was in July 2013.

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 \(www.njstart.gov\)](#).

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 screenshot above, Parish did not complete the Disclosure of Investment Activities in Iran category. Because Parish 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 Parish's Quote did not include a completed and signed *Disclosure of Investment Activities in Iran Form*, nor was the form contained within Parish'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, Parish'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.

### 3. Quote Pricing and the State-Supplied Price Sheet

As to the submission of Quote pricing, in order for Parish's Quote to be considered responsive, Parish's failure to submit the pricing information with its Quote would have to be deemed a minor irregularity. Minor irregularities can be waived pursuant to the authority vested by N.J.A.C. 17:12-2.7(d) and Bid Solicitation Section 1.4.10, *Quote {Proposal} Acceptances and Rejections*. It is firmly established in New Jersey that material conditions contained in bidding specifications may not be waived. Twp. of Hillside v. Sternin, 25 N.J. 317, 324 (1957). In Meadowbrook Carting Co. v. Borough of Island Heights, 138 N.J. 307, 315 (1994), the New Jersey Supreme Court adopted the test set forth by the court in Twp. of River Vale v. Longo Constr. Co. for determining materiality. 127 N.J. Super. 207 (Law Div. 1974). "In River Vale, Judge Pressler declared that after identifying the existence of a deviation, the issue is whether a specific non-compliance constitutes a substantial [material] and hence non-waivable irregularity." In re Protest of the Award of the On-Line Games Prod. and Operation Servs. Contract, Bid No. 95-X-20175, 279 N.J. Super. 566, 594 (App. Div. 1995), citing River Vale, *supra*, 127 N.J. at 216. The River Vale court set forth a two-part test for determining whether a deviation is material:

First, whether the effect of a waiver would be to deprive the [government entity] of its assurance that the contract will be entered into, performed and guaranteed according to its specified requirements, and second, whether it is of such a nature that its waiver would adversely affect competitive bidding by placing a bidder in a position of advantage over other bidders or by otherwise undermining the necessary common standard of competition.

[River Vale, *supra*, 127 N.J. at 216.]

"If the non-compliance is substantial and thus non-waivable, the inquiry is over because the bid is non-conforming and a non-conforming bid is no bid at all." *Id.* at 222.

The Bid Solicitation cautioned Vendors {Bidders} regarding the need to ensure that all required forms, including the State-Supplied Price Sheet, are properly submitted. Specifically Bid Solicitation Section 4.4 *Quote {Proposal} Content* states:

The Quote {Proposal} should contain the State supplied price sheet/schedule(s) and all forms/documents required by the Bid Solicitation {RFP}. The Vendor {Bidder} is cautioned to carefully read the Bid Solicitation {RFP} to ensure that all required forms are submitted with the Vendor's {Bidder's} Quote {Proposal}. **NOTE: Failure to submit required forms/documents may result in the Vendor's {Bidder's} Quote {Proposal} being deemed non-responsive.**

A Vendor {Bidder} submitting a Quote {Proposal} through **NJSTART** must complete its Price Schedule as an attachment using the State-supplied price sheet/schedule(s) accompanying this Bid Solicitation {RFP} and located on the "Attachments" Tab (See Section 4.4.5 of this Bid Solicitation {RFP}).

[*Emphasis in the original.*]

Again, to make the process of submitting Quote pricing easier, a State-Supplied Price Sheet, which included fields for all of the necessary pricing information, was included with the Bid Solicitation. See,

Bid Solicitation Section 4.4.5 *Price Sheet/Schedule* (requiring that the “Vendor {Bidder} must submit its pricing using the State-Supplied Price Sheet accompanying this Bid Solicitation {RFP} and located on the “Attachments” Tab.”) Moreover, Bid Solicitation Section 4.4.5.2 *Price Sheet/Schedule Attachment Instructions* provided detailed information regarding the mandatory information for Quote pricing and instructions on completing the State-Supplied Price Sheet. In pertinent part,

Vendors {Bidders} must enter pricing in U.S. dollars and/or cents for the one (1) price line on the Price Sheet. This Price Line will be evaluated and awarded on an individual line item basis.

...  
 Step 4 - The Vendor {Bidder} shall insert a firm, fixed, all-inclusive price in U.S. dollars in the “Unit Price Per Bag” column on the Price Sheet. The “Unit Price Per Bag” must be the price per bag and must be submitted Freight On Board (F.O.B.) Destination. Any additional costs, including freight, should be included in the “Unit Price Per Bag” pricing offered on the price sheet. If a Vendor {Bidder} leaves a “Unit Price Per Bag” blank, it shall mean that the Vendor {Bidder} is not offering a Quote {Proposal} for that line item.

Step 5 – The Vendor {Bidder} should enter the amount of bags per case in the “Number of Bags Per Case” field.

Step 6 – The Vendor {Bidder} shall enter the “Brand/Model/Manufacturer” in the “Brand/Model/Manufacturer” column.

[Bid Solicitation § 4.4.5.2 *Price Sheet/Schedule Attachment Instructions, emphasis added.*]

Parish did not submit the State-Supplied Price Sheet with its Quote. Rather, contrary to Bid Solicitation Section 4.4.5 *Price Sheet/Schedule*, Parish included the unit cost per item on the “Items” Tab within **NJSTART**.

The question then is whether Parish’s submission of pricing information on the “Items” Tab results in a deviation from the requirements of the Bid Solicitation. As shown on the screenshot below, and as indicated in the price sheet instructions, the Unit of Measure for price submission purposes on the State-Supplied Price Sheet was per ‘bag.’ Additionally, the State-Supplied Price Sheet included a space where the Vendor {Bidder} was required to identify the brand, model and manufacturer of the bag proposed.

18DPPP00193 T-2923 Liquid Packaging Bags PRICE SHEET						
Vendor's (Bidder's) Name:			Cash Discount Terms Per Section 4.4.5.6 of the Bid Solicitation (RFP):		Delivery Days ARO (Not to Exceed thirty (30) Calendar Days):	
Price Line Number	Item Description	Quantity	Unit of Measure	Unit Price Per Bag (Required)	Number of Bags Per Case	Brand/Model/Manufacturer (Required)
1	Liquid Packaging Bag. Min. 6 gallon to Max. 6.25 gallon capacity. For use with Liqui Box 1000C1B-0 and/or Liqui Box 1000 C1T-0 beverage dispensers. See Bid Solicitation (RFP) Section 3.1	1	Bag			

Note: The Vendor (Bidder) is required to indicate the following on this Price Sheet: Unit Price Per Bag; Brand/ Model/ Manufacturer.

However, as shown in the screenshot below, the “Items” Tab within **NJSTART** indicated that the Unit of Measure was per ‘case,’ not per ‘bag’ as required by the Bid Solicitation.

Item #	Print Sequence	Quantity	UOM	Unit Cost	Net Unit Cost	Total Discount Amt.	Tax Rate	Tax Amount	Total Cost
1	1.0	1.0	CASE	\$0.0	\$0.00	\$0.00	0.0	\$0.00	\$0.00
Total									\$0.00

By submitting its Quote pricing on the “Items” Tab rather than on the State-Supplied Price Sheet, Parish submitted a Quote price of \$0.686 per ‘case’. As such the State has no information regarding the per bag pricing.

Item #	Print Sequence	Questions Exist	Description								
			Quantity	UOM	Unit Cost	Discount %	Tax Rate	Freight	Extended Amount	No Bid	No Charge
1	1.0	No	1.0	CASE	\$0.686	0.0%		\$0.00	\$0.69	<input type="checkbox"/>	<input type="checkbox"/>
Quote Response Total									\$0.69		

Further, Parish did not include any information regarding the brand, model or manufacturer of the liquid packaging bag proposed with its Quote.

While the Bureau may have been able to clarify whether the price set forth on the “Items” Tab was per ‘bag’ or per ‘case’, the Bureau is not permitted to clarify the brand, model and manufacturer of the bag proposed after the Quote opening deadline. Parish’s failure to include all of the pricing information requested by the Bid Solicitation with its Quote submission is a material deviation from the requirements of the Bid Solicitation. Permitting Parish, or any other Vendor {Bidder}, to submit information regarding the brand, model and manufacturer after the Quote opening deadline has passed, would place that Vendor {Bidder} in a position of advantage over other Vendors {Bidders} who timely submitted the required pricing information with the Quote.

Here, Parish submitted a Quote without the required *Ownership Disclosure Form, Disclosure of Investment Activities in Iran Form* and the pricing information sought by the Bid Solicitation. As such, Parish's proposal was properly rejected by the Division's Proposal Review Unit.

This is an unfortunate situation for the State, as we encourage competition and appreciate your expertise in the field. Thank you for registering your company with **NJSTART** at [www.njstart.gov](http://www.njstart.gov), the State of New Jersey's eProcurement system. I look forward to your company's continuing interest in doing business with the State of New Jersey.

Sincerely,



Maurice A. Griffin  
Acting Director

MAG: RUD

c: J. Kerchner  
K. Thomas  
G. Gerstenacker  
A. Puza  
A. Nelson  
D. Rodriguez