



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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June 26, 2018

Via Electronic Mail [casinocw@optimum.net] and USPS Regular Mail

Walter Del Terzo
WPDT d/b/a Casino Car Wash
313 W. Market Street
Newark, New Jersey 07103

Re: I/M/O Bid Solicitation #18DPP00227 WPDT d/b/a Casino Car Wash
T0390 – Vehicle Washing and Cleaning Services
Request for Reconsideration

Dear Mr. Del Terzo:

This letter is in response to your correspondence of June 18, 2018, on behalf of WPDT d/b/a Casino Car Wash (Casino) which was received by the Division of Purchase and Property’s (Division) Hearing Unit. In that letter, Casino requests that the Division reconsider its June 12, 2018 final agency decision which upheld the Notice of Proposal Rejection issued by the Division’s Proposal Review Unit for Bid Solicitation #18DPP00227 – T0390 – Vehicle Washing and Cleaning Services (Bid Solicitation)¹.

By way of background, on March 23, 2018, the Division’s Procurement Bureau (Bureau) issued the Bid Solicitation on behalf of State Agencies and Cooperative Purchasing participants to solicit Quotes for Brick and Mortar Vehicle Washing and Cleaning Services and Mobile Vehicle Washing and Cleaning Services. 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,

¹ 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.

NJSTART Term	Statutory, Regulatory and/or Legacy Term
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

conforming to this Bid Solicitation are most advantageous to the State, price and other factors considered. The State may award any and all price lines. Ibid. The State will evaluate and award the Brick and Mortar Vehicle Washing and Cleaning Services, and the Mobile Vehicle Washing and Cleaning Services, separately and by county as referenced in Bid Solicitation Section 1.2.1 *Counties*. Ibid. It is the intent of the State to award a Blanket P.O. to one or more Vendors {Bidders} in each county for each award grouping. Ibid.

On May 3, 2018, the Bureau issued Bid Amendment #1 responding to the questions posed by potential Vendors {Bidders}. On May 16, 2018, the Division's Proposal Review Unit opened the 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 Casino for failure to submit the *Ownership Disclosure Form* with its Quote.

In response to the Notice of Proposal Rejection, on May 25, 2018, Casino wrote to the Division's Hearing Unit stating "I Walter Del Terzo as WPDT dba, Casino Car Wash protest the rejection... [d]ue to a missing document which is included with this email." With the protest email, Casino submitted a copy of the *Ownership Disclosure Form*. I note that the *Ownership Disclosure Form* submitted with the protest was neither completed nor signed.

On June 12, 2018 I issued the Division's Final Agency Decision upholding the Proposal Review Unit's Notice of Proposal Rejection. In summary, I stated:

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, are uploaded into *NJSTART* necessarily and appropriately rests solely with the Vendor {Bidder}. Bid Solicitation § 1.4.2 *Vendor {Bidder} Responsibility*. 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, Casino did not comply with any of the options available to it for the submission of ownership information. Accordingly, Casino's Quote was properly rejected by the Division's Proposal Review Unit for failure to submit the mandatory *Ownership Disclosure Form* with its Quote.

On June 18, 2018, Casino submitted a request for reconsideration to the Division stating in part:

You point out that the reason for your decision is because I submitted the completed and signed Ownership Disclosure after bid opening. For your information, I submitted the bid on April 9, 2018 which is well before the due date of the bid which would have given the State time well before the due date to contact me for the information...In addition, please note that I have bid and was awarded the contract for these services for the last two years and have provided the Ownership Disclosure in both those years. The State, therefore, knows Casino car wash very well. The fact that I, in an honest mistake which I immediately corrected upon learning of it, would be punished seems extremely unfair. You explained in the letter that to allow Casino to submit the completed and signed Ownership Disclosure

Form after bid opening would violate the Legislative requirement outlined in N.J.S.A. 52:25-24.2 but I would urge you to refer to Schlumberger Industries, Inc. v Borough of Avalon in which the Court did allow the bidder to submit the ownership information post-bid because the bidder had previously provided the municipality the ownership information in a previous bid and negotiations.

In consideration of Casino's request for reconsideration I have reviewed the record of this procurement, including the Bid Solicitation, Casino's proposal and protest, the June 12, 2018 Final Agency Decision, the request for reconsideration, 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 decision. For the reasons set forth in the June 12, 2018 Final Agency Decision, I sustain the Proposal Review Unit's Notice of Proposal Rejection.

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). "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." Twp. of River Vale v. Longo Constr. Co., 127 N.J. Super. 207, 222 (Law Div. 1974). The question to be answered is whether or not a bidder's failure to comply completely with the statutory ownership disclosure requirement is a material deviation which would render a bid nonresponsive. C&H Industrial Services, Inc. v. City of Vineland, 2014 N.J. Super Unpub. Lexis 1187, at *13 (App. Div. May 23, 2014). 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 Award of On-Line Games Prod. And Operation Servs. Contract, 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.]

In support of its request for reconsideration Casino states that it submitted the Quote through **NJSTART** on April 9, 2018, well before the Quote opening deadline. Casino suggests that the Division could have advised it prior to the Quote opening deadline that the *Ownership Disclosure Form* was missing. Upon being notified, it would have provided the completed form to the Division.² The Division's governing law do not permit it to open any Quote received pursuant to the advertised procurement process prior to the

² In the request for reconsideration, Casino states that upon receiving the Notice of Proposal Rejection it provided the completed *Ownership Disclosure Form* to the Division, and that it would have done so prior to the Quote opening if it has known that the form was missing. For the sake of completeness, I note that the *Ownership Disclosure Form* provided by Casino with its May 25, 2018 protest was neither completed nor signed.

Quote opening deadline. Here, the subject Bid Solicitation required the submission of sealed Quotes, such that the submitted Quote cannot be opened or viewed, whether submitted electronically or in hard copy format, prior to the Quote opening deadline. See, Bid Solicitation § 1.4.4 *Contents of Quote {Proposal}*; N.J.A.C. 17:12-1.3. Therefore, the Division had no way of knowing which documents, if any, were included with a Vendor's {Bidder's} Quote.

Further, Casino urges the Division to refer to Schlumberger Industries, Inc. v. Borough of Avalon, 252 N.J. Super. 202 (App. Div. 1991) stating that there “the Court did allow the bidder to submit the ownership information post-bid because the bidder had previously provided the municipality the ownership information in a previous bid and negotiations”. See, Casino’s June 15, 2018 Request for Reconsideration.

Unfortunately Schlumberger cannot be relied upon in this instance to allow Casino to submit the missing form. In Schlumberger the Appellate Division recognized that a post-bid clarification could be permitted in limited circumstances. There, the bidder failed to list its full ownership structure with its proposal. The court concluded that the bidder was wholly-owned by a public company with the same name in its title; this fact was evidently known by the municipality that solicited the bids. Id. at 212-13. Additionally, in Schlumberger, the municipality had engaged in negotiations with the bidder on a previous contract and the information regarding the bidder’s ownership had been supplied to the municipality in connection with the earlier contract. Therefore, the municipality was aware of the bidder’s ownership structure prior to the bid opening date. Id. at 207.

Here, in 2013 City Casino Car Wash submitted a Quote in response to Bid Solicitation #13-X-22927 – Car Wash Services, and was awarded a contract (Vendor Contract #83938). In July 2015, WPDT, LLC purchased the assets of City Casino Car Wash and requested that the contract be assigned to it. With the request for a contract assignment, WPDT, LLC d/b/a Casino submitted a copy of an *Ownership Disclosure Form* which, as shown in the screenshot below, indicated that that it was wholly owned by Walter Del Terzo.

STATE OF NEW JERSEY - DIVISION OF PURCHASE AND PROPERTY
OWNERSHIP DISCLOSURE FORM

Bidder/Officer: _____

PART 1 PLEASE COMPLETE THE QUESTIONS BELOW BY CHECKING EITHER THE "YES" OR "NO" BOX. ALL PARTIES ENTERING INTO A CONTRACT WITH THE STATE ARE REQUIRED TO COMPLETE THIS FORM PURSUANT TO N.J.S.A. 17:27-2.2. PLEASE NOTE: IF THE BIDDER/OFFICER IS A NON-RESIDENT, THIS FORM IS NOT REQUIRED. PLEASE COMPLETE THE SEPARATE DISCLOSURE OF INVESTIGATIONS FORM.

	YES	NO
1. Are there any individuals, corporations or partnerships owning a 10% or greater interest in the Bidder/Officer?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Of those parties owning a 10% or greater interest in the Bidder/Officer, are any of those parties individuals?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Of those parties owning a 10% or greater interest in the Bidder/Officer, are any of those parties corporations or partnerships?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. If you answer to Question 3 is "YES", are there any parties owning a 10% or greater interest in the corporation or partnership referenced in Question 3?	<input type="checkbox"/>	<input type="checkbox"/>

PART 2 PLEASE PROVIDE FURTHER INFORMATION RELATED TO QUESTIONS 2-4 ANSWERED AS "YES".
For Questions 2-4 answered "YES", you must disclose identifying information related to the individuals, partnerships and/or corporations owning a 10% or greater interest in the Bidder/Officer. Further, if one or more of these entities is itself a corporation or partnership, you must also disclose all parties that own a 10% or greater interest in that corporation or partnership. This information is required to disclose.

TO COMPLETE PART 2, PLEASE PROVIDE THE REQUESTED INFORMATION PERTAINING TO EITHER INDIVIDUALS OR PARTNERSHIPS/CORPORATIONS HAVING A 10% OR GREATER INTEREST IN THE BIDDER/OFFICER. IF YOU NEED TO MAKE ADDITIONAL ENTRIES, CLICK THE "ADD AN ENTRY" BUTTON IN THE APPROPRIATE ENTITY TYPE.

Individuals

Name	Walter Del Terzo	Date of Birth	26/1/66
Home Address	PO BOX 6202 2161		
City	Hudson	State	N.J.
Zip Code	07033		

Are there additional entities holding 10% or greater ownership interest in the Bidder/Officer and its parent corporation/partnership?
 Yes or No

Add An Additional Individuals Entry

In April 2018 Casino agreed to extend its current contract with the State. However, as shown in the screenshot below, Casino did not complete the portion of the extension agreement indicating whether or not there had been any changes to the information previously provided to the State:

Walter Bel Terzo WPDT LLC DBA Casino Car Wash PO Box 8161 Haledon, NJ 07508
Re: T 0590, Contract A83938 Bid Solicitation / Request for Proposal Car Wash Services Extension period commencing on May 2, 2018 and expiring on September 1, 2018
Should the State decide to extend this contract
<input checked="" type="checkbox"/> I agree to extend the contract under Section 5.3 of the State of New Jersey Standard Terms and Conditions and in accordance with the terms and conditions of the current contract, including price.
<input type="checkbox"/> I agree to extend the current contract under Section 5.3 of the State of New Jersey Standard Terms and Conditions and in accordance with the terms and conditions of the current contract with the exception of price. During the term of the extension, I agree to reduce the price(s) as follows: _____
<input type="checkbox"/> I do not agree to extend the current contract.
<input type="checkbox"/> I certify that there has been no change to the information originally reported in the Disclosure Forms submitted by my Company.
<input type="checkbox"/> There have been changes in the information originally reported in the Disclosure Forms. Updated Disclosure Forms, as applicable, are attached.

Despite the fact that the State has a current contract with Casino, and that there may not have been any change in Casino's ownership, the information on file with the Division was almost three years old; and therefore, the Division does not have on file any recent or contemporaneous information regarding Casino's ownership structure. Case law related to the *Ownership Disclosure Form* has determined that a submitted *Ownership Disclosure Form* or ownership information can be no older than six (6) months. The form submitted by WPDT/Casino in 2015 is well beyond the permitted six month look back period. See, Bid Solicitation § 4.4.1.2.1 *Ownership Disclosure Form*; In the Matter of Protest of Scheduled Award of Term Contract T2813 RFP 12-X-22361 Laboratory Testing Service, Equine Drug Testing, Lexis 1698, at *25 (App. Div. July 10, 2013).

Based upon the relevant case law, I find that Casino's Quote contains a material deviation from the requirements of the solicitation making Casino's Quote nonresponsive. With respect to the previously mentioned River Vale factors, I note that the Courts have determined "noncompliance with N.J.S.A. 52:25-24.2 deprives the [contracting entity] of its assurance that the contract will be entered in to performed and guaranteed according to its specified requirements" because the failure to fully disclose 10% owners deprive the contracting entity and the public of the information with which it can be made aware of the real parties in interest, identify conflicts of interest, and the information necessary to assess the capability, financial stability and moral integrity of the bidder. C&H, supra, Lexis 1187 at *14-15; citing, George Harms, supra, 161 N.J. Super. at 372. Further, noncompliance with the statutory requirement "places the non-compliant bidder in a position of advantage over other bidders who might have bid on the project had they known they could avoid timely filing of the disclosure statement or that it would be waived." C&H, supra, Lexis 1187 at *16; citing, Muirfield, supra, 336 N.J. Super. at 136-37.

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. Here, the Legislature has mandated that the ownership information be submitted prior to or with the Quote. Unfortunately, Casino did not comply with any of the options available to it for the submission of ownership information either prior to or with its Quote. Accordingly, while I acknowledge

Casino's service to the State, Casino's Quote was properly rejected by the Division's Proposal Review Unit for failure to submit the mandatory *Ownership Disclosure Form* with its Quote.

Notwithstanding Casino's interest in competing for this procurement, to allow Casino to submit the completed and signed *Ownership Disclosure Form* after bid 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. Further, I have no reason to dispute Casino's assertion that it has "provided excellent service to the Sate for the past two years" and that it is "proud to serve [the] community." However, in light of the findings set forth above, I have no choice but to deny your request for eligibility to participate in the competition for the subject contract. This is my final agency decision on this matter.

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.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

c: A. Davis
K. Anderson-Thomas
R. Regan