

## State of New Jersey

CHRIS CHRISTIE

Governor

KIM GUADAGNO

Lt. Governor

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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October 3, 2017

Via Electronic Mail [preis@orasure.com] and USPS Regular Mail

Pat Reis OraSure Technologies, Inc. 220 East First Street Bethlehem, PA 18015

Re:

I/M/O RFP #17DPP00064 OraSure Technologies, Inc.

Protest of Notice of Proposal Rejection

T0115 Scientific Equipment Accessories and Supplies

Dear Ms. Reis:

This letter is in response to your email of September 27, 2017, on behalf of OraSure Technologies, Inc. hereinafter ("OraSure") which was received by the Division of Purchase and Property's (hereinafter "Division") Hearing Unit. In that correspondence, OraSure protests the Notice of Proposal Rejection issued by the Division's Proposal Review Unit for Bid Solicitation {Request for Proposal} #17DPP00064: T0115 Scientific Equipment Accessories, Supplies and Maintenance Statewide (hereinafter "RFP"). The record of this procurement reveals that OraSure's Quote {Proposal} (hereinafter "Proposal") was rejected because OraSure did not submit the completed and signed *Ownership Disclosure Form* with its Proposal submission.

In consideration of OraSure's protest, I have reviewed the record of this procurement, including the RFP, OraSure's Proposal, 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.

By way of background, on March 22, 2017, the Division's Procurement Bureau (hereinafter "Bureau") issued the RFP on behalf of State Using Agencies and Cooperative Purchasing Program Partners, to solicit Proposals for educational/instructional and professional/laboratory grade scientific equipment, accessories, supplies, chemicals and reagents, instrument rental and maintenance. RFP § 1.1 *Purpose and Intent*. It is the State's intent to award Statewide Blanket P.O.s {Contracts} (hereinafter "Contracts") for each specific brand bid (one award per brand) for price lines one (1) through four (4), to those responsible Vendors {Bidders} (hereinafter "Bidders"), whose Proposals, conforming to the RFP, are most advantageous to the State, price, and other factors considered. Price lines five (5) and six (6) will be awarded to all Bidders awarded contracts for prices lines one (1) through four (4). RFP § 7.2 *Final Blanket P.O. {Contract} Award*.

FORD M. SCUDDER
State Treasurer

MAURICE A. GRIFFIN Acting Director On July 6, 2017, the Bureau issued Bid Amendment {Addendum} #6 responding to the questions posed by potential Bidders. On August 15, 2017, the Bureau issued Bid Amendment {Addendum} #9 extending the Proposal opening date to August 25, 2017, 2:00 pm eastern time. On August 25, 2017, the Proposal Review Unit opened 55 Proposals received by the submission deadline of 2:00 pm eastern time. A review of the Proposal submitted by OraSure reveals that OraSure did not submit a completed and signed Ownership Disclosure Form with its Proposal as required. Therefore, the Proposal Review Unit issued a Notice of Proposal Rejection.

On September 27, 2017, OraSure wrote to the Division's Hearing Unit stating:

I received the attached Notice of Proposal Rejection and I do not understand why the Ownership Disclosure Form is not considered acceptable. I have attached a copy for your review. We marked Item I box: NO and then it says if you answer NO that you just need to sign and date the form which is what we did. Could you please provide me with further clarification?

With its protest, OraSure submitted a completed and signed Ownership Disclosure Form, shown below.

STATE OF NEW JERSEY — DIVISION OF PURCHASE AND PROPE OWNERSHIP DISCLOSURE FORM	RTY	
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Pursuant to the Division's governing regulations, a Proposal must "[c]ontain all RFP-required certifications, forms, and attachments, completed and signed as required" or "be subject to automatic rejection." N.J.A.C. 17:12-2.2. To assist Bidders in preparing and submitting a Proposal, the RFP advises Bidders to visit the NJSTART Vendor Support Page and to utilize the available Quick Reference Guides. Specifically, RFP § 1.33 NJSTART states in pertinent part:

Vendors {Bidders} are strongly encouraged to visit the <u>NJSTART Vendor Support Page</u>, which contains Quick Reference Guides (QRGs), supporting videos, a glossary of *NJSTART* terms, and helpdesk contact information.

The Vendor {Bidder} should utilize the QRGs before attempting to submit its Quote {Proposal} using the *NJSTART* process. It is the Vendor's {Bidder's} responsibility to ensure that the *NJSTART* Quote {Proposal} and attachments have been properly submitted.

The Ownership Disclosure Form is a statutorily required document that must be submitted with the Bidder's Proposal. The New Jersey Legislature, in implementing N.J.S.A. 52:25-24.2, mandated the requirements that a bidder must comply with in order 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.

## [Emphasis added.]

The Ownership Disclosure Form is specifically addressed in RFP 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}

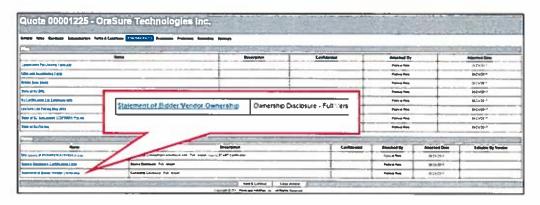
must complete the full Ownership Disclosure Form located on the <u>Division's website</u>. This form is also available in <u>NJSTART</u> (www.njstart.gov).

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 reviewing Proposals submitted in response to an RFP, the Division does not have the power to waive the legislative requirement that a Bidder provide its ownership information prior to or accompanying the Proposal submission. N.J.S.A. 52:25-24.2. Only the New Jersey Legislature can change a requirement it has mandated. Accordingly, in order to make this process of complying with the legislative requirement easier, the Division provides to the bidding community an *Ownership Disclosure Form* to be completed and submitted with the Proposal.

The Division's Hearing Unit's independent review of OraSure's Proposal reveals that OraSure did not submit a completed and signed *Ownership Disclosure Form* with its Proposal. In creating its Proposal OraSure attached the following files:



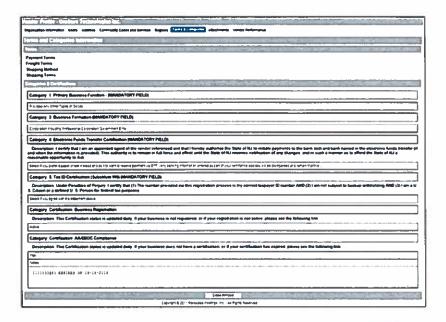
One of the documents uploaded by OraSure was annotated on the attachment list as the "Statement of Bidder/Vendor Ownership – Ownership Disclosure – Full Version". However, as shown in the screenshot below, this form was not completed or signed. With its Proposal, OraSure submitted the blank *NJSTART Ownership Disclosure Form*, not the hard copy form submitted with its protest.

Statement of Bidder/Vendor Ownership
STATE OF NEW JERSEY - DIVISION OF PURCHASE AND PROPERTY - OWNERSHIP DISCLOSURE FORM
P3DDERDDAY P3DDERDDAG
PART 1 PLEASE COMPLETE THE QUESTIONS BELOW BY CHECKING EITHER THE "FES" OR THO" BOX
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Moreover, a review of the 10 other files which comprised OraSure's Proposal does not reveal a completed and signed *Ownership Disclosure Form*.

As noted in RFP § 4.4.1.2.1 above, Bidders using *NJSTART* to submit a Proposal 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, OraSure did not complete the Ownership Disclosure category.



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

The *NJSTART* system does not prevent a Bidder from submitting a Proposal 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 Proposal, are uploaded into *NJSTART* necessarily and appropriately rests solely with the Bidder. RFP § 1.4.2 *Vendor {Bidder} Responsibility*. Here, unfortunately, although it may have been inadvertent, OraSure submitted a Proposal without the *Ownership Disclosure Form* being completed and signed as required.

Notwithstanding OraSure's interest in competing for this procurement, to allow Continental OraSure to submit a 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 Proposal. However, in light of the findings set forth above, I have no choice but to uphold the Proposal Review Unit's Notice of Proposal Rejection issued to OraSure. 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 company with *NJSTART* at www.njstart.gov, the State of New Jersey's new eProcurement system.

Sincerely,

Maurice A. Griffin Acting Director

MAG: RUD

c: J. Kerchner

K. Thomas C. Murphy A. Nelson D. Rodriguez