



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
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September 21, 2021

Via Electronic Mail Only robin@stewsautobody.com

Robin Klimko
Stew's Auto Body
276 West Washington Ave.
Washington, NJ 07882

Re: I/M/O Bid Solicitation #20DPP00539 Stew's Auto Body
Protest of Notice of Intent to Award
T0704 Vehicle Collision Repairs for the Department of the Treasury and State Police

Dear Ms. Klimko:

This final agency decision is in response to your email of September 2, 2021, on behalf of Stew's Auto Body (Stew's), which was received by the Division of Purchase and Property's (Division) Hearing Unit.¹ In that email, Stew's protests the August 18, 2021, Notice of Intent to Award (NOI) issued by the Division's Procurement Bureau (Bureau), questioning why it was not listed for an award. Stew's requests that the Division review the matter and that it be considered for an award.

By way of background, on February 8, 2021, the Bureau issued Bid Solicitation #20DPP00539 (Bid Solicitation) on behalf of the Department of the Treasury - Bureau of Transportation Services and the New Jersey State Police. Bid Solicitation §1.1 *Purpose and Intent*. The purpose of the Bid Solicitation was to solicit Quotes for vehicle collision repair services. *Ibid*. It is the State's intent to award Master Blanket Purchase Orders (Blanket P.O.s) to those responsible Vendors {Bidders} whose Quotes, conforming to this Bid Solicitation are most advantageous to the State, price and other factors considered. *Ibid*.

¹ As stated in the August 18, 2021, NOI,

In accordance with the Division's administrative regulations, N.J.A.C. 17:12-3.3 Protest Procedures, the protest period end[ed] at 4:00 pm on September 1, 2021. Letters of Protest [were to] be received by the protest period end date submitted by email to dpp.protest@treas.nj.gov.

Stew's submitted its protest at 3:49 pm on September 1, 2021, to the incorrect email address, ddp.protest@tres.nj.gov. Stew's resent the protest to the correct email address, dpp.protest@treas.nj.gov, on September 2, 2021. There were no attachments to the protest email.

On March 19, 2021, the Bureau issued Bid Amendment #1 to the subject Bid Solicitation. This Bid Amendment #1 provided answers to questions received from potential Vendors {Bidders}, and included a Revised Bid Solicitation, a Revised State-Supplied Price Sheet, and a list of all attendees of the Optional Pre-Quote Conference.

On March 30, 2021, the Division's Proposal Review Unit opened twenty-eight Quotes which were 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 Stew's for failing to submit a completed *Ownership Disclosure Form* with its Quote. In response to the Notice of Proposal Rejection, on April 8, 2021, Stew's sent a protest email to the Division's Hearing Unit stating:

Please accept our apologies, in filling out our bid application, somehow our attachment which was filled out, got sent over blank, enclosed is the correct file. Please accept this corrected form as the completed information need for our bid.

With the protest, Stew's included the completed *Ownership Disclosure Form*. On April 13, 2021, the Division issued a final agency decision on the merits of that protest, ultimately sustaining the rejection of Stew's Quote. The Division reasoned that allowing Stew's to submit the *Ownership Disclosure Form* after bid opening would violate the Legislative requirement outlined in N.J.S.A. 52:25-24.2.

The Division's Proposal Review Unit then released the Quotes to the Bureau for review and evaluation consistent with Bid Solicitation Section 6.7 *Evaluation Criteria*. The Bureau completed its review and issued a recommendation report indicating the Vendors {Bidders} to be awarded Blanket P.O.s. The Bureau subsequently issued the NOI on August 18, 2021.

On September 2, 2021, Stew's submitted a protest of the Bureau's NOI. Specifically, Stew's states:

When we did our bid, all of our paper work was scanned and completed, so we sent it forward, then we received notice that the ownership disclosure was missing. I then rescanned and resent it. On or about March 19, 2021 we received email stating that our amendment was received, so now we find out we were not awarded a bid and we are wondering why. since the paper was received we are asking to please be reconsidered for the contract.


In consideration of Stew's renewed protest dated September 1, 2021, (but received September 2, 2021), the Division has again reviewed the record of this procurement, including the Bid Solicitation, Stew's Quote and two protests, the relevant statutes, regulations and case law. The review of the record has provided the Division with the information necessary to determine the facts of this matter and to render an informed final agency decision on the merits of the September 1, 2021, protest.

As noted in the April 13, 2021 final agency decision, the Division's administrative regulations establish certain requirements that must be met in order for a Quote to be accepted. If the requirements are not met, a Quote must be rejected to maintain the equal footing of all Vendors {Bidders} and to ensure the integrity of the State's bidding process. The regulations provide in relevant part that "the bidder's proposal shall² . . . [c]ontain all RFP-required certifications, forms, and attachments, completed and signed as required." N.J.A.C. 17:12-2.2(a), emphasis added.

² "Shall - Denotes that which is a mandatory requirement." Bid Solicitation Section 2.2 *General Definitions*.

The Bid Solicitation for the subject procurement states in pertinent part that a “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 as non-responsive.” Bid Solicitation § 4.4.1.2 *NJ Standard Bid Solicitation Forms Required With The Quote*. Among those forms required to be submitted with the Quote is the *Ownership Disclosure Form*. As part of the Bid Solicitation documents, and to ease the Vendor’s {Bidder’s} compliance with the statutory requirements, the Division provides a copy of the *Ownership Disclosure Form* to be filled out and completed by the Vendor {Bidder} and submitted with its Quote.

A review of the record of this procurement reveals that on March 30, 2021, Stew’s submitted Quote No. 00005518. Stew’s did upload the *Ownership Disclosure Form* with the Quote. However, as shown on the screenshot below, the *Ownership Disclosure Form* was blank, but for the Bid Solicitation number which had been pre-filed in by the Bureau prior to posting the *Ownership Disclosure Form* to *NJSTART* with the other Bid Solicitation documents.

	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
OWNERSHIP DISCLOSURE FORM	
BID SOLICITATION #: <u>20DPP00539</u> VENDOR {BIDDER}: _____	
<small>ALL PARTIES ENTERING INTO A CONTRACT WITH THE STATE ARE REQUIRED TO PROVIDE THE INFORMATION REQUESTED PURSUANT TO <u>N.J.S.A. 52:25-24.2</u>.</small> <small>PLEASE NOTE THAT IF THE VENDOR/BIDDER IS A NON-PROFIT ENTITY, THIS FORM IS NOT REQUIRED.</small>	
PART 1	
Are there any individuals, partners, members, stockholders, corporations, partnerships, or limited liability companies owning a 10% or greater interest in the Vendor {Bidder}?	YES <input type="checkbox"/> NO <input type="checkbox"/>
<small>If you answered, "YES" above, you must disclose the following: (a) the names and addresses of all stockholders in the corporation who own 10 percent or more of its stock, of any class; (b) all individual partners in the partnership who own a 10 percent or greater interest therein; or, (c) all members in the limited liability company who own a 10 percent or greater interest therein.</small>	
NAME _____ ADDRESS 1 _____ ADDRESS 2 _____ CITY _____ STATE _____ ZIP _____	
NAME _____ ADDRESS 1 _____ ADDRESS 2 _____ CITY _____ STATE _____ ZIP _____	
NAME _____ ADDRESS 1 _____ ADDRESS 2 _____ CITY _____ STATE _____ ZIP _____	
NAME _____ ADDRESS 1 _____ ADDRESS 2 _____ CITY _____ STATE _____ ZIP _____	
NAME _____ ADDRESS 1 _____ ADDRESS 2 _____ CITY _____ STATE _____ ZIP _____	
<small>Attach Additional Sheets If Necessary.</small>	

As an alternative to the submission of the *Ownership Disclosure Form*, as noted in Bid Solicitation Section 4.4.1.2.1, 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. With respect to ownership, Vendors {Bidders} are able to select from the following descriptors:

Category: Ownership Disclosure

Description: N.J.S.A. 52:25-24.2 requires disclosure of the names and addresses of those individuals, partnerships and/or corporations owning a 10% or greater interest in the bidding entity ("interest owners"). Further, if any of these interest owners is itself a partnership or corporation, you must disclose the names and addresses of the interest owners of that partnership or corporation.

Please select at most one category value

Select

- The bidder is a non-profit entity and is exempt from the ownership disclosure requirement. See Disclosure of Non-Profit Officers and Directors below. (No Ownership Disclosure form is required.)
- There are no individuals, partnerships or corporations with a 10% or greater interest in the bidding entity, therefore the bidder is exempt from the ownership disclosure requirement. (No Ownership Disclosure form is required.)
- Neither statement is applicable. A current, true and complete Statement of Bidder Ownership on the attached form has been or will be uploaded to the vendor profile prior to the submission deadline and is intended to accompany the bidder's submission.

Stew's did complete the Ownership Disclosure category as required; however, the response provided required that Stew's upload a completed *Ownership Disclosure Form* to its **NJSTART** Vendor profile or submit the completed *Ownership Disclosure Form* with its Quote.

Category: Ownership Disclosure

Description: N.J.S.A. 52:25-24.2 requires disclosure of the names and addresses of those individuals, partnerships and/or corporations owning a 10% or greater interest in the bidding entity ("interest owners"). Further, if any of these interest owners is itself a partnership or corporation, you must disclose the names and addresses of the interest owners of that partnership or corporation.

Neither statement is applicable. A current, true and complete Statement of Bidder Ownership on the attached form has been or will be uploaded to the vendor profile prior to the submission deadline and is intended to accompany the bidder's submission.

As shown in the screenshot below, Stew's did not upload any attachments to its **NJSTART** Vendor profile.

Vendor Profile - Stews Auto body

Organization Information Users Address Commodity Codes and Services Regions Terms & Categories **Attachments** Vendor Performance

Attachments Information

No Attachments found for this vendor.

Forms

No Form Attachments

Close Window

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Accordingly, the Division's Proposal Review Unit issued a Notice of Proposal Rejection to Stew's for failing to submit a completed *Ownership Disclosure Form* with the Quote. On April 13, 2021, the Division issued a final agency decision which sustained the Notice of Proposal Rejection.

In the September 1, 2021, email, Stew's protests the Bureau's NOI. The September 1, 2021, email acknowledges that Stew's Quote was incomplete (by omitting the *Ownership Disclosure Form*), stating that after it "received notice that the ownership disclosure was missing" the missing document was "rescanned and resent". Stew's inaccurately states that "[o]n or about March 19, 2021, [Stew's] received email stating that our amendment was received". The Division has no record of a communication with Stew's on or about March 19, 2021, related to the submission of an amended document. The only communication with Vendors {Bidders} on this procurement on March 19, 2021 was the posting of Bid Amendment #1. This was not a confirmation of having received any documents or material from Stew's. In fact, the issuance of Bid Amendment #1 predates not only the submission of Stew's *Ownership*

Disclosure Form with its April 8, 2021, protest, but also the submission of Stew's Quote, which was uploaded to [NJSTART](#) on March 29-30, 2021.³


In each of its two protests, Stew's acknowledges that the *Ownership Disclosure Form* submitted with the Quote was incomplete and requests that the Division accept the *Ownership Disclosure Form* submitted on April 8, 2021, (with the first protest). Allowing Stew's to submit the completed *Ownership Disclosure Form* after the Quote opening date would result in an impermissible change or correction to its Quote, which the Division cannot allow as doing so would be contrary to the Court's holding in *In re Protest of Award of On-Line Games Prod. & Operation Servs. Contract*, Bid No. 95-X-20175, 279 N.J. Super. 566, 597 (App. Div. 1995) (holding that "in clarifying or elaborating on a proposal, a bidder explains or amplifies what is already there. In supplementing, changing or correcting a proposal, the bidder alters what is there. It is the alteration of the original proposal which was interdicted by the RFP".)

The [NJSTART](#) system does not prevent a Vendor {Bidder} from submitting a Quote without all of the required forms and documents completed and/or attached as mandated by the specifications. The responsibility for ensuring that all necessary forms and other submittals, are completed and uploaded into [NJSTART](#) necessarily and appropriately rests solely with the Vendor {Bidder}. Bid Solicitation § 1.4.2 *Vendor {Bidder} Responsibility*. Here, unfortunately, Stew's submitted a Quote without a completed *Ownership Disclosure Form* attached.

Notwithstanding Stew's interest in competing for this procurement, to allow Stew's to submit the *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. Only the New Jersey Legislature can change a requirement it has mandated. 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. In light of the findings set forth above, I sustain the rejection of Stew's Quote, and the Bureau's August 18, 2021, Notice of Intent to Award.

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. I encourage you to log into [NJSTART](#) to select any and all commodity codes for procurements you may be interested in submitting a Quote for so that you may receive notification of future bidding opportunities. This is my final agency decision on this matter.

Sincerely,


Maurice A. Griffin
Acting Director

MAG: RUD/EEL

c. R. Regan
K. Popso
K. Tran

³ Stew's sent an additional email to [NJSTART](#) on April 7, 2021, "looking to confirm" an extension of the Quote opening date beyond March 30, 2021. The [NJSTART](#) vendor administrator replied the same day that Bid Solicitation #20DPP00539 was opened on March 30, 2021, and that the award was in process.