



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR

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April 10, 2017

Via Electronic Mail [PeterNVaeth@maximus.com] and USPS Regular Mail

Peter Vaeth, Vice President, Contracts and Compliance
MAXIMUS Federal Services, Inc.
1891 Metro Center Drive
Reston, VA 20190

Re: Protest of Notice of Proposal Rejection
Solicitation #17DPP00101: T2471 – Arbitration and Mediation Services, Claims Arbitration

Dear Mr. Vaeth:

This letter is in response to your correspondence dated April 4, 2017, on behalf of MAXIMUS Federal Services, Inc. (MAXIMUS) received by the Division of Purchase and Property (Division) on April 5, 2017. In that letter, MAXIMUS protests the Notice of Proposal Rejection issued by the Division's Proposal Review Unit for Solicitation #17DPP00101: T2471 – Arbitration and Mediation Services, Claims Arbitration. The record of this procurement reveals that MAXIMUS' Quote {Proposal} (hereinafter "proposal") was rejected for failing to submit the full *Ownership Disclosure Form* with its proposal.

In consideration of MAXIMUS' protest, I have reviewed the record of this procurement, including the Bid Solicitation {Request for Proposal} (hereinafter "RFP"), MAXIMUS' 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 February 2, 2017 the Division's Procurement Bureau (Bureau) issued the above referenced RFP on behalf of the Division of Banking and Insurance (DOBI), to solicit proposals from qualified Vendor {Bidders} (hereinafter "bidder") to provide arbitration services as required by the Health Claims Authorization, Processing and Payment Act. RFP § 1.1 *Purpose and Intent*. The intent of the RFP is to award one Master Blanket Purchase Order {Contract} (hereinafter "contract") to that responsible bidder whose proposal, conforming to this RFP is most advantageous to the State, price and other factors considered. *Ibid.* This solicitation was a procurement of services similar to those provided under T2471, which currently expires on June 14, 2017. RFP § 1.2 *Background*.

On March 16, 2017, 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 MAXIMUS' proposal did not contain the full *Ownership Disclosure Form* as required by the RFP. Accordingly, on March 28, 2017, the Proposal Review Unit issued a Notice of Proposal Rejection.

On April 4, 2107, MAXIMUS wrote to the Division stating in part:

Please be advised that MAXIMUS Federal Services did, in fact, provide the Ownership Disclosure Form with the proposal and it was submitted timely prior to the proposal due date. This form is attached for your examination. Alternatively, it is also located on the State of New Jersey's NJSTART bidding portal.

With the protest, MAXIMUS submitted a copy of the completed *NJSTART Ownership Disclosure Short Form* that had been uploaded to its *NJSTART* profile.

The subject solicitation was comprised of the RFP and other documents, including the *Ownership Disclosure Form* which is specifically addressed in RFP § 4.4.1.2.1 *Ownership Disclosure Form* which states in pertinent part:

4.4.1.2.1 OWNERSHIP DISCLOSURE FORM

Pursuant to N.J.S.A. 52:25-24.2, in the event the Vendor {Bidder} is a corporation, partnership or sole proprietorship, the Vendor {Bidder} must complete an Ownership Disclosure Form.

...

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).

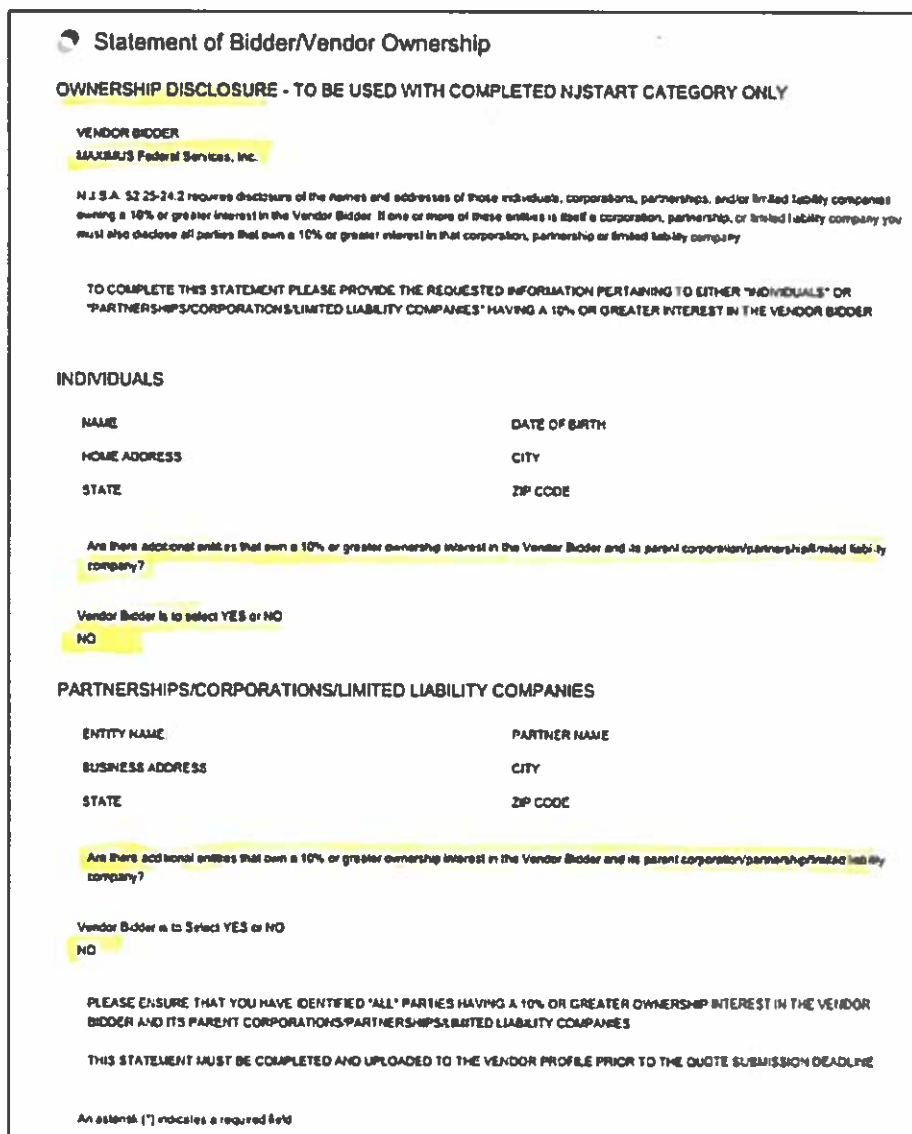
The requirement to disclose ownership information with a proposal is dictated by N.J.S.A. 52:25-24.2 which states in part:

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, ... 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.

As interpreted by our courts, “[t]he obvious purpose of the statute is to prevent favoritism by denying an individual the use of a corporate or partnership name to hide his or her true identity, when knowledge of this identity could affect public bidding.” Schlumberger Industries, Inc. v. Borough of Avalon, 252 N.J. Super. 202, 208 (App. Div. 1991).

A review of the record of this procurement reveals that in submitting its proposal, MAXIMUS had not checked any box on the Terms and Categories Tab within its **NJSTART** profile for ownership disclosure; therefore, MAXIMUS should have completed and submitted the full *Ownership Disclosure Form* with its proposal. However, MAXIMUS instead completed the **NJSTART** *Ownership Disclosure Short Form*, and attached the same to its **NJSTART** profile. See the image below:

The image shows a screenshot of a web form titled "Statement of Bidder/Vendor Ownership". The form is for "OWNERSHIP DISCLOSURE - TO BE USED WITH COMPLETED NJSTART CATEGORY ONLY". The vendor bidder is identified as "MAXIMUS Federal Services, Inc.". The form includes instructions from N.J.S.A. 17:27-24.2 regarding ownership disclosure. It has sections for "INDIVIDUALS" and "PARTNERSHIPS/CORPORATIONS/LIMITED LIABILITY COMPANIES", each with a table for name, address, and birth date. There are also checkboxes for "Are there additional entities that own a 10% or greater ownership interest..." and "Vendor Bidder is to select YES or NO". At the bottom, there are instructions to ensure all parties are identified and a note that an asterisk (*) indicates a required field.

Statement of Bidder/Vendor Ownership

OWNERSHIP DISCLOSURE - TO BE USED WITH COMPLETED NJSTART CATEGORY ONLY

VENDOR BIDDER
MAXIMUS Federal Services, Inc.

N.J.S.A. 17:27-24.2 requires disclosure of the names and addresses of those individuals, corporations, partnerships, and/or limited liability companies owning a 10% or greater interest in the Vendor Bidder. If one or more of these entities is itself a corporation, partnership, or limited liability company you must also disclose all parties that own a 10% or greater interest in that corporation, partnership or limited liability company.

TO COMPLETE THIS STATEMENT PLEASE PROVIDE THE REQUESTED INFORMATION PERTAINING TO EITHER "INDIVIDUALS" OR "PARTNERSHIPS/CORPORATIONS/LIMITED LIABILITY COMPANIES" HAVING A 10% OR GREATER INTEREST IN THE VENDOR BIDDER

INDIVIDUALS

NAME	DATE OF BIRTH
HOME ADDRESS	CITY
STATE	ZIP CODE

Are there additional entities that own a 10% or greater ownership interest in the Vendor Bidder and its parent corporation/partnership/limited liability company?
NO

Vendor Bidder is to select YES or NO
NO

PARTNERSHIPS/CORPORATIONS/LIMITED LIABILITY COMPANIES

ENTITY NAME	PARTNER NAME
BUSINESS ADDRESS	CITY
STATE	ZIP CODE

Are there additional entities that own a 10% or greater ownership interest in the Vendor Bidder and its parent corporation/partnership/limited liability company?
NO

Vendor Bidder is to select YES or NO
NO

PLEASE ENSURE THAT YOU HAVE IDENTIFIED "ALL" PARTIES HAVING A 10% OR GREATER OWNERSHIP INTEREST IN THE VENDOR BIDDER AND ITS PARENT CORPORATIONS/PARTNERSHIPS/LIMITED LIABILITY COMPANIES

THIS STATEMENT MUST BE COMPLETED AND UPLOADED TO THE VENDOR PROFILE PRIOR TO THE QUOTE SUBMISSION DEADLINE

An asterisk (*) indicates a required field

Upon receipt of MAXIMUS' protest, on April 5, 2017, the Division's Proposal Review Unit again reviewed MAXIMUS' Terms and Categories Tab and noted that at some point after the submission of its proposal and the issuance of the Notice of Proposal Rejection, MAXIMUS amended the Terms and Categories Tab to complete the category for ownership disclosure.¹

In order for MAXIMUS' proposal to be considered responsive, the inclusion of the *NJSTART Ownership Disclosure Short Form* without checking a box on the Terms and Categories Tab within the *NJSTART* profile would have to be deemed as a minor irregularity. Minor irregularities can be waived pursuant to the authority vested in N.J.A.C. 17:12-2.7(d) and RFP Section 1.4.10, *Proposal Acceptances and Rejections*. The New Jersey courts have developed a two-prong test to consider the materiality of a deviation and whether the deviation can be waived. In In re Protest of the Award of the On-Line Games Prod. & Servs. Contract, Bid No. 95-X-20175, 279 N.J. Super. 566, 594 (App. Div. 1995), the Appellate Division affirmed the criteria used by the Law Division in Twp. of River Vale v. Longo Constr. Co., 127 N.J. Super. 207, 216 (Law Div. 1974). In River Vale, the Court ruled that in considering the materiality of a deviation or exception and whether it can be waived, one must determine

first, whether the effect of a waiver would be to deprive the [State] 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 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.

[Ibid.]

I have considered MAXIMUS' deviation through the lens of the River Vale criteria, and find that the failure to check a box on the Terms and Categories Tab does not rise to the level of a material deviation. Because MAXIMUS submitted the *NJSTART Ownership Disclosure Short Form* with its proposal, it fulfilled the purpose of the statute and was in compliance with specified requirements. Inclusion of the *NJSTART Ownership Disclosure Short Form* is evidence of MAXIMUS' intent to comply with the ownership disclosure requirements of the statute. Further, a review of MAXIMUS' *NJSTART Ownership Disclosure Short Form*, which was included in its *NJSTART* profile at the time of Proposal opening, reveals that MAXIMUS did not have individuals, corporations, partnerships and/or limited liability companies owning a 10% or greater interest. First, the State is not deprived of its assurance that the contract will be entered into, performed and guaranteed according to its specified requirements; and, second, because all bidders were required to provide ownership disclosure information, MAXIMUS will not be placed in a position of advantage over other bidders.

Therefore, I am overturning the decision of the Proposal Review Unit to reject MAXIMUS' proposal for the above referenced RFP. This is my final agency decision on this matter.

¹ In conducting its initial review of the proposal submitted by MAXIMUS, the Proposal Review Unit took screenshots of the Terms and Categories Tab within MAXIMUS' *NJSTART* profile.

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: P. Michaels
M. Tagliaferri
A. Nelson
D. Rodriguez