



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
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January 6, 2016

Via Electronic [bquick@hamiltonsorter.com] and USPS Regular Mail

Brad Quick
Workstream, Inc. d/b/a/ Hamilton Sorter
3158 Production Dr.
Fairfield, OH 45014

Re: Protest of Notice of Proposal Rejection
RFP 16-X-24117 Mailroom Equipment, Accessories, Supplies & Maintenance (T-0200)

Dear Mr. Quick:

This letter is in response to your December 28, 2015, email to the Hearing Unit of the Division of Purchase and Property (Division), on behalf of Workstream, Inc. d/b/a/ Hamilton Sorter (Hamilton Sorter), in which Hamilton Sorter protests the Proposal Review Unit's Notice of Proposal Rejection for RFP 16-X-24117 Mailroom Equipment, Accessories, Supplies & Maintenance. The record of this procurement reveals that Hamilton Sorter's proposal was rejected for failing to include a *Disclosure of Investment Activities in Iran* form.

In consideration of this protest, I have reviewed the record of this procurement, including the RFP, Hamilton Sorter's eBid proposal, the relevant statutes, regulations, and case law. This review 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.

By way of background, on November 18, 2015, the Bureau issued the subject Request for Proposal (RFP) on behalf of State Agencies and Cooperative Purchasing Participants to solicit proposals for mailroom equipment supplies and maintenance. It is the intent of the Bureau to award contracts to the responsible bidders whose proposals, conforming to this RFP, are most advantageous to the State, price and other factors considered. (RFP § 1.1 *Purpose and Intent*). On December 16, 2015, the Division opened the proposals received by the submission deadline of 2:00 p.m. After conducting the intake review of the proposals submitted, the Proposal Review Unit found that Hamilton Sorter failed to submit the *Disclosure of Investment Activities in Iran* form. Accordingly, the Proposal Review Unit issued a Notice of Proposal Rejection. In response to the Notice of Proposal Rejection, on December 28, 2015, Hamilton Sorter submitted a protest letter to the Division stating:

We received a letter on 12/28/15 informing us that we were missing required RFP certifications, forms, and attachments, as noted: Disclosure of Investment Activities in Iran. In the e-mail attachment "Solicitation 16-X-24117" we have included the documents that were uploaded on 12/16/15 for submittal. We show all documents were uploaded and checked off the check list. We also have these documents on file with the

State of New Jersey from 4 previous requests in the last four months regarding our Mailroom contract and our EIN number change. We are therefore requesting that our proposal be reviewed and considered for the Mailroom Equipment Contract a contract we have held for over 10 years.

With its protest and as proof of its properly completed proposal submission, Hamilton Sorter submitted a completed and signed *Disclosure of Investment Activities in Iran* form and a screenshot of the eBid Proposal Status page. Hamilton Sorter requests that its proposal be reviewed and considered by the Division.

The above referenced solicitation was comprised of the RFP and other documents, one of which was the three-part document entitled *NJ Standard RFP Forms*. This document includes three expandable forms, namely an *Ownership Disclosure Form*, a *Disclosure of Investigations and Other Actions Involving Bidder Form*, and a *Disclosure of Investment Activities in Iran* form. These forms are addressed in RFP Section 4.0, *Proposal Preparation and Submission*, which reads as follows:

4.4.1.2 NJ STANDARD RFP FORMS

One of the downloadable RFP documents is titled NJ STANDARD RFP FORMS. It is comprised of three separate forms, two of which (Ownership Disclosure and Disclosure of Investment Activities in Iran) discussed below, must be completed, signed and submitted with the bidder's proposal. **The bidder is cautioned that failure to complete, sign and submit either of these two forms will be cause to reject its proposal as non-responsive as noted below.**

...

4.4.1.2.2 DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN FORM

Pursuant to N.J.S.A. 52:32-58, the bidder must utilize this Disclosure of Investment Activities in Iran form to certify that neither the 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 Person or Entities Engaging in Prohibited Investment Activities in Iran and that neither the 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 bidder is unable to so certify, the bidder shall provide a detailed and precise description of such activities as directed in the form. **A bidder's failure to submit the completed and signed form with its proposal will result in the rejection of the proposal as non-responsive and preclude the award of a contract to said bidder.**

[Emphasis added.]

Moreover, pursuant to N.J.A.C. 17:12-2.2, a bidder's proposal must "contain all RFP-required certifications, forms, and attachments, completed and signed as required" or "be subject to automatic rejection." As a courtesy to all bidders, the Division provided a *Proposal Checklist* as an accompaniment to the RFP. The relevant portion of the checklist includes the following:

N.J. Department of the Treasury Division of Purchase and Property PROPOSAL CHECKLIST	
Solicitation Number:	16-X-24117
Solicitation Title:	Mailroom Equipment & Maintenance
<small>This checklist was created as a guide to assist bidders in preparing a complete and responsive proposal. It is only advisory in nature. It is the bidder's responsibility to ensure that all requirements of the RFP have been met.</small>	
FORMS THAT MUST BE SUBMITTED WITH YOUR PROPOSAL	
<input type="checkbox"/>	RFP Signatory Page with physical signature or PIN (PIN is for eBid submission ONLY)
<input type="checkbox"/>	Completed Price Sheets as instructed in Section 4.4.5 of the RFP
<input type="checkbox"/>	Completed and signed Ownership Disclosure Form*
<input type="checkbox"/>	Completed and signed Disclosure of Investments in Iran Form*
<input type="checkbox"/>	Exhibit 1 Pricing Spreadsheet 16 X 24117
<input type="checkbox"/>	Subcontractor Utilization Plan (if subcontracting is being proposed)

* The Ownership Disclosure, Disclosure of Investigations and Other Actions Involving Bidder, and the Disclosure of Investments in Iran forms MUST each contain either a physical or typed signature (typed signatures are only acceptable for eBid submissions). The forms are found in the Standard RFP Forms Packet, which can be downloaded at http://www.state.nj.us/treasury/purchase/forms_StandardRFPForms.pdf

Further, N.J.S.A. 52:32-58 requires that “a State agency shall¹ require a person or entity that submits a bid or proposal 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 [the act] as a person or entity engaging in investment activities in Iran...” (Emphasis added.) As such, the submission of a completed and signed *Disclosure of Investment Activities in Iran* Form as part of a bidder’s proposal was required.

The general purpose of the public bidding laws is “to guard against favoritism, improvidence, extravagance and corruption; their aim is to secure for the public the benefits of unfettered competition.” Barrick v. State, 218 N.J. 247, 258 (2014). Therefore, “[i]t is firmly established in New Jersey that material conditions contained in bidding specifications may not be waived. The New Jersey courts have developed a two-prong test to consider “whether a specific noncompliance constitutes a substantial and hence non-waivable irregularity.” Twp. of River Vale v. R. J. Constr. Co., 127 N.J. Super. 207, 216 (Law Div. 1974). The two-prong test requires a determination of

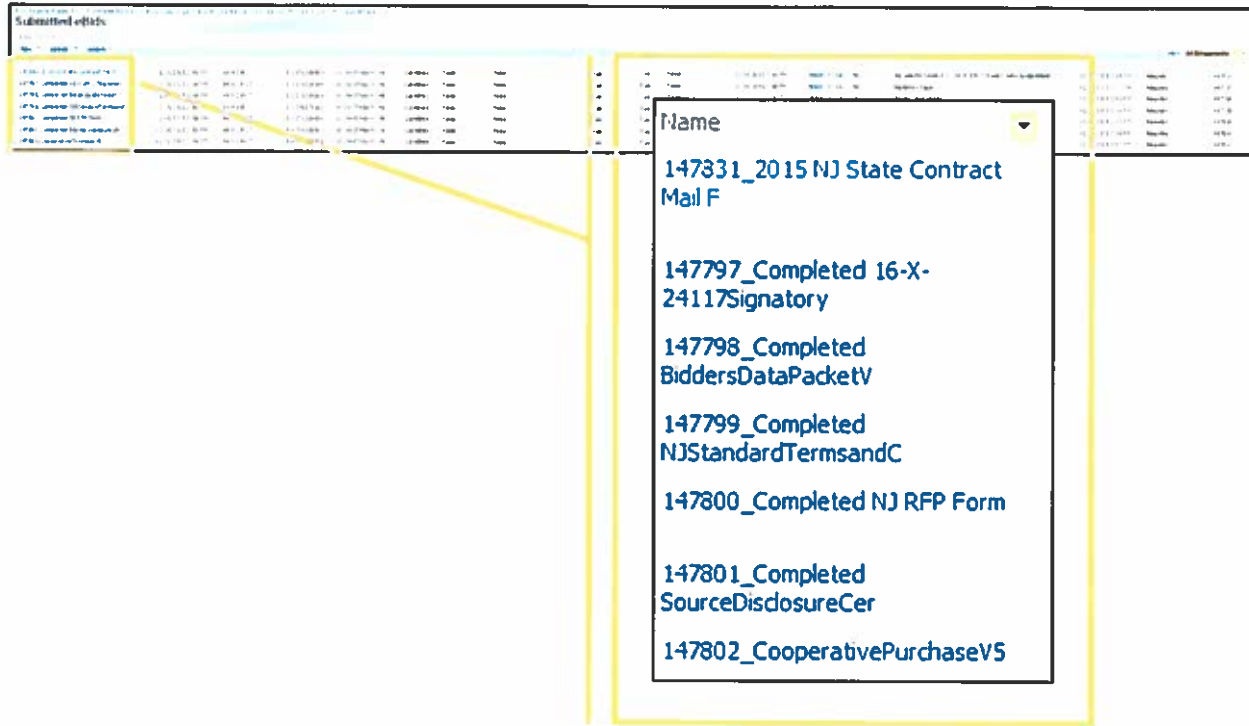
first, whether the effect of a waiver would be to deprive the [government entity] of its assurance that the contract will be entered into, performed and guaranteed according to its specified requirements, and second, whether it is of such a nature that its waiver would adversely affect competitive bidding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

[Meadowbrook Carting Co., Inc. v. Borough of Island Heights, 138 N.J. 307, 315 (1994) (internal quotations omitted) (affirming the two-prong test established in River Vale, *supra*, 127 N.J. Super. 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. Here, submission of the *Disclosure of Investment Activities in Iran* form is mandatory and non-waivable.

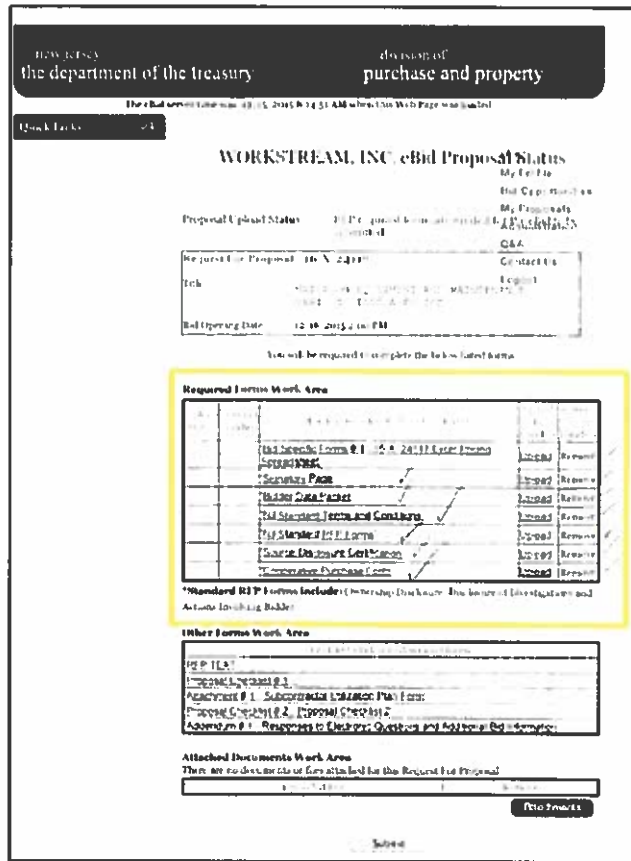
¹ **Shall or Must** – Denotes that which is a mandatory requirement. Failure to meet a mandatory material requirement will result in the rejection of a proposal as non-responsive. (RFP § 2.1 *General Definitions*)

The record of this procurement indicates that Hamilton Sorter submitted a proposal through the Division's eBid system by the proposal submission deadline. Hamilton Sorter contends that it uploaded a completed and signed *Disclosure of Investment Activities in Iran* form to the eBid system along with the other documents required for submittal.

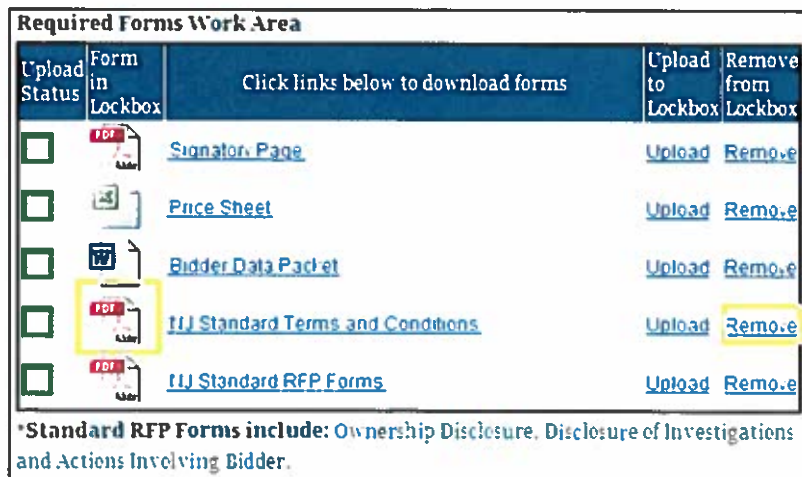


However, a review of all of the document files uploaded by Hamilton Sorter to eBid (see image above) reveals that Hamilton Sorter did not upload the *Disclosure of Investment Activities in Iran* form. Specifically, in the file named "147831_2015 NJ State Contract Mail F" Hamilton Sorter uploaded an excel price sheet. In the file named "147797_Completed 16-X-24117Signatory" Hamilton Sorter uploaded a pdf file of the *Signatory Page*. In the file named "147798_Completed BiddersDataPacketV" Hamilton Sorter uploaded a pdf file of the *Bidder Data Sheet*. In the file named "147799_Completed NJStandardTermandC" Hamilton Sorter uploaded a pdf file of the *State of New Jersey Standard Terms and Conditions*. In the file named "147800_Completed NJ RFP Form" Hamilton Sorter uploaded a pdf file of the *Ownership Disclosure Form*. In the file named "147801_Completed SourceDisclosureCer" Hamilton Sorter uploaded a pdf file of the *Source Disclosure Form*. Finally, in the file named "147802_CooperativePurchaseV5" Hamilton Sorter uploaded a pdf file of the *Cooperative Purchasing Form*. None of the files uploaded by Hamilton Sorter that comprised its eBid proposal contained the *Disclosure of Investment Activities in Iran* form.

With its protest, Hamilton Sorter included a screenshot of its “eBid Proposal Status” page asserting “[w]e show all documents were uploaded and checked off the checklist.”



While Hamilton Sorter did place physical checkmarks next to each item listed in the “Required Forms Work Area,” this screenshot (see image above) does not support Hamilton Sorter’s argument that its forms were all properly uploaded. First, as shown below, when forms have been uploaded, a document icon appears in the “Form in Lockbox” cell and the “Remove” button in the “Remove for Lockbox” cell becomes highlighted (turning from Remove to [Remove](#)).



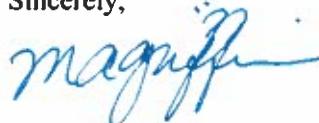
In the screen shot included in Hamilton Sorter’s protest, there are no document icons in the “Form in Lockbox” cell and “Remove” button in the “Remove for Lockbox” cell is not highlighted.

Further, I note that the eBid system accepts any document a bidder uploads in a required document field; it cannot differentiate what documents are uploaded. The responsibility for the contents of the proposal submission and a specific file uploaded necessarily and appropriately rests with the bidder. Here, Hamilton Sorter did not upload *Disclosure of Investment Activities in Iran* form with its proposal.² Because a “bidder’s failure to submit the completed and signed form with its proposal will result in the rejection of the proposal as non-responsive and preclude the award of a contract to said bidder,” Hamilton Sorter’s proposal was properly rejected by the Proposal Review Unit for failing to include the *Disclosure of Investment Activities in Iran* form with its proposal.

This is an unfortunate situation; however, it would not be in the State’s best interest to allow a bidder who did not provide the required information to be eligible to participate in the procurement process. Such acceptance would un-level the bidder’s playing field as the State received responsive proposals in which all necessary documents and information were provide as required. The deficiency at issue cannot be remedied after the proposal submission deadline as acceptance of Hamilton Sorter’s proposal under these circumstances would be contrary to the provisions of the governing statutes. In light of the finding set forth above, I must deny your request for eligibility to participate in the competition for the subject contract. This is the Division’s 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 company with [NJSTART](http://www.njstart.gov) at www.njstart.gov, the State of New Jersey’s new eProcurement system.

Sincerely,



Maurice A. Griffin
Chief Hearing Officer

MAG: RUD

c: B. Gallagher
J. Signoretta
G. Olivera
A. Nelson
D. Rodriguez

² Hamilton Sorter is able to log into its eBid account and review the documents that it uploaded for its proposal submission.