



## State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
OFFICE OF THE DIRECTOR  
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January 24, 2018

Via Electronic Mail [vrk@gyrus.com] and USPS Regular Mail

Viren Kapadia, President and CEO  
Gyrus Systems  
5400 Glenside Drive, Suite B  
Henrico, VA 23228

Re: I/M/O Bid Solicitation #17DPP00148 Gyrus Systems  
Protest of Notice of Proposal Rejection  
T2985 – Learning Management Systems

Dear Mr. Kapadia:

This letter is in response to your email of January 23, 2018, on behalf of Gyrus Systems, Inc. (hereinafter “Gyrus”) which was received by the Division of Purchase and Property’s (hereinafter “Division”) Hearing Unit. In that correspondence, Gyrus protests the Notice of Proposal Rejection issued by the Division’s Proposal Review Unit for Bid Solicitation #17DPP00148: T2985 Learning Management Systems (hereinafter “Bid Solicitation”). The record of this procurement reveals that Gyrus’ Quote was rejected because Gyrus did not submit a completed and signed *Ownership Disclosure Form* with its Quote.

In consideration of Gyrus’ protest, I have reviewed the record of this procurement, including the Bid Solicitation, Gyrus’ Quote, 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 November 1, 2017, the Division’s Procurement Bureau (hereinafter “Bureau”) issued the Bid Solicitation on behalf of the Civil Service Commission (hereinafter “CSC”), to solicit Quotes for a Learning Management System (hereinafter “LMS”) that will manage and administer training activities for various employee and client populations, including course registrations, scheduling, tracking and reporting for all online and instructor led training. Bid Solicitation § 1.1 *Purpose and Intent*. It is the State’s intent to award a Master Blanket Purchase Order (hereinafter “Blanket P.O.”) to that responsible Vendor {Bidder}, whose Quote, conforming to the Bid Solicitation, is most advantageous to the State, price, and other factors considered. Ibid.

On January 12, 2018, the Division’s Proposal Review Unit opened four Quotes received by the submission deadline of 2:00 pm eastern time. A review of the Quote submitted by Gyrus revealed that Gyrus did not submit a completed and signed *Ownership Disclosure Form* with its Quote as required. Therefore, the Proposal Review Unit issued a Notice of Proposal Rejection.

On January 23, 2018, Gyrus wrote to the Division's Hearing Unit stating:

In our response to solicitation # 17DPP00148 Gyrus Systems made a mistake of not including page # 2 of Ownership Disclosure Form. Attached you will find the document which was scanned for this RFP but only one page was include.

We would appreciate if you could give an opportunity to participate in your RFP proposal review process.

The *Ownership Disclosure Form* is a statutorily required document that must be submitted with the Vendor's {Bidder's} Quote. The New Jersey Legislature, in implementing N.J.S.A. 52:25-24.2, mandated the requirements that a Vendor {Bidder} must comply with in order to enter into a Blanket P.O. 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.*]

Pursuant to the Division's governing regulations, a Quote must "[c]ontain all [Bid Solicitation]-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 Vendors {Bidders} in preparing and submitting a Quote, the Bid Solicitation advises Vendors {Bidders} to visit the [NJSTART Vendor Support Page](#) and to utilize the available Quick Reference Guides. Specifically, Bid Solicitation Section 1.33 [NJSTART](#) states in pertinent part:

Vendors {Bidders} are strongly encouraged to visit the [NJSTART Vendor Support Page](#), 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 specifically addressed in Bid Solicitation 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 Division's website. This form is also available in NJSTART (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.

[Emphasis added.]

In reviewing Quotes 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. 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, signed and submitted with the Quote. The *Ownership Disclosure Form* is a two page document that requires the Vendor {Bidder} to answer questions on page 1, provide details regarding the responses to the questions posed on pages 1 and 2, and to certify that the information provided is "true and complete" on page 2.

The Division's Hearing Unit's independent review of Gyrus' Quote reveals that Gyrus did not submit a completed and signed *Ownership Disclosure Form* with its Quote. Rather, as shown in the screenshot below, Gyrus only submitted the first page of the *Ownership Disclosure Form* with its Quote.

**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#: T288 VENDOR/BIDDER: Gyrus Systems

**PART 1**  
PLEASE COMPLETE THE QUESTIONS BELOW BY CHECKING EITHER THE "YES" OR THE "NO" BOX. ALL PARTIES ENTERING INTO A CONTRACT WITH THE STATE ARE REQUIRED TO COMPLETE THIS FORM PURSUANT TO N.J.S.A. 52:25-24.2. PLEASE NOTE THAT IF THE VENDOR/BIDDER IS A NON-PROFIT ENTITY, THIS FORM IS NOT REQUIRED.

1. Are there any individuals, corporations, partnerships, or limited liability companies owning a 10% or greater interest in the Vendor/Bidder?  
IF THE ANSWER TO QUESTION 1 IS "NO", PLEASE SIGN AND DATE THE FORM.  
IF THE ANSWER TO QUESTION 1 IS "YES", PLEASE ANSWER QUESTIONS 2 - 4 BELOW.

2. Of those parties owning a 10% or greater interest in the Vendor/Bidder, are any of those parties individuals?  YES  NO

3. Of those parties owning a 10% or greater interest in the Vendor/Bidder, are any of those parties corporations, partnerships, or limited liability companies?  YES  NO

4. If your answer to Question 3 is "YES", are there any parties owning a 10% or greater interest in the corporation, partnership, or limited liability company referenced in Question 3?  YES  NO

IF ANY OF THE ANSWERS TO QUESTIONS 2 - 4 ARE "YES", PLEASE PROVIDE THE REQUESTED INFORMATION IN PART 2 BELOW.

**PART 2**  
PLEASE PROVIDE FURTHER INFORMATION RELATED TO QUESTIONS 2 - 4 ANSWERED AS "YES".  
If you answered "YES" for questions 2, 3, or 4, you must disclose identifying information related to the individuals, corporations, partnerships, and/or limited liability companies owning a 10% or greater interest in the Vendor/Bidder. Further, 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. This information is required by statute.

**INDIVIDUALS**

NAME: VIKEN KAPANIA DATE OF BIRTH: 05/12/1977  
ADDRESS 1: 1230 ELDERBERRY LANE  
ADDRESS 2:  
CITY: WILM ALTON STATE: VA ZIP: 23017

NAME: SUNITA KAPANIA DATE OF BIRTH:  
ADDRESS 1: 1230 ELDERBERRY LANE  
ADDRESS 2:  
CITY: WILM ALTON STATE: VA ZIP: 23017

NAME: \_\_\_\_\_ DATE OF BIRTH: \_\_\_\_\_  
ADDRESS 1: \_\_\_\_\_  
ADDRESS 2: \_\_\_\_\_  
CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

Attach Additional Sheets if Necessary

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Gyrus acknowledges the same in its protest email. In an effort to remedy this deficiency, with its protest, Gyrus attempted to submit the complete *Ownership Disclosure Form* with its protest. Unfortunately, the Division cannot accept a completed and signed *Ownership Disclosure Form* after bid opening as doing so

is contrary to the requirement of the Bid Solicitation.<sup>1</sup> Bid Solicitation § 4.4.1.2.1 *Ownership Disclosure Form*.

As an alternative to the submission of the *Ownership Disclosure Form*, as noted in Bid Solicitation Section 4.4.1.2.1 above, 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. As shown in the screenshot below, Gyrus did not complete the Ownership Disclosure category.

The screenshot displays the 'Maintain Terms and Categories' interface for the vendor 'Gyrus Systems'. It lists several mandatory categories for completion:

- Category 1: Primary Business Function (MANDATORY FIELD)**: Description: Other: Other: Description of Business in this Bid. Yes:  (unchecked)
- Category 2: Business Formation (MANDATORY FIELD)**: Description: Other: Other: Company
- Category 4: Electronic Funds Transfer Certification (MANDATORY FIELD)**: Description: I certify that I am an authorized agent of the vendor referred to and that I hereby authorize the State of NJ to initiate payments to the bank account listed in the information provided. This authority is in full force and effect until the State of NJ receives notification of any changes and in such a manner as to afford the State of NJ a reasonable opportunity to Act.
- Category 8: Tax ID Certification (Substitute W9) (MANDATORY FIELD)**: Description: Under Penalties of Perjury, I certify that (1) The number provided via this registration process is my correct taxpayer ID number AND (2) I am not subject to backup withholding AND (3) I am a U. S. Citizen or a defined U. S. Person for federal tax purposes.
- Category: Disclosure of Investment Activities in Iran**: Description: P. L. 2012, c. 23 requires that an authorized representative of the bidder certify, under penalty of perjury, that the bidder and its parents, subsidiaries and affiliates are not identified on the Department of the Treasury's list of entities engaged in prohibited investment activities in Iran ("Chapter 23 List").
- Category: Disclosure of Investigations and Other Actions Involving Bidder**: Description: Within the past 5 years, you (or any individual or business entity that has been implicated in any criminal or disorderly conduct matter, prohibited from contracting with any governmental agency, or the subject of a criminal involving a public sector client).
- Category: Disclosure of Officers and Directors**: Description: Bidders that are non-profit entities are required to disclose all officers and directors.
- Category: Certification: Business Registration**: Description: This Certification status is updated daily. If your business is not registered, or if your registration is not active, please see the following link.

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

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, including the Quote, are uploaded into **NJSTART** necessarily and appropriately rests solely with the Vendor {Bidder}. Bid Solicitation § 1.4.2 *Vendor {Bidder} Responsibility*. Here, unfortunately, although it may have been inadvertent, Gyrus submitted a Quote without the completed and signed *Ownership Disclosure Form* being submitted as required. Bid Solicitation § 4.4.1.2.1 *Ownership Disclosure Form*.

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 have no choice but to uphold the Proposal Review Unit’s Notice of Proposal Rejection issued to Gyrus. This is my final agency decision on this matter.

<sup>1</sup> Gyrus did not submit both pages of the *Ownership Disclosure Form* with the protest. Rather, Gyrus submitted the first page of the *Ownership Disclosure Form* and the first page of the *Disclosure of Investigation and Other Action Involving the Vendor/Bidder Form*.

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](http://www.njstart.gov), the State of New Jersey's eProcurement system.

Sincerely,



Maurice A. Griffin  
Acting Director

MAG: RUD

c: L. Leonardi  
M. Tagliaferri  
C. Iversen  
A. Nelson  
D. Rodriguez