



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
33 WEST STATE STREET
P. O. BOX 039

TRENTON, NEW JERSEY 08625-0039

<https://www.njstart.gov>

Telephone (609) 292-4886 / Facsimile (609) 984-2575

PHILIP D. MURPHY
Governor

ELIZABETH MAHER MUOIO
State Treasurer

SHEILA Y. OLIVER
Lt. Governor

MAURICE A. GRIFFIN
Acting Director

December 24, 2020

Via Electronic Mail Only frank.defina@vaisala.com

Frank DeFina, Sales Manager – Meteorology
Vaisala, Inc.
10-D Gill Street
Worburn, MA 01801

Re: I/M/O Bid Solicitation #20DPP00589 Vaisala, Inc.
Protest of Notice of Proposal Rejection
T0983 Environmental Testing Instruments, Equipment and Supplies for Air and Water Quality
Testing and Monitoring

Dear Mr. DeFina:

This final agency decision is in response to your email of December 22, 2020, on behalf of Vaisala, Inc. (Vaisala) which was received by the Division of Purchase and Property's (Division) Hearing Unit. In that email, Vaisala protests the Notice of Proposal Rejection issued by the Division's Proposal Review Unit for Bid Solicitation #20DPP00589 - T0983 Environmental Testing Instruments, Equipment and Supplies for Air and Water Quality Testing and Monitoring (Bid Solicitation). The record of this procurement reveals that Vaisala's Quote was rejected for failing to submit the *Ownership Disclosure Form* with its Quote.

By way of background, on October 30, 2020, the Division's Procurement Bureau (Bureau) issued the Bid Solicitation on behalf of State Using Agencies and Cooperative Purchasing Program participants. Bid Solicitation §1.1 *Purpose and Intent*. The purpose of the Bid Solicitation was to solicit Quotes for Environmental Testing Instruments, Equipment and Supplies for Air and Water Quality Testing and Monitoring. *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*.

On December 18, 2020, the Division's Proposal Review Unit opened fifteen 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 Vaisala for failing to submit a completed *Ownership Disclosure Form* with its Quote. In response to the Notice of Proposal Rejection, on December 22, 2020, Vaisala sent an email to the Division's Hearing Unit stating:

Vaisala Inc. was rejected for the bid referenced above. We sent in multiple documents, filled out many state forms and made the requested deadline. In addition, we recently held a similar contract with the state for over five years prior to this. If I understand this correctly, we were rejected because

we forgot to properly fill out the ownership form. Given the nature of our environmental sensors, for use with the state of New Jersey, and the NJ DEP, I kindly ask that you reconsider your decision and allow us to move forward with the state contract. As a Vaisala employee in Woodbridge New Jersey, and veteran, I hope that we can work this out as it appears this was the only issue with our bid. This oversight was my fault and the corrected form is above. This contract allows the NJ DEP to buy direct from Vaisala and lock in prices that will save taxpayers money in the future.

With the protest, Vaisala included the completed *Ownership Disclosure Form*.

In consideration of Vaisala's protest, I have reviewed the record of this procurement, including the Bid Solicitation, Vaisala's Quote and protest, the relevant statutes, regulations and case law. The 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.

The Division's administrative regulations that govern the advertised procurement process establish certain requirements that must be met in order for a Quote to be accepted. Those regulations provide in relevant part that:

- (a) In order to be eligible for consideration for award of contract, the bidder's proposal shall¹ conform to the following requirements or be subject to designation as a non-responsive proposal for non-compliance:

...

4. Contain all RFP-required certifications, forms, and attachments, completed and signed as required. An RFP may designate certain forms and/or certifications that need not be included in the bidder's proposal but that must be provided by a successful bidder upon request prior to an award of contract;

[N.J.A.C. 17:12-2.2(a), emphasis added.]

If the requirements of N.J.A.C. 17:12-2.2 are not met, a Quote must be rejected. This regulation mandates stringent enforcement to maintain the equal footing of all Vendors {Bidders} and to ensure the integrity of the State's bidding process.

The subject procurement was comprised of the Bid Solicitation, other documents and mandatory forms which were specifically addressed in Bid Solicitation Section 4.0 *Quote Preparation and Submission* which states in pertinent part:

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.*]

¹ "Shall - Denotes that which is a mandatory requirement." Bid Solicitation Section 2.2 *General Definitions*.

Among those forms required to be submitted with the Quote is the *Ownership Disclosure Form*. With respect to ownership, the New Jersey Legislature, in implementing N.J.S.A. 52:25-24.2, mandated that a Vendor {Bidder} must supply its ownership information, prior to or with its Quote, to be eligible to enter into a Blanket P.O. with the State. N.J.S.A. 52:25-24.2 states, in pertinent part:

No corporations, partnership, or limited liability company shall be awarded any [Blanket P.O.] 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 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 for 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, 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.

The *Ownership Disclosure Form* is specifically discussed in Bid Solicitation Section § 4.4.1.2.1 which states:

Pursuant to N.J.S.A. 52:25-24.2, in the event the Vendor {Bidder} is a corporation, partnership or limited liability company, 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. A Vendor's {Bidder's} failure to submit the completed and signed form with its Quote will result in the rejection of the Quote as non-responsive and preclude the award of a Blanket P.O. 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 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.

In the alternative, to comply with this section, a Vendor {Bidder} with any direct or indirect parent entity which is publicly traded may submit the name and address of each publicly traded entity and the name and address of each person that holds a 10 percent or greater beneficial interest in the publicly traded entity as of the last annual filing with the federal Securities and Exchange Commission or the foreign equivalent, and, if there is any person that holds a 10 percent or greater beneficial interest, also shall submit links to the websites containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent and

the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest. N.J.S.A. 52:25-24.2.


Vendors {Bidders} using **NJSTART** to submit a Quote 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 must complete the full Ownership Disclosure Form located on the Division’s website.

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 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 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. Note: The Primary Form must have a Date Created within six (6) months of the Quote submission deadline to be considered valid.

In order to make this process of certifying easier, the Division provides to the bidding community the *Ownership Disclosure Form* to be completed in order for Vendor {Bidder} to comply with the statutory requirements. As an alternative to submission of the *Ownership Disclosure Form*, as noted in Bid Solicitation § 4.4.1.2.1 above, Vendors {Bidders} using **NJSTART** to submit a Quote are required to make the appropriate certification regarding investment activities in Iran on the “Maintain Terms and Categories” Tab within its profile.

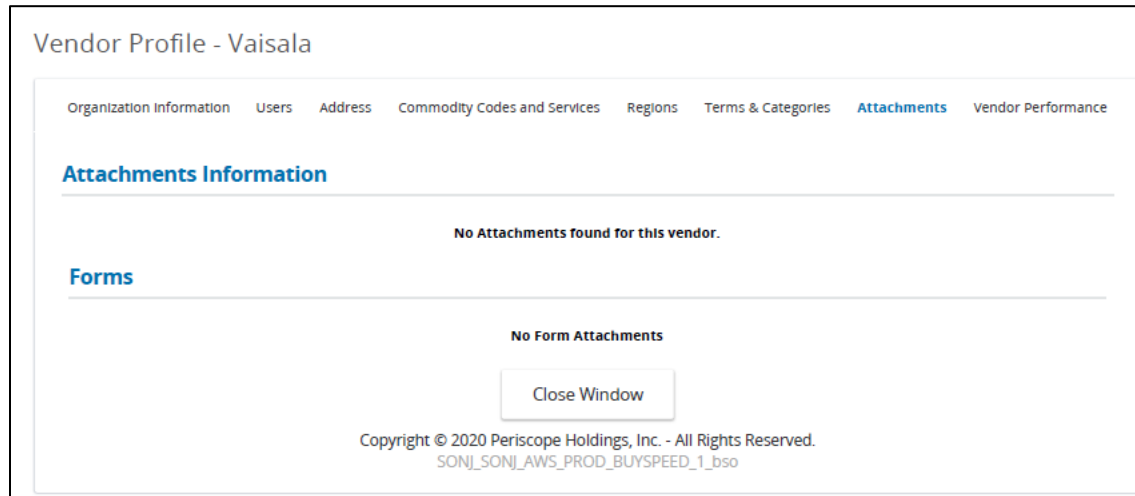
A review of the record of this procurement reveals that on December 18, 2020, Vaisala submitted Quote No. 00005170. Vaisala did upload the *Ownership Disclosure Form* with the Quote. However, as shown on the screenshot below, the *Ownership Disclosure Form* was blank.

	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>21DPP00589</u> VENDOR (BIDDER): <u>Vaisala Inc.</u>	
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> . PLEASE NOTE THAT IF THE VENDOR/BIDDER IS A NON-PROFIT ENTITY, THIS FORM IS NOT REQUIRED.	
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"/>	
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.	
NAME	<input style="width: 80%;" type="text"/>
ADDRESS 1	<input style="width: 80%;" type="text"/>
ADDRESS 2	<input style="width: 80%;" type="text"/>
CITY	<input style="width: 40%;" type="text"/> STATE <input style="width: 20%;" type="text"/> ZIP <input style="width: 40%;" type="text"/>
NAME	<input style="width: 80%;" type="text"/>
ADDRESS 1	<input style="width: 80%;" type="text"/>
ADDRESS 2	<input style="width: 80%;" type="text"/>
CITY	<input style="width: 40%;" type="text"/> STATE <input style="width: 20%;" type="text"/> ZIP <input style="width: 40%;" type="text"/>
NAME	<input style="width: 80%;" type="text"/>
ADDRESS 1	<input style="width: 80%;" type="text"/>
ADDRESS 2	<input style="width: 80%;" type="text"/>
CITY	<input style="width: 40%;" type="text"/> STATE <input style="width: 20%;" type="text"/> ZIP <input style="width: 40%;" type="text"/>
NAME	<input style="width: 80%;" type="text"/>
ADDRESS 1	<input style="width: 80%;" type="text"/>
ADDRESS 2	<input style="width: 80%;" type="text"/>
CITY	<input style="width: 40%;" type="text"/> STATE <input style="width: 20%;" type="text"/> ZIP <input style="width: 40%;" type="text"/>
Attach Additional Sheets If Necessary.	

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. With respect to ownership, Vendors {Bidders} are able to select one of 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	
<input type="checkbox"/>	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.)
<input type="checkbox"/>	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.)
<input type="checkbox"/>	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.

Vaisala did not complete the Ownership Disclosure category as required, nor did Vaisala upload a completed *Ownership Disclosure Form* to its **NJSTART** Vendor profile.



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 uploaded into **NJSTART** necessarily and appropriately rests solely with the Vendor {Bidder}. Bid Solicitation § 1.4.2 *Vendor {Bidder} Responsibility*. Here, unfortunately, Vaisala submitted a Quote without a completed *Ownership Disclosure Form* attached.

In the protest, Vaisala acknowledges that the *Ownership Disclosure Form* submitted with the Quote was incomplete and requests that the Division accept the *Ownership Disclosure Form* submitted with the protest. In reviewing a Quote 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. Only the New Jersey Legislature can change a requirement it has mandated. Unfortunately, Vaisala did not comply with any of the options available to it for the submission of ownership information. Accordingly, Vaisala's Quote was properly rejected by the Division's Proposal Review Unit for failure to submit the mandatory *Ownership Disclosure Form* with its Quote.

Notwithstanding Vaisala's interest in competing for this procurement, to allow Vaisala 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. 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 Proposal Review Unit's Notice of Proposal Rejection.

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,



Rachel Doobrajh
Acting Chief Hearing Officer

- c. J. Kerchner
- K. Thomas
- S. Ghorbani
- A. Miller
- A. Nelson
- D. Rodriguez