



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

ELIZABETH MAHER MUOIO
State Treasurer

MAURICE A. GRIFFIN
Acting Director

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

March 24, 2022

Via Electronic Mail fmellon@aqua-treatinc.com

Frederick Mellon
Aqua Treatment Services, Inc.
270 Jessup Road
West Deptford, 08086

Re: I/M/O Bid Solicitation #22DPP00694 Aqua Treatment Services, Inc.
Protest of Notice of Proposal Rejection
T0154 Water Treatment & Maintenance Services (Heating & Cooling) - Statewide

Dear Mr. Mellon:

This final agency decision is in response to your email of March 23, 2022, on behalf of Aqua Treatment Services, Inc. (Aqua) which was received by the Division of Purchase and Property's (Division) Hearing Unit. In that email, Aqua protests the Notice of Proposal Rejection issued by the Division's Proposal Review Unit on March 16, 2022 for Bid Solicitation #22DPP00694 – T0154 Water Treatment & Maintenance Services (Heating & Cooling) – Statewide (Bid Solicitation). The record of this procurement reveals that Aqua's Quote was rejected for failing to submit the *Ownership Disclosure Form* with its Quote.

By way of background, on January 11, 2022, the Division's Procurement Bureau (Bureau) issued the Bid Solicitation on behalf of various Using Agencies. The purpose of the Bid Solicitation was to solicit Quotes for complete water treatment programs, including maintenance services, for the heating and cooling systems of various locations throughout the State. Bid Solicitation § 1.1 *Purpose and Intent*. 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*. The Bureau issued a Revised Bid Solicitation on March 4, 2022.

On March 15, 2022, the Division's Proposal Review Unit opened the Quotes received by the submission deadline of 2:00 pm eastern time. After conducting a preliminary review of the Quotes received, the Division's Proposal Review Unit issued a Notice of Proposal Rejection to Aqua for failing to submit the *Ownership Disclosure Form* with its Quote.

In response to the Notice of Proposal Rejection, on March 23, 2022, Aqua sent an email to the Division's Hearing Unit stating:

To whom it may concern,

I inadvertently forgot to attach this document with out (sic) bid. I am attaching it with this request to appeal with the hope that our bid can be included with the State request for Chemical water Treatment for Cooling towers, boilers and all other treated systems throughout the State of NJ. I look forward to your reply.

In consideration of Aqua's protest, I have reviewed the record of this procurement, including the Bid Solicitation, Aqua's Quote and protest, 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 submitted by Aqua. I set forth herein the Division's final agency decision.

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*.]

The subject solicitation was comprised of the Bid Solicitation, other documents and mandatory forms which were specifically addressed in Bid Solicitation § 4.0 *Quote Preparation and Submission – Requirements of the Vendor {Bidder}* which states in pertinent part:

Vendor's {Bidder's} failure to complete sign and submit the forms in Section 4.4.1.2 shall cause 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*. 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:

¹ "Shall or Must – Denotes that which a mandatory requirement. Failure to meet a mandatory material requirement will result in the rejection of a Quote {Proposal} as non-responsive." Should or May – "Denotes that which is permissible or recommended, not mandatory." Bid Solicitation § 2.2 *General Definitions*.

No corporation, 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 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 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 individuals 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.

The *Ownership Disclosure Form* is specifically addressed in Bid Solicitation § 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, 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

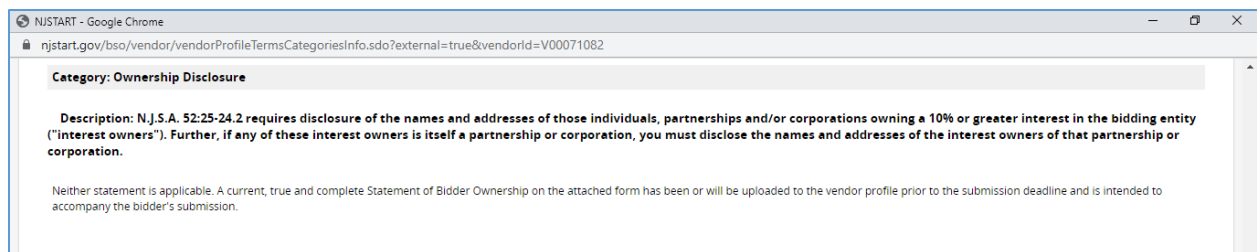
the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest. N.J.S.A. 52:25-24.2.

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](#).

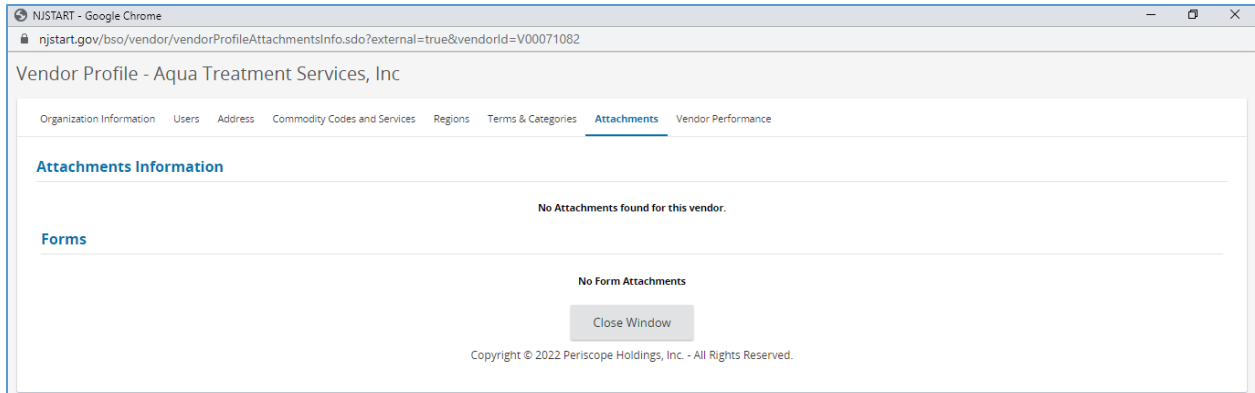
Vendors {Bidders} utilizing **NJSTART** should designate one (1) version of the Ownership Disclosure Form as the Primary Form. In the event that a Vendor {Bidder} fails to attach an Ownership Disclosure Form, or the attached Ownership Disclosure Form is deemed deficient, the Division may access the Primary Form and consider it as part of the Quote. 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 complying with the legislative requirement easier, the Division provides the bidding community with an *Ownership Disclosure Form* to be completed and submitted with the Quote. As an alternative to the submission of the *Ownership Disclosure Form*, as noted in Bid Solicitation § 4.4.1.2.1 above, Vendors {Bidder} 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.

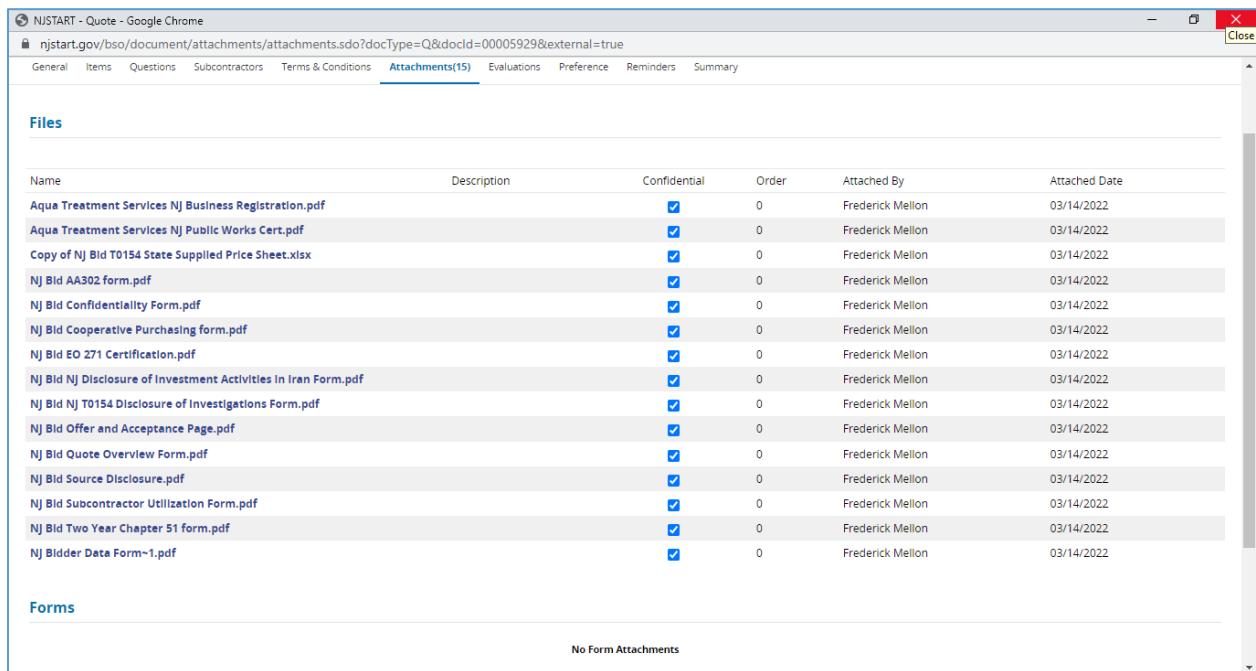
As shown below, Aqua did complete the Ownership Disclosure Category; however, Aqua’s response to the Ownership Disclosure category required that it complete and submit the *Ownership Disclosure Form* either with its Quote or attach the form its Vendor Profile within **NJSTART**.



Aqua did not upload the *Ownership Disclosure Form* to its profile.



Nor did it submit the form with its Quote.



By its own admission, Aqua has stated that it inadvertently forgot to attach the *Ownership Disclosure Form* with its Quote. 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, Aqua did not comply with the options available to it for the submission of ownership information. Accordingly, Aqua's Quote was properly rejected by the Division's Proposal Review Unit for failure to submit the mandatory *Ownership Disclosure Form* with its Quote.

If the requirements of N.J.A.C. 17:12-2.2 are not met, a Quote must be rejected. The Division's governing regulations mandate stringent enforcement to maintain the equal footing of all Vendors {Bidders} and to ensure the integrity of the State's bidding process. The *NJSTART* system does not prevent a Vendor {Bidder} from submitting a Quote without all the required forms and documents 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 §1.3.3 Vendor {Bidder} Support. I encourage you to review the Quick Reference Guide (QRG), located at <https://www.state.nj.us/treasury/purchase/vendor.shtml>, to ensure that in the future, you are uploading the correct documents.

Based upon the foregoing, I sustain the Bureau's Notice of Proposal Rejection. This is an unfortunate situation for the State as the Division encourages competition and appreciates the time and effort put forth in preparing and submitted the Quote. However, in light of the findings set forth above, I have no choice but to deny your request for eligibility to participate in the competition for the subject Bid Solicitation. This is my final agency decision.

Thank you for your company's interest in doing business with the State of New Jersey. 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.

Sincerely,



Rachel Doobrajh
Chief Hearing Officer

RUD: TCR

c: M. Griffin
L. Groninger
D. Albin
M. Maciolek