



# 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

CHRIS CHRISTIE  
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*Lt. Governor*

ROBERT A. ROMANO  
*Acting State Treasurer*

JIGNASA DESAI-MCCLEARY  
*Director*

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

September 11, 2015

Via Electronic [TBank@dorazio.com] and USPS Regular Mail

Terri D'Orazio-Bank, Vice President  
Sales & Marketing  
D'Orazio Foods, Inc.  
P.O. Box 243  
Bellmawr, NJ 08099

Re: Protest of Notice of Proposal Rejection  
RFP # 16-X-23965: Foods: Frozen Entrée, Specialty/Dinner/Breakfast/Pizza/Veggie Patty - DSS

Dear Ms. D'Orazio-Bank:

This letter is in response to your correspondence dated September 8, 2015, to the Division of Purchase and Property (Division) on behalf of D'Orazio Foods, Inc. (D'Orazio), in which you request to be allowed to participate in the solicitation despite the Division's Proposal Review Unit's Notice of Proposal Rejection for the subject solicitation. The Division accepts your letter as a protest of the rejection notice. The record of this procurement reveals that D'Orazio's proposal was rejected for failing to include a signed *Disclosure of Investment Activities in Iran* form. In your letter, D'Orazio acknowledges that it neglected to sign the *Disclosure of Investment Activities in Iran* form which was submitted with the eBid proposal and requests that it be permitted to sign and return the form to the Division subsequent to the proposal opening date.

By way of background, the Division's Procurement Bureau (Bureau) issued the subject Request for Proposal (RFP) on behalf of the Distribution and Support Services (DSS) to solicit proposals for frozen specialty entrees, frozen breakfast servings, frozen pizza items and vegetarian patties. (RFP § 1.1 *Purpose and Intent*). In accordance with the RFP, contracts are to be awarded to the responsible bidder(s) whose proposal(s) conforming to this RFP are most advantageous to the State, price and other factors considered." (*Ibid.*) The Proposal Review Unit opened proposals following the submission deadline of August 27, 2015 at 2:00 p.m.

In consideration of D'Orazio's protest, I have reviewed the record of this procurement, including the RFP, D'Orazio's proposal, and 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.

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 included the *Disclosure of Investment Activities in Iran* form. This form is addressed in RFP Section 4.0, *Proposal Preparation and Submission*, which provides in pertinent part:

#### **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.** If the bidder submits a hard copy proposal, each of the two forms must be physically signed.

If the bidder is submitting an electronic proposal through the Division's eBid system, there are only two acceptable forms of signature for the two forms:

1. The bidder must download the document, physically complete and sign each form, scan the completed document and then upload it, or
2. The bidder may download the document, type the name of the signatory in the space designated for certification signature in each of the forms and the upload the document.

**Note: A bidder's entry of a Personal Identification Number (PIN) shall not suffice as a certifying signature on the forms comprising the NJ STANDARD RFP FORMS document.**

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#### **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 in the original.]*

Furthermore, as a courtesy to all bidders, the Division provided a *Proposal Checklist* as an accompaniment to the RFP. The checklist included the following:

N.J. Department of the Treasury  
Division of Purchase and Property  
**PROPOSAL CHECKLIST**

Solicitation Number: 16-X-23965 Solicitation Title: Foods: Frozen Entrees, Specialty/Dinner/Breakfast/

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.

**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*

\* 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>

The record of this procurement reveals that D'Orazio submitted its proposal through the Division's eBid system by the proposal submission date of August 27, 2015. With its submission, D'Orazio did include a copy of the *Disclosure of Investment Activities in Iran* form which is filled out; however, the document does not contain either a physical or typed signature and D'Orazio has acknowledge this fact.

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 set forth in RFP 4.4.1.2 and 4.4.1.2.2, the submission of a completed and signed *Disclosure of Investment Activities in Iran* form as part of the proposal was required.

Notwithstanding D'Orazio's interest in competing for this procurement, it would not be in the State's best interest to allow a bidder who did not appropriately complete, sign and submit all of the required forms with its proposal as required by the RFP to be eligible to participate in the procurement process. Such acceptance would unlevel 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 D'Orazio's proposal under these circumstances would be contrary to the provisions of the governing statute and provide D'Orazio with disclamation options not available to those bidders whose proposals where fully responsive. 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 my final agency decision on this matter.

Thank you for your interest in doing business with the State of New Jersey and thank you for registering your company with **NJ START** at [www.njstart.gov](http://www.njstart.gov), the State's new eProcurement system.

Sincerely,



Maurice A. Griffin  
Acting Chief Hearing Officer

MAG: RUD

c: G. Gerstenacker  
J. Kemery  
A. Nelson  
D. Rodriguez