



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

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

FORD M. SCUDDER
Acting State Treasurer

JIGNASA DESAI-MCCLEARY
Director

February 12, 2016

Via Electronic Mail [lisa@royalfoodimport.com] and USPS Regular Mail

Lisa Slone, Director of Corporate Sales
Royal Food Import Corp.
100 Franklin St., Ste #702
Boston, MA 02110

RE: Protest of Notice of Proposal Rejection
RFP #16-X-24120 Foods: Staple – Tuna, Canned – DSS

Dear Ms. Slone:

This correspondence is in response to your letter of protest¹ dated and received February 3, 2016, referencing the subject Request for Proposal (RFP) and regarding the proposal submitted by Royal Food Import Corp. (Royal) to the Procurement Bureau (Bureau) of the Division of Purchase and Property (Division). The record of this procurement notes that Royal's proposal was rejected for failing to include a properly completed *Disclosure of Investment Activities in Iran* Form. In your letter, you state you are "not sure why the [form] did not attach[]" to Royal's electronic proposal and you request the Division accepted the completed form attached to your letter of protest.

I have reviewed the record of this procurement, including the RFP, Royal's proposal, and 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 determination on the merits of Royal's protest.

By way of the background, the subject RFP was issued by the Bureau to solicit proposals for canned tuna, which will be made available and delivered to Distribution and Support Services (DSS). RFP § 1.1 *Purpose and Intent*. The intent of the RFP is "to award (a) contract(s) to that (those) responsible Bidder(s) whose proposal(s), conforming to this RFP is (are) most advantageous to the State, price and other factors considered." *Ibid*. This is a procurement of term contract #T1090.

The above-referenced solicitation was comprised of the RFP and other documents, one of which was the three-part document titled *NJ Standard RFP Forms*. This document includes the *Disclosure of Investment Activities in Iran* Form. These *NJ Standard RFP 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

¹ Your email is accepted as a timely letter of protest.

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 may 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 then 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.

....

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 Persons 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 on 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 nonresponsive and preclude the award of a contract to said bidder.

[(Emphasis in 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:

FORMS THAT MUST BE SUBMITTED WITH YOUR PROPOSAL:

- RFP Signatory Page with physical signature or PIN (PIN is for eBid submission ONLY)
- Completed Price Sheets as instructed in Section 4.4.5 of the RFP
- Completed and signed Ownership Disclosure Form*
- 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). . . .*

Pursuant to N.J.A.C. 17:12-2.2,² a bidder's proposal must "[c]ontain all RFP-required certifications, forms, and attachments, completed and signed as required" or "be subject to automatic rejection." As set forth in RFP Sections 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 a bidder's proposal was required.

² The Division's administrative rules governing its procurement programs are set forth in N.J.A.C. 17:12. These rules can be accessed at <http://www.state.nj.us/treasury/purchase/AdminCode.shtml>.

Furthermore, N.J.A.C. 17:12-2.2(a)(2) specifies that “[i]n order to be eligible for consideration for award of contract, the bidder’s proposal shall” be “submitted on or before the due date and time and at the place specified in the RFP” or “be subject to designation as a non-responsive proposal for non-compliance[.]”

In this case, the record reveals that Royal submitted an electronic proposal by the submission deadline of January 22, 2016. However, this proposal failed to include a properly signed *Disclosure of Investment Activities in Iran* Form. As noted above, the two permissible ways to sign these forms were either: 1) downloading the document, physically signing the form, scanning the completed document, and then uploading it; or 2) typing the name of the signatory in the space designated for certification signature and uploading the document. Here, the signature line on the submitted form was left blank. (For your reference a copy of the form submitted by Royal is included as Attachment #1 to this final agency decision.)

Notwithstanding Royal’s interest in competing for this procurement, it would not be in the State’s best interests to allow a bidder who did not provide the required information to be eligible to participate in the procurement process. Such acceptance would unlevel the bidders’ playing field, as the State received responsive proposals in which all necessary documents and information were provided as required. The deficiency at issue cannot be remedied after the proposal submission deadline, as acceptance of Royal’s proposal under these circumstances would be contrary to the provisions of governing statutes and would provide Royal with disclamation options not available to those bidders whose proposals were fully responsive and whose forms were fully completed and executed. In light of the findings 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.

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 Royal’s proposal. Thank you for registering your business with **NJSTART** at www.njstart.gov, the State of New Jersey’s new eProcurement system.

Sincerely,



Maurice Griffin
Chief Hearing Officer

MG:DF

c: P. Michaels
G. Gerstenacker
A. Nelson

Attachment #1

STATE OF NEW JERSEY -- DIVISION OF PURCHASE AND PROPERTY DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN									
Quote Number: 16x24120	Bidder/Offeror: Royal Food Import Corp								
PART 1: CERTIFICATION BIDDERS MUST COMPLETE PART 1 BY CHECKING EITHER BOX. FAILURE TO CHECK ONE OF THE BOXES WILL RENDER THE PROPOSAL NON-RESPONSIVE.									
<p>Pursuant to Public Law 2012, c. 25, any person or entity that submits a bid or proposal or otherwise proposes to enter into or renew a contract must complete the certification below to attest, under penalty of perjury, that neither the person or entity, nor any of its parents, subsidiaries, or affiliates, is identified on the Department of Treasury's Chapter 25 list as a person or entity engaging in investment activities in Iran. The Chapter 25 list is found on the Division's website at http://www.state.nj.us/treasury/purchase/pdf/Chapter25List.pdf. Bidders must review this list prior to completing the below certification. Failure to complete the certification will render a bidder's proposal non-responsive. If the Director finds a person or entity to be in violation of law, s/he shall take action as may be appropriate and provided by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and seeking debarment or suspension of the party</p> <p>PLEASE CHECK THE APPROPRIATE BOX:</p> <p><input checked="" type="checkbox"/> I certify, pursuant to Public Law 2012, c. 25, that neither the bidder listed above nor any of the bidder's parents, subsidiaries, or affiliates is listed on the N.J. Department of the Treasury's list of entities determined to be engaged in prohibited activities in Iran pursuant to P.L. 2012, c. 25 ("Chapter 25 List"). I further certify that I am the person listed above, or I am an officer or representative of the entity listed above and am authorized to make this certification on its behalf. I will skip Part 2 and sign and complete the Certification below.</p> <p style="text-align: center;">OR</p> <p><input type="checkbox"/> I am unable to certify as above because the bidder and/or one or more of its parents, subsidiaries, or affiliates is listed on the Department's Chapter 25 list. I will provide a detailed, accurate and precise description of the activities in Part 2 below and sign and complete the Certification below. <u>Failure to provide such will result in the proposal being rendered as non-responsive and appropriate penalties, fines and/or sanctions will be assessed as provided by law.</u></p>									
PART 2: PLEASE PROVIDE FURTHER INFORMATION RELATED TO INVESTMENT ACTIVITIES IN IRAN You must provide a detailed, accurate and precise description of the activities of the bidding person/entity, or one of its parents, subsidiaries or affiliates, engaging in the investment activities in Iran outlined above by completing the boxes below.									
EACH BOX WILL PROMPT YOU TO PROVIDE INFORMATION RELATIVE TO THE ABOVE QUESTIONS. PLEASE PROVIDE THOROUGH ANSWERS TO EACH QUESTION. IF YOU NEED TO MAKE ADDITIONAL ENTRIES, CLICK THE "ADD AN ADDITIONAL ACTIVITIES ENTRY" BUTTON.									
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Name _____</td> <td style="width: 50%;">Relationship to Bidder/Offeror _____</td> </tr> <tr> <td colspan="2">Description of Activities _____</td> </tr> <tr> <td colspan="2">Duration of Engagement _____ Anticipated Cessation Date _____</td> </tr> <tr> <td>Bidder/Offeror Contact Name _____</td> <td>Contact Phone Number _____</td> </tr> </table>		Name _____	Relationship to Bidder/Offeror _____	Description of Activities _____		Duration of Engagement _____ Anticipated Cessation Date _____		Bidder/Offeror Contact Name _____	Contact Phone Number _____
Name _____	Relationship to Bidder/Offeror _____								
Description of Activities _____									
Duration of Engagement _____ Anticipated Cessation Date _____									
Bidder/Offeror Contact Name _____	Contact Phone Number _____								
<input type="button" value="ADD AN ADDITIONAL ACTIVITIES ENTRY"/>									
<p>Certification: I, being duly sworn upon my oath, hereby represent and state that the foregoing information and any attachments thereto to the best of my knowledge are true and complete. I attest that I am authorized to execute this certification on behalf of the above-referenced person or entity. I acknowledge that the State of New Jersey is relying on the information contained herein and thereby acknowledge that I am under a continuing obligation from the date of this certification through the completion of any contracts with the State to notify the State in writing of any changes to the answers of information contained herein. I acknowledge that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification, and if I do so, I recognize that I am subject to criminal prosecution under the law and that it will also constitute a material breach of my agreement(s) with the State of New Jersey and that the State at its option may declare any contract(s) resulting from this certification void and unenforceable.</p>									
Full Name (Print): Douglas J Tilley	Signature: _____								
Title: Chief Financial Officer	Date: 1/21/2016								