



## State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY

OFFICE OF THE DIRECTOR

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JIGNASA DESAI-MCCLEARY  
*Director*

October 5, 2016

Via Electronic Mail [cchaffee@thecaviartgroup.com] and USPS Regular Mail

Clarence Chaffee, President  
The Caviart Group, LLC  
9556 Pine Cluster Circle  
Vienna, VA 22181

Re: Protest of Notice of Proposal Rejection  
Bid Solicitation {Request for Proposal} #17DPP00048  
LSRP Examination Dev. & Administration

Dear Mr. Chaffee:

This letter is in response to your email of September 26, 2016, to the Hearing Unit of the Division of Purchase and Property (Division) on behalf of the Caviart Group, LLC (Caviart). In that correspondence you state that you received a Notice of Proposal Rejection from the Division's Proposal Review Unit for failure to include the *Disclosure of Investment Activities in Iran* form. You further note that the form was submitted online through the Division's NJSTART System. The Division accepts your letter as a protest of the Notice of Proposal Rejection. With the protest letter you have submitted a completed and signed *Disclosure of Investment Activities in Iran* form.

In consideration of Caviart's protest, I have reviewed the record of this procurement, including the Bid Solicitation (Request for Proposal) (RFP), Caviart's proposal, 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, the Division's Procurement Bureau (Bureau) issued the subject RFP on behalf of the New Jersey Site Remediation Professional Licensing Board to solicit Quotes (Proposals) from qualified bidders to review, update and administer a licensure examination for individuals applying for a Site Remediation Professional License. RFP § 1.1 *Purpose and Intent*. The intent of the RFP "is to award a Master Blanket Purchase Order (Blanket P.O.) (Contract) to that responsible Vendor (Bidder) whose Quote (Proposal), conforming to this Bid Solicitation (RFP) is most advantageous to the State, price and other factors considered. The State may award any and all price lines." *Ibid*. On September 14, 2016, the Proposal Review Unit opened proposals received by the submission deadline of 2:00 p.m. The record of this procurement reveals that Caviart's proposal was rejected for failing to sign the *Disclosure of Investment Activities in Iran* form.

The above referenced solicitation was comprised of the RFP and other documents, one of which was the *Disclosure of Investment Activities in Iran* form which is addressed in RFP Section 4.0, *Proposal Preparation and Submission*, and states in pertinent part:

**4.4.1.2 NJ STANDARD BID SOLICITATION {RFP} FORMS  
REQUIRED WITH THE QUOTE {PROPOSAL}**

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 {Proposal} as non-responsive.

**4.4.1.2.2 DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN  
FORM**

Pursuant to N.J.S.A. 52:32-58, the Vendor {Bidder} must utilize this Disclosure of Investment Activities in Iran form to certify that neither the Vendor {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 Vendor {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 Vendor {Bidder} is unable to so certify, the Vendor {Bidder} shall provide a detailed and precise description of such activities as directed on the form. **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}.**

[Emphasis added.]

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 the completed and signed *Disclosure of Investment Activities in Iran* form as part of the proposal was required. There are two permissible ways through which vendors may submit the *Disclosure of Investment Activities in Iran* form:

- (1) 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 Disclosure of Investment Activities in Iran form; or
- (2) Vendors {Bidders} not using **NJSTART** to submit a Quote {Proposal} must complete the full Disclosure of Investment Activities in Iran form located on the [Division's website](#). The full version of the form is also available in **NJSTART** ([www.njstart.gov](http://www.njstart.gov)).

The record of this procurement reveals that Caviart submitted its proposal through **NJSTART** by the proposal submission date of September 14, 2016. With its submission, Caviart included a copy of the *Disclosure of Investment Activities in Iran* form, which was filled out; however, the document did not contain either a physical or typed signature. See Caviart's submitted form below.

**STATE OF NEW JERSEY -- DIVISION OF PURCHASE AND PROPERTY  
DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN**

Quote Number: \_\_\_\_\_ Bidder / Offeror: \_\_\_\_\_

**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**

Pursuant to Public Law 2012, c. 25, any person or entity that submits a bid or proposes 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/purchaseandproperty/chapter25list.html>. Bidders must review this list prior to completing the bid 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 may 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 judgment or enforcement of the party.

**PLEASE CHECK THE APPROPRIATE BOX:**

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 U.S. Department of Treasury's Chapter 25 list of entities deemed to be engaged in prohibited activities in Iran pursuant to P.L. 2012, c. 25 (Chapter 25 List). I further certify that all 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 sign Part 2 and sign and complete the Certification below.

**OR**

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. **PLEASE PROVIDE A DETAILED, ACCURATE AND PRECISE DESCRIPTION OF THE ACTIVITIES IN PART 2 BELOW AND SIGN AND COMPLETE THE CERTIFICATION BELOW.**

**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 person or entity, or one of its parents, subsidiaries or affiliates, engaging in the investment activities in Iran as indicated above by completing responses to the questions 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.**

Name _____	Relationship to Bidder/Offeror _____
Description of Activities _____	
Duration of Engagement: _____	Anticipated Cessation Date: _____
Bidder/Offeror Contact Name: _____	Contact Phone Number: _____

**ADD AN ADDITIONAL ACTIVITIES ENTRY**

I, the undersigned, being duly sworn upon my oath, hereby represent that the foregoing information and any attachments thereto to the best of my knowledge are true and complete to the best of my knowledge. But I am authorized to execute this certification on behalf of the bidder, but the State of New Jersey is relying on the information contained herein and 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 in the information contained herein. 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 am subject to criminal penalties under the law and that it would constitute a material breach of my agreement(s) with the State, permitting the State to declare any contracts I have entered into with the State null and void.

Full Name (Print): Clarence L. Chaffee Signature: \_\_\_\_\_  
Do Not Enter PIN as a Signature

Title: President Date: 9/12/2016

The requirement to certify that a bidder is not engaged in certain prohibited activities in Iran is set forth in N.J.S.A. 52:32-58. The New Jersey Legislature, in implementing N.J.S.A. 52:32-58, mandated requirements that a bidder must comply with in order to enter into a contract with the State. N.J.S.A. 52:32-58 states:

A State agency shall require a person or entity that submits a bid or proposal or otherwise proposes to enter into or renew a contract **to certify, at the time the bid is submitted** or contract is renewed, that the person or entity is not identified on a list created pursuant to subsection b. of section 3 of the act as a person or entity engaging in investment activities in Iran described in subsection f. of section 2 of this act.

[Emphasis added.]

In reviewing proposals submitted in response to an RFP, the Division does not have the power to waive this legislative requirement, as only the New Jersey Legislature can change a requirement it has mandated. In order to make this process of certifying easier, the Division provides to the bidding community the *Disclosure of Investment Activities in Iran* form to be completed and signed in order for bidders to comply with the statutory requirements. Unless otherwise specified, forms must contain an original, physical signature, or an electronic signature pursuant to Section 1.3.4 of this Bid Solicitation {RFP}. RFP § 4.4.2 *Forms, Registrations and Certifications Required Before Blanket P.O. {Contract}*

*Award And That Should Be Submitted With The Quote {Proposal}*. Here, unfortunately, the signature line on the submitted form was left blank. Because Caviart submitted its proposal without the *Disclosure of Investment Activities in Iran* form being signed, it was not in compliance with the Legislative requirement that mandates that a bidder certify at the time of bid submission that it is not engaged in investment activities in Iran.

Notwithstanding Caviart's interest in competing for this procurement, 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 would un-level 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 Caviart's proposal under these circumstances would be contrary to the provisions of the governing statute and provide Caviart with disclamation options not available to those bidders whose proposals where fully responsive. In light of the finding set forth above, I have no choice but to deny your request for eligibility to participate in the competition for the subject contract. This is the Division's 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 Caviart's proposal. 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 new eProcurement system.

Sincerely,

  
Maurice A. Griffin  
Chief Hearing Officer

MAG: RUD

c: P. Michaels  
L. Spildener