



## State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
OFFICE OF THE DIRECTOR  
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February 5, 2019

Via Electronic Mail [peacock@tspsupply.com] and USPS Regular Mail

Chris Peacock, President  
TSP Maintenance Supply, LLC  
52 East Drive  
Livingston, NJ 07039

Re: I/M/O Bid Solicitation #18DPP00259 TSP Maintenance Supply, LLC  
Protest of Notice of Proposal Rejection  
T0374 Bar Soap, Individually Wrapped for Distribution and Support Services (DSS)

Dear Mr. Peacock:

This letter is in response to your email of January 31, 2019, on behalf of TSP Maintenance Supply, LLC (TSP) which was received by the Division of Purchase and Property's (Division) Hearing Unit. In that email, TSP protests the Notice of Proposal Rejection issued by the Division's Proposal Review Unit for Bid Solicitation #18DPP00259 – T0374 Bar Soap, Individually Wrapped for Distribution and Support Services (Bid Solicitation). The record of this procurement reveals that TSP's Quote was rejected for failing to submit the *Disclosure of Investment Activities in Iran Form* with its Quote.

By way of background, on December 5, 2018, the Division's Procurement Bureau ("Bureau") issued the Bid Solicitation on behalf of the New Jersey Department of the Treasury, Distribution and Support Services (DSS). The purpose of this Bid Solicitation is to solicit Quotes for bar soap, individually wrapped, for DSS. Bid Solicitation § 1.1 *Purpose and Intent*. It is the State's intent to a Master Blanket Purchase Order (Blanket P.O.) to the responsible Vendor {Bidder} whose Quote, conforming to this Bid Solicitation is most advantageous to the State, price and other factors considered. Ibid.

On January 29, 2019, the Division's Proposal Review Unit opened the Quotes 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 TSP for failure to submit the *Disclosure of Investment Activities in Iran Form* with its Quote.

In response to the Notice of Proposal Rejection, on January 31, 2019, TSP sent an email to the Division's Hearing Unit stating:

We would like to protest our notice of proposal rejection for 18DPP00259. The proposed rejection states that we are missing disclosure of investment activities in Iran. The form is attached with our bid that was submitted.

We are currently unsure why we were rejected for this form missing. We triple checked and its (sic) included with attachments that are required. Please review and confirm that our bid will be accepted.

In consideration of TSP's protest, I have reviewed the record of this procurement, including the Bid Solicitation, TSP'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 TSP. I set forth herein my final agency decision.

With respect to the submission of the *Disclosure of Investment Activities in Iran Form*, the New Jersey Legislature has mandated that "[a] State agency shall require a person or entity that submits a bid or Quote or otherwise proposes to enter into or renew a [Blanket P.O.] to certify, at the time the bid is submitted or the [Blanket P.O.] is renewed, that the person or entity is not identified on a list created pursuant to subsection b. of section 3 [C.52:32-57] of this act as a person or entity engaging in investment activities in Iran described in subsection f. of section 2 [C.52:32-56] of this act." N.J.S.A. 52:32-58(a).

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 shall<sup>1</sup> 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 Section 4.0 *Quote Preparation and Submission* which states in pertinent part:

The Quote should contain the State-Supplied Price Sheet and all forms/documents required by the Bid Solicitation. The Vendor {Bidder} is cautioned to carefully read the Bid Solicitation to ensure that all required forms are completed, signed and submitted with the Vendor's {Bidder's} Quote. **NOTE: Failure to submit required forms/documents may result in the Vendor's {Bidder's} Quote being deemed non-responsive.**

[Bid Solicitation § 4.4 *Quote Content*, emphasis in the original.]

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<sup>1</sup> "Shall or Must – Denotes that which is 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*.

Among those forms/documents required to be submitted with the Quote is the *Disclosure of Investment Activities in Iran Form* discussed in Bid Solicitation Section 4.4.1.2.2 which states in part:

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}.

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. 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 \(www.njstart.gov\)](#).

In order to make this process of complying with the legislative requirement easier, the Division provides to the bidding community with a one page document entitled the *Disclosure of Investment Activities in Iran Form* to be completed, signed and submitted with the Quote.

As an alternative to the submission of the *Disclosure of Investment Activities in Iran Form*, as noted in Bid Solicitation Section 4.4.1.2.2 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. As shown in the screenshot below, TSP did not complete the Disclosure of Investment Activities in Iran category.

Vendor Profile - TSP Maintenance Supply LLC

Organization Information Users Address Commodity Codes and Services Regions Terms & Categories Attachments Vendor Performance

**Terms and Categories Information**

**Terms**

Payment Terms:  
Freight Terms:  
Shipping Method:  
Shipping Terms:

**Categories & Certifications**

**Category: 1. Primary Business Function (MANDATORY FIELD)**

Provides Any Other Types of Goods:

**Category: 3. Business Formation (MANDATORY FIELD)**

Partnership Including Limited Partnership General Partnership Limited Liability Partnership

**Category: 4. Electronic Funds Transfer Certification (MANDATORY FIELD)**

Description: I certify that I am an appointed agent of the vendor referenced and that I hereby authorize the State of NJ to initiate payments to the bank acct and bank named in the electronic funds transfer (if and when the information is provided). This authority is to remain in full force and effect until the State of NJ receives notification of any changes, and in such a manner as to afford the State of NJ a reasonable opportunity to Act.

Select if you intend to enter the data for EFT payment and agree with the statement above. To enter banking data, you must log in after the initial registration process has been completed, add or edit a bank address and check the EFT bracketed box.

**Category: 5. Tax ID Certification (Substitute W9) (MANDATORY FIELD)**

Description: Under Penalties of Perjury, I certify that (1) The number provided via this registration process is my correct taxpayer ID number AND (2) I am not subject to backup withholding AND (3) I am a U. S. Citizen or a defined U. S. Person for Federal tax purposes.

Select if you agree with the statement above.

**Category: Certification: Business Registration**

Description: This Certification status is updated daily. If your business is not registered, or if your registration is not active, please see the following link:

Active

Because TSP did not complete the Disclosure of Investment Activities in Iran category within **NJSTART**, it was required to submit the *Disclosure of Investment Activities in Iran Form* with its Quote, or attach the form to its Vendor Profile within **NJSTART**. As shown in the screenshot below, TSP did not attach the *Disclosure of Investment Activities in Iran Form* to its **NJSTART** Vendor Profile.

Vendor Profile - TSP Maintenance Supply LLC

Organization Information Users Address Commodity Codes and Services Regions Terms & Categories Attachments Vendor Performance

**Attachments Information**

No Attachments found for this vendor.

**Forms**

No Form Attachments

Close Window

In the protest, TSP asserts that “[t]he form is attached with our bid that was submitted... We triple checked and its (sic) included with attachments that are required.” TSP’s January 31, 2019 protest email. As shown on the screen shot below, TSP uploaded eight attachments comprising its submitted Quote:

**Quote 00002669 - TSP Maintenance Supply LLC**

General Items Questions Subcontractors Terms & Conditions **Attachments(8)** Evaluations Preference Reminders Summary

**Files**

| Name  | Description                      | Confidential                        | Order | Attached By     | Attached Date |
|---|----------------------------------|-------------------------------------|-------|-----------------|---------------|
| EIRCERT.pdf (view details)                                | NJ Employee Info Report          | <input checked="" type="checkbox"/> | 0     | Michele Peacock | 01/11/2019    |
| NJ18DPP00259PAGE1IRAN.pdf (view details)                  | Iran Disclosure page 1           | <input checked="" type="checkbox"/> | 0     | Michele Peacock | 01/11/2019    |
| NJ18DPP00259PAGE2IRAN.pdf (view details)                  | Iran disclosure page 2           | <input checked="" type="checkbox"/> | 0     | Michele Peacock | 01/11/2019    |
| NJ18DPP00259OAPAGE.pdf (view details)                     | Offer and Acceptance page        | <input checked="" type="checkbox"/> | 0     | Michele Peacock | 01/11/2019    |
| NJ18DPP00259ODFPAGE1.pdf (view details)                   | Page 1 Ownership disclosure form | <input checked="" type="checkbox"/> | 0     | Michele Peacock | 01/11/2019    |
| NJ18DPP00259ODFPAGE2.pdf (view details)                   | Page 2 Ownership disclosure form | <input checked="" type="checkbox"/> | 0     | Michele Peacock | 01/11/2019    |
| NJ18DPP00259Bidder Data Form-5 (1).pdf (view details)     | Bidder Data Form                 | <input checked="" type="checkbox"/> | 0     | Michele Peacock | 01/11/2019    |
| T0374 Price Sheet protected-3 (3) (5).xlsx (view details) | Price Sheet                      | <input checked="" type="checkbox"/> | 0     | Michele Peacock | 01/29/2019    |

**Forms**

No Form Attachments

Two of the attached documents have a file name indicative of a *Disclosure of Investment Activities in Iran Form* being submitted; however, a review of the individual attachments reveals that neither of these attachments is the *Disclosure of Investment Activities in Iran Form*. Rather, TSP uploaded each page of the two page *Disclosure of Investigations and Other Actions Involving the Vendor {Bidder} Form* as a separate file. Although TSP may have meant to upload the *Disclosure of Investment Activities in Iran Form* it did not do so.

The **NJSTART** system does not prevent a Vendor {Bidder} from submitting a Quote without all of the required forms and documents attached as mandated by the specifications. The responsibility for ensuring that all necessary forms and other submittals are properly completed and uploaded into **NJSTART** necessarily and appropriately rests solely with the Vendor {Bidder}; as such the Bid Solicitation advised:

The Vendor {Bidder} assumes sole responsibility for the complete effort required in submitting a Quote {Proposal} in response to this Bid Solicitation {RFP}. No special consideration will be given after Quotes {Proposals} are opened because of a Vendor’s {Bidder’s} failure to be knowledgeable as to all of the requirements of this Bid Solicitation {RFP}.

[Bid Solicitation § 1.4.2 Vendor {Bidder} Responsibility.]

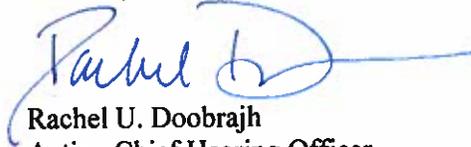
To assist Vendors {Bidders} in completing and uploading Quotes, as well as to ensure that Quotes have been properly submitted, the Division provides Quick Reference Guides on its website (<https://www.state.nj.us/treasury/purchase/njstart/vendor.shtml#tabs-3>.) One of those guides is entitled “How to Review a Submitted Quote,” and provides Vendors {Bidders} with step-by-step instructions and screenshots, on how to review those documents uploaded and submitted as part of a Quote.

Notwithstanding TSP's interest in competing for this procurement, the Division does not have the power to waive the legislative requirement that a Vendor {Bidder} certify with its Quote that it is not engaged in investment activities in Iran. Only the New Jersey Legislature can change a requirement it has mandated. Accordingly, TSP's Quote was properly rejected by the Division's Proposal Review Unit for failure to submit the mandatory *Disclosure of Investment Activities in Iran Form* with its Quote.

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. 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 contract. This is my final agency decision on this matter.

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

Sincerely,

A handwritten signature in blue ink, appearing to read "Rachel U. Doobraj", with a long horizontal flourish extending to the right.

Rachel U. Doobraj  
Acting Chief Hearing Officer

c: J. Kerchner  
K. Thomas  
A. Puza  
D. Rodriguez  
A. Nelson