



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR

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April 6, 2017

Via Electronic Mail [slandolfi@safewaygroup.net] and USPS Regular Mail

Sandy Landolfi
Director of Customer Logistics
The Safeway Group, LLC
97 North Mill Road
Vineland, New Jersey 08360

Re: Protest of Notice of Proposal Rejection
Solicitation #17DPP00112: Food Storage Facilities

Dear Ms. Landolfi:

This letter is in response to your correspondence dated April 3, 2017, to the Hearing Unit of the Division of Purchase and Property (Division) on behalf of The Safeway Group, LLC (Safeway), in which you request permission to continue in the bidding process despite the Division's Proposal Review Unit's Notice of Proposal Rejection. The record of this procurement reveals that Safeway's proposal was rejected for failing to submit a completed and signed *Offer and Acceptance Page* and for failing to submit the *Disclosure of Investment Activities in Iran* form. The Division accepts your letter as a protest of the Notice of Proposal Rejection. With the protest letter Safeway submitted the completed and signed forms.

In consideration of Safeway's protest, I have reviewed the record of this procurement, including the Request for Proposal (RFP), Safeway's proposal, the 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 Department of Agriculture – Division of Food and Nutrition (NJDA), to solicit proposals from qualified bidders to provide for the storage of foods donated by the United States Department of Agriculture under the National School Lunch Program, Child and Adult Care Feeding Program and Summer Food Service Program to NJDA. The foods are picked-up from the storage facilities by various recipient agencies which include school districts, non-profit organizations and State Agencies. RFP § 1.1 *Purpose and Intent*. The intent of the RFP "is to award up to (2) Master Blanket Purchase Orders (Blanket P.O.(s)) {Contract(s)} to those responsible Vendors {Bidders} whose Quotes {Proposals}, conforming to this Bid Solicitation {RFP} are most advantageous to the State, price and other factors considered. The State may award any and all price lines." *Ibid*. This solicitation was a procurement of similar services provided under T0303, which currently expires on April 30, 2017. RFP § 1.2 *Background*.

On March 24, 2017, the Proposal Review Unit opened the two (2) proposals received by the submission deadline of 2:00 p.m. After conducting a review of the proposals submitted, the Proposal Review Unit found that Safeway's proposal did not contain a completed and signed *Offer and Acceptance Page* or the *Disclosure of Investment Activities in Iran* form. Accordingly, the Proposal Review Unit issued a Notice of Proposal Rejection. On April 3, 2107, Safeway wrote to the Division's Hearing Unit stating:

Please find attached along with your notice of rejection, Offer and Acceptance Page, signed by owner, this was included in original bid. Also attached is the signed form "Disclosure of Investments in Iran", this form was not included in the original bid. Please let me know if there is anything further needed to continue this bidding process.

The subject solicitation was comprised of the RFP and other documents, including the *Offer and Acceptance Page* and the *Disclosure of Investment Activities in Iran* form. All RFP required documents were available on the Division's website as downloadable documents through the Bid Solicitation {RFP} process through NJSTART. The *Offer and Acceptance Page* and the *Disclosure of Investment Activities in Iran* form are addressed in the RFP and are specifically listed under RFP § 4.4.1 *Forms, Registrations and Certifications Required with Quote {Proposal}*. More specifically the RFP states in pertinent part:

4.4.1.1 OFFER AND ACCEPTANCE {SIGNATORY} PAGE

The Vendor {Bidder} shall complete, including signature of an authorized representative of the Vendor {Bidder}, and submit the Offer and Acceptance Page {Signatory Page} accompanying this Bid Solicitation {RFP} (whether submitted through NJSTART or as a hard copy). If the Vendor {Bidder} is a limited partnership, the Offer and Acceptance Page {Signatory Page} must be signed by a general partner. All information requested must be submitted. If the Vendor {Bidder} is a joint venture, the Offer and Acceptance Page {Signatory Page} must be signed by a principal of each party to the joint venture. **Failure to comply will result in rejection of the Quote {Proposal}**.

[*Emphasis added.*]

...

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.]

Furthermore, as a courtesy to all bidders, the Division provided a Checklist as an accompaniment to the RFP. This Checklist is a resource showing, among other things, forms required to be submitted with the bidder's proposal. The relevant portion of the Checklist is captured below. As indicated on the Checklist, among the forms required to be submitted with the bidder's proposal are the *Offer and Acceptance Page* and the *Disclosure of Investment Activities in Iran* form.


**New Jersey Department of the Treasury
 Division of Purchase and Property**




NJ START PROCUREMENT PROGRAM CHECKLIST

Solicitation (RFP) Number: 17DPP00112 Solicitation (RFP) Title: T0303 Food Storage Facilities

This checklist was created as a guide to assist Vendors (Bidders) in preparing a complete and responsive Quote (Proposal) as part of the NJ START Procurement Program. It is only advisory in nature.

It is the Vendor's (Bidder's) responsibility to ensure that all requirements of the Bid Solicitation (RFP) have been met.

Forms with an NJ START icon can be accessed through the Maintain General Information section of the Vendor Profile. Forms that have a  icon next to them can be accessed on the Division website or by clicking on the icon.

FORMS, REGISTRATIONS AND CERTIFICATIONS REQUIRED BY SECTION 4.4.1 THAT MUST BE SUBMITTED WITH THE VENDOR (BIDDER) QUOTE (PROPOSAL)			
	Offer and Acceptance - MUST BE PHYSICALLY OR ELECTRONICALLY SIGNED AND COMPLETED. SEE RFP SECTIONS 1.3.4 AND 4.4.1.1		 PDF
	Disclosure of Investment Activities in Iran - Full Version - SEE SECTION 4.4.1.2.2	NJ START	 PDF
	Disclosure of Investment Activities in Iran - <i>Use with completed NJSTART Category ONLY</i> SEE SECTION 4.4.1.2.2	NJ START	
	Ownership Disclosure - Full Version - SEE SECTION 4.4.1.2.1	NJ START	 PDF
	Ownership Disclosure - <i>Use with completed NJSTART Category ONLY</i> - SEE SECTION 4.4.1.2.1	NJ START	

Pursuant to the Division's governing regulations, 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." N.J.A.C. 17: 12-2.2. As set forth in RFP §§ 4.4.1.1, 4.4.1.2.1, and on the Checklist, the submission of a completed and signed *Offer and Acceptance Page* and the *Disclosure of Investment Activities in Iran* form with the bidder's proposal was required. The *Offer and Acceptance Page* also notified the bidder that the form must be submitted with the proposal.

In reviewing the record of this procurement, the Hearing Unit confirmed that the *Offer and Acceptance Page* was available to all bidders for download and submission. Here however, while Safeway uploaded an *Offer and Acceptance Page* with its proposal, the document, as shown on the figure below, was not completed or signed.

The screenshot shows a PDF document titled "OFFER AND ACCEPTANCE" from the State of New Jersey Department of the Treasury. The document is a form for vendors to submit their offers. It includes a header with the state seal and the department's name and address. Below the header, there are fields for the Vendor Name, Address, City, State, ZIP, and Phone Number. There is also a section for the Vendor to sign and submit the offer. The document is titled "OFFER AND ACCEPTANCE" and is addressed to the State of New Jersey. It includes a section for the Vendor to sign and submit the offer.

In the future, Safeway should review the Vendor Quick Reference Guides provided on the Division's website (<http://www.state.nj.us/treasury/purchase/njstart/vendor.shtml>) as a guide to the process of downloading, completing, saving and uploading completed forms to the NJSTART system.

The Hearing Unit also confirmed that the *Disclosure of Investment Activities in Iran* form was also available to all bidders for download and submission. Unfortunately, Safeway did not submit the *Disclosure of Investment Activities in Iran* form with its proposal and it acknowledges the same in its protest.

The New Jersey Legislature, in implementing N.J.S.A. 52:32-58, mandated that a bidder certify that it is not engaged in certain prohibited activities in Iran with its proposal submission 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 the 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 with the *Disclosure of Investment Activities in Iran* form to be completed and signed in order for bidders to comply with statutory requirement. Unfortunately, Safeway did not submit the form with its proposal, and therefore 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 Safeway'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. The deficiency at issue cannot be remedied after the proposal submission deadline as acceptance of Safeway's proposal under these circumstances would be contrary to the provisions of the governing statute and provide Safeway with disclamation options not available to other bidders.

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.

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 proposal. I note that while there were two proposals received for this procurement, the proposal submitted by the other bidder was withdrawn. Accordingly, this solicitation will be cancelled and all bidders are advised to review the Division's website for future solicitations related to these services.

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, the State of New Jersey's new eProcurement system.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

c: G. Olivera
K. Woolford
B. Gallagher
A. Nelson
D. Rodriguez