



# State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
OFFICE OF THE DIRECTOR  
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April 15, 2016

Via Electronic Mail [tomc@seashoreeast.com] and USPS Regular Mail

Thomas Costello, Vice President  
Seashore Fruit & Produce Co.  
P.O. Box 1819  
Atlantic City, NJ 08404

RE: Protest of Notice of Proposal Rejection  
RFP #16-X-24070: Foods: Fruits & Vegetables (delivery to) North, Central, South & South  
Woods Processing

Dear Mr. Costello:

This correspondence is in response to your letter of protest dated and received April 11, 2016, referencing the subject Request for Proposal (RFP) and regarding the proposal submitted by Seashore Fruit & Produce Co. (Seashore) to the Procurement Bureau (Bureau) of the Division of Purchase and Property (Division). The record of this procurement notes that Seashore's proposal was rejected for failing to include a properly signed *Disclosure of Investment Activities in Iran* Form. In your letter, you acknowledge that Seashore did not "attach the correct completed document with signature" when submitting its proposal, but request the Division accept the completed form included as an attachment to the letter of protest.

I have reviewed the record of this procurement, including the RFP, Seashore'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 Seashore's protest.

By way of the background, the subject RFP was issued by the Bureau on behalf of numerous State Using Agencies within New Jersey (North, Central, South, and South Woods delivery zones) and the Department of Corrections AgriIndustries high-volume processing facility in Bridgeton, New Jersey, to "solicit proposals for a limited variety of cost effective fresh fruit and vegetables, delivered, F.O.B. to State agencies." RFP § 1.1 *Purpose and Intent*. The intent of the RFP is "to award a primary and a secondary contract for each zone, to those responsible Bidders whose proposals, conforming to this RFP are most advantageous to the State, price and other factors considered." *Ibid*. This is a reprocurement of term contract # T1353.

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 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.**

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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 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\*

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*\* 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,<sup>1</sup> 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. 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 Seashore submitted an electronic proposal by the submission deadline of April 1, 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.

Notwithstanding Seashore'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 Seashore's proposal under these circumstances would be contrary to the provisions of governing statutes and would provide Seashore 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 Seashore's proposal. Thank you for registering your business with NJ-START at [www.njstart.gov](http://www.njstart.gov), the State of New Jersey's new eProcurement system.

Sincerely,



Maurice Griffin  
Chief Hearing Officer

MG:DF

c: P. Michaels  
J. Kemery  
K. Popso

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<sup>1</sup> 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>.