



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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November 4, 2019

Via Electronic Mail [vvilvert@naturalvert.com] and USPS Regular Mail

Vetchay Vilvert
Naturalvert LLC
150 Florence Ave, D
Hawthorne, NJ 07507

Re: I/M/O Bid Solicitation #19DPP00379 Naturalvert LLC
Protest of Notice of Proposal Rejection
T-0009 Foods: Cereal, Hot and Cold, for Distribution and Support Services

Dear Mr. Vilvert:

This letter is in response to your email of October 29, 2019, on behalf of Naturalvert LLC ("Naturalvert") which was received by the Division of Purchase and Property's ("Division") Hearing Unit. In that email, Naturalvert protests the Notice of Proposal Rejection issued by the Division's Proposal Review Unit on October 28, 2019, for Bid Solicitation #19DPP00379- T-0009 Foods: Cereal, Hot and Cold, for Distribution and Support Services ("Bid Solicitation"). The record of this procurement reveals that Naturalvert's Quote was rejected for failing to submit the *Disclosure of Investment Activities in Iran Form* with its submitted Quote.

By way of background, on September 19, 2019, the Division's Procurement Bureau ("Bureau") issued the Bid Solicitation on behalf of the Department of Treasury, Distribution and Support Services (DSS). Bid Solicitation § 1.1 *Purpose and Intent*. The purpose of this Bid Solicitation is to solicit Quotes for various hot and cold cereal products for delivery to DSS. Ibid.

On October 24, 2019, the Division's Proposal Review Unit opened Quotes which were 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 Naturalvert for failing to submit the *Disclosure of Investment Activities in Iran Form* with its submitted Quote.

In response to the Notice of Proposal Rejection, on October 29, 2019, Naturalvert sent an email to the Division's Hearing Unit stating:

I'm attaching a copy of our Disclosure of Investments in Iran Form_7 (1) that's needed for our quote. Please let me know if there's anything else that's needed from our end.

In consideration of Naturalvert's protest, I have reviewed the record of this procurement, including the Bid Solicitation, Naturalvert's proposal and protest, 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.

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 shall¹ 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:

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 as non-responsive.

[Bid Solicitation § 4.4.1.2 *NJ Standard Bid Solicitation Forms Required With The Quote.*]

Among those forms 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 (1) 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 (1) 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

¹ "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*.

Quote will result in the rejection of the Quote as non-responsive and preclude the award of a Blanket P.O. to said Vendor {Bidder}.

Vendors {Bidders} using **NJSTART** to submit a Quote 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 must complete the full Disclosure of Investment Activities in Iran form located on the [Division’s website](#).

In order to make this process of complying with the legislative requirement easier, the Division provides 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, Naturalvert did not complete the Disclosure of Investment in Iran category.

Vendor Profile - Naturalvert

Organization Information Users Address Commodity Codes and Services Regs **Forms & 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: 2. Business Formation (MANDATORY FIELD)

Limited Liability Company

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 prefer a paper check instead and do not want to receive payment via EFT. (Any banking information entered as part of your remittance address will be disregarded and remain inactive.)

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: Ownership Disclosure

Description: N.J.S.A. 52:25-24.2 requires disclosure of the names and addresses of those individuals, partnerships and/or corporations owning a 10% or greater interest in the bidding entity ("interest owners"). Further, if any of these interest owners is itself a partnership or corporation, you must disclose the names and addresses of the interest owners of that partnership or corporation.

There are no individuals, partnerships or corporations with a 10% or greater interest in the bidding entity, therefore the bidder is exempt from the ownership disclosure requirement. (No Ownership Disclosure form is required.)

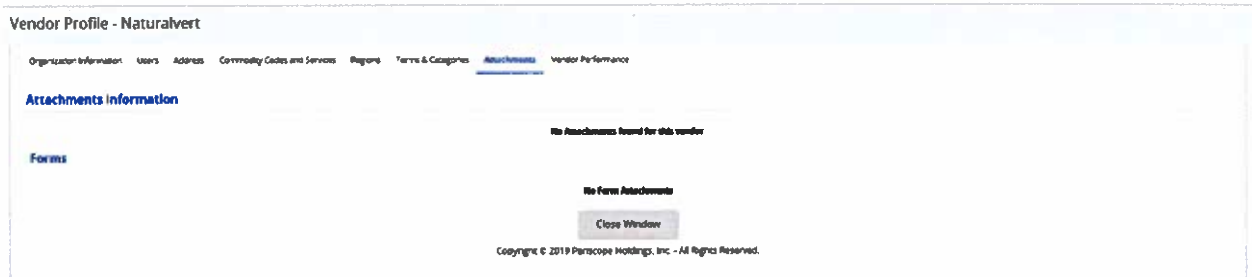
Category: Disclosure of Investment Activities in Iran

Description: P.L. 2012, c. 25 requires that an authorized representative of the bidder certify, under penalty of perjury, that the bidder and its parents, subsidiaries and affiliates are not identified on the Department of the Treasury's list of entities engaged in prohibited investment activities in Iran ("Chapter 25 List").

No, the bidder cannot make this certification. A detailed description of the activities on the attached form has been or will be uploaded to the vendor profile prior to the submission deadline and is intended to accompany the bidder's submission.

Category: Disclosure of Investigations and Other Actions Involving Bidder

Because Naturalvert 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 show in the screenshot below, Naturalvert did not attach the Disclosure of Investment Activities in Iran Form to its **NJSTART** profile.



Nor did it submit the form with its Quote.

Quote 0003587 - Naturalvert

Home Home Questions Subcontractors Terms & Conditions Attachments Evaluators Preferences Bidders Summary

Files

Name	Description	Confidential	Order	Attached By	Attached Date
Naturalvert Bulk Sell Sheet.pdf (view details)		☑	0	Wesley Wheat	09/26/2019
Naturalvert Bulk Sheet Final.pdf (view details)		☑	0	Wesley Wheat	09/26/2019
T0000 Cereal Price Sheet Protected-1 List.xls (view details)		☑	0	Wesley Wheat	09/26/2019
Bidder Data Form.pdf (view details)		☑	0	Wesley Wheat	09/26/2019
Disclosures of Investigators Form.pdf (view details)		☑	0	Wesley Wheat	09/26/2019
Ownership Disclosures Form.pdf (view details)		☑	0	Wesley Wheat	09/26/2019

Forms

No Forms Attachments

Save & Continue Close Window

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In reviewing a Quote submitted in response to a Bid Solicitation, the Division does not have the power to waive the legislative requirement that a Vendor {Bidder} provide its ownership information prior to or accompanying the Quote submission. Only the New Jersey Legislature can change a requirement it has mandated. Unfortunately, Naturalvert did not comply with any of the options available to it for the submission of ownership information. Accordingly, Naturalvert'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.

If the requirements of N.J.A.C. 17:12-2.2 are not met, a Quote must be rejected. The Division's governing regulations mandate stringent enforcement to maintain the equal footing of all Vendors {Bidders} and to ensure the integrity of the State's bidding process. 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 uploaded into *NJSTART* necessarily and appropriately rests solely with the Vendor {Bidder}. Bid Solicitation § 1.4.2 *Vendor {Bidder} Responsibility*. I encourage you to review the Quick Reference Guide (QRG), located at <https://www.state.nj.us/treasury/purchase/vendor.shtml>, to ensure that, in the future, you are uploading the correct documents.

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 Bid Solicitation. 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, the State of New Jersey's eProcurement system.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: TCR

c: U. Magaya
G. Gerstenacker
K. Thomas
J. Kerchner
D. Rodriguez
A. Nelson