



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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Director

July 7, 2015

Via Electronic [vargatransmissions@verizon.net] and USPS Regular Mail

Frank Varga, Jr., President
Varga Auto Repair and Transmission Center
937 Joyce Kilmer Ave.
North Brunswick, NJ 08902

Re: Protest of Notice of Proposal Rejection
RFP #15-X-23841 OEM and Non-OEM Maintenance and Repair Services for Light/Medium
Duty Vehicles, 15,000 lb. GVWR or Less (T-0126)

Dear Mr. Varga:

This correspondence is in response to your letter of protest dated and received May 14, 2015, on behalf of Varga Auto Repair and Transmission Center ("Varga"), by which you express interest in competing for the award of the subject term contract, notwithstanding Varga's receipt of a Notice of Proposal Rejection from the Proposal Review Unit of the Division of Purchase and Property ("Division"). This notice indicates that Varga submitted an incomplete, yet signed, *Disclosure of Investment Activities in Iran* form. You contend that Varga's omission was inadvertent and that Varga intended to check the first box on the form, indicating that neither Varga nor its parents, subsidiaries or affiliates is listed or being considered for listing on the Department of the Treasury's list of entities determined to be engaged in prohibited activities in Iran pursuant to P.L. 2012, c. 25 ("Chapter 25 List").

I have reviewed the record of this procurement, including the RFP, Varga's proposal, and 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 submitted by Varga. I set forth herein my final agency decision.

A review of the facts of this procurement shows that Varga submitted an electronic proposal through the Division's eBid system by the proposal submission date of April 17, 2015. Varga included the three-part Standard RFP Forms packet with its electronic submission, which contained the *Disclosure of Investment Activities in Iran* form. While Varga completed the necessary certification on this form, it failed to check one of the two boxes. Acknowledging this oversight, Varga included a properly completed form with its letter of protest in which it indicated that neither it nor any of its parents, subsidiaries, or affiliated "is listed on the N.J. Department of Treasury's list of entities

determined to be engaged in prohibited activities in Iran pursuant to P.L. 2012, c. 25 ('Chapter 25 List')."

In order for Varga's proposal to be considered for an award, the omission on the *Disclosure of Investment Activities in Iran* form would have to be deemed as a minor irregularity. Minor irregularities can be waived by the Director pursuant to the authority vested in N.J.A.C. 17:12-2.7(d) and RFP Section 1.4.10, *Proposal Acceptances and Rejections*. New Jersey courts have developed a two-prong test to consider "whether a specific noncompliance constitutes a substantial and hence non-waivable irregularity." Twp. of River Vale v. R. J. Constr. Co., 127 N.J. Super. 207, 216 (Law Div. 1974). The two-prong test requires a determination of

first, whether the effect of a waiver would be to deprive the municipality of its assurance that the contract will be entered into, performed and guaranteed according to its specified requirements, and second, whether it is of such a nature that its waiver would adversely affect competitive bidding by placing a bidder in a position of advantage over other bidders or by otherwise undermining the necessary common standard of competition.

[Meadowbrook Carting Co., Inc. v. Borough of Island Heights, 138 N.J. 307, 315 (1994) (internal quotations omitted) (affirming the two-prong test established in River Vale, supra, 127 N.J. Super. at 216).]

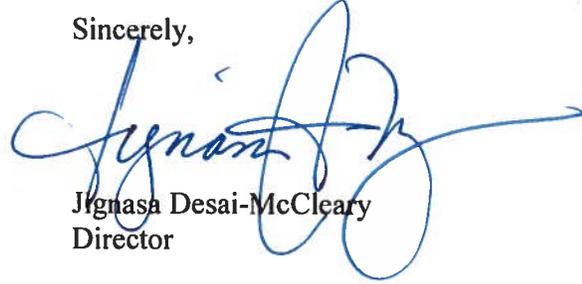
I have considered Varga's position through the lens of the River Vale criteria, and concur with Varga that its submission of a signed but incomplete *Disclosure of Investment Activities in Iran* form does not rise to the level of a material deviation. I note that, consistent with your position, a permissible inference regarding Varga's intent can be made due to its non-inclusion of a description of investment activities in Iran for itself or its parents, subsidiaries or affiliates, as required if the second box was checked. Our Hearing Officer has also reviewed the Department of the Treasury's Chapter 25 List and there is no evidence that either Varga, or one of its parents, subsidiaries or affiliates, is on the list or engaged in investment activities in Iran that would qualify for Chapter 25 listing. As a result, I find that a clarification would be appropriate to remedy the ambiguity in Varga's *Disclosure of Investment Activities in Iran* form. Therefore, I accept the revised form included with Varga's May 14, 2015 letter of protest, which affirmed that neither Varga nor any of its parents, subsidiaries or affiliates is on the Department's Chapter 25 List. This statement clarifies Varga's intent to check the first box on the *Disclosure of Investment Activities in Iran* form, which remedies the ambiguity at issue. However, I must also note that if the statement of clarification expressed Varga's intent to check the second box on the form and provided information to that end, the clarification would be unacceptable. See In re Protest of the Award of the On-Line Games Prod. & Servs. Contract, Bid No. 95-X-20175, 279 N.J. Super. 566, 597 (App. Div. 1995) (holding that "[i]n clarifying or elaborating on a proposal, a bidder explains or amplifies what is already there. In supplementing, changing or correcting a proposal, the bidder alters what is there. It is the alteration of the original proposal which was interdicted by the RFP.").

Therefore, I am overturning the decision of the Proposal Review Unit to reject Varga's proposal for the above-referenced RFP. This is my final agency decision on this matter.

I hereby direct the Procurement Bureau to proceed accordingly with evaluation of the proposals, inclusive of Varga, received for this procurement.

Thank you for your interest in doing business with the State of New Jersey and for registering your business with **NJ START**, the State of New Jersey's new eProcurement system, which is scheduled to go live soon.

Sincerely,



Jignasa Desai-McCleary
Director

JD-M:DF

- c: M. Griffin
K. Thomas
V. Bequer
D. Rodriguez
A. Nelson