



## State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
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April 19, 2017

Via Electronic Mail [[jpyslak@campbellsupply.com](mailto:jpyslak@campbellsupply.com)] and USPS Regular Mail

Neal B. Campbell, President  
Campbell Freightliner, LLC  
1015 Cranbury South River Road  
South Brunswick, NJ 08831

Re: Protest of Notice of Proposal Rejection  
Solicitation #17DPP00120: T2960 Tractor 50,000 lb. GVWR Cab & Chassis

Dear Mr. Campbell:

This letter is in response to your email of April 17, 2017, on behalf of Campbell Freightliner, LLC a/k/a Campbell Supply Company (hereinafter "Campbell") which was received by the Hearing Unit of the Division of Purchase and Property (hereinafter "Division"). In that letter, Campbell protests the Notice of Proposal Rejection issued by the Division's Proposal Review Unit for Solicitation #17DPP00120: T2960 Tractor 50,000 lb. GVWR Cab & Chassis. The record of this procurement reveals that Campbell's Quote {Proposal} (hereinafter "proposal") was rejected for failing to submit the *Disclosure of Investment Activities in Iran Form* with its proposal.

In consideration of Campbell's protest, I have reviewed the record of this procurement, including the Bid Solicitation {Request for Proposal} (hereinafter "RFP"), Campbell'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, on February 28, 2107 the Division's Procurement Bureau (hereinafter "Bureau") issued the above referenced RFP on behalf of the Department of Transportation (hereinafter "DOT"), to solicit proposals for the purchase of a tractor with a 50,000 lb. minimum GVWR Cab & Chassis, Tandem Axle, with Rear Mounted Winch, as specified in the RFP. RFP § 1.1 *Purpose and Intent*. The intent of the RFP is to award one Master Blanket Purchase Order {Contract} (hereinafter "contract") to that responsible Vendor {Bidder} (hereinafter "bidder") whose proposal, conforming to this RFP is most advantageous to the State, price and other factors considered. *Ibid.* This solicitation was a re-procurement of RFP #15-X-23334 which was previously cancelled in order to revise the specifications. RFP § 1.2 *Background*.

On April 11, 2017, the Proposal Review Unit opened the 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 Campbell's proposal did not include the *Disclosure of Investment Activities in Iran Form* as required by the RFP. Accordingly, the Proposal Review Unit issued a Notice of Proposal Rejection.

On April 17, 2107, Campbell wrote to the Division stating:

I am in receipt of your letter in regards to the above subject matter, which is a notice of rejection for our proposal submitted. I would like to note that this form was not provided as a downloadable form from the NJSTART website. All other forms that were required were downloadable and submitted.

I have attached the required form and am requesting to be reconsidered. Thank you for your consideration in this matter.

With the protest, Campbell submitted a copy of the completed *Disclosure of Investment Activities in Iran Form*.

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." Accordingly, the subject solicitation was comprised of the RFP, other documents and mandatory forms which are specifically addressed in RFP § 4.0 *Quote {Proposal} Preparation and Submission* which states in pertinent part:

**4.4.1.2.1 NJ STANDARD BID SOLICITATION {RFP} FORMS REQUIRED WITH THE QUOTE {PROPOSAL}**

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 {Proposal} as non-responsive.

...

**4.4.1.2.2 DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN FORM**

Pursuant to N.J.S.A. 52:32-58<sup>2</sup>, 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

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<sup>1</sup> The Division's administrative rules governing its procurement process 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>.

<sup>2</sup> N.J.S.A. 52:32-58(a) 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 the contract 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."


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

[Emphasis added.]

Furthermore, as a courtesy to all bidders, the Division provided a Proposal Checklist with the solicitation which in pertinent part states the following:


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




** PROCUREMENT PROGRAM CHECKLIST**

Solicitation (RFP) Number: \_\_\_\_\_ - Solicitation (RFP) Title: \_\_\_\_\_

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

As set forth in N.J.S.A. 52:32-58, RFP §§ 4.4.1.2 and 4.4.1.2.2, and as noted in the checklist above, the submission of a completed and signed *Disclosure of Investment Activities in Iran Form* as part of a bidder's proposal was required. In your April 17, 2017 letter, you indicate that the *Disclosure of Investment Activities in Iran Form* "was not provided as a downloadable form from the NJSTART website." However, a review of the record of this procurement reveals that as stated in the RFP and on the checklist, the

*Disclosure of Investment Activities in Iran Form* was available for download on the Division's website located at <http://www.state.nj.us/treasury/purchase/forms.shtml>.

In this case, the record indicates that Campbell's proposal did not include a completed and signed *Disclosure of Investment Activities in Iran Form* as evidenced by a review of the documents submitted by Campbell through the Division's *NJSTART* eProcurement system, nor was the form contained within Campbell's *NJSTART* Vendor Profile. The *NJSTART* system does not prevent a bidder from submitting a proposal without all required forms and documentation. The responsibility for the contents of the proposal, forms, or submittals necessarily and appropriately rests solely with the bidder. Here, unfortunately, Campbell submitted its proposal without the completed *Disclosure of Investment Activities in Iran Form* or other form of certification.

Notwithstanding Campbell's interest in competing for this procurement, it would not be in the State's best interest 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 information and documents were provided as required. The deficiency at issue cannot be remedied or waived after the proposal submission deadline, as acceptance of Campbell's proposal under these circumstances would be contrary to the provisions of the governing statute and would provide Campbell with disclamation options not available to those bidders whose proposals were fully responsive. In light of the findings set forth above, Campbell is not eligible 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 by Campbell in preparing and submitting the proposal.

Thank you for your company's continuing 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 new eProcurement system.

Sincerely,



Maurice A. Griffin  
Acting Director

MAG: RUD

c: J. Kerchner  
K. Thomas  
S. Ghorbani  
A. Nelson  
D. Rodriguez