



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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August 17, 2015

Via Electronic [madelyn.colon@brsrelocations.com] and USPS Regular Mail

Madelyn Colon, Administrative Assistant
Business Relocation Services, Inc.
20 Aquarium Drive
Secaucus, NJ 07094

Re: Protest of Notice of Proposal Rejection
RFP # 16-X-23884: Moving Services DPMC Cooperative Purchase

Dear Ms. Colon:

This letter is in response to your June 19, 2015 email, on behalf of Business Relocation Services, Inc. (BRSI), in which you request that the Division of Purchase and Property (Division) reconsider the Notice of Proposal Rejection issued by the Proposal Review Unit. The Notice of Proposal Rejection indicates that BRSI submitted an incomplete, yet signed, *Disclosure of Investment Activities in Iran* form. BRSI contends that the checking of the second box was in error and that BRSI intended to check the first box on the form, indicating that neither BRSI 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). With the protest, BRSI submitted a corrected *Disclosure of Investment Activities in Iran* form and requests that the Division accept the properly completed form as a complement to its proposal.

By way of background, the Procurement Bureau (Bureau) of the Division issued this subject Request for Proposal (RFP) on behalf of the Division of Property Management and Construction (DPMC) to solicit proposals for intra/inner agency relocation of State agencies and cooperative purchasing entities files, furniture, equipment and other related services. The Division opened proposals following the submission deadline of June 17, 2015 at 2:00 p.m.

In consideration of this protest, I have reviewed the record of this procurement, including the RFP, BRSI'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 BRSI. I set forth herein my final agency decision.

A review of the facts of this procurement shows that BRSI submitted an electronic proposal through the Division's eBid system. With its submission, BRSI included the three-part Standard RFP Forms packet which contained the *Disclosure of Investment Activities in Iran* form. While BRSI completed the form by checking the second box in Part 1 of the form, and completed the necessary certification on the form, it did not provide any information in Part 2 of the form, which is necessary

when checking the second box in Part 1. In its protest, BRSI states that it checked the second box in error and it intended to check the first box in Part 1. In support of its position that the second box in Part 1 was checked in error, BRSI notes that it did not provide any information in response to Part 2 of the form, as it would be required to do if BRSI did have investment activities in Iran. In addition, with its protest, BRSI submitted a *Disclosure of Investment Activities in Iran* form which indicates that neither it nor any of its parents, subsidiaries, or affiliates is listed on the Chapter 25 List.

The general purpose of the public bidding laws is “to guard against favoritism, improvidence, extravagance and corruption; their aim is to secure for the public the benefits of unfettered competition.” Barrick v. State, 218 N.J. 247, 258 (2014). Therefore, “[i]t is firmly established in New Jersey that material conditions contained in bidding specifications may not be waived. This rule, however, does not apply to minor or inconsequential conditions. Public contracting units should resolve problems arising from minor deviations in in a sensible or practical way.” Terminal Constr. Corp. v. Atlantic City Sewerage Auth., 67 N.J. 403, 411 (2013) (*internal citations omitted*). In order for BRSI’s proposal to be considered, the error on the *Disclosure of Investment Activities in Iran* form would have to be deemed 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*. The 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 [government entity] 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).]

The “distinction between conditions that may or may not be waived stems from a recognition that there are certain requirements often incorporated in bidding specifications which by their nature may be relinquished without there being any possible frustration of the policies underlying competitive bidding.” Terminal Constr. Corp., *supra*, 67 N.J. at 412.

I have considered BRSI’s position through the lens of the River Vale criteria and find that BRSI’s submission of the *Disclosure of Investment Activities in Iran* form containing a clerical error does not rise to the level of a material deviation. A permissible inference regarding BRSI’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, which would have been required if the second box was checked. I have also reviewed the Chapter 25 List and there is no evidence that either BRSI, 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. I find that a clarification would be appropriate to remedy the ambiguity in BRSI’s *Disclosure of Investment Activities in Iran* form. Therefore, I accept the June 22, 2015 revised *Disclosure of Investment Activities in Iran* form, which affirms that neither BRSI nor any of its parents, subsidiaries, or affiliates is on the Chapter 25 List. This statement illuminates BRSI’s intent to check the first box on the *Disclosure of Investment Activities in Iran* form, which remedies the ambiguity at issue.¹ Permitting this elaboration

¹ New Jersey Courts have held 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

does not deprive the State of “its assurance that the contract will be entered into, performed and guaranteed according to its specified requirements” and does not place BRSI “in a position of advantage over other bidders or by otherwise undermining the necessary common standard of competition.” Meadowbrook, supra, 138 N.J. at 315.

Therefore, I overturn the decision of the Proposal Review Unit to reject BRSI’s proposal for the above-referenced RFP. I hereby direct the Bureau to proceed accordingly with evaluation of the proposals, inclusive of Business Relocation Services, Inc., received for this procurement. This is my final agency decision on this matter.

Thank you for your company’s continuing interest in doing business with the State of New Jersey and for registering your company with **NJ START** at www.njstart.gov, the State of New Jersey’s new eProcurement system.

Sincerely,



Signasa Desai-McCleary
Director

JD-M: RUD

c: J. Signoretta
A. Miller
A. Nelson
D. Rodriguez

what is there. It is the alteration of the original proposal which was interdicted by the RFP.” 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)