



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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August 30, 2016

Via Electronic Mail [greg@genelsafety.com] and USPS Regular Mail

Gregory Krannich, President
Gen-El Safety & Industrial Products, LLC
Occupational Health & Safety Equipment
961 Route 10 East, Suite 2M
Randolph, New Jersey 07869

RE: Reconsideration: Protest of Notice of Proposal Rejection
Bid Solicitation {Request for Proposal} #16DPP00020 – Protective Clothing and Footwear

Dear Mr. Krannich:

This letter is in response to your email of August 15, 2016, on behalf of Gen-El Safety & Industrial Products, LLC (Gen-El). In that email, you request that I reconsider the Division of Purchase and Property's (Division) August 15, 2016 final agency decision (FAD). In the FAD, I upheld the Division's Proposal Review Unit's rejection of Gen-El's proposal for failing to include a signed and completed *Disclosure of Investment Activities in Iran* Form.

I have reviewed the record of this procurement, including Gen-EL's reconsideration request, Gen-El's original protest and proposal, the Bid Solicitation {Request for Proposal} (RFP), 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 Gen-El's reconsideration request.

By way of background, the subject RFP was issued by the Division's Procurement Bureau (Bureau) on behalf of various New Jersey Agencies and Cooperative Purchasing Program Participants for Protective Clothing and Footwear. RFP § 1.1 *Purpose and Intent*. This is a procurement of services similar to those offered by term contract T0046. RFP § 1.2 *Background*.

On June 28, 2016, the Proposal Review Unit opened the proposals received by the submission deadline of 2:00 p.m. After reviewing the proposals submitted, the Proposal Review Unit found that Gen-El failed to submit a signed/completed *Disclosure of Investment Activities in Iran* Form and issued a Notice of Proposal Rejection. In response to the Notice of Proposal Rejection, on July 13, 2016, Gen-El submitted an email protest and included a completed *Disclosure of Investment Activities in Iran* Form dated May 23, 2016. The Division issued a FAD on August 15, 2016, upholding the rejection of Gen-El's proposal for failing to submit the form. On that same

day Gen-El emailed the Division's Chief Hearing Officer regarding to the FAD. Gen-El's email stated as follows:

I have received your letter and decision regarding the protest I submitted with respect to RFP #16DPP00020. I am in total disagreement with your decision. I respect the Division encourages competition and required that the bidder's playing field be fair and level, but I would like to propose a question. How does the late submission of the "Disclosure of Investigation of Iran" place my company in a more advantageous situation? It is beyond my comprehension that the State would even entertain the thought that we do business with Iran, especially since we have been doing business with the State of New Jersey since the early 1990's. I live in this State, pay taxes here and employ personnel who depend on these contracts. If I had neglected submitting a price sheet, I could understand how I might have an advantage over other bidders, but this reason is totally unfair.

I would very much appreciate your reconsideration of this matter.

The requirement to certify that a bidder is not engaged in certain prohibited activities in Iran is set forth in N.J.S.A. 52:32-58. The New Jersey Legislature, in implementing N.J.S.A. 52:32-58, mandated requirements that a bidder must comply with in order to enter into a contract with the State. N.J.S.A. 52:32-58 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 contract is renewed, that the person or entity is not identified on a list created pursuant to subsection b. of section 3 of the act as a person or entity engaging in investment activities in Iran described in subsection f. of section 2 of this act.

[(Emphasis added.)]

In reviewing proposals submitted in response to an RFP, the Division does not have the power to waive this legislative requirement, as only the New Jersey Legislature can change a requirement it has mandated. In order to make this process or certifying easier, the Division provides to the bidding community a *Disclosure of Investment Activities in Iran* Form to be completed in order for bidders to comply with the statutory requirement of N.J.S.A. 52:32-58. Here, because Gen-El uploaded its proposal without the completed *Disclosure of Investment Activities in Iran* Form or other form of certification, it was not in compliance with the Legislative requirement that mandates that a bidder certify at the time of bid submission that it is not engaged in investment activities in Iran.

Were the Division to allow Gen-El to submit a completed and signed *Disclosure of Investment Activities in Iran* Form after bid opening, it would be in violation of the Legislative requirement outlined in N.J.S.A. 52:32-58. This would allow Gen-El the ability to submit the form beyond the time frame allowed, which would unlevel the bidders' playing field, as the State received responsive proposals in which all necessary information and documents were provided as required. While I regret the outcome of this unfortunate situation, in light of the findings set forth above, Gen-

El is not eligible to participate in the competition for the subject contract. This is my final agency decision related to Gen-El's request for reconsideration.

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

Sincerely,

A handwritten signature in black ink that reads "magniff". The signature is written in a cursive, lowercase style.

Maurice Griffin
Chief Hearing Officer

c: J. Kerchner
K. Thomas
K. Popso
A. Nelson