



# State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
OFFICE OF THE DIRECTOR  
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June 3, 2014

Via Electronic Mail [a.ricciardi@schrierfoodservice.com] and USPS Regular Mail

Ms. Ann Ricciardi  
H. Schrier & Co. Inc.  
4901 Glenwood Road  
Brooklyn, NY 11234

RE: Protest of Notice of Proposal Rejection  
RFP #15-X-23453 Foods: Cereal, Hot & Cold — DSS

Dear Ms. Ricciardi:

This letter is in response to your email<sup>1</sup> dated May 22, 2014, and received May 27, 2014, referencing the subject Request for Proposal (“RFP”) and regarding the proposal submitted by H. Schrier & Co. Inc. (“Schrier”) to the Division of Purchase and Property (“the Division”). The record of this procurement notes that Schrier’s proposal was rejected due to a missing *Ownership Disclosure Form* and *Disclosure of Investment Activities in Iran* form. In your email, you acknowledge the *Bidder Data Packet* included with your proposal was attached twice in error. However, you request that I reconsider the rejection of Schrier’s proposal and permit Schrier to complement its proposal by acceptance of the missing forms, included as an attachment to your protest.

I have reviewed the record of this procurement, including the RFP, Schrier’s proposal, and 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 Schrier’s protest.

The above-referenced solicitation was comprised of the RFP and other documents, one of which was the three-part document titled *NJ Standard RFP Forms*. This document is comprised of three expandable forms, namely an *Ownership Disclosure Form*, a *Disclosure of Investigations and Other Actions Involving Bidder Form*, and a *Disclosure of Investment Activities in Iran* form.

These forms are addressed in RFP Section 4.0, *Proposal Preparation and Submission*. The relevant text reads as follows:

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<sup>1</sup> Your email correspondence is accepted as a letter of protest.

#### **4.4.1.2 NJ Standard RFP Forms**

One of the downloadable RFP documents is titled NJ STANDARD RFP FORMS. It is comprised of three separate forms, two of which (Ownership Disclosure and Disclosure of Investment Activities in Iran) discussed below, must be completed, signed and submitted with the bidder's proposal. **The bidder is cautioned that failure to complete, sign and submit either of these two forms will be cause to reject its proposal as non-responsive as noted below.** If the bidder submits a hard copy proposal, each of the two forms must be physically signed.

If the bidder is submitting an electronic proposal through the Division's eBid system, there are only two acceptable forms of signature for the two forms:

1. The bidder may download the document, physically complete and sign each form, scan the completed document and then upload it, or
2. The bidder may download the document, type the name of the signatory in the space designated for certification signature in each of the forms and then upload the document.

**Note: A bidder's entry of a Personal Identification Number (PIN) will not suffice as a signature on these two forms. A signed RFP Signatory Page is also not an acceptable substitute for signature on these two forms.**

#### **4.4.1.2.1 Ownership Disclosure Form**

Pursuant to N.J.S.A. 52:25-24.2, in the event the bidder is a corporation, partnership or sole proprietorship, the bidder must complete and sign the attached Ownership Disclosure Form. A current completed Ownership Disclosure Form must be received prior to or accompany the submitted proposal. A bidder's failure to submit the completed and signed form with its proposal will result in the rejection of the proposal as non-responsive and preclude the award of a contract to said bidder unless the Division has on file a signed and accurate Ownership Disclosure Form dated and received no more than six months prior to the proposal submission deadline for this procurement. If any ownership change has occurred within the last six months, a new Ownership Disclosure Form must be completed, signed and submitted with the proposal.

#### **4.4.1.2.2 Disclosure of Investment Activities in Iran Form**

Pursuant to N.J.S.A. 52:32-58, the bidder must utilize this Disclosure of Investment Activities in Iran form to certify that neither the 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 bidder, nor one 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 bidder is unable to so certify, the bidder shall provide a detailed and precise description of such activities as directed on the form. A bidder's failure to submit the completed and signed form with its proposal will result in the rejection of the proposal as nonresponsive and preclude the award of a contract to said bidder.

[(Emphasis in original.)]

Pursuant to N.J.A.C. 17:12-2.2,<sup>2</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." As set forth in RFP 4.4.1.2, 4.4.1.2.1, and 4.4.1.2.2, the submission of a completed and signed

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<sup>2</sup> The Division's administrative rules governing its procurement programs 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>.

*Ownership Disclosure Form* prior to or as part of the proposal and a completed and signed *Disclosure of Investment Activities in Iran* form as part of a bidder's proposal was required.

In this case, a review of the electronic records reveals that Schrier's electronic submission contained a duplicate *Bidder Data Packet*, uploaded by Schrier in the place of the *Standard RFP Forms*. With respect to Schrier's contention that the *Ownership Disclosure Form* and *Disclosure of Investment Activities in Iran* form were "indeed attached" but the *Bidder Data Packet* was "attached twice in error," the eBid System cannot differentiate what documents are uploaded. Rather, it accepts any document the bidder uploads in a required document field. The responsibility for the contents of the proposal or submittal necessarily and appropriately rests solely with the bidder.

Notwithstanding Schrier's interest in competing for this procurement, it would not be in the State's best interests 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 documents and information were provided as required. The deficiency at issue cannot be remedied after the proposal submission deadline, as acceptance of Schrier's proposal under these circumstances would be contrary to the provisions of the governing statute and would provide Schrier with disclamation options not available to those bidders whose proposals were fully responsive. In light of the findings set forth above, I must deny your request for eligibility 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 in preparing and submitting Schrier's proposal. Thank you for your company's continuing interest in doing business with the State of New Jersey.

Sincerely,



Ronald G. Wengerd  
Chief Hearing Officer

RGW:DF

c: L. DuBois  
R. Sharbaugh  
J. Signoretta  
G. Gerstenacker  
D. Rodriguez