



## State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
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August 17, 2016

Via Electronic Mail [[Alexandra.howell@whitelodging.com](mailto:Alexandra.howell@whitelodging.com)] and USPS Regular Mail

Alexandra Howell, Sales Manager  
White Lodging/Marriott Teaneck at Glenpointe  
100 Frank W. Burr Boulevard  
Teaneck, New Jersey 07666

RE: Protest of Notice of Proposal Rejection  
RFP #17-X-24267 - Conference, Banquet and Hotel Facility Rental - Statewide

Dear Ms. Howell:

This letter is in response to your facsimile of May 23, 2016, enclosing a *Disclosure of Investment Activities in Iran* Form and your May 26, 2016 email requesting confirmation of receipt emailed to the Division of Purchase and Property (Division). In the Division's Hearing Unit's May 27, 2016 email acknowledging receipt of these documents, we indicate that both your facsimile and email would be treated as White Lodging/the Marriott Teaneck at Glenpointe's (Marriott Teaneck) protest of its proposal rejection. The record of this procurement reveals that Marriott Teaneck's proposal was rejected by the Division of Purchase and Property's (Division) Proposal Review Unit for failing to include a *Disclosure of Investment Activities in Iran* Form in response to the subject Request for Proposal ("RFP").

I have reviewed the record of this procurement, including the RFP, Marriott Teaneck'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 Marriott Teaneck's protest.

By way of background, the subject RFP was issued by the Division's Procurement Bureau ("Bureau") on behalf of the New Jersey Agencies and State Cooperative Purchasing Program Participants for rental of conference, banquet and hotel facilities. RFP § 1.1 *Purpose and Intent*. The intent of the RFP is "to award contracts to those responsible Bidders whose proposals, conforming to this RFP are most advantageous to the State, price and other factors considered." *Ibid*. This is a procurement of services similar to those offered by term contract T0364. RFP § 1.2 *Background*.

On April 19, 2016, the Division's Proposal Review Unit opened the proposals received by the submission deadline of 2:00 p.m. After conducting review of the proposals submitted, the

Proposal Review Unit found that Marriott Teaneck's proposal failed to include a *Disclosure of Investment Activities in Iran Form*. Accordingly, the Proposal Review Unit issued a Notice of Proposal Rejection. In response to the Notice of Proposal Rejection, on May 23, 2016 Marriott Teaneck faxed a completed *Disclosure of Investment Activities in Iran Form* and subsequently sent a May 26, 2016 email which indicates as follows:

I am reaching out in regards to the application that was submitted for the Teaneck Marriott at Glenpointe for the Conference Banquet and Hotel application. I faxed the outstanding forms last week that were required to be approved. The form that was faxed is called "Disclosure of Activities in Iran". (sic) I just want to confirm that these forms were received.

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:

#### **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) shall not suffice as a certifying signature on the forms comprising the NJ STANDARD RFP FORMS document.**

#### **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.)]

Furthermore, as a courtesy to all bidders, the Division provided a Proposal Checklist as an accompaniment to the RFP. The Checklist included the following:

**FORMS THAT MUST BE SUBMITTED WITH YOUR PROPOSAL:**

- RFP Signatory Page with physical signature or PIN (PIN is for eBid submission ONLY)
- Completed Price Sheets as instructed in Section 4.4.5 of the RFP
- Completed and signed Ownership Disclosure Form\*
- Completed and signed Disclosure of Investments in Iran Form\*

....

*\* The Ownership Disclosure, Disclosure of Investigations and Other Actions Involving Bidder, and the Disclosure of Investments in Iran forms MUST each contain either a physical or typed signature (typed signatures are only acceptable for eBid submissions). . . .*

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." As set forth in RFP §§ 4.4.1.2 and 4.4.1.2.2, the submission of a completed and signed *Disclosure of Investment Activities in Iran Form* as part of a bidder's proposal was required.

In this case, the record indicates that Marriott Teaneck's proposal did not include a *Disclosure of Investment Activities in Iran Form* as evidenced by a review of the documents submitted by Marriott Teaneck through the Division's eBid system. A review of the eBid system reveals that in the location for the *Disclosure of Investment Activities in Iran Form*, Marriott Teaneck instead uploaded the RFP document. Although the bidder is required to upload all forms before the proposal can be submitted, the eBid system cannot differentiate between documents that are uploaded or what information is contained within a document. Rather, the eBid system accepts any document the bidder uploads in a required document field and will notify a bidder that its submission is complete regardless of what information is contained in that document field. Furthermore, once a proposal is submitted, the Division can only download the forms submitted as part of a complete proposal after the proposal submission deadline. The responsibility for the contents of the proposal, forms, or submittals necessarily and appropriately rests solely with the bidder. Here unfortunately, Marriott Teaneck's upload of the RFP instead of the required form resulted in no *Disclosure of Investment Activities in Iran Form* being uploaded with Marriott Teaneck's proposal.

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<sup>1</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>.

Notwithstanding Marriott Teaneck'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 information and documents were provided as required. The deficiency at issue cannot be remedied or waived after the proposal submission deadline, as acceptance of Marriott Teaneck's proposal under these circumstances would be contrary to the provisions of the governing statute and would provide Marriott Teaneck with disclamation options not available to those bidders whose proposals were fully responsive. In light of the findings set forth above, Marriott Teaneck 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 in preparing and submitting Marriott Teaneck's proposal. Thank you for your company's continuing interest in doing business with the State of New Jersey. I encourage you to take this opportunity to register your business with ~~NJSTART~~ at [www.njstart.gov](http://www.njstart.gov), the State of New Jersey's new eProcurement system, which went live on June 20, 2016.

Sincerely,



Maurice Griffin  
Chief Hearing Officer

c: G. Olivera  
K. Woolford  
V. Taylor  
A. Nelson