



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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July 10, 2017

Via Electronic Mail [joe@myprincetonchevrolet.com] and USPS Regular Mail

Joe Zamorski, Parts Director
Princeton Chevrolet
200 Renaissance Blvd.
Lawrenceville, NJ 08648

Re: Reconsideration of Final Agency Decision Regarding Proposal Rejection
Solicitation #17DPP00114: T2760 OEM Automotive Parts and Accessories for Light Duty
Vehicles Class 4 or Lower

Dear Mr. Zamorski:

This letter is in response to your email of June 20, 2017, on behalf of Princeton Chevrolet which was received by the Hearing Unit of the Division of Purchase and Property (hereinafter "Division"). In that letter, Princeton Chevrolet requests that Division reconsider the decision set forth in the June 2, 2017, Final Agency Decision which upheld the Division's Proposal Review Unit's Rejection of Princeton Chevrolet's Quote {Proposal} (hereinafter "Proposal") because Princeton Chevrolet submitted a blank *Disclosure of Investment Activities in Iran Form*.

In consideration of Princeton Chevrolet's request for reconsideration, I have reviewed the record of this procurement, including Princeton Chevrolet's original protest letter dated May 22, 2017, the request for reconsideration, the Bid Solicitation {Request for Proposal} (hereinafter "RFP"), Princeton Chevrolet's Proposal, the relevant statutes, regulations, and case law.

By way of background, on March 16, 2017, the Division's Procurement Bureau (hereinafter "Bureau") issued the above referenced RFP on behalf of Department of the Treasury, Bureau of Transportation Services, to solicit Proposals for OEM Automotive Parts and Accessories for Light Duty Vehicles. RFP § 1.1 *Purpose and Intent*. The intent of the RFP is to award up to four (4) Master Blanket Purchase Orders (Blanket P.O.s) {Contracts} (hereinafter "Contracts") per region, for each brand, for each price line item, to those responsive Vendors {Bidders} (hereinafter "Bidder") whose proposals are most advantageous to the State, price, and other factors considered. RFP § 7.2 *Final Blanket P.O. {Contract} Award*.

On April 27, 2017, the Proposal Review Unit opened the Proposals received by the submission deadline of 2:00 p.m. After conducting an initial review of the Proposals submitted, the Proposal Review Unit found that Princeton Chevrolet's Proposal included a blank *Disclosure of Investment Activities in Iran Form*. Accordingly, the Proposal Review Unit issued a Notice of Proposal Rejection.

On May 22, 2015, Princeton Chevrolet submitted its protest alleging that it had submitted a completed and signed *Disclosure of Investment Activities in Iran Form*. Specifically, Princeton Chevrolet stated "All the attachments from bid (00000710) and (00000830) were the same files except for the pricing file in the amendment. All signed and dated including the Disclosure of Investment Activities in Iran." With the protest Princeton Chevrolet submitted a copy of a completed and signed *Disclosure of Investment Activities in Iran Form*.

On June 2, 2017 the Division issued its Final Agency Decision upholding the Proposal Review Unit's rejection of Princeton Chevrolet's Proposal. The Hearing Unit's review of the Princeton Chevrolet's Proposal confirmed that Princeton Chevrolet had not uploaded the completed and signed *Disclosure of Investment Activities in Iran Form* with its submitted Proposal (Quote #00000830). As noted in the June 2, 2017 Final Agency Decision, in creating its initial Proposal (Quote # 00000710) Princeton Chevrolet uploaded the completed and signed *Disclosure of Investment Activities in Iran Form*. However, Princeton Chevrolet withdrew that Proposal as permitted by RFP § 1.4.7.1. *Quote {Proposal} Withdrawal Prior To Quote {Proposal} Opening*, which states in pertinent part "Vendors {Bidders} should note that while withdrawn **NJSTART** Quotes {Proposals} remain viewable by the Vendor {Bidder} on its Vendor Profile Homepage, **they are removed from the Division's view and cannot be considered for Blanket P.O. {Contract} award.**" (*Emphasis added.*) Thereafter, Princeton Chevrolet created a new Proposal (Quote #00000830) which was submitted to the Division. Unfortunately, that Proposal did not have a completed and signed *Disclosure of Investment Activities in Iran Form* attached.

The submission of a completed and signed *Disclosure of Investment Activities in Iran Form* is a mandatory legislative requirement which the Division has no authority to waive. The New Jersey Legislature, in implementing N.J.S.A. 52:32-58, mandated that a Vendor {Bidder} (hereinafter "Bidder") certify, at the time of proposal opening, that it is not engaged in certain prohibited activities in Iran, to be eligible to enter into a contract with the State. N.J.S.A. 52:32-58 states in part:

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 the proposals submitted in response to an RFP, the Division does not have the power to waive the legislative requirement that a bidder certify, at the time of bid submission, that it is not engaged in investment activities in Iran. Only the New Jersey Legislature can change a requirement it has mandated.

Accordingly, the Division's Final Agency Decision upheld the Division's Proposal Review Unit's Rejection of Princeton Chevrolet's Proposal.

On June 20, 2012, Princeton Chevrolet submitted a request for reconsideration to the Division's Hearing Unit. In the letter, Princeton Chevrolet states in part:

...We feel this rejection has no merit due to the fact that the NJSTART website is poorly designed. Because of this, there are now issues with our bid due to your website. All the website instructions were followed in detail, yet there were issues beyond our control that led to this unfair rejection...

In your rejection letter you state that in our original bid (00000710) - all the forms were correct with all the signatures - but that bid could not be considered since we submitted an updated one.

Since you agreed that the first bid was correct, we question why is the second one wrong if all the same files were uploaded to the second bid from the first? After working on this website with both bids, we are not confident that the site is working correctly or user friendly.

This rejection has no merit and needs to be reconsidered.

In requesting reconsideration, Princeton Chevrolet has not brought to light any new or additional information which was not included in its original protest. Rather, Princeton Chevrolet simply disagrees with the Division's decision, and asks that the Division reconsider the decision based upon the same information and arguments presented in the original protest. Reconsideration however,

should be utilized only for those cases which fall into that narrow corridor in which either 1) the [tribunal] has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the [tribunal] either did not consider, or failed to appreciate the significance of probative, competent evidence. . . .

Alternatively, if a litigant wishes to bring new or additional information to the [tribunal's] attention which it could not have provided on the first application, the [tribunal] should, in the interest of justice (and in the exercise of sound discretion), consider the evidence. Nevertheless, motion practice must come to an end at some point, and if repetitive bites at the apple are allowed, the core will swiftly sour. Thus, the [tribunal] must be sensitive and scrupulous in its analysis of the issues in a motion for reconsideration.

[Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996), citing, D'Atria v. D'Atria, N.J. Super. 392, 402-402 (Ch. Div. 1990)(stating "[r]econsideration is a matter within the sound discretion of the Court, to be exercised in the interest of justice.)]

Additionally, the Division's governing regulations do not contemplate requests for reconsideration. Rather, upon issuance of the final agency decision, the appropriate course of action would be to file an appeal with the Superior Court Appellate Division. N.J.A.C. 17:12-3.1 (b). While Princeton Chevrolet may not be entitled to reconsideration under the law, for the sake of completeness I will address the request here.

Princeton Chevrolet's Proposal (Quote# 00000710) was uploaded to the Division's [NJSTART](#) website on or about April 15, 2017, and contained a completed and signed *Disclosure of Investment Activities in Iran Form*, as shown in the screenshot below.

STATE OF NEW JERSEY - DIVISION OF PURCHASE AND PROPERTY
 DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN

Quote Number: 17DPP00114 Bidder/Officer: PRINCETON CHEVROLET

PART 1: COMPLETION
 BIDDERS MUST COMPLETE PART 1 BY CHECKING EITHER BOX
 FAILURE TO CHECK ONE OF THE BOXES WILL RENDER THE PROPOSAL NONRESPONSIVE.

Pursuant to Public Law 2011-216, any person or entity that submits a bid or proposal in response to a state or local contract must complete the certification below to attest under penalty of perjury that neither the person or entity, nor any of its officers, subsidiaries, or affiliates, is included on the Department of Treasury's List of Specially Designated Nationals and Blocked Persons (SDN List) as of the date of the bid or proposal. If the bidder or the bidder's officers or affiliates are included on the SDN List, the bidder must advise the Department of Treasury in writing of the inclusion and provide a copy of the SDN List to the Department of Treasury. The bidder must also advise the Department of Treasury of any other information that may be relevant to the Department of Treasury's determination of whether the bidder or the bidder's officers or affiliates are included on the SDN List.

I, the undersigned, do hereby certify that neither I, nor any of my officers, subsidiaries, or affiliates, is included on the Department of Treasury's List of Specially Designated Nationals and Blocked Persons (SDN List) as of the date of the bid or proposal. I will advise the Department of Treasury of any other information that may be relevant to the Department of Treasury's determination of whether I, or any of my officers, subsidiaries, or affiliates, are included on the SDN List.

CERT: PLEASE PROVIDE FURTHER INFORMATION RELATED TO INVESTMENT ACTIVITIES IN IRAN
 You must provide a written description of the nature of the bidding community, or any of its officers, subsidiaries, or affiliates, engaging in the investment activities in Iran described in the bid or proposal.

EACH BIDDER MUST PROVIDE YOU TO PROVIDE INFORMATION RELATIVE TO THE ABOVE QUESTIONS. PLEASE PROVIDE THE INFORMATION ANSWERS TO EACH QUESTION IF YOU NEED TO MAKE ADDITIONAL COMMENTS. CHECK THE "ADD AN ADDITIONAL ACTIVITY" BUTTON.

Name: _____ Position: Bidder/Officer

Description of Activity: _____

Duration of Engagement: _____ Independent Consultant/Job: _____

Subcontractor/Contract Name: _____ Contact Person Number: _____

ADD AN ADDITIONAL ACTIVITY

Full Name (Print): _____ Signature: _____ Do Not Fill Out This Section

Title: _____ Date: _____

This demonstrates that Princeton Chevrolet understood and was able to properly complete and submit its Proposal using the Division's **N/START** website.

On April 18, 2017 the Bureau posted an amendment to the RFP which included a revised price sheet. Because of this amendment, it appears that Princeton Chevrolet choose to withdraw its initial Proposal and submit an entirely new Proposal rather than amending the price sheet attached to its original proposal. On or about April 20, 2017, Princeton Chevrolet uploaded a new Proposal to the Division's **N/START** website (Quote# 00000830). Unfortunately, while Princeton Chevrolet did attach a copy of the *Disclosure of Investment Activities in Iran Form* to its submitted revised Proposal (Quote# 00000830), the form, as indicated by the screenshot below, was neither completed nor signed.

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I, the undersigned, do hereby certify that neither I, nor any of my officers, subsidiaries, or affiliates, is included on the Department of Treasury's List of Specially Designated Nationals and Blocked Persons (SDN List) as of the date of the bid or proposal. I will advise the Department of Treasury of any other information that may be relevant to the Department of Treasury's determination of whether I, or any of my officers, subsidiaries, or affiliates, are included on the SDN List.

CERT: PLEASE PROVIDE FURTHER INFORMATION RELATED TO INVESTMENT ACTIVITIES IN IRAN
 You must provide a written description of the nature of the bidding community, or any of its officers, subsidiaries, or affiliates, engaging in the investment activities in Iran described in the bid or proposal.

EACH BIDDER MUST PROVIDE YOU TO PROVIDE INFORMATION RELATIVE TO THE ABOVE QUESTIONS. PLEASE PROVIDE THE INFORMATION ANSWERS TO EACH QUESTION IF YOU NEED TO MAKE ADDITIONAL COMMENTS. CHECK THE "ADD AN ADDITIONAL ACTIVITY" BUTTON.

Name: _____ Position: Bidder/Officer

Description of Activity: _____

Duration of Engagement: _____ Independent Consultant/Job: _____

Subcontractor/Contract Name: _____ Contact Person Number: _____

ADD AN ADDITIONAL ACTIVITY

Full Name (Print): _____ Signature: _____ Do Not Fill Out This Section

Title: _____ Date: _____

Moreover, I note that the *Disclosure of Investment Activities in Iran Form* was not contained within Princeton Chevrolet's **NJSTART** Vendor Profile. Therefore, Princeton Chevrolet was not in compliance with the Legislative requirement.

As noted in the Division's Final Agency Decision, the **NJSTART** system does not prevent a Bidder from submitting a Proposal without all required forms and documentation attached or without the documents being fully completed as mandated by the Legislature and the specifications. The responsibility for the contents of the Proposal, forms, or submittals necessarily and appropriately rests solely with the Bidder. RFP § 1.4.2 *Vendor {Bidder} Responsibility*. Princeton Chevrolet demonstrated its ability to comply with the submission requirements when it submitted its original proposal. However, because that proposal was withdrawn, nothing contained with that Proposal can be considered. RFP § 1.4.7.1. *Quote {Proposal} Withdrawal Prior To Quote {Proposal} Opening*. Unfortunately, Princeton Chevrolet submitted its amended Proposal (Quote# 00000830) without the *Disclosure of Investment Activities in Iran Form* being completed and signed as required.

Notwithstanding Princeton Chevrolet's interest in competing for this procurement, to allow a Bidder who did not appropriately complete, sign and submit all of the legislatively required forms with its Proposal, to be eligible to participate in the procurement process would un-level the Bidders' playing field. The deficiency at issue cannot be remedied after the Proposal submission deadline as acceptance of Princeton Chevrolet's Proposal under these circumstances would be contrary to the provisions of the governing statute. In light of the findings set forth above, I have no choice but to deny your request for reconsideration.

Thank you for your interest in doing business with the State of New Jersey and for registering your company with **NJSTART** at 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