



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
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Acting State Treasurer

JIGNASA DESAI-MCCLEARY
Director

October 15, 2015

Via Electronic Mail [chrisb@collectorsolutions.com] and USPS Regular Mail

Chris Battel, CEO
CollectorSolutions, Inc.
316 S. Baylen St., Suite 590
Pensacola, Florida 32502

Re: Protest of Notice of Proposal Rejection
RFP #16-X-23488 Credit Card Payment Processing: State of New Jersey

Dear Mr. Battel:

This correspondence is in response to your letter of protest dated October 7, 2015, and received October 8, 2015, referencing the subject Request for Proposal (RFP) and regarding the proposal submitted by CollectorSolutions, Inc. (CSI) to the Division of Purchase and Property (Division). The record of this procurement notes that CSI's hard copy proposal was rejected by the Proposal Review Unit as not timely submitted. Your letter contends that, despite scheduling delivery of the proposal via Federal Express Priority Overnight Delivery to arrive by 10:30 a.m. on September 25, 2015, CSI's proposal arrived at 2:45 p.m. due to a "delivery delay" on the part of Federal Express. You request the Division accept CSI's proposal as timely submitted and consider it for an award of contract.

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

By way of background, the subject RFP was issued by Procurement Bureau of the Division on behalf of the Executive and Judicial Branches of New Jersey "to solicit proposals for payment gateway and acquiring processor services required for the receipt of payments to the State via a variety of electronic means of payment, e.g., credit cards, debit cards, etc." RFP § 1.1 *Purpose and Intent*. The proposal submission deadline was 2:00 p.m. on September 25, 2015. The record of this procurement indicates that CSI's hard copy submission arrived at the Division at 2:49 p.m. on September 25, 2015. Although CSI delivered its proposal to the FedEx facility at approximately 3:24 p.m. on September 24, 2015, it appears the proposal did not arrive at the Hamilton, NJ FedEx facility until after the courier dispatch at 11:00 a.m. on the 25th.¹ CSI claims this caused the delay in the proposal being delivered to the Division by the deadline. However, the record also reveals that CSI properly submitted a complete electronic proposal through the Division's eBid system by the proposal submission deadline. This proposal was accepted as timely submitted by the Proposal Review Unit.

¹ CSI provided the FedEx tracking information with its letter of protest.

The RFP provided the following guidance on the submission of proposals in a timely manner:

1.3.2 SUBMISSION OF PROPOSAL

In order to be considered for award, the proposal must be received by the Procurement Bureau of the Division of Purchase and Property at the appropriate location by the required time. **ANY PROPOSAL NOT RECEIVED ON TIME AT THE LOCATION INDICATED BELOW WILL BE REJECTED. THE DATE AND TIME ARE INDICATED ON THE COVER SHEET. THE LOCATION IS AS FOLLOWS:**

PROPOSAL RECEIVING ROOM – 9TH FLOOR
PROCUREMENT BUREAU
DIVISION OF PURCHASE AND PROPERTY
DEPARTMENT OF THE TREASURY
33 WEST STATE STREET, P.O. BOX 230
TRENTON, NJ 08625-0230

Directions to the Division are available on the web at
<http://www.state.nj.us/treasury/purchase/directions.shtml>.

Note: Bidders using U.S. Postal Service regular or express mail services should allow additional time since the U.S. Postal Service does not deliver directly to the Procurement Bureau.

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4.2 PROPOSAL DELIVERY AND IDENTIFICATION

In order to be considered, a proposal must arrive at the Division in accordance with the instructions on the RFP signatory page accompanying this RFP. Bidders are cautioned to allow adequate delivery time to ensure timely delivery of proposals. State regulation mandates that late proposals are ineligible for consideration. **THE EXTERIOR OF ALL PROPOSAL PACKAGES ARE TO BE LABELED WITH THE PROPOSAL IDENTIFICATION NUMBER AND THE FINAL PROPOSAL SUBMISSION DATE OR RISK NOT BEING RECEIVED IN TIME.**

The RFP also advised all bidders on the type of submissions required:

4.3.1 EBID SUBMISSION OF PROPOSAL

If the Bidder is submitting an eBid proposal, hard copy submission is still required, please see Section 4.3.2 for number of complete and exact copies. Instructions detailing how to enroll in and submit an eBid are available on the web at <https://wwwnet1.state.nj.us/treasury/dpp/ebid/>. If the Bidder submits both an eBid and a hard copy of the Bidder's proposal, the eBid proposal will prevail in the event of a discrepancy between the electronic and paper versions.

When submitting an eBid, do not use any symbols (i.e., #, @, \$, &, *) in the filename. In addition, the Bidder should name each converted PDF electronic file to reflect the name of the specific form it is submitting.

4.3.2 NON-EBID SUBMISSION

The Bidder must submit the following proposal copies:

One (1) complete ORIGINAL proposal, clearly marked as the "ORIGINAL" proposal.

Ten (10) complete and exact copies, clearly marked "COPY."

One (1) complete and exact ELECTRONIC copy of the original proposal in PDF file format on disc (CD or DVD) to be viewable and "read only" by State evaluators using Adobe Acrobat Reader software.

Copies are necessary in the evaluation of the proposal and for record retention purposes. A Bidder failing to provide the requested number of copies will be charged the cost incurred by the State in producing the requested number of copies. The Bidder should make and retain a copy of its proposal.

The administrative regulations that govern the Division's advertised procurement process establish certain requirements that must be met in order for a proposal to be accepted. These regulations are stringently enforced to maintain the equal footing of all bidders and to ensure the integrity of the State's bidding process. N.J.A.C. 17:12-2.2(a) provides in relevant part: "In order to be eligible for consideration for award of contract, the bidder's proposal shall . . . [b]e submitted on or before the due date and time and at the place specified in the RFP [.]". Therefore, the Division cannot accept CSI's hard copy submission. CSI retained Federal Express to act as its agent to deliver the proposal in a timely manner and the Division cannot accept responsibility for the actions or inactions of the bidder or its agent.

Notwithstanding the rejection of the hard copy submission, in order for CSI's electronic proposal to be considered, the omission of a hard copy submission would have to be deemed as 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*. 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 [State] 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).]

In this case, because the Division did receive a complete electronic version of CSI's proposal by the proposal submission deadline, the State is assured that CSI could enter into, perform, and guarantee the requirements of the RFP. The submission of hard copies is for convenience of the State and is therefore a minor deviation. Because the electronic proposal was timely received and "the eBid proposal will prevail in the event of a discrepancy between the electronic and paper versions," CSI's electronic proposal is accepted as a valid proposal. The Procurement Bureau is directed to include CSI's proposal in its review of the subject RFP.

Thank you for your interest in doing business with the State of New Jersey. I invite you to take this opportunity to register your business with [NJ START](http://www.njstart.gov) at www.njstart.gov, the State of New Jersey's new eProcurement system.

Sincerely,



Maurice Griffin
Chief Hearing Officer

MAG:DF

c: G. Olivera
J. Strype
A. Nelson