



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
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Director

March 17, 2016

Via Electronic Mail [SMcEvoy@signaturetechnology.com] and USPS Regular Mail

Steve McEvoy, Vice President Solution Development
Signature Technology Group/ Tech Data Corporation
2424 West Desert Cove Ave.
Phoenix, Arizona 85029

Re: Protest of Notice of Proposal Rejection
RFP #16-X-24215 Computer Equipment Repair Services

Dear Mr. Battel:

This correspondence is in response to your letter of protest dated March 15, 2016, referencing the subject Request for Proposal (RFP) and regarding the proposal submitted by Signature Technology Group/ Tech Data Corporation (Tech Data) to the Division of Purchase and Property (Division). The record of this procurement shows that Tech Data's hard copy proposal was rejected by the Proposal Review Unit as not timely submitted. Your letter contends that Tech Data successfully submitted an electronic proposal by the proposal submission deadline and therefore should not be disqualified from the subject solicitation.

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

By way of background, the subject RFP was issued by the Procurement Bureau of the Division on behalf of the State of New Jersey "to solicit proposals for the repair of personal computers and related hardware including, monitors, printers, scanners, digital projectors, file and print servers and all components specified in this RFP." RFP § 1.1 *Purpose and Intent*. The proposal submission deadline was 2:00 p.m. on February 25, 2016. The record of this procurement indicates that Tech Data's hard copy submission arrived at the Division at 11:54 a.m. on February 29, 2016. However, the record also reveals that Tech Data properly submitted a complete electronic proposal through the Division's eBid system by the proposal submission deadline. This electronic proposal was accepted as timely submitted by the Proposal Review Unit.

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.
- Five (5) complete and exact copies, clearly marked "COPY."
- One (1) unbound, complete and exact copy** of the original, clearly marked "COPY."
- One (1) complete and exact ELECTRONIC copy** of the original proposal in an editable and "writable" PDF file format on disc (CD or DVD) for redaction.

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 Tech Data's hard copy submission.

Notwithstanding the rejection of the hard copy submission, in order for Tech Data'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 vested authority contained in N.J.A.C. 17:12-2.7(d) and pursuant to 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 Tech Data's proposal by the proposal submission deadline, the State is assured that Tech Data 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," Tech Data's electronic proposal is accepted as a valid proposal. The Procurement Bureau is directed to include Tech Data's proposal in its review of proposals received in response to the subject RFP.

Thank you for your interest in doing business with the State of New Jersey and for registering your businesses with **NJ START**, the State of New Jersey's new eProcurement system.

Sincerely,


Maurice Griffin
Chief Hearing Officer

MAG:DF

c: G. Olivera
G. Terwilliger
J. McGowan