



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
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Telephone (609) 292-4886 / Facsimile (609) 984-2575

December 17, 2014

Via Electronic Mail [dwatson@petersonservice.com] and USPS Regular Mail

Mr. David Watson
Peterson Service Company, Inc.
234 Route 70
Medford, NJ 08055

RE: Request for Acceptance of Proposal Documents as Timely Submitted
RFP #15-X-23228 – HVAC, Refrigeration & Boiler Services – Statewide (T1372)

Dear Mr. Watson:

This letter is in response to your letter received December 3, 2014, referencing the subject Request for Proposal (“RFP”) requesting, on behalf of Peterson Service Company, Inc. (“PSC”), that the Division of Purchase and Property (“the Division”) accept the electronically submitted documentation that PSC uploaded to a State-established lockbox site prior to the official deadline for submission of proposals in response to the subject RFP as a timely submitted proposal. You explain that your intended completion of PSC’s e-bidding effort was stymied in the moments just prior to the 2:00 p.m., December 2, 2014 deadline when you were unable to enter PSC’s Personal Identification Number (“PIN”) as necessary to sign and complete the proposal submission process. Advising of your hasty and earnest but unsuccessful email and telephonic efforts to secure the State’s assistance in order to remedy the PIN problem, you ask that the Division waive the timely submission requirement and deem the documents PSC uploaded to the lockbox prior to the 2:00 pm deadline a viable proposal.

I have reviewed the record of this procurement in consideration of relevant statutes, regulations, and case law. In addition, I have reviewed the electronic records relating to PSC’s uploading of documents prior to its encountering difficulty in applying its signatory PIN to indicate compliance with select RFP requirements and to commit to the provisions of the contract. This review has provided me with the information necessary to render an informed determination on the merits of PSC’s request.

The record reveals that the proposal submission deadline for the subject RFP was 2:00 p.m. EST on December 2, 2014. The eBid records show that six vendors successfully submitted proposals by the submission deadline, and that the eBid system was fully functioning up until the submission deadline. The records maintained by the eSupport unit of the Department of the Treasury,

which oversees and manages the Division's eBid system and responds to technical issues raised by bidders and potential bidders, indicate that PSC's attempted to secure assistance with addressing a PIN-related problem in the last minutes before the official submission deadline. The eSupport records indicate that DWALSON@PETTERSONSERVICE.COM emailed DPP eSupport at 1:52:58 p.m. on December 2, 2014, asking "what is my pin#" and "will not let me submit my bid". The eSupport records also indicate that PSC sought assistance from the eSupport unit telephonically at 1:53 p.m. on December 2, 2014. The voice message requests assistance concerning PSC's PIN, stating, in pertinent part, "I have no idea what the PIN number is. It's not my username; it's not my password. Please call . . ."

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. If the requirements of N.J.A.C. 17:12-2.2 are not met, the proposal must be rejected. 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 [.]"

The subject RFP establishes the following submission requirements:

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

....

1.3.3 ELECTRONIC BIDDING (EBID)

The Division is pleased to announce its electronic procurement modernization process. This RFP provides to the bidder the opportunity to electronically submit its proposal. A new electronic bidding – "eBid" – application is being made available to vendors to promote an easier, more efficient method to submit proposals.

On-line Electronic Proposal Training Sessions:

Online electronic proposal training for the eBid process is available on the web at <https://wwwnet1.state.nj.us/treasury/dpp/ebid/>. The bidder is strongly encouraged to utilize the on-line training session before attempting to submit an eBid. It will be the bidder's responsibility to ensure that the eBid has been properly submitted.

....

4.2 PROPOSAL DELIVERY AND IDENTIFICATION

In order to be considered, a proposal shall 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. . . .**

[(Emphasis in original.)]

In addition, within the segment of the subject RFP's signatory page that lists base requirements applicable to all advertised competitive procurements, the requirement for timely submission of proposals is set forth as follows:

PURSUANT TO N.J. STATUTES, REGULATIONS AND EXECUTIVE ORDERS, PROPOSALS WHICH FAIL TO CONFORM WITH THE FOLLOWING REQUIREMENTS WILL BE SUBJECT TO REJECTION:

- 1) PROPOSALS MUST BE RECEIVED AT OR BEFORE THE PUBLIC OPENING TIME OF 2:00 PM EASTERN TIME ON DECEMBER 2, 2014**

....

[(Emphasis in original.)]

Thus, the need for the bidder to submit a signed proposal as mandated by the administrative rules that govern the Division's procurements was clearly and repeatedly established by the provisions of the RFP and signatory page.

With regard to PSC's need and effort in the final minutes before the proposal submission deadline to seek assistance from the Division and eSupport personnel when the PIN issue was first encountered, my review discerned that helpdesk staff were predisposed with other matters in their telephone and e-mail queues and thus were unavailable to provide last-minute assistance to PSC. Just as a bidder delivering its hardcopy proposal to the RFP-defined location in Trenton has the responsibility to anticipate potential travel disruptions or other causes for delay in that effort, so, too, is a bidder who has opted to prepare its proposal for electronic transmittal via the eBid system responsible for knowing all the steps necessary to complete that preparation and submission and for allowing time for remediation in the event of preparation and/or transmission problems or other causes of delay in that effort. While apparently unknown to PSC, the PIN issue could likely have been resolved by its own actions by accessing the eBid program's "My Profile" link and "eBid – Reset My PIN" sub-link and following the instructions which call for the bidder to use its Federal Identification Number or Social Security Number and its Business Registration Number to get to the point where it could change its password and then submit its proposal. Since these steps are defined in the eBid program's online training session available to all bidders as described in the previously quoted RFP Subsection 1.3.3, PSC's apparent unfamiliarity with the eBid program's procedure for attending to the PIN issue was a matter within its domain as a bidder. Of course, if the preparation of the proposal had been undertaken at an earlier time, the helpdesk staff would likely have been able to provide timely assistance to PSC.

Therefore, despite PSC's apparent intent to submit a proposal for the subject contract in advance of the proposal deadline, under the provisions set forth above, the Division cannot accept PSC's uploaded documents as a timely submitted, signed proposal. This is my final agency determination concerning this matter.

Notwithstanding the unfortunate circumstances that preclude PSC from securing an award of the subject contract, I trust that PSC will continue to respond to bidding opportunities offered by the Division on behalf of State using agencies. In that regard, thank you for registering PSC with **NJ START** at www.njstart.gov, the State's new eProcurement system soon to be initiated.

Sincerely,

A handwritten signature in blue ink, appearing to read 'R. Wengerd', with a long horizontal flourish extending to the right.

Ronald G. Wengerd
Chief Hearing Officer

c: M. Griffin
J. Kemery
D. Delaney