



State of New Jersey

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

33 WEST STATE STREET
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July 7, 2017

Via Electronic Mail [skipm@machenry.com] and USPS Regular Mail

Paul MacHenry, Jr.
SP Auto Parts, Inc.
201 Executive Drive
Moorestown, NJ 08057

Re: Protest of Notice of Proposal Rejection
Solicitation #17DPP00114: T2760 OEM Automotive Parts and Accessories for Light Duty
Vehicles Class 4 or Lower

Dear Mr. MacHenry:

This letter is in response to your correspondence on behalf of SP Auto Parts, Inc. (hereinafter "SP Auto Parts") which was received by the Hearing Unit of the Division of Purchase and Property (hereinafter "Division") on June 22, 2017. In that letter, SP Auto Parts protests the rejection of its Quote {Proposal} (hereinafter "Proposal") as a late submission. SP Auto Parts alleges that it was unable to upload its Proposal because of "website failures" with the Division's *NJSTART* eProcurement website. SP Auto Parts requests that its hand delivered Proposal be accepted and considered in the evaluation of this procurement.

In consideration of SP Auto Parts' protest, I have reviewed the record of this procurement, including the Bid Solicitation {Request for Proposal} (hereinafter "RFP"), SP Auto Parts' *NJSTART* submission, the relevant statutes, regulations, and case law. This review of the record has provided me with the information necessary to determine the facts of this matter and to render an informed Final Agency Decision on the merits of the protest. I set forth herein the Division's Final Agency Decision.

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 "Bidders") whose Proposals are most advantageous to the State, price, and other factors considered. RFP § 7.2 *Final Blanket P.O. {Contract} Award*.

The Division's administrative regulations that govern the advertised procurement process establish certain requirements that must be met in order for a Proposal to be accepted. The Division's governing regulations provide in relevant part: "[i]n 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.” N.J.A.C. 17:12-2.2(a). If the requirements of N.J.A.C. 17:12-2.2 are not met, a 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. Accordingly, the RFP advised Bidders of the requirements for proper and timely Proposal submission noting:

1.3.2 SUBMISSION OF QUOTES {PROPOSALS}

In order to be considered for award, the Quote {Proposal} must be received by the Procurement Bureau of the Division at the appropriate location by the required time. Vendors {Bidders} shall submit a quote {proposal} either electronically through **NJSTART** or via hard copy.

Hard copy quote {proposal} must be submitted to the physical location noted below:

PROPOSAL RECEIVING ROOM – 9TH FLOOR
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>.

QUOTES {PROPOSALS} NOT RECEIVED PRIOR TO THE QUOTE {PROPOSAL} OPENING DEADLINE SHALL BE REJECTED. THE DATE AND TIME OF THE QUOTE {PROPOSAL} OPENING ARE INDICATED ON THE BID SOLICITATION {RFP} COVER SHEET AND IN THE “SUMMARY” PAGE OF THE BID SOLICITATION IN **NJSTART.**

Note: A Vendor {Bidder} 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. A Vendor {Bidder} should make every effort to submit its quote {proposal} well ahead of the quote {proposal} submission deadline to mitigate unforeseen delays or issues. **The Vendor {Bidder} is solely responsible for the timely submission of its quote {proposal} in response to this Bid Solicitation {RFP}.**

...

[Second emphasis added.]

Further the RFP advised Bidders to consult the Division’s Quick Reference Guides and supporting videos in preparing Proposals; specifically,

1.3.3 **NJSTART**

The Division is pleased to announce its new eProcurement solution
“*NJ START*.”

Vendor {Bidder} Support:

Vendors {Bidders} are strongly encouraged to visit the [NJSTART Vendor Support Page](#), which contains Quick Reference Guides (QRGs), supporting videos, a glossary of [NJSTART](#) terms, and helpdesk contact information.

The Vendor {Bidder} should utilize the QRGs before attempting to submit its Quote {Proposal} using the [NJSTART](#) process. It is the Vendor's {Bidder's} responsibility to ensure that the [NJSTART](#) Quote {Proposal} and attachments have been properly submitted.

On April 3, 2017, the Bureau issued Bid Amendment {Addendum} #1 (hereinafter "Bid Amendment") responding to the questions posed by potential Bidders. On April 18, 2017, the Bureau issued Bid Amendment #2 which included modifications to the price sheet and extended the bid opening date from April 21, 2017 at 2:00 pm eastern time to April 27, 2017 at 2:00 pm eastern time.

On April 27, 2017, the Proposal Review Unit opened the Proposals received by the submission deadline of 2:00 pm eastern time. A review of the Proposals submitted by the submission deadline reveals that SP Auto Parts did not submit its Proposal by the 2:00 p.m. deadline. Instead, on April 28, 2017 at 1:46 pm, almost a full day after the submission deadline, SP Auto Parts hand delivered its Proposal to the Division. Thereafter, the Division's Proposal Review Unit issued a Notice of Proposal Rejection, rejecting SP Auto Parts Proposal as not timely submitted.

STATE OF NEW JERSEY			
NOTICE OF PROPOSAL REJECTION			
Department of the Treasury, Division of Purchase and Property PO Box 039, Trenton, NJ 08625-0039			
Vendor Name:	<u>Paul Machency</u>	Proposal Due Date:	<u>Apr 27, 2017</u>
Vendor Address:	<u>SP Auto Parts Inc</u> <u>201 Executive Dr</u> <u>Moorestown NJ 08057</u>	Solicitation #:	<u>17DPP000114</u>
		Solicitation Title:	<u>OEM Automotive Parts</u> <u>Light Duty Vehicles</u>
Your proposal, or a portion thereof, has been rejected pursuant to the provisions of the New Jersey Administrative Code (N.J.A.C.) 17-12-2.2, <i>Requirements for bidding and contract award</i> . N.J.A.C. 17-12 can be viewed at the Division of Purchase and Property's website at www.state.nj.us/treasury/purchase/AdminCode.shtml . Rejection of the proposal was caused by non-compliance with the following requirement(s).			
	1. Not enclosed or sealed.		
X	2. Not timely submitted.	Date Received: <u>Apr 28, 2017</u>	Time: <u>1:48PM</u>
	3. Not signed by representative of the bidding entity.		
	4. Missing bid security.		
	5. Missing required RFP certifications, forms, and attachments, as noted:		

On June 22, 2017, the Division's Hearing Unit received SP Auto Parts' protest which states:

I am writing this letter because I had issues with the website for the RFP submission on 4/26/2017. I was told when I dropped off the Bid on 4/27/2017 (sic) that I would receive a rejection letter and instruction of how to enter a protest; to date, I have not received that email.

As I tried to upload the pricing files, the website would only accept one (1) file at a time; we were submitting bids for 4 vehicle lines Ford, GM, Honda and Chrysler. When I went back to select another price file the website gave an error that I had already submitted the bid. As I tried to work through what was going on, the 3 PM deadline passed. I have attached proof that I was online and at the website with more than enough time to upload 4 files and submit the bid. Because of the website failure, I decided to hand deliver the bid on 4/27 /2017; please see attached stamped Bid Receipt.

Due to the website issues, I would respectfully request that our bid that was hand delivered be accepted and considered.

At the outset I note that SP Auto Parts' proposal was received well outside of the protest period identified in the Division's governing regulations. Those regulations provide that "[t]he protest shall be filed within 10 business days following the bidder's receipt of written notification that its Proposal is non-responsive or of notice of the intent to award, as applicable." N.J.A.C. 17:12-3.3(b). This timeframe is indicated on the Division's Notice of Proposal Rejection Form which also provides the Bidder with the information on how to submit a protest. While the Division need not accept SP Auto Parts protest, for the sake of completeness, I will address SP Auto Parts protest here.

In reviewing the record of this procurement, the Hearing Unit found that SP Auto Parts did attempt to create a Proposal in response to the RFP and was in the process of doing so on April 27, 2017, the Proposal submission due date.

Quote #:				Bid #:		Status:	
0000017				1700000114		In progress	
Organization:				Description:		Discount Percent:	
Division of Purchase and Property				T712 OEM automotive Parts and Accessories for Light Duty vehicles Class 4 or Lower		0.0	
Bid Flag:				Alternate Bid:		Shipping Terms:	
en				no		F O B Destination	
Freight Terms:				Ship Via Terms:		Payment Term:	
Promised Date				Info Contact:		Quote Total	
Comment:				User last Updated:		User Created:	
Date Last Updated:				Paul MacHenry, Jr		Paul MacHenry, Jr	
Print forms:							
Vendor accepts the terms & conditions with no exceptions.							
Bid Acknowledgements:							

However, at the close of the Proposal submission deadline, 2:00:59 pm, it appears that SP Auto Parts had only uploaded 1 file to the Division's **NJSTART** eProcurement website, and unfortunately, SP Auto Parts did not submit its Proposal. Once the deadline for Proposal submission passes (2:00:59 pm) the system locks and does not allow any additional submissions.

While SP Auto Parts alleges that there were issues with the **NJSTART** eProcurement website which prevented it from uploading its attachments, the Bureau received 22 Proposals submitted in a timely fashion.¹

As noted above, 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. Those governing regulations provide in relevant part that "in order to be eligible for consideration for award of

¹ Sixteen Proposals were submitted electronically through the Division's **NJSTART** eProcurement website and six Proposals were submitted hardcopy to the Division prior to the closed of the submission deadline.

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." N.J.A.C. 17:12-2.2(a). If the requirements of N.J.A.C. 17:12-2.2 are not met a 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. With the above principals in mind, Bidders are cautioned to allow adequate time to ensure that the Proposal is properly submitted.

Despite SP Auto Parts' apparent intent to submit a Proposal for the subject solicitation, under the provisions set forth above, the Division cannot accept SP Auto Parts' Proposal as timely submitted. Such acceptance would un-level the Bidders playing field as the State received responsive Proposals from other Bidders in accordance with the Proposal submission deadline as required. In light of the findings set forth above, I must deny your request for eligibility to participate in the competition for the subject contract. This is my final agency decision.

This is an unfortunate situation for the State, as we encourage competition and appreciate your expertise in the field. In the future, I encourage earlier initiation of submissions to ensure timely receipt of Proposals and to allow for any issues which may arise during the electronic Proposal submission process. Thank you for registering your company with **NJSTART** at www.njstart.gov, the State of New Jersey's new eProcurement system. I look forward to your company's continuing interest in doing business with the State of New Jersey.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

c: J. Kerchner
K. Thomas
A. Nelson
D. Rodriguez