



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
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P. O. BOX 039

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JIGNASA DESAI-MCCLEARY
Director

February 24, 2016

Via Electronic Mail [mpw@esystems-inc.com] and USPS Regular Mail

Michael P. Weber, Director, Sales & Marketing
eSystems Inc.
4391 US Route 1, Suite 301
Princeton, NJ 08540

RE: Protest of Notice of Proposal Rejection
Bid Solicitation {RFP} # 16DPP00008 *DoAS CARE/CASE MANAGEMENT SYSTEM (C/CMS)*

Dear Mr. Weber:

This correspondence is in response to your letter of protest dated and received February 8, 2016, referencing the subject Bid Solicitation {Request for Proposal} (hereinafter "RFP") and regarding the proposal submitted by eSystems Inc. (eSI) to the Division of Purchase and Property (Division). The record of this procurement notes that eSI's quote {proposal} (hereinafter "proposal") was rejected as untimely submitted, received by the Division's Proposal Review Unit at 2:32 p.m. on February 5, 2016. In your letter, you submit that the proposal submission deadline should have been extended due to an unexpected "snow storm" on February 5, 2016, that made "morning travel very treacherous." Included with your letter is a copy of a newspaper article describing winter weather conditions on February 5, 2016, and an email from eSI submitted to the NJSTART vendor support unit at 8:46 a.m. from the same day requesting the proposal submission date be extended by one week.

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

The subject RFP was issued through Division's NJSTART pilot program to solicit proposals "for a cloud-based solution (Base Product) that is configurable and/or customizable to meet the State's requirements for the care and case management of individuals served by the Division of Aging Services (referred to henceforth as DoAS) as well as to satisfy the federal reporting needs relating to these individuals." RFP § 1.1 *Purpose and Intent*. On January 22, 2016, the Division issued Bid Amendment {Addendum} #1, which advised all potential bidders that the proposal submission due date was extended from 2:00 p.m. on February 2, 2016 to 2:00 p.m. on February 5, 2016. The RFP also advised all vendors {bidders} of the requirements for proper proposal submission:

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
 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>.

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}.

....

[RFP § 1.3.2 (second emphasis added).]

Also addressing the proposal submission date, Part 1 of Bid Amendment {Addendum} #1 provided the following answers to questions presented during the open Question and Answer period:

#	Page #	RFP Section Reference	Question	Answer
1.	63	3.3.8	What is the anticipated start date of the project?	The RFP proposal opening date is February 5, 2016. Currently, there is not a scheduled award or start date. The schedule for implementation requires the core solution to be tested and accepted such that implementation begins in calendar year 2017. Please see RFP Section 3.3.8 for more information.
2.	63	3.3.8	What is the desired go live date of the project, i.e., is there an expected timeframe for completion of this project?	The RFP proposal opening date is February 5, 2016. Currently, there is not a scheduled award or start date. The schedule for implementation requires the core solution to be tested and accepted such that implementation begins in calendar year 2017. Please see RFP Section 3.3.8 for more information.
3.		General	Can DoAS please extend the deadline for RFP responses by one week making the new	The Quote {Proposal } Submission Date is currently scheduled for February 5, 2016 at 2:00 p.m.

			RFP response deadline 2/9/2016?	
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The record of this procurement reveals that the Division's Proposal Review Unit received eSI's proposal at 2:32 p.m. on February 5, 2016, approximately 30 minutes after the submission deadline. While eSI contends that inclement weather caused travel to be hazardous and contributed to the tardiness of the proposal delivery, as noted above the RFP makes clear that it is the bidder's responsibility to ensure timely submission of its quote {proposal}. Further, I note that on February 5, 2016, all State offices were open and operating on a normal schedule.¹ Moreover, the Division received five proposals in a timely fashion, two of which were delivered in hard copy format by the 2 p.m., February 5, 2016 deadline.²

In response to eSI's protest point related to the timing of the response to its 8:46 a.m. email requesting that the proposal submission deadline be extended by one week, the review of the record reveals the following. eSI submitted an email at 8:46 a.m. on February 5, 2016, to the **NJSTART** vendor support unit stating:

eSystems, Inc. requests the State extend the due date for the response to bid # 16DPP00008 from today, Feb. 5 to next Friday Feb. 12 due to the poor weather in the Trenton and surrounding areas. Travel is hazardous and we hope the State will take the safety of those needing to deliver this response into consideration.

An immediate response is respectfully requested, but a response by 10 AM EST would be greatly appreciated so that if we need to travel we can leave as much time as possible.

....

At 9:16 a.m., the NJSTART vendor support unit responded: "Your email has been forwarded to our Director's office for consideration." As a follow-up to this message, the NJSTART vendor support unit again responded at 11:56 a.m., indicating "[w]e have been advised that today's bid opening for Bid Number: 16DPP00008 will not be postponed." As noted above, all State offices were open and functioning on a regular schedule. eSI was advised more than two hours prior to the proposal submission that the deadline would not be extended. Further, eSI's 8:46 a.m. email to the Division in no way acted as a mechanism to toll or suspend the proposal submission deadline until a response was received. The RFP and accompanying documents advised bidders in multiple places that proposals for the subject solicitation would be due at 2:00 p.m. on February 5, 2016.

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 [.]". Thus, the requirement for timely submission of a signed and sealed proposal as mandated by the administrative rules that govern the Division's procurements were clearly and repeatedly established by the provisions of the RFP.

¹ eSI's newspaper article "Winter Pulls a Fast One" accompanying its letter of protest does state that a "full-blown storm . . . dumped a slushy 2 to 5 inches of snow across New Jersey," however the article also clarifies that a "low pressure [system] pushed the snowstorm, expected to strike farther east, over Bergen and Passaic counties."

² Note also that, as expressed in RFP Section 1.3.2 above and elsewhere in the RFP, a bidder could submit a proposal electronically or by mailing the proposal: hand delivery was neither expected nor required.

As a result, despite eSI'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 eSI's proposal as a timely submitted, signed proposal. It would not be in the State's best interest to allow a bidder who did not appropriately submit its proposal, as required by the RFP, to be eligible to participate in the procurement process. Such acceptance would un-level the bidders playing field as the State received responsive proposals from other bidders in accord 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 do encourage earlier initiation of future submissions to ensure timely receipt of proposals. Thank you for registering your company with [NJSTART](#). I look forward to your company's continuing interest in doing business with the State of New Jersey.

Sincerely,


Maurice Griffin
Chief Hearing Officer

MG:DF

c: G. Olivera
G. Terwilliger
C. Brennan
A. Nelson