State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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September 30, 2015

Via Electronic Mail [elewis@telegence.com] and USPS Regular Mail

Edward H. Lewis, VP Engineering
Telegence Corporation
383 North Kings Highway
Cherry Hill, NJ 08034

RE: Protest of Notice of Proposal Rejection
RFP #16-X-23969 Data Intermediary Services for the Department of Health

Dear Mr. Lewis:

This correspondence is in response to your letter of protest dated and received September 18, 2015, referencing the subject Request for Proposal (RFP) and regarding the proposal submission by Telegence Corporation (Telegence) to the Division of Purchase and Property (Division). The record of this procurement indicates that Telegence's proposal was rejected by the Division's Proposal Review Unit for failing to include required Pricing Information. Your letter contends that Telegence "submitted all required document material" but it "was evidentially not transmitted" to the Division. Your letter further contends that Telegence filed a "draft proposal" in advance of the proposal deadline and encountered "several annoying instances" while attempting to upload its final draft. You request Telegence be permitted to submit the documents that were "uploaded but not transmitted" and participate in the subject RFP.

I have reviewed the record of this procurement, including the RFP, Telegence's proposal, and relevant statutes, regulations, and case law. In addition, I have reviewed the electronic records relating to Telegence's submission. 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 Telegence's protest.

By way of background, the subject RFP was issued by the Division's Procurement Bureau on behalf of the Department of Health (DOH), to solicit proposals for data intermediary services between the DOH and New Jersey general and acute care hospitals and ambulatory care facilities. The intent of the RFP is to award a contract to that responsible bidder whose proposal, conforming to the RFP, is most advantageous to the State, price and other factors considered.

The above-referenced solicitation was comprised of the RFP and other documents. Under Section 4.0 *Proposal Preparation and Submission*, the RFP stipulates the following:

4.4.1.6 PRICING

The Bidder must submit its pricing on the State supplied Price Sheet/Schedule and supply any additional pricing information as directed in RFP Section 4.4.5.

. . . .

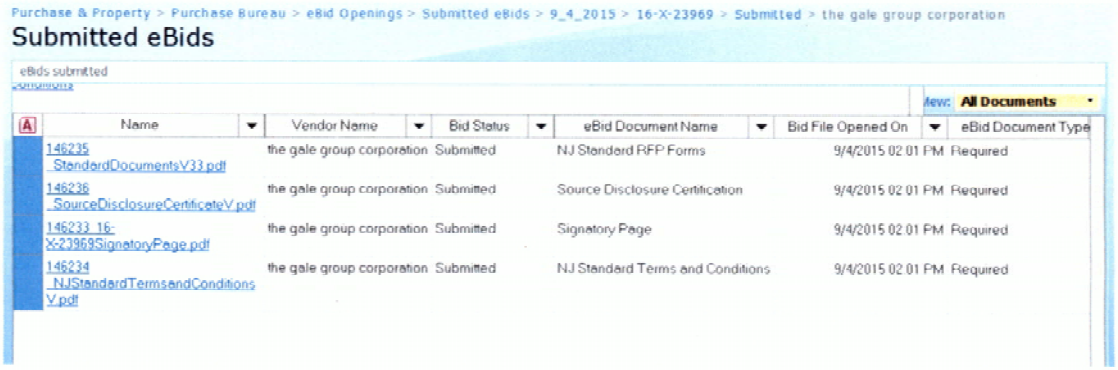
4.4.5 PRICE SCHEDULE/SHEET

The Bidder must submit its pricing using the format set forth in the State-supplied price schedule accompanying this RFP. Failure to submit all information required will result in the proposal being considered non-responsive. Each Bidder is required to hold its prices firm through issuance of contract.

Pursuant to N.J.A.C. 17:12-2.2, a bidder's proposal must "[c]ontain all RFP-required certifications, forms, and attachments, completed and signed as required" or "be subject to automatic rejection." As set forth in RFP Sections 4.4.1.6 and 4.4.5 listed above, the submission of a completed *Price Sheet* as part of the proposal was required for a proposal to be responsive.

The proposal submission deadline for the subject RFP was 2:00 p.m. on September 4, 2015. Telegence asserts in its letter of protest that at approximately 1:32 p.m. on September 4, 2015, it encountered technical issues while attempting to submit its electronic proposal through the Division's eBid system. Telegence contends the eBid website was non-responsive; however, after initially rejecting Telegence's proposal it appeared the proposal was finally accepted.

A review of the electronic records associated with this procurement shows that the proposal submitted on behalf of Telegence by The Gale Group Corporation was accepted as a timely proposal but did not include all required forms. As is evident from the following screen shot of the eBid system, this proposal did not include the required *Price Sheet* and was subsequently rejected by the Proposal Review Unit:



In response to Telegence's assertion that the eBid system was non-responsive at the time of proposal submission on September 4, 2015, the Division of Revenue and Enterprise Service's eSupport Unit has advised that the eBid system was fully functioning during this time and was successfully receiving documents. All bidders are cautioned to allow ample time to submit a proposal through the eBid system to accommodate for any unseen technical issues.

Notwithstanding Telegence's interest in competing for this procurement, it would not be in the State's best interests to allow a bidder who did not provide all required documents to be eligible to

participate in the procurement process. Such acceptance would unlevel the bidders' playing field, as the State received responsive proposals in which all required documents and certifications were provided as required. The deficiency at issue cannot be remedied after the proposal submission deadline, as acceptance of Telegence's proposal under these circumstances would be contrary to the provisions of the governing statute and would provide Telegence with disclamation options not available to those bidders whose proposals were fully responsive. 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 the Division's final agency decision on this matter.

This is an unfortunate situation as the Division encourages competition and appreciates the time an effort put forth in preparing Telegence's proposal. The Division encourages Telegence's participation in future solicitations and invites you to register your company with NJSTART, at www.njstart.gov, the State's new eProcurement system.

Sincerely,

Maurice A. Griffin
Acting Chief Hearing Officer

MG:DF

c: G. Olivera
J. Strype
J. Karamali
D. Rodriguez
A. Nelson