



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
33 WEST STATE STREET
P. O. BOX 039

TRENTON, NEW JERSEY 08625-0039
<https://www.njstart.gov>
Telephone (609) 292-4886 / Facsimile (609) 984-2575

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

FORD M. SCUDDER
Acting State Treasurer

JIGNASA DESAI-MCCLEARY
Director

January 21, 2016

Via Electronic Mail [rswain@dawsoncorporation.com] and USPS Regular Mail

Robert L. Swain CTE, President
The Dawson Corporation
P.O. Box 400
Clarksburg, NJ 08510

RE: Protest of Notice of Proposal Rejection
Bid Solicitation {RFP} # 16DPP00010 *Forestry Mowing/Mulching Service NJDEP (T2759)*

Dear Mr. Swain:

This correspondence is in response to your letter of protest dated and received January 6, 2016, referencing the subject Bid Solicitation {RFP} (RFP) and regarding the proposal submitted by The Dawson Corporation (Dawson) to the Division of Purchase and Property (Division). The record of this procurement notes that Dawson's proposal was rejected as untimely submitted, received by the Division's Proposal Review Unit at 9:44 a.m. on January 6, 2016. Included with your letter is a Federal Express delivery receipt showing that the proposal "was signed for by an A. Allen" at 9:40 a.m. on Tuesday, January 5, 2016, the proposal submission date.

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 Dawson's protest.

The subject RFP was issued through Division's NJSTART pilot program to solicit proposals for forestry mowing/mulching services on behalf of the New Jersey Department of Environmental Protection and Cooperative Purchasing Participants. RFP § 1.1 *Purpose and Intent*. The revised proposal submission date of the subject RFP was 2:00 p.m. on January 5, 2016, and the RFP advised all 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}.

....

The RFP further provided the following information and guidelines concerning proposal delivery:

4.2 QUOTE {Proposal} Delivery and Identification

A quote {proposal} must arrive at the Division in accordance with this Bid Solicitation’s {RFP’s} instructions within the time frames noted on the Bid Solicitation {RFP} cover sheet and on the “Summary” page of the Bid Solicitation in *NJSTART*. Vendors {Bidders} submitting electronic quotes {proposals} via *NJSTART* are cautioned to allow adequate time to ensure timely uploads of all quote {proposal} documents to mitigate unforeseen delays or issues. Vendors {Bidders} submitting hard copy quotes {proposals} are cautioned to allow adequate delivery time to ensure timely delivery of quotes {proposals}. **State regulation mandates that late quotes {proposals}, regardless of submission method, are ineligible for consideration. THE EXTERIOR OF ALL QUOTE {PROPOSAL} PACKAGES ARE TO BE LABELED WITH THE BID SOLICITATION {RFP} IDENTIFICATION NUMBER AND THE FINAL QUOTE {PROPOSAL} SUBMISSION DATE OR RISK NOT BEING RECEIVED IN TIME.**

The record of this procurement reveals that the Division’s Proposal Review Unit received Dawson’s proposal at 9:44 a.m. on January 6, 2016. While the corresponding Federal Express tracking history shows that Dawson’s packing was delivered at 9:40 a.m. on January 5, 2016, and signed for by “A. Allen,” the proposal was shipped in an envelope that provided the following address:

100 FedEx Express 4018 4878

1 From
Date 1-4-16
Sender's Name Robert L. Quinn Phone 732 928-0600
Company DAWSON CORP. THE
Address 631 WRIGHT DEBOW RD
City JACKSON State NJ ZIP 08527-5425

2 Your Internal Billing Reference

3 To
Recipient's Name State of New Jersey
Company Dept of the Treasury
Address 33 West State Street
City Trenton State NJ ZIP 08625-1231

*BIC 0111050031

DA HT 25 14 16

As is evident, Dawson failed to include "Proposal Receiving Room – 9th Floor, Procurement Bureau, Division of Purchase and Property" on the front of the envelope as required by RFP Section 1.3.2. Dawson also failed to label the exterior of the proposal package with the RFP identification number and the date of proposal submission as specified in RFP Section 4.2.¹ Both of these deficiencies resulted in Dawson's proposal package being delivered to the wrong floor of 33 West State Street.² (There is no one by the name "A. Allen" employed by the Division of Purchase and Property.) Unfortunately, it was not until January 6, 2016, that the package was returned to the Federal Express carrier with direction to bring the package to the 9th floor. The Proposal Review Unit time stamped the exterior of the envelope as soon as it was received.

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 While Dawson appears to have attempted to write "*Bid" below the address box on the Federal Express label, the word was cut off and did not include the identifying number of the RFP.

² Unfortunately for Dawson, 33 West State Street is a nine-floor building that houses several offices. For this reason, the RFP specifically instructs bidders to include "Proposal Receiving Room – 9th Floor" in the address field.

As a result, despite Dawson'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 Dawson's proposal as a timely submitted, signed proposal. Furthermore, Dawson retained Federal Express to act as its agent to deliver the proposal in a timely manner. The Division cannot accept responsibility for the actions or inactions of the bidder or its agent(s). 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. I do encourage earlier initiation of future submissions. Thank you for registering your company with NJSTART and 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
J. Signoretta
D. Delaney
A. Nelson