



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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January 21, 2015

Via Electronic Mail [Woody.McClendon@flightsafety.com] and USPS Regular Mail

Woody McClendon, Regional Sales Manager
FlightSafety International, Inc.
3201 East Airfield Drive
DFW Airport, TX 75261

RE: Request for Reconsideration of Proposal Rejection - RFP #15-X-23699
Contract T3017 – *Pilot and Technician Training for Rotary and Fixed Wing Aircraft*

Dear Mr. McClendon:

This letter is in response to your email communication dated and received January 12, 2015, referencing the subject Request for Proposal (“RFP”) and regarding the proposal submitted by FlightSafety International, Inc. (“FSI”) to the Division of Purchase and Property (“the Division”). Responding to a Notice of Proposal Rejection sent by the Division’s Proposal Review Unit indicating that FSI’s proposal was rejected due to a missing Signatory Page, you explain that FSI timely uploaded an unsigned Signatory Page, but that an Adobe-based glitch may be to blame for the absence of entries in the blocks at the bottom of the Signatory Page of FSI’s proposal. Based on these circumstances, you ask that FSI’s proposal be reinstated.

Your communication is accepted as a formal protest of the Division’s rejection of FSI’s proposal.¹ In regard to the issue at hand, I have reviewed the record of this procurement, including the RFP, its addenda, and FSI’s electronically submitted proposal relative to the RFP requirements, 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 FSI’s challenge.

¹ Such challenges are adjudicated in accord with the provisions of the Division’s regulations set forth as New Jersey Administrative Code (N.J.A.C.) 17:12-3.3, which can be viewed at the following website: <http://www.state.nj.us/treasury/purchase/AdminCode.shtml>.

The above-referenced solicitation was comprised of the RFP and other documents. Within RFP Section 4.0, *Proposal Preparation and Submission*, and RFP Subsection 4.4.1, *Forms, Registrations and Certifications Required with Bid Proposal*, Paragraph 4.4.1.1, *Signatory Page*, stipulates the following:

The bidder shall complete, including signature of an authorized representative of the bidder, and submit the Signatory Page accompanying this RFP. If the bidder is a limited partnership, the Signatory Page must be signed by a general partner. If the bidder is a joint venture, the Signatory Page must be signed by a principal of each party to the joint venture. Failure to comply will result in rejection of the proposal.

Note: A bidder's written signature on the Signatory Page, or entry of a Personal Identification Number (PIN) if using the eBid system, shall not serve as a certifying signature on the forms comprising the NJ STANDARD RFP FORMS document. (See 4.4.1.2)

[Boldface type in original; underlining added for emphasis.]

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 Paragraph 4.4.1.1, a bidder's failure to complete and submit the *Signatory Page* "will result in rejection of the proposal."

In this case, a review of the Division's eBid system's record, as set forth in the attached spreadsheet depiction, reveals that, although the title of one document within FSI's proposal referred to a signatory page (see attachment – far right column), the name of the form received by the Division in that space was a second, identical *Bidders Data Packet* form. A review of the other five documents comprising FSI's proposal, which was conducted to determine if the required signatory page had been included elsewhere within the four corners of the proposal, proved unsuccessful in terms of finding the required Signatory Page, completed and signed or blank.

Notwithstanding FSI's interest in securing an award of the subject contract and the Division's ever-present objective to secure the benefits of enhanced competition, it would not be in the State's best interest to allow a bidder who did not timely provide essential information attained by completion and submission of the signatory page to be eligible to participate in the procurement process. Such acceptance would unlevel the bidders' playing field, as the Division received responsive proposals containing all mandated, material documents and information as expressly required by the RFP. As affirmed by New Jersey courts, the deficiency at issue cannot be remedied after the proposal submission deadline, as acceptance of FSI's proposal under these circumstances would be contrary to the RFP's provisions and would provide FSI with disclamation options not available to those bidders whose proposals are 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 my final agency decision on this matter.

This is an unfortunate situation for the State, as the Division encourages competition and appreciates the time and effort you applied in preparing and submitting FSI's proposal. Anticipating FSI's continued interest in doing business with the State of New Jersey, I invite you to take this opportunity to register your business entity with ~~NJ START~~ at www.njstart.gov, the State of New Jersey's eProcurement system, which is scheduled to go live in the near future. This new procurement solution will provide a "one-stop shop" for vendors to submit proposals, maintain required forms and certifications, and present purchase orders and invoices for payment.

Sincerely,


Ronald G. Wengerd
Chief Hearing Officer

Attachment

c: M. Griffin
J. Kemery
D. Delaney
D. Rodriguez/A. Nelson