



# State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
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*Director*

September 15, 2015

Via Electronic Mail [Richardp@paylogix.com] and USPS Regular Mail

Richard Pfenauer, President  
Paylogix LLC  
1025 Old Country Road, Ste 310  
Westbury, NY 11590

RE: Protest of Untimely Submission of Proposal  
RFP #15-X-23787 Voluntary Insurance: Office of Management and Budget

Dear Mr. Pfenauer:

This letter is in response to your email and accompanying letter of protest dated June 30, 2015, referencing the subject Request for Proposal ("RFP") and regarding the proposal submitted by Paylogix LLC ("Paylogix") to the Division of Purchase and Property ("the Division"). The record of this procurement indicates that the Procurement Bureau ("Bureau") of the Division did not receive Paylogix's proposal submission by the deadline. Your letter questions why Paylogix's proposal was not received and requests that Paylogix's submission be accepted and considered for award in light of Paylogix's contention that Addendum #6 *Responses to Electronic Questions* and Attachment #5 were posted to the Division's public solicitation website in an untimely manner.

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

By way of background, the subject RFP was issued by the Bureau on behalf of the Department of the Treasury, Office of Management and Budget ("OMB"), to solicit proposals from qualified bidders to function as the State of New Jersey's Third Party Administrator for the handling of State Employee Deductions for Voluntary Insurance, as covered under N.J.S.A. 52:14-15.9(a). 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.

Prior to the revised proposal opening date of June 30, 2015, at 2:00 p.m., the Bureau posted Addendum #6 *Responses to Electronic Questions* to the Division's public solicitation website. Part 1 of Addendum #6, *Answers to Questions*, contained the following information:

Question #	Page #	RFP Section Reference	Question	Answer
13	15	Section 3.2.1 “Business Requirements”	Data Entry: Please define data entry requirements.	Please see attached pdf file Voluntary_Insurance_File_Layout Attachment #5 posted on the website. <a href="http://www.state.nj.us/treasury/purchase/bid/summary/15x23787.shtml">http://www.state.nj.us/treasury/purchase/bid/summary/15x23787.shtml</a>

Part 2 of Addendum #6, *Additions, Deletions, Clarifications and Modifications to the RFP* further provided: “Attachment #5 – Voluntary Insurance File Layout has been posted to the website. This is in response to Question #13.”

Paylogix asserts in its letter of protest that prior to the 2:00 p.m. deadline, it uploaded all the “necessary and required documents to complete the bidding process” through the eBid website in a document entitled “Paylogix Response to State of NJ RFP – 15-X-23787 – Vol 1 Sec 1 Forms.pdf.” Paylogix contends that the document was uploaded twice into the eBid lockbox.

The record reveals that just prior to the 2:00 p.m. deadline on June 30, 2015, Paylogix requested a new password in order to submit a proposal through the eBid site. At 1:54 p.m. Paylogix received an automated response from [ebids@treas.state.nj.us](mailto:ebids@treas.state.nj.us) stating:

Please make sure that eBid e-mail address: [eBids@treas.state.nj.us](mailto:ebids@treas.state.nj.us) is added to your e-mail safe list to ensure you will receive eBid e-mails.

You are receiving this e-mail because you have requested a new password for your User ID[.]

Following the 2:00 p.m. proposal submission deadline, Paylogix submitted a message to the Division of Revenue and Enterprise Services (DORES) technical support unit (“eSupport”) on June 30, 2015, which stated:

Correct me if I am wrong, but it would appear that there may have been a possible error in the Response to Bidder Questions.

Part 2 of the document (last page) #4, referring to Section 3.2.2 Project Components (B) state “DELETE (B) in its entirety.” I believe this should read “DELETE (C) in its entirety.”

We were unable to upload our proposal. Can you please confirm that the RFP was received successfully by the State? We encountered some difficulty during the upload process.

eSupport responded at 3:38 p.m. that same day, advising Paylogix to “immediately submit a letter to [the Director of the Division] requesting consideration to be allowed to submit a bid proposal” and to include within the letter an “explanation why [Paylogix] did not submit [its] bid for 15-X-23787 on time.”

A review of the eBid electronic records reveals that Paylogix first uploaded a form into its eBid lockbox at 1:56 p.m. on June 30, 2015—four minutes prior to the 2:00 p.m. deadline. The last file Paylogix saved in the database was at 1:59 p.m. During these four minutes, it appears that Paylogix did upload a number of forms into the eBid lockbox, including the pdf document Paylogix references above.

However, Paylogix did not upload all the required RFP forms, as specified on the eBid site, and therefore could not properly submit its proposal. DORES, which maintains eBid, advises us of the following program features that affected the proposal. The eBid system will not allow a proposal to be submitted until a document is uploaded in each required form “slot” in the lockbox. Until this occurs the submit button is disabled. Since a bidder can upload any document for these form “slots,” eBid cannot validate

the submission to make sure a bidder uploaded the correct document. Once all the required forms in the “Required Work Forms Area” are uploaded into the lockbox, the submit button changes from gray to blue, thereby enabling a bidder to click “submit.” Prior to clicking submit, a bidder will see the following message: “The proposal is ready for submission, but has not yet been submitted.” After clicking “submit,” the PIN entry screen appears. Of import, by entering a PIN and clicking submit, a bidder certifies to the following statement: “By clicking ‘Submit’ below, I thereby certify that I have read and understand all the terms and conditions set forth herein and specifically affirm this bidder’s compliance with the attestation set forth above item 25 of the RFP signatory page.”

Furthermore, 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. 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[.]” If the requirements of N.J.A.C. 17:12-2.2 are not met, the proposal must be rejected, as 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 foregoing information in mind, bidders should be mindful of the eBid and RFP instructions when submitting a proposal and to begin proposal submission with ample time to accommodate for any unforeseen technological issues. While Paylogix’s proposal would have been rejected as untimely, due process provides other reasons for the cancellation of the subject RFP.

A review of the electronic records associated with this procurement show that Addendum #6 *Responses to Electronic Questions*, although dated June 15, 2015, was not posted to the Division’s website until June 29, 2015. It also appears that due to an oversight, Attachment #5, referenced in the answer to question number 13 in Addendum #6, was never posted to the website. In this case, I find both the untimely posting of Addendum #6 and lack of posting Attachment #5 to have been insufficient to both meet our statutory requirements and to provide for an orderly procurement process.

“The public interest underlies the public-bidding process in this State.” Barrick v. State, 218 N.J. 247, 258 (2014). Public bidding statutes exist “for the benefit of the taxpayers and are construed as nearly as possible with sole reference to the public good. Their objects are to guard against favoritism, improvidence, extravagance and corruption; their aim is to secure for the public the benefits of unfettered competition.” Ibid. (internal quotations removed).

The Division’s advertising statute expressly provides that certain timeframes must be met when issuing addenda or revisions to an RFP:

(d) notice of revisions or addenda to advertisements or bid documents relating to bids shall be published in a newspaper or newspapers and other medium or media selected by the State Treasurer to give notice to bidders at least seven days, Saturdays, Sundays and holidays excepted, prior to the bid due date; (e) failure to advertise for the receipt of bids or to provide proper notification of revisions or addenda to advertisements or bid documents related to bids as prescribed by subsection (d) of this section shall prevent the acceptance of bids and require the readvertisement for bids[.]

[N.J.S.A. 52:34-12(d) and (e).]

Furthermore, our courts have upheld the decision to readvertise and rebid a solicitation when various forms of advertisements contained different RFP requirements, finding the “inadvertent error” may have affected competitive bidding by “wrongly discourage[ing] other eligible potential [bidders] from responding” to the advertisement. DGR Co. v. State, Dept. of Treasury, Div. of Prop. Mgmt. and Const., 361 N.J. Super. 467, 469-70, 477 (App. Div. 2003).

Here, uploading Addendum #6 to the Division's website on June 29, 2015, one day before the proposal submission deadline, did not provide bidders the requisite seven days of notice required by N.J.S.A. 52:34-12(d).<sup>1</sup> Similarly, the oversight of not posting Attachment #5 did not "provide proper notification of revision or addenda to . . . bid documents" as required by N.J.S.A. 52:34-12(e). In addition, as in DGR Co., supra, the failure to post Attachment #5 was an inadvertent error that caused confusion among bidders and may have discouraged bidders from responding to the solicitation. Moreover, although the Division did receive other proposals by the submission deadline, a bidder would not have been in a position to agree to the information contained in Attachment #5. Based on these deficiencies, I find that the subject RFP must be cancelled and reprocedured, inclusive of all necessary attachments and addenda. This is my final agency decision.

Thank you for your continued interest in doing business with the State of New Jersey. I invite you to register your business with NJSTART, at [www.njstart.gov](http://www.njstart.gov), the State's new eProcurement system.

Sincerely,



Jignasa Desai-McCleary  
Director

JD-M:DF

c: D. Reinert  
J. Kemery

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<sup>1</sup> I do note, however, that despite not making the document available for download on the Division's website, notice of Addendum #6 was properly advertised in The Star-Ledger on June 15, 2015.