



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
State Treasurer

MAURICE A. GRIFFIN
Acting Director

September 12, 2017

Via Electronic Mail [gvandergrift@illumina.com] and USPS Regular Mail

JV Vandergrift
Senior Territory Account Manager
Illumina, Inc.
5200 Illumina Way
San Diego, CA 92122

Re: I/M/O RFP #17DPP00064 Illumina, Inc.
Protest of Notice of Proposal Rejection
T0115 Scientific Equipment Accessories and Supplies

Dear Mr. Vandergrift:

This letter is in response to your email of September 7, 2017, on behalf of Illumina, Inc. (hereinafter "Illumina") to the Division of Purchase and Property's (hereinafter "Division") Hearing Unit. In that correspondence Illumina requests that its un-submitted Proposal be accepted for consideration for the subject solicitation.

In consideration of Illumina's protest, I have reviewed the record of this procurement, including the Bid Solicitation {Request for Proposal} (hereinafter "RFP") #17DPP00064 - T0115 Scientific Equipment Accessories Supplies and Maintenance Statewide, Illumina's protest, the relevant statutes, regulations, and case law. This review of the record has provided me with the information necessary to determine the facts of this matter and to render an informed Final Agency Decision on the merits of the protest. I set forth herein the Division's Final Agency Decision.

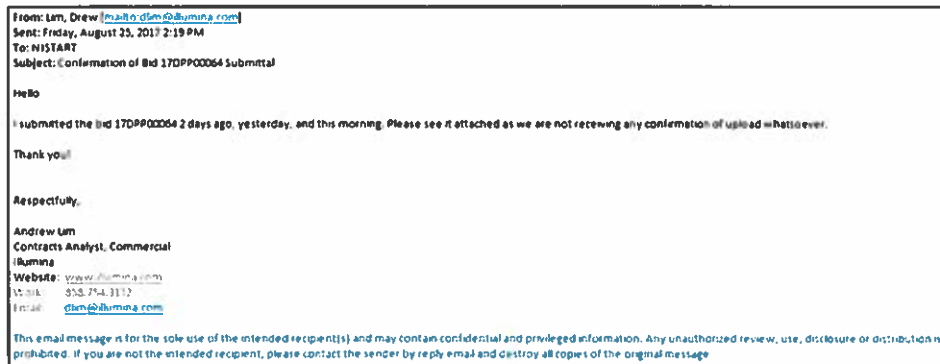
By way of background, on March 22, 2017, the Division's Procurement Bureau (hereinafter "Bureau") issued the RFP on behalf of State Using Agencies and Cooperative Purchasing Program Partners, to solicit Quotes {Proposals} (hereinafter "Proposals")¹ for educational/instructional and professional/laboratory grade scientific equipment, accessories, supplies, chemicals and reagents, instrument rental and maintenance. RFP § 1.1 *Purpose and Intent*. It is the State's intent to award Statewide Blanket P.O.s {Contracts} (hereinafter "Contracts") for each specific brand bid (one award per brand) for price lines one (1) through four (4), to those responsible Vendors {Bidders} (hereinafter "Bidders"), whose

¹ RFP § 2.2 *General Definitions* defines "Quote {Proposal} [as a] Vendor's {Bidder's} timely response to the Bid Solicitation {RFP} including, but not limited to, technical Quote {Proposal}, price Quote {Proposal}, and any licenses, forms, certifications, or other documentation required by the Bid Solicitation {RFP}." *Emphasis added.*

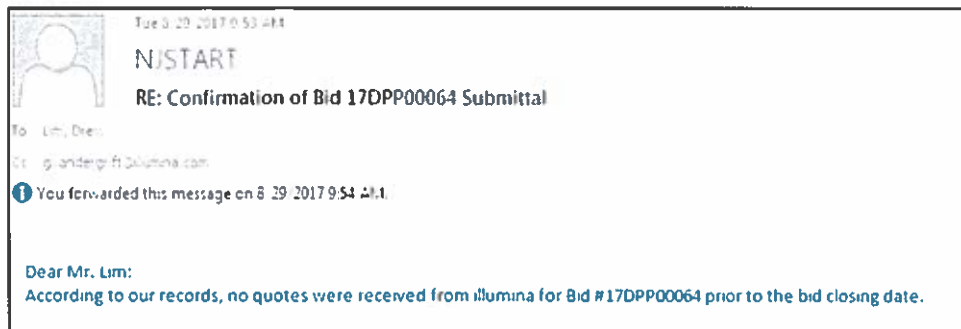
Proposals, conforming to the RFP, are most advantageous to the State, price, and other factors considered. Price lines five (5) and six (6) will be awarded to all Bidders awarded contracts for prices lines one (1) through four (4). RFP § 7.2 *Final Blanket P.O. {Contract} Award.*

On July 6, 2017, the Bureau issued Bid Amendment {Addendum} #6 responding to the questions posed by potential Bidders. On August 15, 2017, the Bureau issued Bid Amendment {Addendum} #9 extending the Proposal opening date to August 25, 2017, 2:00 pm eastern time.

On August 25, 2017, the Proposal Review Unit opened 55 Proposals received by the submission deadline of 2:00 pm eastern time. A review of the Proposals submitted by the submission deadline reveals that Illumina did not submit a Proposal by the 2:00 p.m. deadline as required. After the Proposal submission deadline, Illumina wrote to the **NJSTART** stating:



On August 29, 2017 **NJSTART** responded to Illumina stating:



The Division's administrative regulations that govern the advertised procurement process establish certain requirements that must be met in order for a Proposal to be accepted. The Division's governing regulations provide in relevant part: "[i]n 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." N.J.A.C. 17:12-2.2(a), *emphasis added*. If the requirements of N.J.A.C. 17:12-2.2 are not met, a 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.

The RFP advised all potential Bidders of the requirements for proper and timely Proposal submission noting:

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
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}.**

...

[Second emphasis added.]

Further the RFP advised Bidders to consult the Division’s Quick Reference Guides and supporting videos in preparing Proposals; specifically,

1.3.3 **NJSTART**

The Division is pleased to announce its new eProcurement solution
“*NJ START*.”

Vendor {Bidder} Support:

Vendors {Bidders} are strongly encouraged to visit the [NJSTART Vendor Support Page](#), which contains Quick Reference Guides (QRGs), supporting videos, a glossary of *NJSTART* terms, and helpdesk contact information.

The Vendor {Bidder} should utilize the QRGs before attempting to submit its Quote {Proposal} using the *NJSTART* process. It is the Vendor's {Bidder's} responsibility to ensure that the *NJSTART* Quote {Proposal} and attachments have been properly submitted.

With the above principals in mind, Bidders are cautioned to allow adequate time to ensure that the Proposal is properly submitted.

In its protest, Illumina states that it:

made several attempts to submit our bid via the NJStart (sic) site before and immediately after bid opening date of Friday, 08/25/2017 02:00:59 PM and received no confirmation of our submission being received. We began reaching out to NJStart (sic) immediately that Friday afternoon and early the following week. As I have mentioned earlier in this email chain we readied our submission months ago as the opening date pushed back several time[s]. We marked our calendars each time and submitted our bid once the NJStart (sic) site allowed us to upload it.

In response to Illumina's statement that it marked its calendars each time and submitted its bid once the *NJSTART* site allowed for Proposals to be uploaded, I note that *NJSTART* eProcurement website allows Bidders to upload and submit Proposals immediately after the RFP is available on the website. As such, there was no need for Illumina to wait until the Proposal submission due date to upload its Proposal, and doing so was at Illumina's own peril of not submitting a timely Proposal.

A review of the record of this procurement reveals that Illumina did not create or submit a Proposal in response to the RFP.

Vendors													New Searches	
Select	Vendor ID	Vendor Name	Last PO Date	Last Bid Date	Address	City	State	Postal Code	Contact Name	Phone	Fax	Response Status	Status	
<input checked="" type="checkbox"/>	Y9821176	Illumina			220 Illumina Ave	San Diego	CA	92122	David Strong	619.222.4710		No	Active	

Once the deadline for Proposal submission passes (2:00:59 pm) the system locks and does not allow any additional submissions. Therefore, any attempts to upload a Proposal after 2:00:59 pm would have been unsuccessful. I note that the Bureau received 55 Proposals submitted in a timely fashion.²

With its protest, Illumina submitted a copy of its un-submitted Proposal. A review of Illumina's 86 page un-submitted Proposal reveals that following documents were included as attachments:

² Forty-nine (49) Proposals were submitted electronically through the Division's *NJSTART* eProcurement website and six (6) Proposals were submitted hardcopy to the Division prior to the close of the Proposal submission deadline. Eight (8) of the Bidders who submitted Proposals electronically through the Division's *NJSTART* eProcurement website, completed the Proposal uploads on August 25, 2017, prior to the Proposal submission deadline.

- Copy of Bid Solicitation {Request for Proposal} #17DPP00064 (pgs. 1-73)
- Ownership Disclosure Form (pgs. 74-75)
- Offer and Acceptance Page (pgs. 76-77)
- Disclosure of Investment Activities in Iran (p. 78)
- Cooperative Purchasing Form (p. 79)
- Illumina's Addendum #1 – Illumina's Exceptions to the Bid Solicitation/Request for Proposal Bid # 17DPP00064 (pgs. 80-85)
- Bidder Data Sheet (p. 86)

Illumina's un-submitted Proposal package did not include the Price Sheet/Schedule as required by RFP § 4.4.5 *Price Sheet/Schedule* which states in pertinent part "[t]he Vendor {Bidder} must submit its pricing using the State-supplied Price Sheet accompanying this Bid Solicitation {RFP} and located on the "Attachments" Tab." It is on this Price Sheet/Schedule that Bidders submit to the State the "firm, fixed percentage discount or markup off the manufacturer's latest price list." RFP § 4.4.5.2 *Price Sheet/Schedule Attachment Instructions*. Having failed to attach this form, even if the un-submitted Proposal that Illumina submitted with its protest had been submitted prior to the Proposal submission deadline, Illumina's Proposal would have been deemed non-responsive. The Bureau would be unable to allow Illumina to submit the Price Sheet/Schedule after the Proposal submission deadline as doing so would put Illumina in a position of advantage over other Bidders, and would unlevel the Bidder's playing field, as the State received responsive Proposals in which all necessary information, documents and pricing was provided in the Proposal as required.

Similarly, despite Illumina's desire to submit a Proposal for the subject solicitation, under the provisions set forth above, the statutory procurement laws, and the regulations of the State of New Jersey, the Division cannot accept Illumina's Proposal as timely submitted. Such acceptance would un-level the Bidders playing field. 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 encourage earlier initiation of submissions to ensure timely receipt of Proposals and to allow for any issues which may arise during the electronic Proposal submission process. Thank you for registering your company with [NJSTART](http://www.njstart.gov) at www.njstart.gov, the State of New Jersey's new eProcurement system. I look forward to your company's continuing interest in doing business with the State of New Jersey.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

c: J. Kerchner
K. Thomas
C. Murphy
A. Nelson
D. Rodriguez