



# State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
OFFICE OF THE DIRECTOR  
33 WEST STATE STREET  
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*Lt. Governor*

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*Acting State Treasurer*

JIGNASA DESAI-MCCLEARY  
*Director*

September 22, 2015

Via Electronic Mail [Andrew.Schechter@TalenEnergy.com] and USPS Regular Mail

Andy Schechter, CEP  
Regional Sales Manager  
Talen Energy  
835 Hamilton Street, Suite 150  
Allentown, PA 18101

RE: Protest of Untimely Submission of Proposal  
RFP# 16-X-23729 Aggregated Purchase of Electricity Supply (Commodity) – Statewide

Dear Mr. Schechter:

This correspondence is in response to your email of September 16, 2015, received by the Hearing Unit of the Division of Purchase and Property (Division), regarding the intended proposal submission by Talen Energy (Talen) to the subject Request for Proposal (RFP). The record of this procurement indicates that the Division did not receive Talen's proposal by the submission deadline. Your email contends that Talen uploaded all of the required documents to the Division's eBid system by the submission deadline but was unable to submit the proposal by the submission deadline as Talen was unable to reset its PIN with enough time to submit its proposal prior to the submission deadline. Your email goes on to request that the Division "strongly consider allowing [Talen] to submit all required information and be part of this proposal."

I have reviewed the record of this procurement, including the RFP, Talen's proposal, the relevant statutes, regulations and case law. In addition, I have reviewed the electronic records relating to Talen's submission. This review has provided me with the information necessary to determine the facts of this matter and render an informed determination on the merits of Talen's protest. I set forth herein the Division's final agency decision.

By way of background, the subject RFP was issued by the Division's Procurement Bureau (Bureau) on behalf of participating entities in the New Jersey Consolidated Energy Supply Program (NJCESP) to solicit proposals from Electric Power Suppliers for aggregated supply of Electric Generation Service to a consortium of State entities participating in the NJCESP. The intent of the RFP is to award up to 19 contracts to those responsible Bidders whose proposals, conforming to this RFP are most advantageous to the State, price and other factors considered. (RFP § 1.1 *Purpose and Intent*).

Talen asserts it uploaded "all required documents and all forms necessary ready (sic) for 2A Qualification Submission uploaded to [the Division's] portal." (Talen September 16, 2015, protest email). However, when Talen attempted to submit its proposal "[a]t ~ 1:58 pm...the system would not accept [its] Pin. By the time [it] had reset [its] Pin and tried to re-submit, [it] just barely missed the deadline." (Talen's September 16, 2015, protest email).

A review of the electronic records associated with this procurement reveals that Talen began uploading its proposal documents to the eBid website on September 15, 2015, at 11:17:23 a.m. and uploaded its final document on September 16, 2015, at 1:57:43 p.m. Although forms were uploaded into eBid, the final proposal was not properly and timely submitted to the Division.

A review of the Department of the Treasury Division of Revenue and Enterprise Services' (eSupport) email correspondence reveals that at 2:04 p.m. on Wednesday, September 16, 2015, Talen contacted the eSupport Unit stating, "I tried to submit but it wouldn't accept my PIN – What do I do now?" By the time that Talen contacted eSupport regarding its PIN, the proposal submission deadline had already passed.

The administrative regulations that govern the Division's advertised procurement process establishes certain requirements that must be met in order for a proposal to be accepted. 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 a 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[.]"

The subject RFP specified the exact location in which proposals were to be delivered:

#### **1.3.2.1 STAGE 2A - QUALIFICATION SUBMISSION DATE**

In order to be considered for pre-approval, the Stage 2A qualification submission must be received by the Procurement Bureau of the Division of Purchase and Property at the appropriate location by the required time. **ANY STAGE 2A QUALIFICATION SUBMISSION NOT RECEIVED ON TIME AT THE LOCATION INDICATED BELOW WILL BE REJECTED. THE DATE AND TIME ARE INDICATED ON THE COVER SHEET. THE LOCATION IS AS FOLLOWS:**

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

#### **1.3.2.1.1 ELECTRONIC BIDDING (EBID)**

This RFP provides to the Bidder the opportunity to electronically submit its Stage 2A qualification submission. An electronic bidding – "eBid" – application is available to Bidders to promote an easier, more efficient method to submit proposals.

#### **On-line Electronic Proposal Training Sessions:**

Online electronic proposal training for the eBid process is available on the web at <https://wwwnet1.state.nj.us/treasury/dpp/ebid/>. The Bidder is strongly encouraged to utilize the on-line training session before attempting to submit an eBid. It will be the Bidder's responsibility to ensure that the eBid has been properly submitted.

In addition, the RFP's *Signatory Page* sets forth base requirements applicable to all advertised competitive procurements. With respect to the requirement for timely submission of proposals, the *Signatory Page* states:

**PURSUANT TO N.J. STATUTES, REGULATIONS AND EXECUTIVE ORDERS, PROPOSALS WHICH FAIL TO CONFORM WITH THE FOLLOWING REQUIREMENTS WILL BE SUBJECT TO REJECTION:**

- 1) PROPOSALS MUST BE RECEIVED AT OR BEFORE THE PUBLIC OPENING TIME OF 2:00 PM EASTERN ON TIME ON September 16, 2015 AT THE FOLLOWING ADDRESS (NOTE: TELEPHONE, EMAIL, TELEFASCIMILE OR TELEGRAPH PROPOSALS WILL NOT BE ACCEPTED):**

**DEPARTMENT OF THE TREASURY  
PROCUREMENT BUREAU, PO Box 230  
33 WEST STATE STREET – 9TH FLOOR  
TRENTON, NEW JERSEY 08625-0230**

*[Emphasis in original.]*

Thus, the requirement for the timely submission of a signed and completed proposal as mandated by the administrative rules that govern the Division's procurements are mandated and cannot be relaxed to a particular bidder, so that the playing field for all potential bidders remains level. As a result, despite Talen's intent to timely submit its proposal and its need to reset its PIN, under the provisions set forth above the Division cannot accept Talen's uploaded documents as a timely submitted, signed proposal. This is the Division's final agency decision.

This is an unfortunate situation as the Division encourages competition and appreciates the effort put forth in preparing Talen's proposal. We urge Talen and all potential bidders submitting a proposal to begin the proposal submission process to allow ample time to accommodate for any unforeseen technological issues. The Division encourages Talen's participation in future solicitations and invites you to take this opportunity to register your business with **NJ START** at [www.njstart.gov](http://www.njstart.gov), the State of New Jersey's new eProcurement system.

Sincerely,



Maurice A. Griffin  
Acting Chief Hearing Officer

MAG: RUD

c: S. Laidlaw  
M. Tagliaferri  
P. Michaels