



State of New Jersey

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DIVISION OF PURCHASE AND PROPERTY
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February 29, 2016

Via Email [Olanoff@eeconsultingservices.com] and USPS Regular Mail

Oliver Olanoff, Chief Operating Officer and General Counsel
EECS, LLC
111 Broadway, Suite 2002
New York, NY 10006

Re: Protest of Notice of Intent to Award
RFP# 16-X-23508: Unclaimed Property Recovery Services

Dear Mr. Olanoff:

This letter is in response to your correspondence dated October 23, 2015, to the Division of Purchase and Property (Division), on behalf of Escheatment Expertise Consulting Services, LLC (EECS). In that letter, EECS protests the Division's Procurement Bureau's (Bureau) October 9, 2015 Notice of Intent to Award (NOI) a contract for Solicitation #16-X-23508: Unclaimed Property Recovery Services. Specifically, EECS challenges the scoring of its proposal and requests that the Division re-evaluate its proposal. EECS also requests an opportunity to make an in-person presentation for the purpose of providing information regarding EECS' approach to auditing so that it can refute the concerns raised by the Evaluation Committee

By way of background, the subject Request for Proposal (RFP) was issued on May 7, 2015 by the Bureau on behalf of the Unclaimed Property Administration (UPA) to solicit proposals to provide audit examinations to ensure compliance with the unclaimed property statutes and to assist with the reporting and delivery of unclaimed property. (RFP § 1.1 *Purpose and Intent*.) In performing these examinations the contractors will locate, identify, report and deliver any unreported past due unclaimed property due to the State. (*Ibid.*) It is the intent of the State to award multiple 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*.)

On June 11, 2015 nine proposals received by the submission deadline were opened by the Division's Proposal Review Unit. Thereafter, the Evaluation Committee (Committee) of technical experts met and reviewed the proposals submitted, scoring each proposal in accordance with the evaluation criteria set forth in RFP § 6.7.1 *Technical Evaluation Criteria*. The Committee was comprised of members of the UPA and the Bureau. The Committee was responsible for performing a technical review and price comparison of the proposals received.

Based upon the Committee's evaluation, on October 9, 2015, the Bureau issued its NOI indicating that contracts would be awarded to the following companies:

Audit Services US, LLC
Kelmar Associates, LLC
Verus Financial, LLC
Xerox State & Local Solutions, Inc.

On October 23, 2015, the Division received EECS' protest letter which, by way of summary, alleges:

- That the Committee did not award contracts based upon the "most advantageous to the State" standard. Rather, newer and/or smaller companies were not awarded contracts on the basis that they would be unable to complete a contract of New Jersey's size and scope - a standard which suggests that an individual bidder must be able to complete all of New Jersey's audits. EECS alleges that there are several companies used to handle contract audits; therefore, each contractor can complete a customizable number of audits based upon the company's size.
- That EECS proposed a highly appealing, innovative and efficient method for unclaimed property auditing that would provide the State of New Jersey with significant value. EECS' auditing methodology employs automated techniques that require significantly less human review; and its examinations are staffed to ensure that the audits are completed in a timely and thorough manner.
- EECS requested the opportunity to make an in-person presentation, stating that through oral communications we can have a productive discussion regarding EECS's approach to auditing and precisely how EECS can disprove the concerns raised by the Committee.

First, with respect to EECS' request for an in-person presentation to engage in "a productive discussion regarding EECS's approach to auditing" so that it "can disprove the concerns raised by the Committee," I note that in reviewing the submitted proposals, the Committee did not entertain presentations from any of the bidders. All proposals were evaluated based upon the contents of the submitted proposals. A discussion of the proposal with EECS would afford one bidder an opportunity that the other bidders did not have. Moreover, such a discussion appears to seek and would result in EECS being permitted to supplement, change, correct and/or alter what was submitted in its original proposal, possibly placing it in a position of advantage over other bidders. Permitting EECS to have a meeting with the Director and Committee during which it could potentially supplement its proposal, would be inconsistent with the Appellate Division's reasoning in In re Protest of the Award of the On-Line Games Prod. and Operation Servs. Contract, Bid No. 95-X-20175, where the court held that "[i]n clarifying or elaborating on a proposal, a bidder explains or amplifies what is already there. In supplementing, changing or correcting a proposal, the bidder alters what is there. It is the alteration of the original proposal which was interdicted by the RFP." 279 N.J. Super. 566, 597 (App. Div. 1995.)

Further, to the extent that EECS desires to make a presentation regarding its protest, I note that pursuant to N.J.A.C. 17:12-3.3(d)(1), "[t]he Director has sole discretion to determine if an in-person presentation by the protester is necessary to reach an informed decision on the matter(s) of the protest. In-person presentations are fact-finding for the benefit of the Director." Further, "[i]n cases where no in-person presentation is held, such review of the written record shall, in and of itself, constitute an informal hearing." N.J.A.C. 17:12-3.3(d). In consideration of EECS' protest, I have reviewed the record of this procurement, including the RFP, the proposals submitted, the Evaluation Committee report, the Bureau's Recommendation Report, and the relevant statutes, regulations, and case law. The issue(s) raised in EECS' protest were sufficiently clear such that a review of the record of this procurement 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 submitted by EECS on the written record.

Second, in addressing EECS' protest points, in preparing proposals the RFP required that "the bidder shall describe its approach and plans for accomplishing the work outlined in the Scope of Work . . . The bidder must set forth its understanding of the requirements of this RFP and its ability to successfully complete the contract." (RFP § 4.4.3 *Technical Proposal*). In addition, the RFP requested that the bidder "describe its specific plans to manage, control and supervise the contract to ensure satisfactory contract completion according to the required schedule;" include a contract schedule; set forth a summary of anticipated problems and a proposed solution; and "include information relating to its organization, personnel, and experience, including, but not limited to, references, together with contract names and telephone numbers, evidencing the bidder's qualifications and capabilities to perform the services required by this RFP." (RFP § 4.4.3.2 *Contract Management*, RFP § 4.4.3.3 *Contract Schedule*, RFP § 4.4.3.5 *Potential Problems*, and RFP § 4.4.4 *Organizational Support and Experience*.)

In evaluating the proposals submitted for conformance with the RFP requirements, the Committee used the following criteria set forth in the RFP:

6.7.1 EVALUATION CRITERIA

- a. Personnel: The qualifications and experience of the bidder's management, supervisory, and key personnel assigned to the contract, including candidates recommended for each of the positions/roles required;
- b. Experience of firm: The bidders documented experience in successfully completing contracts of a similar size and scope in relation to the work required by this RFP; and
- c. Ability of Firm to complete the Scope of Work based on its Technical Proposal: The bidder's demonstration in the proposal that the Bidder understands the requirements of the Scope of Work and presents an approach that would permit successful performance of the technical requirements of the contract.

Utilizing these criteria to evaluate EECS' proposal, the Committee determined that "EECS did not fully address all of the tasks and deliverables specified in the RFP." (Evaluation Committee Report, p. 15.) Specifically, the Committee report noted that with respect to Criteria A - *Personnel*, EECS' management lacked unclaimed property auditing experience and the proposal lacked detail regarding the audit support staff. As to Criteria B - *Experience of the Firm*, the Committee's evaluation report notes that EECS is a young company that currently has three state unclaimed property contracts, all of which have only been recently entered into and, the experience presented in the proposal relates to small to mid-sized banks which are not comparable in size and scope to the work required by this RFP. For Criteria C - *Ability of Firm to complete the Scope of Work based on its Technical Proposal*, EECS states that it could offer the State a more modern audit examination approach through the firm's "technology based exam methodology." While the Committee found this appealing; the proposal lacked detail on the proprietary system. The limited information provided in the EECS' proposal, along with the inexperience of the firm compared to that of the intended awardees was evidenced in the Committee's scoring.

In connection with this protest, the Division's Hearing Unit conducted an independent review of EECS' proposal. With respect to the Criteria A - *Personnel*, bidders were guided to set forth the qualifications and experience of the management, supervisory, and key personnel assigned to the contract. EECS' June 11, 2015 proposal states in pertinent part:

Our experience over several decades closely reviewing unclaimed property and financial records gives EECS a wealth of knowledge in

analyzing, categorizing and auditing records of various types of asset holders. . . .

EECS has experience specific to the services sought by this RFP. We propose a dedicated team with both the necessary expertise to manage the DOT audits, and significant skills and expertise to support the audits and address any holder-specific issues as they arise. . . .

The first four team members for whom we have provided resumes Messrs. Allegaert, Olanoff, Ginsberg and Wang - will be the dedicated [as] unclaimed property recovery service team members. As attorneys adept in statutory construction and interpretation, Mr. Allegaert and Mr. Olanoff are well-versed in New Jersey's unclaimed property laws. Mr. Allegaert and Mr. Olanoff have also served as leads on numerous holder audits for EECS that have returned several million dollars to client states. Mr. Wang, a database and information technology expert is experienced in technology systems employed by large holder institutions. Mr. Ginsberg has more than 50 years of experience in the abandoned property space and will be particularly useful analyzing more complex holder data.

As part of this protest, the Hearing Unit conducted an independent review of EECS' proposal in relation to the RFP requirements. Included in this review was, among other things, the technical narrative and the resumes provided pursuant to Section 4.4.4.3 of the RFP. This section states:

4.4.4.3 RESUMES

Detailed resumes should be submitted for all management, supervisory and key personnel to be assigned to the contract. Resumes should emphasize relevant qualifications and experience of these individuals in successfully completing contracts of a similar size and scope to those required by this RFP. Resumes should include the following:

- a. The individual's previous experience in completing each similar contract;
- b. Beginning and ending dates for each similar contract;
- c. A description of the contract demonstrating how the individual's work on the completed contract relates to the individual's ability to contribute to successfully providing the services required by this RFP; and
- d. With respect to each similar contract, the name and address of each reference together with a person to contact for a reference check and a telephone number.

The Hearing Unit's review of the individual resumes included with EECS' proposal reveals that most of the management and support staff lacks meaningful experience in unclaimed property recovery services. Specifically, with respect to the management, supervisory, and key personnel assigned to the contract, the proposal resumes state:

Christopher Allegaert, Chief Executive Officer

. . .
Mr. Allegaert has nearly 30 years of experience as a practicing attorney and is a founding partner of a 22-lawyer law firm with offices in New York and New Jersey. The firm's practice is focused on complex civil litigation, intellectual property, commercial real estate, and trust and

estates matters. Mr. Allegaert has represented a wide range of clients in banking, securities and accounting litigations, including matters involving asset recovery, abandoned property and escheatment. He has broad knowledge of state abandoned property statutes, has represented heirs and other claimants in abandoned property proceedings and has litigated multiple cases in the estate administration area...

Oliver Olanoff, Chief Operating Officer/General Counsel

...
Mr. Olanoff was an attorney with more than 11 years of experience practicing in the New York office of a leading international law firm where he represented a wide range of blue-chip clients in complex commercial and financial matters, including banking, securities, contractual and accounting litigations. Mr. Olanoff has also represented individual and corporate clients in sensitive and high profile investigations by governmental agencies such as the Securities and Exchange Commission, the Department of Justice, and by various state law enforcement and regulatory authorities...

Nicholas Wang, Lead Technical Examination Specialist

Mr. Wang is a database professional with more than a decade of experience developing, managing and administering complex database systems for large businesses, including financial institutions...

Charles Ginsberg, EECS Principal/Abandoned Property Subject Matter Expert

... Mr. Ginsberg has more than five decades of experience examining the abandoned property records having operated and sold two highly successful asset recovery firms...For EECS, Mr. Ginsberg reviews and evaluates data collected from holders with a special focus on those assets that require an additional level of careful and critical analysis to assess dormancy...

While EECS did provide resumes and information in response to the RFP requirements, the resumes revealed that though the management, supervisory, and key personnel have significant legal and financial experience, other than Mr. Ginsberg who is identified as a subject matter expert in examining abandoned property records, the unclaimed property recovery services experience for the management, supervisory, and key personnel as well as other staff presented is limited to non-existent. The resumes for these individuals list their current duties, many of which include oversight of unclaimed property services; however there is little to no detail related to these individuals performing unclaimed property auditing services.¹

I find that given the dearth of relevant successful experience presented for these key staff members, TSG's proposal provided minimal information to assure the Evaluation Committee that the proposal met Criteria A.

¹ EECS's proposal also lists backup staff, however, as with the management, supervisory, and key personnel, the experience listed is of a legal and financial nature, rather than unclaimed property experience. I do note that EECS's proposal lists Paul Goldstein as having "nearly two decades of experience in senior management positions in abandoned asset recovery firms," however as backup staff he and the others listed as backup staff will not be those responsible for the work required by this RFP.

As to Criteria B - *Experience of the Firm*, the RFP requested that the bidder demonstrate that it has the ability to successfully complete contracts of similar size and scope in relation to the work required by the RFP. Specifically, RFP § 4.4.4.5 *Experience with Contracts of Similar Size and Scope* states:

The bidder should provide a comprehensive listing of contracts of similar size and scope that it has successfully completed, as evidence of the bidder's ability to successfully complete the services required by this RFP. Emphasis should be placed on contracts that are similar in size and scope to the work required by this RFP. **A description of all such contracts should be included and should show how such contracts relate to the ability of the firm to complete the services required by this RFP.** For each such contract, the bidder should provide two names and telephone numbers of individuals for the other contract party. Beginning and ending dates should also be given for each contract.

The bidder should provide documented experience to demonstrate that each subcontractor has successfully performed work on contracts of a similar size and scope to the work that the subcontractor is designated to perform in the bidder's proposal. The bidder must provide a detailed description of services to be provided by each subcontractor.

[Emphasis added.]

In its proposal EECS states that:

In the last 12 months, EECS has executed contracts to perform unclaimed property audit services for the Louisiana Department of the Treasury and the Florida Department of Financial Services. EECS has returned several million dollars to the states. In late January 2015, the Louisiana Department of the Treasury renewed its contract with EECS...EECS also signed a contract with the Missouri State Treasury in December 2014.

We are pleased to report that in a short period of time, EECS has identified and facilitated the return of several million dollars collectively to the Louisiana Department of the Treasury and on behalf of the Florida DFS. Importantly, EECS's methodology has enabled it to identify noncompliance in all of the institutions audited to date. Our audits are facilitated by well-planned and secure information exchanges and where necessary, on-site visits to holders. Our proprietary application has performed all functions as intended on audits to date, and has done so in a timely and efficient manner. EECS has received feedback from several holders that, in addition to being productive, the unclaimed property examinations have been extremely informative and conducted in a professional manner.

Further, as to each contract identified EECS stated:

State of Louisiana Department of the Treasury

LDOT retained EECS in February 2014. EECS has completed audits of small and midsized commercial banks with findings that have been approved by the LDOT and agreed to by each holder. Notably, the holders did not dispute EECS's reports, which were based on a full set of actual holder records rather than estimates, extrapolations or sampling. In

each of these audits, EECS, using its proprietary methodologies, audited the holders, identified unclaimed property and collected it from the holder institutions without issue. EECS recently began an examination of a large insurance/brokerage company and expects to begin additional audits in the coming months in the brokerage space.

State of Florida Department of Financial Services

The Florida DFS retained EECS in May 2014. EECS has fully completed or near fully completed 4 unclaimed property examinations and has begun three additional examinations. In each of these audits, EECS, using its proprietary methodologies, is auditing the holders and identifying out-of-compliance unclaimed property. To date there have been no disputes regarding examination findings and several million dollars have been returned to the State.

Missouri State Treasurer's Office

The Missouri State Treasurer's Office retained EECS in December 2014. EECS expects to begin auditing holders on behalf of the MSO very shortly.

In evaluating EECS' proposal, the Committee found that "EECS currently has three (3) state unclaimed property contracts, two (2) of which were entered into in 2014 and the other in 2015. At the time of its proposal submission, work has only begun on one (1) of the contracts. The Committee agreed that two-thirds of EECS' state contracts are not comparable to the size and scope of New Jersey." Further, the Committee noted that "experience presented seemed to be regarding small to mid-sized banks which is not comparable to the requirements of the RFP."

An independent review of EECS' proposal conducted by the Hearing Unit reveals that as of the date of its proposal submission EECS had entered into contracts to perform unclaimed property audit services with three states. In the proposal, EECS notes that in Louisiana it has completed audits for small and mid-sized commercial banks and has begun an examination of a large insurance company, while in Florida, EECS states that four (4) unclaimed property examinations are nearly or fully completed and three (3) additional examinations have just begun. However, EECS did not provide any details regarding the contracts or the audits to demonstrate that the contracts are of a similar size and scope in relation to the work required by the RFP. Indeed there was no information on the number of audits, the scope of the audits, and the specific size of the audits.

I find that EECS' proposal lacked detailed information related to contracts of similar size and scope to the scope of work required by the RFP or even the tasks under those contracts. This lack of detail provided minimal information to assure the Evaluation Committee that the proposal met Criteria B.

Turning to Criteria C – *Ability of the firm to complete the Scope of Work based on its Technical Proposal*, a bidder was required to describe its approach and plans for accomplishing the work identified in the RFP. The ability of the firm to complete the scope of work based upon its technical proposal represents the most important of the three evaluation criteria based upon the weighted score.² RFP § 4.4.3 *Technical Proposal*

In this section, the bidder **shall describe its approach and plans for accomplishing the work outlined in the Scope of Work section, i.e., Section 3.0.**

² As noted in the Committee Report, the weight assigned to each of the evaluation criteria was as follows: Personnel 25%; Experience of the Firm 35%; and, Ability of the firm to complete the Scope of Work based on its Technical Proposal 40%.

...

The bidder must set forth its understanding of the requirements of this RFP and its ability to successfully complete the contract. This section of the proposal should minimally contain the information identified below.

[Emphasis added.]

The Committee found that EECS' proposal "did not fully address the tasks and deliverables specified in the RFP." EECS' proposal explained it could offer a more modern audit approach through the firm's technology based exam methodology. The proposal indicated EECS had a faster, more reliable two-step audit approach using EECS' proprietary system. In considering this system, however, the Committee found that "the proposal lacked ample detail on the proprietary system and how it would greatly differ from the others." Further, in the protest, EECS asserts that it can complete a customizable amount of work based upon the size of its company. Unfortunately, EECS did not provide any details on this 'customizable amount of work' in its proposal.

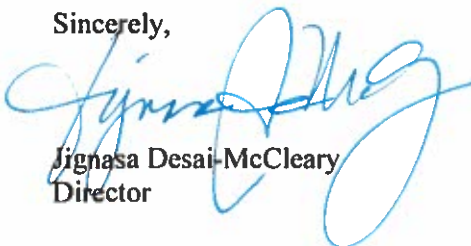
The Hearing Unit's review of EECS's proposal reveals that EECS' proposal lacked detail regarding its approach and plans to complete the Scope of Work identified in the RFP. In its technical proposal, EECS states that it has internal measures to ensure accuracy and performs 'timely audits [to] minimize disruption to holders; however, EECS provides no detail regarding these procedures. Further, while EECS provides an overview of the purpose of conducting the audit, the proposal does not provide any details or procedures explaining how its audits will be accomplished.³

I find that EECS did not provide sufficient information in the proposal to allow the Committee to conclude that EECS has the ability to complete the Scope of Work. This lack of detail provided minimal information to assure the Evaluation Committee that the proposal met Criteria C.

Based upon the foregoing, and the fact that EECS did not protest the awards to the intended awardees, I sustain the Bureau's NOI to award contracts to the four (4) current intended awardees and direct the Bureau to proceed with the award to those bidders. This is my final agency decision with respect to the protest submitted by IA Group.

Thank you for your company's interest in doing business with the State of New Jersey. I invite you to register your company with **NJSTART** at www.njstart.gov, the State of New Jersey's new eProcurement system.

Sincerely,



Jignasa Desai-McCleary
Director

JD-M: RUD

c: P. Michaels
M. Boragine
K. Anderson-Thomas

³ EECS cannot now be permitted to provide any details regarding the 'customizable work' as such supplementation is inconsistent with the Appellate Division's reasoning in On-Line Games, *supra*, 279 N.J. Super. 566.