



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

ELIZABETH MAHER MUOIO
State Treasurer

MAURICE A. GRIFFIN
Acting Director

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

February 8, 2021

Via Electronic Mail Only rhunt@parkermccay.com

Richard Hunt, Esq.
Parker McCay, P.A.
9000 Midlantic Drive, Suite 300
Mount Laurel, NJ 08054

Re: I/M/O Bid Solicitation #20DPP00506 Mercadien P.C.
Protest of Notice of Cancellation
T0894 Auditing Services, Acute Care Hospital Common Audit Program

Dear Mr. Hunt:

This final agency decision is in response to your letter of January 27, 2021, on behalf of Mercadien P.C. (Mercadien) which was received by the Division of Purchase and Property's (Division) Hearing Unit. In that letter, Mercadien protests the January 12, 2021, Notice of Cancellation issued by the Division's Procurement Bureau (Bureau) for Bid Solicitation #20DPP00506 – T0894 Auditing Services, Acute Care Hospital Common Audit Program (Bid Solicitation).

By way of background, on March 12, 2020, the Bureau issued the Bid Solicitation on behalf of the New Jersey Department of Health. Bid Solicitation § 1.1 *Purpose and Intent*. The purpose of the Bid Solicitation was to solicit Quotes for a Vendor {Contract} to perform patient eligibility Charity Care Claim audits for all New Jersey Medicaid Disproportionate Share Hospitals (DSH), desk audits of all New Jersey Acute Care Hospital cost reports, and financial report audits of licensed New Jersey Ambulatory Care Facilities. *Ibid*. Audits of Rehabilitative Hospitals and Special Hospitals as well as other special projects will be at the discretion of the DOH. *Ibid*.

On September 9, 2020, the Division's Proposal Review Unit opened three (3) Quotes, which were received by the submission deadline of 2:00 pm eastern time. After conducting an initial review of the Quotes received for the compliance with mandatory Quote submission requirements, the Division's Proposal Review Unit forwarded the Quotes to the Bureau for further review and evaluation consistent with the requirements of the Bid Solicitation Section 6.7 *Evaluation Criteria*.

On December 24, 2020, after completing the review of the submitted Quotes, the Bureau issued a Recommendation Report which recommended that the Bid Solicitation be cancelled. Specifically, the Recommendation Report noted that "upon further review, the Bureau determined that the instructions for the price sheet did not clearly detail that the pricing was to be submitted on a per audit basis, and not a total cost per year to perform audits. As a result, this Bid Solicitation should be cancelled, revised, and reissued

with more clearly detailed instructions in Bid Solicitation Section 4.4.5.2 to complete the price sheet on a per-audit basis.” Recommendation Report, p. 2.

On January 12, 2021, the Notice of Cancellation was issued advising all Vendors {Bidders} that it was the State’s intent to cancel the Bid Solicitation and re-procure the service sought, consistent with the Bureau’s Recommendation Report.

On January 27, 2021, Mercadien sent a protest letter to the Division challenging the Bureau’s decision to cancel the Bid Solicitation. In the protest, Mercadien claims that the “Bid Solicitation included clear instructions to provide a “per task/deliverable” price for each of the four types of “deliverable products and audit schedules” identified in the Scope of Work. The relevant terms were defined in the Bid Solicitation.” Mercadien continues stating that Bid Solicitation Section 3.4 *Deliverable Product and Audit Schedules*, requires that the awarded Vendor {Contractor} provide four different types of audits, each audit being a discrete unit of work comprised of many components. Mercadien protest p. 2. Moreover, Mercadien alleges that the current contract pricing is on a per audit basis; and therefore, Vendors {Bidders} should have known that Quote pricing was to be submitted based on a per audit basis. Therefore, Mercadien believes that it should be awarded the Blanket P.O.

In consideration of Mercadien’s protest, I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes received and Mercadien’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.

The New Jersey Courts have long recognized that the purpose of the public bidding process is to “secure for the public the benefits of unfettered competition.” *Meadowbrook Carting Co. v. Borough of Island Heights*, 138 N.J. 307, 313 (1994). To that end, the “public bidding statutes exist for the benefit of the taxpayers, not bidders, and should be construed with sole reference to the public good.” *Borough of Princeton v. Board of Chosen Freeholders*, 169 N.J. 135, 159-60 (1997). The objective of New Jersey’s statutory procurement scheme is “to guard against favoritism, improvidence, extravagance and corruption; their aim is to secure for the public the benefits of unfettered competition.” *Barrick v. State of New Jersey*, 218 N.J. 247, 258 (2014) (citing *Keyes Martin & Co. v. Dir. of Div. of Purchase and Prop.*, 99 N.J. 244, 256 (1985)). Consistent with this purpose, the New Jersey procurement law provides that “any or all bids may be rejected when the State Treasurer or the Director of the Division of Purchase and Property determines that it is in the public interest so to do.” N.J.S.A. 52:34-12(a).

The Division’s administrative regulations that govern the advertised procurement process establish certain requirements that must be met in order for a Quote to be accepted. Those regulations provide in relevant part that:

- (a) In order to be eligible for consideration for award of contract, the bidder's proposal shall¹ conform to the following requirements or be subject to designation as a non-responsive proposal for non-compliance:

...

6. Include all RFP-required pricing information.

[N.J.A.C. 17:12-2.2(a), emphasis added.]

¹ “Shall – Denotes that which is a mandatory requirement.” Bid Solicitation § 2.2 *General Definitions*.

Among those attachments required to be submitted with the Quote is the State-Supplied Price Sheet discussed in Bid Solicitation Section 4.4.5 *State-Supplied Price Sheet*. To assist Vendors {Bidders} in completing the State-Supplied Price Sheet, the Bid Solicitation advised in part:

The Vendor {Bidder} must submit its pricing using the format set forth in the State-supplied price sheet/schedule(s) accompanying this Bid Solicitation. Failure to submit all information required will result in the Quote being considered non-responsive. Each Vendor {Bidder} is required to hold its prices firm through issuance of Blanket P.O.

- A. Vendors {Bidders} must submit a Firm Fixed Price for price lines 1 through 4 as detailed on the accompanying State-Supplied Price Sheet. Price lines 1 through 4 shall comprise the Total Audit Cost for Blanket P.O. years one (1) through (3);
- B. Vendors {Bidders} must complete Price Lines 5 through 6, which include Special Projects and Expert Testimony and Litigation Support. These prices lines will be reviewed for cost reasonableness; and

Vendors {Bidders} shall include pricing without assumptions, exceptions, or caveats or the Quote may be deemed non-responsive.

[Bid Solicitation § 4.4.5.2 *State-Supplied Price Sheet Instructions*.]

Further, Bid Solicitation Section 6.7.2 *Vendor's {Bidder's} State-Supplied Price Sheet* advised that the Bureau would “utilize a weighted consumption/market basket model to evaluate pricing. The pricing model will be date-stamped and entered into the record before Quote opening.” In order to evaluate the pricing details submitted by the Vendors {Bidders}, as required by Bid Solicitation Section 6.7.2 and N.J.A.C. 17:12-2.7(b), prior to the Quote opening date, the Bureau time and date-stamped the evaluation criteria.

In reviewing the Quotes submitted, it was clear that there was a variation in the way that the Vendors {Bidders} submitted the Quote pricing. Based upon the historical usage of the current contract, it was apparent that two of the Vendors {Bidders} submitted Quote pricing for an annual cost to perform the required audits, while the third Vendor {Bidder} submitted pricing based upon a per audit cost. The Procurement Bureau was unable to compare the pricing submitted using its pre-defined consumption model as doing so created skewed pricing likely not representative of the pricing the using agency would be charged for the services to be provided and placing the Vendors {Bidders} in an flawed position relative to one another.

The large variation in the Quote pricing submitted requires a close review of the State-Supplied Price sheet and language of the Bid Solicitation. As shown in the screen shot below, the State-Supplied Price Sheet listed the various tasks / deliverables sought, specifically the 4 different types of audits.

20DPP00506 T0894 - Auditing Services, Acute Care Hospital Common Audit Program					
Vendor:			Date:		
Price Schedule					
Items	Task/Deliverable	Unit	Blanket PO Year One (1) Firm Fixed Price	Blanket PO Year Two (2) Firm Fixed Price	Blanket PO Year Three (3) Firm Fixed Price
1	Charity Care	Each			
2	NJ Acute Care Hospital Cost Report Desk Audits	Each			
3	Ambulatory Care Facility Financial Reports Audits	Each			
4	Rehabilitative and Special Hospital Audits (Bid Solicitation Section 3.3.4)	Each			
TOTAL AUDIT COST FOR BLANKET PO YEARS ONE (1) THROUGH THREE (3)					
5	Special Projects (RFP Section 3.3.4) All Inclusive Hourly Rate	Hour			
6	Expert Testimony and Litigation Support (Bid Solicitation Section 3.6) All Inclusive Hourly Rate	Hour			


Three of the four audit types listed included the plural “Audits” rather than the singular “Audit”. While the Unit was listed as “Each”, the pricing columns required a firm fixed priced for each year. In fact, the price sheet instructions noted that “Price lines 1 through 4 shall comprise the Total Audit Cost for Blanket P.O. years one (1) through (3)”.

While Mercadien interpreted the price sheet and the instructions as requiring that pricing be submitted on a per audit basis, the remaining two Vendors {Bidders} interpreted price sheet and the instructions as requiring that pricing be submitted as an annual rate for all audits required. Both interpretations are plausible creating an ambiguity in the Bid Solicitation. Because of this ambiguity the Bureau determined that the best and fairest course for the taxpayers and bidding community was to cancel the Bid Solicitation. This decision is in line with the Division’s primary goal of ensuring that the public bidding process allows for unfettered competition. *Meadowbrook, supra*, 138 N.J. at 313. Here, the Bureau recommended, and I concurred, that it was in the public interest to cancel the Bid Solicitation. This decision was based on both cogent and compelling reasons and I find no evidence of fraud, collusion, bath faith or favoritism.

Based upon the foregoing, I find no reason to disturb the Bureau’s recommendation that the subject Bid Solicitation be cancelled. Accordingly, I sustain the January 12, 2020 Notice of Cancellation. This is my final agency decision.

Thank you for your company’s interest in doing business with the State of New Jersey. I encourage you to log into [NJSTART](#) to select any and all commodity codes for procurements you may be interested in submitting a Quote for so that you may receive notification of future bidding opportunities. Please monitor the Division’s [NJSTART](#) website for future bidding opportunities for these services.

Sincerely,


 Maurice A. Griffin
 Acting Director

MAG: RUD

c: S. Fletcher
L. Spildener
M. Tagliaferri