



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR

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June 25, 2024

Via Electronic Mail Only to maeve.cannon@stevenslee.com

Maeve E. Cannon, Esq.
Stevens & Lee
100 Lenox Drive
Suite 200
Lawrenceville, NJ 08648

Re: I/M/O Bid Solicitation #21DPP00639 Data Networks Solutions
Protest of Notice of Intent to Award
T1776 – Data Communications Network Services

Dear Ms. Cannon:

This final agency decision is in response to your electronic mail on behalf of Data Network Solutions (DNS) received by the Division of Purchase and Property's (Division) Hearing Unit on May 2, 2024 (Protest). In that letter, DNS protests the Procurement Bureau's (Bureau) April 19, 2024, Notice of Intent to Award letter (NOI) issued for Bid Solicitation #21DPP00639 – Data Communications Network Services (Bid Solicitation).

By way of background, on January 26, 2022, the Bureau issued the Bid Solicitation on behalf of the State of New Jersey, Office of Information Technology (NJOIT). The purpose of the Bid Solicitation was to solicit Quotes for Data Communications Network Services that will provide basic data network connectivity, as well as associated support services. Bid Solicitation Sec. 1.1, *Purpose and Intent*. Bid Solicitation Section 1.2, *Background*, cautioned Bidders that this Bid Solicitation addressed the State's current requirements.

NJOIT is responsible for the technology infrastructure used by the Executive Branch of New Jersey State Government. The services covered by this contract will be used as the infrastructure for the State of New Jersey's Garden State Network (GSN), which enables data communications between different State sites, and allows for Using Agencies to reliably and securely connect to the internet. Currently, the vast majority of State sites are connected to the GSN via ethernet services.

In accordance with Bid Solicitation Section 1.3.5, *Optional Pre-Quote Conference*, an optional Pre-Quote Conference was held on February 8, 2022, providing all potential Bidders with an overview of the Bid Solicitation and Quote submission procedures and requirements. Representatives from six (6) potential bidding entities attended (AT&T, Carousel, DNS, Hunter Carrier, Crown Castle, and Verizon).

In accordance with Bid Solicitation Section 1.3.1, *Electronic Question and Answer Period*, an electronic portal enabling the Bureau to receive questions electronically was available to all potential Bidders until 2:00 P.M. Eastern Time on February 25, 2022. Eight (8) Bid Amendments were issued for this Bid Solicitation, which provided revisions to the Bid Solicitation and responses to questions received from potential Bidders.

Bid Amendment #	Date Issued	Contents
Bid Amendment 1	2/14/2022	Pre-Quote Conference Attendees List
Bid Amendment 2	3/31/2022	Quote Submission due date extended from 6/10/2022 to 9/2/2022
Bid Amendment 3	7/26/2022	Quote Submission due date extended from 9/2/2022 to 11/4/2022
Bid Amendment 4	10/17/2022	Quote Submission due date extended from 11/4/2022 to 1/13/2023
Bid Amendment 5	12/28/2022	Quote Submission due date extended from 1/13/2023 to 4/20/2023
Bid Amendment 6	4/6/2023	Quote Submission due date extended from 4/20/2023 to 5/31/2023; Answers to first round of electronic Bidder questions posted to NJSTART; Revised Bid Solicitation posted to NJSTART; 2 nd Q&A period opened until 4/27/2023
Bid Amendment 7	5/18/2023	Quote Submission due date extended from 5/31/2023 to 6/21/2023
Bid Amendment 8	6/1/2023	Answers to 2 nd round of electronic Bidder questions posted to NJSTART

On June 21, 2023, the Division's Proposal Review Unit opened eleven (11) Quotes. The eleven (11) Quotes were deemed administratively complete by the Proposal Review Unit and released to the Bureau for further review and evaluation.

The Bureau determined that the Quotes submitted by Brightspeed of New Jersey, Inc. (Brightspeed), Cablevision Lightpath, Inc. (Lightpath), MetTel, Granite Telecommunications LLC (Granite), Comcast Communications Management LLC (Comcast), Data Network Solutions (DNS), and Crown Castle Fiber LLC (Crown Castle), were either fully or partially non-responsive due to non-compliance with several mandatory elements of the Bid Solicitation. Recommendation Report at pgs. 3-5. The Bureau found that the following Quotes met, and complied with, the mandatory requirements for at least one award-eligible section of the Bid Solicitation to be released to the Evaluation Committee:

1. AT&T
2. Carousel Industries of North America (Carousel)
3. DNS
4. Hunter Carrier Services LLC Hunter Carrier)
5. Crown Castle
6. Verizon Business Network Services LLC (Verizon)

These six (6) Quotes were released to the Evaluation Committee in accordance with Bid Solicitation Section 6.5, *Quote Evaluation Committee*. The Committee was composed of three (3) voting members from NJOIT, one (1) voting member from the Bureau, and four (4) non-voting members from the Bureau (1), NJOIT (1), and the New Jersey Judiciary (2). Evaluation Committee at p. 7-8. The Committee was responsible for performing the technical evaluation of the responsive Quotes received based upon the evaluation criteria set forth in Bid Solicitation Section 6.7, *Evaluation Criteria*, which stated in part:

- A. Personnel: The qualifications and experience of the Vendor's

{Bidder's} management, supervisory, and key personnel assigned to the Blanket P.O., including the candidates recommended for each of the positions/roles required;

- B. Experience of firm: The Vendor's {Bidder's} documented experience in successfully completing Blanket P.O. of a similar size and scope in relation to the work required by this Bid Solicitation; and
- C. Ability of firm to complete the Scope of Work based on its Technical Quote: The Vendor's {Bidder's} demonstration in the Quote that the Vendor {Bidder} understands the requirements of the Scope of Work and presents an approach that would permit successful performance of the technical requirements of the Blanket P.O.

Prior to the public advertisement of the Bid Solicitation, in January 2021, representatives from NJOIT and the Bureau assigned relative weights for the three (3) Evaluation Criteria. The assigned weights are as indicated on the timestamped score sheet shown below:

9NOV '21 2:33PM

T1776 - Data Communication Networking Services		
Vendor (Bidder) for DS-1 and DS-3 Services shall provide the following requested sample prices. Vendor (Bidder) shall provide its pricing in the table format provided below as if new service. The Total 3-Year Cost = 36 months x Monthly Recurring Charge (MRC) + Non-Recurring Charge (NRC). Vendor (Bidder) shall populate MRC and NRC columns.		
The Vendor (Bidder) must also attach a thorough description of the proposed rate structure that includes a price list that clearly identifies all pricing components, including one-time charges, surcharges and mileage charges (if applicable) as per Service Description requirements listed in Section 3.4.1.1		
Additionally, the Vendor (Bidder) is invited to propose discounts to their standard pricing for the following options; bulk orders, service quantity commitments, and Provisioning/Maintenance/Performance abilities that are superior to the State requirements provided in Section 3.3.6. The Vendor (Bidder) must include a description of these discounts along with the pricing.		
Configuration 1: Section 3.4.1 Private Line Data Services- DS1 & DS3		
DS-1 Location A - Location B - 10 miles		
Monthly Recurring Cost (MRC)	Non-Recurring Charge (NRC)	Total
		\$ -
Configuration 2: Section 3.4.1 Private Line Data Services- DS1 & DS3		
DS-3 Location A - Location B - 20 miles		
Monthly Recurring Cost (MRC)	Non-Recurring Charge (NRC)	Total
		\$ -
Private Line Total Cost		\$ -
Configuration 1 Weight		50%
Configuration 2 Weight		50%
Private Line Total Weighted Cost		\$ -

The Committee members each conducted an independent analysis of each of the six (6) remaining Quotes. Then, on December 5, 2023, the Committee met to review and consider the Quotes as a group. The four (4) voting members assigned individual technical scores (1-10) for each of the three (3) Evaluation Criteria for each Quote based upon their independent analysis and Committee discussions. Evaluation Committee Report at pgs. 8-9. Assigned scores were multiplied by the criterion weight to produce a weighted score for each criterion.

Bidder	Total Criterion A (Max 400)	Total Criterion B (Max 1200)	Total Criterion C (Max 2400)	Total Technical Score (Max 4000)	Average Technical Score (Max 1000)	Ranking
Verizon	360	1,170	2,100	3,630	908	1
AT&T	320	1,110	1,980	3,410	853	2
Crown Castle	310	870	1,560	2,740	686	3
DNS	280	630	1,440	2,350	588	4
Carousel	260	870	1,140	2,270	568	5
Hunter Carrier	120	270	540	930	233	6

In accordance with Bid Solicitation Section 6.8, *Negotiation and Best and Final Offer (BAFO)*, the Bureau requested a BAFO from Verizon, Carousel, DNS, Crown Castle, and AT&T on December 29, 2023, with responses due by January 10, 2024.¹ The Bidders provided BAFO responses as shown on pages 25 through 30 in the Evaluation Committee Report.

Having completed its evaluation of the Quotes received in response to the Bid Solicitation, on April 19, 2024, the Bureau issued the NOI advising all Bidders that it was the State’s intent to award a Contract to AT&T, Carousel, Crown Castle, DNS, and Verizon.

On May 2, 2024, prior to the close of the protest period, DNS submitted the Protest claiming that “DNS was improvidently rejected for Section 3.4.3, IP Services and VoIP Services as DNS supplied the requested pricing in other configurations such that the failure to complete configuration 1 of Section 3.4.3 was not material here.” By way of remedy, DNS asks that it be deemed responsive for Section 3.4.3 and eligible for award.

Although DNS did not request an in-person presentation as permitted by N.J.A.C. 17:12-3.3(e), it should be noted that “[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). I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes received, the Evaluation Committee Report, the Bureau’s Recommendation Report, the relevant statutes, regulations, case law, and the protest submitted by DNS. The issues raised in the 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 DNS on the written record, as such an in-person hearing is not warranted. I set forth herein the Division’s Final Agency Decision.

DISCUSSION

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

¹ Based on the Evaluation Committee’s review, Hunter Carrier’s Quote was deemed not to be in the competitive range as outlined in the Recommendation Report and received no further consideration.

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). .

When evaluating Quotes received, the Division is charged with ensuring that the Contract is awarded to that responsible Bidder whose Quote, conforming to the Bid Solicitation, is most advantageous to the State, price and other factors considered. Bid Solicitation Section 1.1, *Purpose and Intent*. A responsive Quote is a Quote that is deemed by the Division and/or evaluation committee to have adequately addressed all material provisions of a Bid Solicitation’s terms and conditions, specifications, and other requirements. N.J.A.C. 17:12-1.3. A Quote that is not compliant or responsive to the material requirements of the Bid Solicitation shall not be eligible for further consideration for award of a Contract and the bidder offering said Quote shall receive notice of the rejection of its Quote. N.J.A.C. 17:12-2.7(e).

When evaluating a Quote received, if a deviation is found, the question is whether the deviation is material. It is firmly established in New Jersey that material deviations may not be waived. Twp. of Hillside v. Sternin, 25 N.J. 317, 324 (1957). In Meadowbrook Carting Co., 138 N.J. at 315, the New Jersey Supreme Court adopted the test set forth by the court in Twp. of River Vale v. Longo Constr. Co. for determining materiality. 127 N.J. Super. 207 (Law Div. 1974). “In River Vale, the court declared that after identifying the existence of a deviation, the issue is whether a specific non-compliance constitutes a substantial [material] and hence non-waivable irregularity.” In re Protest of Award of On-Line Games Prod. and Operation Servs. Contract, 279 N.J. Super. 566, 594 (App. Div. 1995), citing River Vale, 127 N.J. Super. at 216. The River Vale court set forth a two-part test for determining whether a deviation is material:

First, whether the effect of a waiver would be to deprive the [government entity] of its assurance that the contract will be entered into, performed and guaranteed according to its specified requirements, and second, whether it is of such a nature that its waiver would adversely affect competitive bidding by placing a bidder in a position of advantage over other bidders or by otherwise undermining the necessary common standard of competition.

[River Vale, *supra*, 127 N.J. Super. at 216.]

“If the non-compliance is substantial and thus non-waivable, the inquiry is over because the bid is non-conforming and a non-conforming bid is no bid at all.” On-Line Games, *supra*, 279 N.J. Super. at 595 (citing River Vale, 127 N.J. Super. at 222).

Bid Solicitation Section 4.4.5, *State-Supplied Pricing Configuration*, clearly states that any “Vendor {Bidder} **must** submit its pricing using the State-Supplied Pricing Configuration accompanying this Bid Solicitation and located on the ‘Attachments’ Tab.” Emphasis added. To assist Bidders in completing the State-Supplied Pricing Configurations and Price List Requirements, the revised Bid Solicitation advised:

PRICING CONFIGURATIONS

The Vendor {Bidder} **shall** submit pricing for one or more of the services listed below. See State-Supplied Pricing Configurations for sample pricing required.

Section 3.4.1: Private Line Data Services – DS1 & DS3 Service
Section 3.4.2: Ethernet Services
Section 3.4.3: IP Services and VoIP Services Section
Section 3.4.4.1.1: Satellite
Section 3.4.4.1.2: Microwave
Section 3.5.1: Synchronous Optical Network (SONET)
Section 3.5.2: Optical Transport Network (OTN)
Section 3.5.3: Wavelength Services
Section 3.5.4: Dark Fiber
Section 3.6: Internet Service
Section 3.7: Managed and Professional Services

Vendors {Bidders} may put \$0.00 into a cell when that line item will be considered free of charge.

All pricing submitted by Vendors {Bidders} in the State-Supplied Pricing Configurations and Price List exclude any applicable non-exempt taxes, surcharges, and fees. Applicable non-exempt taxes, surcharges, and fees shall be included in the invoices submitted at time of billing pursuant to Bid Solicitation Section 3.3.5, *Billing*.

Any price changes including hand written revisions or “white-outs” must be initialed. Failure to initial price changes shall preclude a Blanket P.O. award from being made to the Vendor {Bidder} pursuant to N.J.A.C. 17:12-2.2(a)(8).

Where the State-Supplied Price Sheet includes an estimated quantity column, Vendors {Bidders} are advised that estimated quantities may vary throughout the Blanket P.O. term resulting from this Bid Solicitation. There is no guaranteed minimum or maximum volume for these price lines.

PRICE LIST REQUIREMENTS

The Vendor {Bidder} **shall** also attach a price list that clearly identifies all pricing components, including one-time charges, surcharges, and mileage charges (if applicable) for the services proposed. Service specific requirements are provided in Bid Solicitation Sections 3.4 through 3.7.

Vendors {Bidders} who propose Cable-based Broadband Internet shall include features available with the service and associated pricing in the Price List.

Additionally, the Vendor {Bidder} is invited to propose discounts to their standard pricing for the following options; bulk orders, service quantity

commitments, and Provisioning/Maintenance/Performance abilities that are inferior to the State requirements provided in Section 3.3.6. The Vendor {Bidder} must include a description of these discounts along with the pricing.

[Bid Solicitation Section 4.4.5.2, *State-Supplied Pricing Configurations Instructions and Price List Requirements*, emphasis added.]

The review of DNS' submitted Quote revealed that the submitted State-Supplied Pricing Configuration worksheet for Section 3.4.3 did not only not provide pricing for Configuration 1 or Configuration 2, but that DNS affirmatively stated that it would not be providing an estimate for Configuration 2 when it stated under the notes for that configuration that

DNS can't bid this configuration because it is not a practical or cost effective to use legacy TDM circuits to deliver IP services. Carriers have mostly discontinued the sale of OC3 circuits. IP access over OC-3 (SONET) is possible but rarely provisioned any more. OC-3 is much less widely available than Ethernet and when available its price is much higher. IP services over OC-3 are provisioned using a SONET MSPP with Ethernet over SONET capability. This was a viable option in the past when there were substantial volumes of TDM circuits (DS1, DS3) which were provisioned over the SONET, and IP volumes were relatively small. But with TDM circuits declining and in most cases no longer used or even available, the added complexity of SONET is unnecessary even where it is available.

[Section 3.4.3, IP&VoIP Servs., Config 2, T1776 Pricing Configurations.]

With respect to Configuration 1, DNS failed to complete the cells on Row 8, and only added a note for Configuration 1 that it "Assumes a direct EVPL connection to DNS data center". See DNS "T1776 Pricing Configurations if last.xlsx", Sheet Section 3.4.3 IP&VoIP Servs.

As indicated above, Bid Solicitation Section 4.4.5.2, *State-Supplied Pricing Configurations Instructions and Price List Requirements*, clearly stated with respect to the configurations that the Bidder "**shall** submit pricing for one or more of the services listed below. See State-Supplied Pricing Configurations **for sample pricing required.**" Emphasis added. DNS did not only not provide the required information for Configuration 1 and Configuration 2, it affirmatively then failed to include the required information and instead provided a note with assumptions but no pricing for Configuration 1, and a narrative for Configuration 2 stating that it would not be submitting a bid. These failures on DNS' part mean DNS' State-Supplied Price Configuration Sheet lacked the requisite information required by the Bid Solicitation, therefore DNS could not be evaluated on the same terms as the other responsive Bidders for these configurations.

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 shall² 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.]

The Bid Solicitation makes clear that certain requirements are mandatory and not subject to discretion. Specifically the Bid Solicitation Section 2.2, *General Definitions*, states:

Must – Denotes that which is a mandatory requirement.

Shall – Denotes that which is a mandatory requirement.

This mandatory language is found in Bid Solicitation Section 4.4.5.2, *State Price Sheet Instructions*, Step 4, Step 6, Step 8, and Step 9, and makes clear that:

PRICING CONFIGURATIONS

The Vendor {Bidder} **shall** submit pricing for one or more of the services listed below. See State-Supplied Pricing Configurations for sample pricing required.

* * *

PRICE LIST REQUIREMENTS

The Vendor {Bidder} **shall** also attach a price list that clearly identifies all pricing components, including one-time charges, surcharges, and mileage charges (if applicable) for the services proposed. Service specific requirements are provided in Bid Solicitation Sections 3.4 through 3.7.

[Emphasis added.]

The clear language in the instructions found in Bid Solicitation Section 4.4.5.2 requiring pricing be submitted for the requisite sample pricing, as well as the mandatory requirement of attaching a price list, along with the Glossary definition explaining the mandatory nature of “shall” and “must” requirements, makes clear that the required Pricing Configurations and Price List Requirements information was a required component of the Bid Solicitation.

However, a review of the State-Supplied Price Sheet for Configuration 3 shows that DNS submitted pricing and notes as requested. Further, in response to the Bureau's BAFO request, DNS replied by email on January 10, 2024, with the following:

² “Shall – Denotes that which is a mandatory requirement.” Bid Solicitation Section 9, *Glossary*.

Data Network Solutions (DNS) will not be changing its service price lists. Therefore, DNS will not be submitting a best and final and will stay with our original prices.

However, DNS only wants to make one clarification, if allowed, for configuration 1: Section 3.4.3 IP Services and VoIP Services the Ethernet Access 100M unit price is \$617 monthly recurring and \$22,212 total for 36 months. This price was stated in the notes for config 1 and again on spreadsheet line 29 as part of the breakout for configuration 3. However, there was a scrivener's error and the amounts were not transposed to the MRC and NRC cells on line 8.

This clarification confirms the pricing submitted as requested for Configuration 3, but incorrectly seeks to revise the information in the State-Supplied Price Sheet for Configuration 1.

The Bid Solicitation outlines the requirements that govern the BAFO process, including who may participate in the BAFO process, and what actions are permitted by the Bureau and the Bidder. The requirements provide in relevant part that:

In accordance with N.J.S.A. 52:34-12(f) and N.J.A.C. 17:12-2-7, after evaluating Quotes, the Bureau may establish a competitive range and enter into negotiations with one (1) Vendor {Bidder} or multiple Vendors {Bidders} within this competitive range. The primary purpose of negotiations is to maximize the State's ability to obtain the best value based on the mandatory requirements, evaluation criteria, and cost. Multiple rounds of negotiations may be conducted with one (1) Vendor {Bidder} or multiple Vendors {Bidders}. Negotiations will be structured by the Bureau to safeguard information and ensure that all Vendors {Bidders} are treated fairly.

Similarly, the Bureau may invite one (1) Vendor {Bidder} or multiple Vendors {Bidders} to submit a Best and Final Offer (BAFO). Said invitation will establish the time and place for submission of the BAFO. Any BAFO that does not result in more advantageous pricing to the State will not be considered, and the State will evaluate the Vendor's {Bidder's} most advantageous previously submitted pricing. As permitted by P.L. 2021, Ch. 4, in requesting a BAFO, the Division may utilize a reverse auction procedure. If a reverse auction procedure is utilized, Vendor {Bidder} pricing will be released, but Vendor {Bidder} identifying information will be sanitized.

[Bid Solicitation Section 6.8, Negotiation and Best and Final Offer (BAFO), emphasis added.]

An underlying concept of the BAFO process is that the Bidder provides an offer in its initial Quote submission for the requested good or service. This is a natural extension of the requirements outlined above that the Bureau can only consider a responsive Bidder's proposal that conforms to the Bid Solicitation's requirements, including all RFP-required pricing information. See N.J.A.C. 17:12-2.2(a)(6). Thus, new pricing information may not be submitted where none was provided as part of the Bidder's original Quote.

Here, DNS provided pricing for evaluation for Configuration 3 as part of its original Quote, and confirmed that pricing as part of its BAFO response. However, DNS sought to apply the pricing supplied for Configuration 3 to Configuration 1 which runs contrary to the Division's regulations and New Jersey case law. As such, the pricing can be accepted for Configuration 3 as being responsive to the Bid Solicitation's requirements, but must be rejected for Configuration 1 as being non-responsive because no original pricing was supplied with the Quote as acknowledged in DNS' BAFO response.

Moreover, accepting the pricing for a single configuration is consistent with the Bid Solicitation's statement that the "Vendor {Bidder} shall submit pricing for one or more of the services listed below. See State-Supplied Pricing Configurations for sample pricing required." DNS makes this point by highlighting in its Exhibit C that Verizon only provided pricing for Configuration 1 and Configuration 3, and did not include pricing for Configuration 2. Similar to Verizon, DNS did not include pricing for all of the configurations under Section 3.4.3 IP&VoIP Servs on the State-Supplied Price Sheet. However, the pricing included would be sufficient for evaluation purposes with other bidders supplying the same information.

A review of the record indicates though that both DNS and Verizon met the clear language in Bid Solicitation Section 4.4.5.2 requiring pricing be submitted for sample pricing, as well as the mandatory requirement of attaching a price list. Because the pricing on the State-Supplied Price Sheet was for evaluation purposes only during the evaluation process, with the submitted price lists supplying the contract pricing for an awarded contract, there is no need to remand to the Evaluation Committee for additional review. Finally, Bid Solicitation Section 1.1, *Purpose and Intent*, notes in the following pertinent part that multiple awards are expected to be made for this contract, so the inclusion of DNS at this time does not require additional action beyond the delivery of a Notice of Intent to Award Letter to DNS to outline any actions that need to be taken to complete the award process:

The intent of this Bid Solicitation is to award Master Blanket Purchase Orders (Blanket P.O.s) to those responsible Vendors {Bidders} whose Quotes, conforming to this Bid Solicitation are most advantageous to the State, price and other factors considered. The State intends to make a minimum of two (2) awards of each of the individual services listed below, i.e., two (2) awards for Private Line, two (2) awards for Ethernet Services, etc. The State may award any or all services. Specific requirements for the services below are provided in Bid Solicitation Sections 3.4 through 3.7. The State, however, reserves the right to separately procure individual requirements that are the subject of the Blanket P.O. during the Blanket P.O. term, when deemed by the Director of the Division of Purchase and Property (Director) to be in the State's best interest.

[Bid Solicitation Section 1.1, *Purpose and Intent*.]

In reviewing the Quote submitted by DNS, the Bureau missed that DNS submitted the required pricing information as required by the Bid Solicitation instructions for Configuration 3. The Hearing Unit's independent review of the Bid Solicitation instructions for the submission of pricing information, along with the guidance provided in the Bid Amendments, finds that the instructions were clear. The Bidder was clearly informed in the instructions that it must provide pricing for all pricing configurations for which it intended to bid, and that failure to submit the required information would result in the Bidder's Quote being deemed non-responsive and ineligible for award. Bid Solicitation Section 4.4.5.2, *State-Supplied Pricing Configurations Instructions and Price List Requirements*. Therefore, the Bureau correctly determined that the Quote submitted by DNS was non-responsive for Configuration 1 and Configuration 2 because DNS did not submit the fully completed configuration pricing as required on the State-Supplied Price Sheet, but incorrectly found DNS was non-responsive for Configuration 3. Therefore, DNS was not eligible for an

award for Configuration 1 and Configuration 2, but should have been eligible for award for Configuration 3. 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.

CONCLUSION

Accordingly, I remand this matter back the Bureau to include a price line for DNS for Section 3.4.3, Configuration 3, in **NJSTART** in accordance with the terms of the Bid Solicitation, the Division's procurement rules, and DNS' original award once the contract is made effective in **NJSTART**. I note that this procurement was structured to make at least two (2) contract awards for each Price Line item; therefore, the remainder of the April 19, 2024, Notice of Intent to Award is not affected by this remand.

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.

This is the Division's final agency decision. Pursuant to N.J.A.C. 17:12-3.1, this determination is appealable to the Appellate Division of the Superior Court in accordance with the New Jersey Court Rules (R. 2:4-1) which provide a party 45 days to appeal this final agency decision.

Sincerely,



Cory K. Kestner
Chief Hearing Officer

c: M. Dunn
J. Pastuzyn