



## State of New Jersey

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

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July 22, 2024

*Via Electronic Mail Only to [pchiu@bmgww.com](mailto:pchiu@bmgww.com)*

Philip G. Chiu  
Beyond Media Global LLC  
140 E. Ridgewood Avenue, Room 449  
Paramus, NJ 07652

Re: I/M/O Bid Solicitation #23DPP00836 Beyond Media Global LLC  
Protest of Notice of Intent to Award  
T3067 – Statewide Advertising and Public Relations Services

Dear Mr. Chiu:

This final agency decision is in response to your letter delivered via electronic mail on behalf of Beyond Media Global LLC (“BMG”) received by the Division of Purchase and Property’s (Division) Hearing Unit on June 14, 2024 (Protest). In that letter, BMG protests the Procurement Bureau’s (Bureau) June 13, 2024, Notice of Intent to Award letter (NOI) issued for Bid Solicitation #23DPP00836 – T3067 Statewide Advertising and Public Relations Services (Bid Solicitation).

By way of background, on July 18, 2023, the Bureau issued the Bid Solicitation on behalf of State Agencies. The purpose of the Bid Solicitation was to solicit Quotes for advertising, marketing, public relations, community outreach, and related services for the State of New Jersey (State). 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.

In accordance with Bid Solicitation Section 2.5, *Optional Pre-Quote Conference*, an optional Pre-Quote Conference was held on August 2, 2023, providing all potential Bidders with an overview of the Bid Solicitation and Quote submission procedures and requirements. Representatives from eleven (11) potential bidding entities attended according to the Pre-Quote sign-in sheet.

In accordance with Bid Solicitation Section 2.1, *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 August 9, 2023. Four (4) Bid Amendments were issued for this Bid Solicitation, which provided revisions to the Bid Solicitation and responses to questions received from potential Bidders.

#	DATE	DESCRIPTION
1	09/12/2023	Quote Submission Due Date Extended to October 20, 2023
2	10/12/2023	Quote Submission Due Date Extended to November 17, 2023
3	11/03/2023	Quote Submission Due Date Extended to December 5, 2023
4	11/14/2023	Answers to Questions

On December 5, 2023, the Division’s Proposal Review Unit (“PRU”) opened thirty-nine (39) Quotes. The Quotes submitted by Arise Communications Inc., Purplegator, MMGY Global LLC, were Automatically Rejected by

the PRU pursuant to the provisions of N.J.A.C. 17:12-2.2, and no protests were received in response to PRU rejections. The PRU also issued formal notice and a warning letter to five (5) Bidders that they were not in compliance with Business Registration Certificate requirements. The remaining thirty-six (36) Quotes, listed below, were deemed administratively complete by the Proposal Review Unit and released to the Bureau for further review and evaluation.

True North Inc. ("True North")	Oxford Communications ("Oxford")
LAZWORLD.COM INC ("Lazworld")	Dana Communications Inc. ("Dana")
Miles Partnership, LP ("Miles")	Vision Media Marketing Inc. ("VMM")
Integrated Marketing Services Inc. ("IMS")	Positive Solutions, LLC ("PS")
EFK Group, LLC ("EFK")	Success Advertising Inc. ("SA")
AB&C Philadelphia LLC ("AB&C")	Beyond Media Global LLC ("BMG")
Brand Enchanting Media LLC ("BEM")	Magnum Integrated Marketing "MIM")
Kivvit, LLC ("Kivvit")	Spitball LLC ("Spitball")
Birdsall, Voss & Associates, Inc. ("BVA")	Masterpiece Design
Forge Apollo LLC ("FA")	Fuerza Strategy Group ("FSG")
Rockefeller Group Development Corp ("RGD")	The Setroc Group, Inc. ("TSG")
Direct Development	MWW Group LLC ("MWW")
KLR Agency ("KLR")	Impact Consulting Enterprises ("ICE")
EST Marketing ("EST")	Princeton Partners, LLC ("Princeton Partners")
Violet PR ("Violet")	Marketsmith, Inc. ("Marketsmith")
Maple and Monroe	Marketing for Change Co. ("MFC")
Angry Apples Marketing, LLC ("AAM")	JL Media, Inc. ("JL Media")
Targeted Advertising Group Inc. ("TAG")	Tara Dowdell Group LLC ("TDG")

As part of the responsiveness review, the Bureau determined that the Quotes submitted by AB&C, IMS, JL Media, and True North, required a Request for Clarification, in accordance with Bid Solicitation Section 8.4, *Clarification of Quote*, for the Bureau to determine whether or not the Quotes were responsive to mandatory material requirements of the Bid Solicitation as outlined on Pages 4 and 5 in the Recommendation Report. For the reasons more fully explained on those pages in the Recommendation Report, the Bureau determined that each Bidder's clarification response sufficiently addressed the matter in question, and that the Bidders met the requirements of the Bid Solicitation.

The Bureau determined that the Quotes submitted by the Bidders in the following chart were non-responsive due to non-compliance with one or more mandatory elements of the Bid Solicitation. Recommendation Report at pgs. 5-9.

Beyond Media Global LLC ("BMG")	Oxford Communications ("Oxford")
LAZWORLD.COM INC ("Lazworld")	EST Marketing ("EST")
Miles Partnership, LP ("Miles")	Vision Media Marketing Inc. ("VMM")
Kivvit, LLC ("Kivvit")	Magnum Integrated Marketing "MIM")
Princeton Partners, LLC ("Princeton Partners")	MWW Group LLC ("MWW")
Marketsmith, Inc. ("Marketsmith")	Rockefeller Group Development Corp ("RGD")

The Bureau found that the following Quotes met, and complied with, the mandatory requirements of the Bid Solicitation, and remained available to be evaluated and eligible for Contract award:

True North Inc. ("True North")	Dana Communications Inc. ("Dana")
Integrated Marketing Services Inc. ("IMS")	Positive Solutions, LLC ("PS")
EFK Group, LLC ("EFK")	Success Advertising Inc. ("SA")
AB&C Philadelphia LLC ("AB&C")	Spitball LLC ("Spitball")
Brand Enchanting Media LLC ("BEM")	Masterpiece Design
Birdsall, Voss & Associates, Inc. ("BVA")	Fuerza Strategy Group ("FSG")
Forge Apollo LLC ("FA")	The Setroc Group, Inc. ("TSG")
Direct Development	Impact Consulting Enterprises ("ICE")

KLR Agency (“KLR”)	Marketing for Change Co. (“MFC”)
Violet PR (“Violet”)	JL Media, Inc. (“JL Media”)
Maple and Monroe	Tara Dowdell Group LLC (“TDG”)
Angry Apples Marketing, LLC (“AAM”)	Targeted Advertising Group Inc. (“TAG”)

Thereafter, the remaining responsive Quotes were reviewed and evaluated in accordance with Bid Solicitation Section 8.9, *Evaluation Criteria*. These twenty-four (24) Quotes were evaluated in accordance with the evaluation criteria set forth in Bid Solicitation Section 8.9.1, *Technical Evaluation Criteria*, which stated in part:

- A. The Bidder’s demonstration in the Quote that the Bidder understands and is able to complete the requirements of the Scope of Work as sought;
- B. The qualifications and experience of the Bidder’s personnel; and
- C. The Bidder’s documented experience in successfully completing contracts of a similar size and scope in relation to the work required by the Bid Solicitation.

The Scoring Legend for the Technical Evaluation of Quotes was: “5 – Excellent”; “4 – Very Good”; “3 – Good”; “2 – Fair”; and “1 – Minimally Responsive”, and each responsive Bidder received a single score between 1-5 based on the above scoring legend and the Bureau’s evaluation of the Quote based on the above Evaluation Criteria. The evaluation methodology and score sheet were finalized and time-stamped prior to the opening of Quotes. Recommendation Report Pg. 10. Following the evaluation and scoring of the responsive Quotes, Bidders BVA, FA, FSG, and Maple and Monroe were found to be outside the Competitive Range, and were ineligible for further consideration.<sup>1</sup> Recommendation Report Pgs. 25-26.

To evaluate pricing pursuant to Bid Solicitation Section 8.9.2, *Price Evaluation*, Bidders were evaluated and ranked from lowest to highest based upon the three (3) year average of the percentages provided for Price Line 1 Media Placement Mark-Up located on Tab 1, with Price Line 1 also evaluated for reasonableness. The pricing submitted for Price Lines 5 through 29 related to hourly rates would be evaluated to confirm all Bidders submitted reasonable hourly rates.

In accordance with Bid Solicitation Section 8.12, *Best and Final Offer (BAFO)*, the Bureau requested a BAFO from all responsive Bidders determined to be in the Competitive Range. Ten Bidders provided BAFO responses as shown on pages 25 and 26 in the Recommendation Report. Bidders were thereafter ranked from lowest to highest per Section 8.9.2 as follows:

BIDDER	BAFO – PRICE LINE 1	PRICING RANK
EFK	3%	1
MFC	3.25%	2
TAG	4%	3
ICE	5%	4
KLR	6%	5
TSG	7%	6
Spitball	7%	7
Dana	7%	8
PS	7.67%	9
JL Media	8%	10
SA	8%	11
True North	8%	12
Violet	9%	13
AB&C	10%	14
Direct Development	10%	15
TDG	11.67%	16

<sup>1</sup> Additionally, Bidders BVA, FA, and FSG were ineligible for award due to the lack of a valid Business Registration Certificate.

IMS	12%	17
Masterpiece Design	14%	18
BEM	15.33%	19
AAM	36.3%	20

The Bureau considered all pricing from the Bidders in the Competitive Range to be reasonable and acceptable, with the exception of AAM's Media Placement Mark-Up percentage of 36.3% for Price Line 1, which was determined to be a significant outlier from the other nineteen (19) Bidders in the Competitive Range. As a result, AAM's pricing was deemed to not be acceptable to the State, and AAM's Quote was removed from further consideration of award.

Having completed its evaluation of the Quotes received in response to the Bid Solicitation, on June 13, 2024, the Bureau issued the NOI advising all Bidders that it was the State's intent to award a Contract to the following Bidders:

Intended Awardee	Intended Awardee
AB&C Philadelphia LLC	Masterpiece Design
Brand Enchanting Media LLC	Positive Solutions, LLC
Dana Communications Inc.	Spitball LLC
EFK Group, LLC	Success Advertising Inc.
Impact Consulting Enterprises	Tara Dowdell Group LLC
Integrated Marketing Services Inc.	Targeted Advertising Group Inc.
JL Media, Inc.	The Setroc Group, Inc.
KLR Agency	True North Inc.
Marketing for Change Co.	Violet PR

On June 14, 2024, prior to the close of the protest period, BMG submitted a Protest challenging the Division's determination that the Quote submitted by BMG was non-responsive. Specifically, BMG refutes

the Bureau's stance that our Quote was non-responsive due to the inclusion of additional fees.

- As a part of T3067 Bid Solicitation 4.3.1 Advertising, We were requested to demonstrate the ability to "Execute all contracts with the media and other third parties, including negotiation of the best possible rates for any contracts, when required. All such third party contracts shall: Execute all contracts with the media and other third parties, including negotiation of the best possible rates for any contracts, when required."
- Where the Bureau deemed BMG's Quote non-responsive "On page 18 of the Bidder's Quote entitled "23DPP00836 T3067 – Bidder's Quote – BMG Response", under the title "Fees are in United States dollars unless otherwise expressly stated", the Bidder listed additional fees. The fees described here are "Initial Setup", "Monthly Platform Share Fee", and "Monthly Managed Service Fee"."
  - *These are a part of the presentation/demonstration of our ability to execute all contracts with the media and other third parties. I.e.,*
  - *These are not fees or pricing additional to what we submitted in the State-Supplied Price Sheet, these are demonstrations of BMG's ability to fulfill the Bureau's requirements for Bid Solicitation 23DPP00836 for T3067 – Statewide Advertising and Public Relations Services.*
  - *The fees and pricing for this specific scope of work are already presented fully in the State-Supplied Price Sheet.*

[BMG Protest Letter, Page 1, emphasis in original.]

Although BMG has not requested 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 BMG. 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 BMG 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 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)).

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(c).

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., *supra*, 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, *supra*, 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, *supra*, 127 N.J. Super. at 222).

Here BMG’s Quote / response to the protest focuses on Page 18 of its Quote and included the following language:

Beyond Media Global LLC

Page 18

Newspaper	Format	Fees are in United States dollars unless otherwise expressly stated.																							
British Association of Lecturers in English for Academic Purposes	Online	Initial Setup:	\$2,500 (includes account creation, up to 4 hours of web-based training with a dedicated account manager, and setup support assistance)																						
British Journal of General Practice	Online																								
British Journal of Ophthalmology	1/2 page	Monthly Platform Share Fee:	Greater of (a) \$3,000 ("Monthly Minimum") or (b) the Platform Share. The Monthly Minimum shall commence on the first day of the calendar month that starts on or after the Effective Date.																						
	1/4 page																								
British Medical Journal (BMJ)	1/2 page																								
	1/4 page																								
British Neuroscience Association	Online	The Platform Share is calculated monthly as follows:																							
British Sociological Association	Online																								
CACM	1/2 page																								
	1/4 page																								
Campaign Asia Asia	Online (1 month)	<table> <thead> <tr> <th>Total Cost</th><th>Self Service Fee</th><th>Self Service Fee if Prior Invoice is Paid Net 30*</th></tr> </thead> <tbody> <tr> <td>\$0 - \$100,000</td><td>17.0%</td><td>15.0%</td></tr> <tr> <td>\$100,000.01 - \$250,000</td><td>16.0%</td><td>14.0%</td></tr> <tr> <td>\$250,000.01 - \$1M</td><td>15.0%</td><td>13.0%</td></tr> <tr> <td>\$1,000,000.01 - \$2M</td><td>14.0%</td><td>12.0%</td></tr> <tr> <td>\$2,000,000.01 - \$3M</td><td>13.0%</td><td>11.0%</td></tr> <tr> <td>Over \$3M</td><td>12.0%</td><td>10.0%</td></tr> </tbody> </table>	Total Cost	Self Service Fee	Self Service Fee if Prior Invoice is Paid Net 30*	\$0 - \$100,000	17.0%	15.0%	\$100,000.01 - \$250,000	16.0%	14.0%	\$250,000.01 - \$1M	15.0%	13.0%	\$1,000,000.01 - \$2M	14.0%	12.0%	\$2,000,000.01 - \$3M	13.0%	11.0%	Over \$3M	12.0%	10.0%		
Total Cost	Self Service Fee	Self Service Fee if Prior Invoice is Paid Net 30*																							
\$0 - \$100,000	17.0%	15.0%																							
\$100,000.01 - \$250,000	16.0%	14.0%																							
\$250,000.01 - \$1M	15.0%	13.0%																							
\$1,000,000.01 - \$2M	14.0%	12.0%																							
\$2,000,000.01 - \$3M	13.0%	11.0%																							
Over \$3M	12.0%	10.0%																							
Campaign Reviews	Online																								
Canadian Family Physician Journal	1/4 page																								
CancerDoc	Online (30 days)																								
Cell Cancer Network	Online																								
Chartered Institute of Library and Information Professionals (CILIP)	1/2 page																								
	1/4 page																								
	Online (until job closing date)																								
Chemical & Engineering News	Online																								
Chemical and Engineering News	1/2 page																								
	1/4 page	*Discounted rate will be applied in the next monthly invoice to be issued if Company's prior invoice is paid in full within 30 days of the invoice date and Company has no outstanding payables.																							
	Online (30 days)																								
Chemistry World	1/2 page																								
	1/4 page																								
	Online (30 days)	Monthly Managed Service Fee	An additional Platform Share fee of 10% shall be applied against the monthly Total Cost for Managed Services. In order for TD to manage a campaign, Total Cost must exceed \$30,000 per month per advertiser. Terms and flight dates will be set forth in an Insertion Order.																						
CIBCE Communiqué - International Council on Hotel, Restaurant and Institutional Education	1/2 page (horizontal)																								
	1/2 page (vertical)																								
	1/3 page (horizontal)																								
	1/3 page (vertical)																								
	Online (400 days)																								

[BMG Protest p. 3.]

This language clearly and expressly conflicts with the instructions provided in the Bid Solicitation, which states:

### 3.22 STATE-SUPPLIED PRICE SHEET INSTRUCTIONS

The Bidder must submit its pricing using the State – Supplied Price Sheet accompanying this Bid Solicitation and located on the “Attachments” Tab. Failure to submit all required information in the manner specified will result in the Quote being deemed non-responsive and ineligible for award.

The State - Supplied Price Sheet consists of two (2) tabs:

- Tab 1: Media Placement; and
- Tab 2: Hourly Rates.

#### 3.22.1 TAB 1: MEDIA PLACEMENT PRICE SHEET INSTRUCTIONS

The Bidder shall:

- Submit a Media Placement Mark-Up Percentage for all three (3) Contract Years of Price Line 1, which comprises the percentage of commission paid to the Contractor for ad placement;
- Not complete Price Line 2 which is a pass through line for media placement;
- Not complete Price Line 3 which is a pass through line for media production; and
- Not complete Price Line 4 which is a pass through line for non-media production.

#### 3.22.2 TAB 2: HOURLY RATES PRICE SHEET INSTRUCTIONS

The Bidder shall:

- A. Submit All-Inclusive Hourly Rates for all three (3) Contract Years of Price Lines 5 through 29 to reflect the cost per hour for all labor titles;
  - B. Equate its firm's internal staff qualifications to the labor titles included in Tab 2 of the State Price Sheet, as applicable;
  - C. Determine the value and placement of personnel based on experience and expertise;
  - D. Not alter the State Price Sheet in any way or add additional labor titles; and
  - E. Include all project management requirements pursuant to Section 4.0 of the Bid Solicitation in the All-Inclusive Hourly Rate for all labor titles.
- No additional fees will be paid.

On the one hand, BMG states the fees are not part of its pricing, while at the same time saying the fees show its ability to negotiate pricing. However, Page 17 of BMG's Quote merely appears to show that the fees would be included as part of an "Initial Setup", "Monthly Platform Share Fee", and "Monthly Managed Service Fee". No mention is made that these fees are for hypothetical negotiation purposes, or are in anyway aligned with the pass-through charges permitted for Price Lines 2, 3, and 4 on Tab 1. As such, a plain reading of the inclusion of the fees is that they are provided as an additional fee to be charged in addition to those on the State-Supplied Price Sheet.

Although the State has broad discretion to select among qualified and responsive Bidders in public contracting matters, the discretion afforded to the Director, "is not limitless." See, In re Request for Proposals #17DPP00144, 454 N.J. Super. 527, 559 (App Div. 2018). "In line with the policy goal of thwarting favoritism, improvidence, extravagance, and corruption, the Division may not award a contract to a bidder whose proposal deviates materially from the [RFQ's] requirements." Ibid., quoting, Barrick v. State, 218 N.J. 247, 258-59 (2014)). For that reason, the Division's governing regulations mandate stringent enforcement to maintain the equal footing of all Bidders and to ensure the integrity of the State's bidding process. Notably, "a proposal that is not...responsive to the material requirements of the [RFQ] shall not be eligible for further consideration for award of contract, and the bidder offering said proposal shall receive notice of the rejection of its proposal." N.J.A.C. 17:12-2.7(c).

Here, Bid Solicitation Section 3.11, *Bidder Additional Terms*, stated as follows:

A Bidder may submit additional terms as part of its Quote. Additional terms are Bidder-proposed terms or conditions that do not conflict with the scope of work required in this Bid Solicitation, the terms and conditions of this Bid Solicitation, or the State of New Jersey Standard Terms and Conditions. Bidder proposed terms or conditions that conflict with those contained the State of New Jersey Standard Terms and Conditions will render a Quote non-responsive. It is incumbent upon the Bidder to identify and remove its conflicting proposed terms and conditions prior to Quote submission.

Quotes including Bidder proposed additional terms may be accepted, rejected, or negotiated, in whole or in part, at the State's sole discretion.

If Bidder intends to propose terms and conditions that conflict with the State of New Jersey Standard Terms and Conditions, those Bidder proposed terms and conditions shall only be considered if submitted and agreed to pursuant to the electronic question and answer procedure. Bidders shall not submit exceptions or modifications as part of the Quote or on the "Terms and Conditions" Tab through [NJSTART](#).

Potential Bidders were permitted to submit questions regarding the terms and conditions of the Request for Quotes by August 9, 2023. One hundred fifteen (115) questions were received. Several questions were received regarding the ability to submit and modify a Bidder's pricing if there were issues with the Bidder's submission (question in bold), and the State responded clearly that there was no ability to correct pricing issues, and that a Bidder should submit all requested information in the manner required by the Bid Solicitation..

**If there are cost concerns related to our pricing sheet, is there an opportunity for a discussion on expected rates?**

No, the Bidder must submit pricing pursuant to the instructions in Bid Solicitation Section 3.22, State-Supplied Price Sheet Instructions. Failure to submit all required information in the manner specified will result in the Quote being deemed non-responsive and ineligible for award.

Further, the Bidder must not make changes to the format of the State-Supplied Price Sheet, add/remove Price Lines, or add additional language, assumptions, and/or fees. Such actions may result in the Quote being deemed non-responsive and ineligible for award.

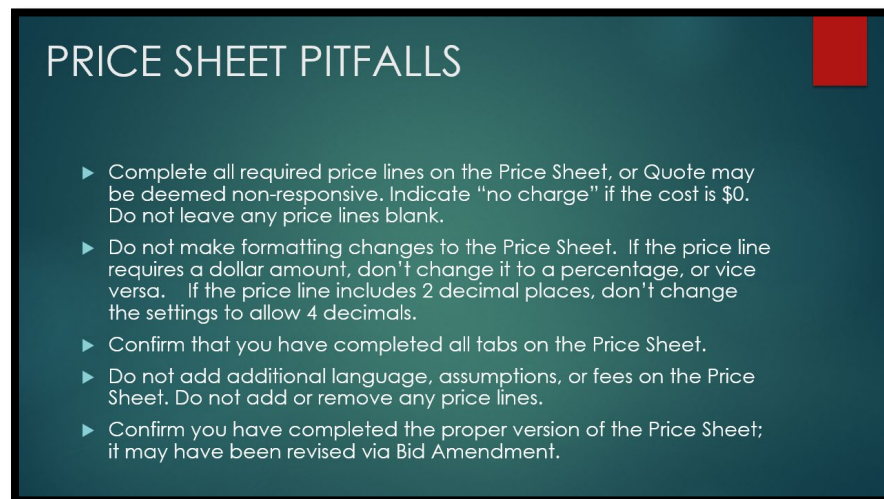
[Bid Amendment #4, Question and Answer #55, November 14, 2023.]

Additionally, Questions and Answers 54 through 63 emphasized the concept that Bidders should not include conflicting terms or additional fees, and that all pricing must be included on the State-Supplied Price Sheet.

As part of the Bid process the Division conducted an Optional Pre-Quote Conference pursuant to Bid Solicitation Section 2.5. The purpose and intent of the Pre-Quote Conference is set forth in that section:

The purpose of the Optional Pre-Quote Conference is to address procedural questions regarding the Bid Solicitation and Bidder Quote Submission Requirements only. No substantive questions regarding the Bid Solicitation Scope of Work will be accepted or answered during the pre-Quote conference. All questions are to be submitted during the Electronic Question and Answer Period.

As part of this Pre-Quote Conference, and because the Division has been presented with this issue multiple times in the past, the following information is specifically included in the standard Pre-Quote Conference presentation:



[Pre-Quote Conference – Slide Deck page #6]

The Division expressly advises and warns Bidders not to “add additional language, assumptions, or fees on the Price Sheet.” The Division includes this language knowing how the courts have addressed this issue in the past and to help Bidder’s avoid repeating the same mistakes.

Looking at BMG's inclusion of the additional fees in its Quote, whether added intentionally or mistakenly or as a clarification, the Bid Solicitation required Bidders to seek any proposed changes to the Bid Solicitation's requirements during the electronic question and answer period. That did not occur in this procurement. BMG's included language removes the assurance that the Contract will be performed in accordance with the terms and conditions set forth in the Bid Solicitation. Additionally, allowing BMG to propose alternate terms in its Quote, and to similarly remove the offending term after Quote opening during a protest, would place it in a position of advantage over other Bidders who submitted conforming Quotes. Applying the court's analysis set forth in River Vale, BMG's proposed term renders the Quote non-responsive.

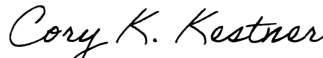
### **CONCLUSION**

Based upon the foregoing, I find no reason to disturb the Bureau's recommendation that the Contract be awarded as outlined in the Recommendation Report. Accordingly, I sustain the June 13, 2024, Notice of Intent to Award. 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.

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: R. Regan  
W. Higgins  
M. Maguire  
T. Maner