



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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June 21, 2016

Via Email [VAGagliardi@pbnlaw.com] and USPS Regular Mail

Vito A. Gagliardi, Jr., Esq.
Porzio, Bromberg & Newman, P.C.
100 Southgate Parkway
P.O. Box 1997
Morristown, NJ 07962-1997

Re: Protest of Notice of Intent to Award
RFP# 15-X-23249: Third Party Liability Services

Dear Mr. Gagliardi:

This correspondence is in response to your protest letter dated February 12, 2016 to the Division of Purchase and Property (Division), on behalf of Health Management Systems (HMS).¹ HMS protests the July 16 and July 17, 2015 Notices of Intent to Award (NOI) a contract for Solicitation #15-X-23249: Third Party Liability Services issued by the Division's Procurement Bureau (Bureau).² In its protest, HMS alleged that the proposal submitted by the intended awardee, Public Consulting Group, Inc. (PCG) is non-responsive and asserts that PCG's proposal must be rejected.

By way of background, the subject Request for Proposal (RFP) was issued on March 23, 2015 by the Bureau on behalf of the Medicaid Fraud Division (MFD)³ of the Office of the State Comptroller (OSC) and the Division of Medical Assistance and Health Services (DMAHS) of the Department of Human Services (DHS) to solicit proposals for Third-Party Liability (TPL) services and the maximization of cost avoidance and recoveries of Medicaid payments in accordance with the Code of Federal Regulation and the New Jersey Administrative Code.⁴ (RFP § 1.1 *Purpose and Intent*.) The MFD detects, prevents and investigates waste, fraud and abuse in the New Jersey Family Care and Charity Care Assistance programs. MFD also recovers improperly expended Medicaid funds, reviews the quality of care given to Medicaid recipients and excludes or terminates providers from the Medicaid program when necessary. (*Ibid.*) DMAHS is responsible for administering the State and federally funded Medicaid program for certain groups of low to moderate-income people. (*Ibid.*)

¹ HMS is the incumbent contractor.

² This RFP was to procure services similar to term contract T-1836 which is due to expire on March 31, 2016 and T-2874 which is due to expire on September 30, 2016. (RFP § 1.2 *Background*.)

³ The MFD will act as the lead management contact with the contractor.

⁴ 42 C.F.R. § 433.135 through 433.154; N.J.A.C. 10:49 *et seq.*

The Scope of Work (SOW) for TPL services under this RFP was divided into eight (8) separate categories:

- Category 1: TPL Services: Sections 3.1 and 3.2;
- Category 2: Specific TPL Services-Tort: Sections 3.1, 3.3, and 3.4;
- Category 3: Specific TPL Services-Casualty Insurance: Sections 3.1, 3.3, and 3.5;
- Category 4: Specific TPL Services-Estate: Sections 3.1, 3.3, and 3.6;
- Category 5: Specific TPL Services-Special Needs Trust: Sections 3.1, 3.3, and 3.7;
- Category 6: Specific TPL Services-Deceased Beneficiary: Sections 3.1, 3.3, and 3.8;
- Category 7: BUNDLED PRICING DISCOUNT (Please refer to Price Sheet/ Schedule); and
- Category 8: BUNDLED PRICING DISCOUNT (Please refer to Price Sheet/ Schedule)

Bidders were permitted to submit proposals for one, all, or any combination of the eight categories.

On April 28, 2015 two (2) proposals received (from HMS and PCG) by the submission deadline were opened by the Division's Proposal Review Unit. The proposals were reviewed by the Evaluation Committee (Committee). The Committee was responsible for performing a technical review of the proposals received using the criteria set forth in RFP § 6.7.1 *Technical Evaluation Criteria*. The technical scores were based upon an independent reading of each proposal by each Committee members and the results of deliberations conducted by the Committee. Price was not a consideration in the technical evaluation and each proposal was scored by the Committee without knowledge of the proposed pricing. Once technical scoring was completed pricing was revealed and evaluated.

On July 17, 2015, the Division issued the Notice of Intent to Award (NOI) letter advising that it was the State's intent to award a contract to PCG for TPL services.

On July 20, 2015, HMS wrote to the Division advising that it intended to protest the intended award of the contract to PCG. HMS requested the opportunity to review the procurement record and requested that the protest period be extended. The Division granted HMS' request to extend the protest period and on February 12, 2016, HMS filed its protest of the July 17, 2015 NOI. By way of summary, in its protest HMS alleged that: (1) that PCG is not eligible for a contract award because it used confidential and proprietary information stolen from HMS to prepare its proposal; (2) the Committee's scoring of PCG's proposal was in error because some of PCG's key personnel were disqualified and PCG failed to meet certain RFP requirements; (3) the Committee's scoring of HMS' proposal was unreasonable; and, (4) the Committee did not properly evaluate the proposal pricing. On February 25, 2016, PCG submitted its opposition to the protest, and on March 7, 2016, HMS submitted its reply.

Prior to and during the procurement, HMS and PCG were engaged in litigation in Texas and New York regarding various aspects of Third Party Liability business.⁵

On April 28, 2016, while the protest was pending, PCG wrote the Division stating that it wished to withdraw its proposal for the subject solicitation pursuant to N.J.A.C. 17:12-2.11 and RFP § 1.4.7. Based upon PCG's request, on May 11, 2016 the Bureau wrote the HMS advising that the Division's July 17, 2015 NOI was being withdrawn.

In light of the fact that the Bureau has withdrawn the July 17, 2015 NOI, HMS' protest is rendered moot. Accordingly, there is no need to render a decision on the merits of HMS' protest.

⁵ The State is not a party to that litigation.

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, which went live on June 20, 2016.

Sincerely,

A handwritten signature in blue ink, appearing to read "M. Griffin", is positioned above the typed name.

Maurice A. Griffin
Chief Hearing Officer

MAG: RUD

c: P. Michaels
S. Fletcher
L. Spildener
K. Confoy