



State of New Jersey

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February 29, 2016

Via Email [sosborn@treasuryservicesgroup.com] and USPS Regular Mail

Shane Osborn, Chairman & CEO
Treasury Services Group
1100 Main Street, Suite 2720
Kansas City, MO 64105

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

Dear Mr. Osborn:

This letter is in response to your correspondence dated October 23, 2015 to the Division of Purchase and Property (Division), on behalf of Treasury Services Group (TSG). In that letter, TSG 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, TSG challenges the scoring of its proposal and requests that the Division re-evaluate its proposal. TSG also requested an opportunity to make an in-person presentation for the purpose of providing supplemental information necessary for the decision making process.

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 Section 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 TSG's protest letter. The letter stated in pertinent part:

We protest this [award] determination and request that you re-evaluate our proposal. Furthermore, we request an in-person presentation to provide the Director with any supplemental information deemed necessary for making an informed decision.

Treasury Services Group is a Service Disabled Veteran Owned Small Business, the only form with that designation among the very small pool of providers of unclaimed property auditing services. As you may know, we provide contingency-fee-only auditing services to States. The State only joins the audits of its choosing, and only pays fees after revenue is delivered to the State. Because the State would be under no obligation and have not potential for a net loss, the only instance in which our contract would not be in the best interest of the State would be if you had reason to believe that TSG was incompetent or unscrupulous. I can assure you that neither of these describe (sic) TSG.

In the protest letter, TSG indicates that it is willing to supplement its proposal submission with any information deemed necessary for the Director to make an informed decision. Related to this part of the protest, the Division cannot allow a supplementation as it is 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, 279 N.J. Super. 566 (App. Div. 1995), where the court held that:

[t]he RFP specifically approved of bidders' clarifying or elaborating in their proposals in post-opening proceedings but prohibited supplementation, change or correction. In 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.

[Emphasis added.]

Therefore, any supplemental information which could be provided by TSG cannot be considered.

With respect to TSG's request for an in-person presentation to discuss and address any additional questions or concerns that the State may have, 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 TSG would afford one bidder an opportunity that the other bidders did not have. Moreover, such a discussion appears to seek and would result in TSG being permitted to supplement, change, correct and/or alter what was submitted in its June 11, 2015 proposal, placing it in a position of advantage over other bidders. Permitting TSG to have a meeting with the Division during which it could potentially supplement its proposal, would also be inconsistent with the Appellate Division's reasoning in On-Line Games Prod., 279 N.J. Super. at 597.

To the extent that TSG 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 TSG’s 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 TSG’s 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 TSG on the written record.

Turning to TSG’s challenge of the NOI, I note that the Committee completed its technical review of each proposal submitted using 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.

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.” (See 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*.)

As part of this protest, the Hearing Unit conducted an independent review of TSG’s proposal as it relates to the RFP requirements. As noted in the Committee report, TSG’s proposal “moderately addressed the tasks and deliverables specified in the RFP” by providing a summary of the objectives and the approach to perform the work required. (Evaluation Committee Report, p. 13.) However, TSG’s proposal did not provide enough detail in several areas.

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. The Committee recognized the qualifications and experience of TSG’s management staff, but it expressed concerns

regarding the remainder of TSG's staff in the area of unclaimed property recovery services. Specifically, the Committee report states in part:

The proposal detailed the experience of TSG's management staff, which includes two (2) former state unclaimed property administrators. While the Committee agreed that these staff member[s] possess noteworthy experience, the overall staff was not as impressive. The proposal indicated TSG employs six (6) staff auditors; however, the proposal did not provide any detail in reference to auditor experience nor did it provide any resumes for any of the audit staff.

As part of this protest, the Hearing Unit conducted an independent review of TSG's 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.

In reviewing the proposal and resumes the Hearing Unit assessed the inclusion of "information relating to its organization, personnel, and experience, including, but not limited to, references...evidencing the bidder's qualifications and capabilities to perform the services required." This review reveals that Chairman/CEO Shane Osborne, President Alex Kaufmann and Audit Manager Dennis Hein do have prior experience in the area of unclaimed property recovery services. Turning to the key personnel, TSG's proposal mentions that TSG's six (6) staff auditors each have "at least five years of experience providing identification, collection, and processing of abandoned property for 27 States." This conclusory statement does not provide any detail on the level of relevant experience for these key personnel. The Hearing Unit's review of the record does not reveal any detail of relevant experience for TSG's six (6) auditors, who represent the key personnel assigned to this contract, in providing unclaimed property services as required by this RFP.

Accordingly, 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.

As to Criteria B - *Experience of the Firm*, the RFP requests that the bidder demonstrate that it has the ability to successfully complete contracts of a 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 report, the Committee noted that TSG's proposal, did not provide enough detail to effectively determine the experience of the firm as well as whether or not TSG could successfully perform the requirements of the RFP; therefore, the Committee was not confident that TSG could successfully complete the required scope of work.

An independent review of TSG's proposal by the Hearing Unit reveals that TSG's proposal included a chart (see below) listing its 27 unclaimed property contracts, setting forth the contract title/type; contract duration, fee percentage, statement of whether it is the prime contractor, contact name/address and contact phone number.

4.4.4.5 LIST OF CONTRACTS						
	CONTRACT TITLE/TYPE	CONTRACT DURATION	SEE PERCENTAGE	Prime Contractor	CONTACT NAME/ADDRESS	Contact Phone#
AE	Contract/Unclaimed Property	7/1/13-6/30/15	17%	Yes	Josh Wood PO Box 251330 Little Rock 72225	501-373-2129
AL	Contract/Unclaimed Property	1/1/14-12/31/15	17%	Yes	Ralph Alexander PO Box 302510 Montgomery 36110	334-742-7568
AZ	Contract/Unclaimed Property	8/15/14-4/14/15		Yes	Richard Ayler 1600 W Monroe Phoenix 85007	602-604-7800
CD	Contract/Unclaimed Property	1/2/11-6/31/15	17%	Yes	Patty White 1580 Logan St, Suite 500 Denver 80202	303-864-7441
FL	Contract/Unclaimed Property	5/20/11-5/20/16		Yes	Corey Williams PO Box 6250 Tallahassee 32314	850-413-5522
IA	Contract/Unclaimed Property	11/25/11-6/30/15	17%	Yes	Anthony Lehning 121 E 12th St 1st Floor Des Moines 50319	515-281-5368
MD	Contract/Unclaimed Property	8/1/12-7/31/16	17%	Yes	Audrey Lee PO Box 83720 Omaha 68170	208-321-2942
NY	Contract/Unclaimed Property	7/1/14-6/30/16	17%	Yes	Mark Pfeiffer 105205 Hwy 1275 Suite 100 Frankfort 40201	502-564-6722
LA	Contract/Unclaimed Property	7/1/14-1/31/16	11%	Yes	Matthew Lobel 425 N Blvd 7th Floor Baton Rouge 70802	225-225-9400
MA	Contract/Unclaimed Property	6/3/11-6/30/15	17%	Yes	Audrey Franch One Ashburton Place 12th Floor Boston 02108	401-221-2297
ND	Contract/Unclaimed Property	12/1/14-12/30/19	17%	Yes	Erich Devens 301 W Preston St Pen 100 Bismarck 58101	410-760-7913
MI	Contract/Unclaimed Property	11/17/10-11/12/15	17%	Yes	Caroleo Blane PO Box 30724 Lansing 48909	517-373-3360
MS	Contract/Unclaimed Property	7/1/13-6/30/15	17%	Yes	Scott Makowski 65 7th Place East St Paul 55101	651-556-3000
MO	Contract/Unclaimed Property	12/12/14-12/14/15	17%	Yes	Scott Harper PO Box 1272 Jefferson City 65102	573-751-8533
MS	Contract/Unclaimed Property	8/15/11-8/14/15	17%	Yes	Lynne Fitch PO Box 130 Jackson 39225	601-356-3600
ND	Contract/Unclaimed Property	12/18/11-1/1/16		Yes	DeBy Schmitt 600 E Blvd Dept 120 Bismarck 58105	701-328-2642
RI	Contract/Unclaimed Property	7/20/11-7/17/15	17%	Yes	Neaghan Aguirre 809 P St Lincoln 06302	402-473-8089
RI	Contract/Unclaimed Property	9/2/14-9/2/15	10%	Yes	William Dwyer 15 Capitol St Rm 121 Concord 03301	603-273-2621
RM	Contract/Unclaimed Property	1/25/15-1/18/16	17%	Yes	Tim Kuchenberg 7055 S Parkwood St Santa Fe 87505	505-959-1120
SD	Contract/Unclaimed Property	7/20/13-6/30/15	10%	Yes	James Dowley 77 S High St 20th Floor Columbia 57104	610-464-2360
CA	Contract/Unclaimed Property	6/30/13-6/30/15		Yes	Patricia Tate 775 Summer St NE Suite 100 Salem 97301	501-373-1983
PA	Contract/Unclaimed Property	12/31/13-12/31/16	10%	Yes	Barbara Bertram 101 Independence Ave 1 E Philadelphia 19106	412-880-4827
SD	Contract/Unclaimed Property	7/1/11-6/30/15	17%	Yes	Loe DeLator 520 E Capitol Ave Pierre 57501	605-773-1178
TN	Contract/Unclaimed Property	8/20/13-8/31/15	15%	Yes	Mike Corliss 111 E 17th St Austin 78771	512-463-4266
WA	Contract/Unclaimed Property	7/1/13-6/30/15	15%	Yes	Laura McArthur PO Box 40200 Olympia 98504	360-422-2000
WI	Contract/Unclaimed Property	7/1/14-6/30/15	17%	Yes	Veronika Miller PO Box 8749 Madison 53708	608-265-2208
WY	Contract/Unclaimed Property	5/1/11-6/30/15	17%	Yes	Wendy Pustel 2515 Warren Ave Suite 102 Cheyenne 82002	307-777-7408

Despite the guidance and the requirements of the RFP, while TSG's proposal states that the contracts listed were in similar size and scope in relation to the work required by the RFP, the proposal did not provide any details regarding the volume of work handled or the specific tasks or duties performed under

each contract. Indeed, no information, beyond the above chart,¹ was provided by TSG in its proposal regarding these contracts. This lack of detail provided the Committee little information to evaluate TSG's experience with contracts of a similar size and scope in relation to the work required by the RFP or even the tasks under those contracts. A review of the record also reflects that while the Bureau attempted to clarify this information by reaching out to the contacts listed in the proposal, this inquiry also yielded little information to the successful completion of audits or tasks under the current contracts.

Accordingly, I find that this lack of detail provided minimal information to assure the Evaluation Committee that the proposal met Criteria B.

With respect to Criteria C – *Ability of the firm to complete the Scope of Work based on its Technical Proposal*, the bidder's technical proposal should demonstrate that it understands the requirements of the scope of work and that it has presented an approach to successfully perform the contract requirements. 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 The RFP required that TSG's proposal demonstrate that TSG understands the level of effort necessary to successfully complete the contract and the TSG's detailed plans and approach to complete the Scope of Work are realistic, attainable and appropriate and that the bidder's proposal will lead to a successful contract completion. (RFP § 4.4.3 *Technical Proposal*.) RFP § 4.4.3 *Technical Proposal* states in pertinent part:

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.

...

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.]

In its proposal, TSG stated "based on extensive, previous unclaimed property audit experiences conducted with 27 states, TSG does not anticipate any problem to arise during the term to fulfill the contract requirements of this RFP. TSG asserts and assures that it has all of the necessary resources to fulfill the terms of its contract and meet the expectations of the State and DPP." (TSG Proposal response to RFP § 4.4.3 *Technical Proposal*, p. 12.)

In its report, the Committee noted that the proposal did not provide enough detail to effectively determine whether or not TSG could successfully perform the requirements of RFP; therefore the Committee was not confident that TSG could successfully complete the required scope of work.

An independent review of TSG's proposal by the Hearing Unit reveals that the proposal provided a company history and set forth its general audit approach when conducting unclaimed property audits.

¹ TSG's proposal does indicate that in the past year TSG has completed more than 50 audits, however the proposal does not relate these audits to the 27 contracts listed, nor does the proposal indicate the size and scope of these 50 audits.

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%.

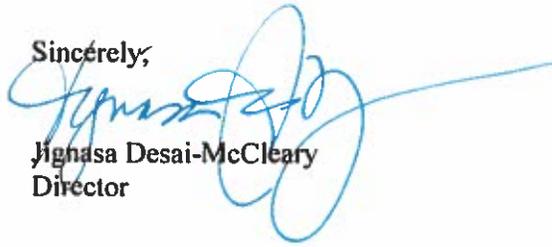
In relation to the requirements of this RFP, TSG's proposal did not provide any details regarding its approach to successfully perform the contract requirements.

I find that TSG did not provide sufficient information in its proposal to allow the Committee to conclude that TSG 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 TSG 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 TSG.

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