



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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January 31, 2018

Via Email [JRyan.DiClemente@saul.com] and USPS Regular Mail

Ryan L. DiClemente, Esq.
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650 College Road East, Suite 4000
Princeton, NJ 08540-6603

Re: IMO Bid Solicitation #17DPP00119
Protest of Notice of Intent to Award
Bid Solicitation Title: Hospital Incentive Program

Dear Mr. DiClemente:

This letter is in response to your correspondence of December 20, 2017, to the Division of Purchase and Property's (hereinafter "Division") Hearing Unit on behalf of Myers and Stauffer, L.C. (hereinafter "Myers"). In that letter, Myers protests the December 6, 2017, Notice of Intent to Award (hereinafter "NOI") a Master Blanket Purchase Order (hereinafter "Contract") to Public Consulting Group, Inc. (hereinafter "PCG") for Bid Solicitation #17DPP00119: Hospital Incentive Program (hereinafter "Bid Solicitation"). Myers alleges that the Quote submitted by PCG had "non-waivable material defects" from the requirements of the Bid Solicitation that should have rendered the Quote non-responsive. Myers protest, p. 1. Myers requests that the Division rescind the December 20, 2017 NOI and award it the Contract.

BACKGROUND

By way of background, the subject Bid Solicitation was issued on February 17, 2017, by the Division's Procurement Bureau (hereinafter "Bureau") on behalf of the New Jersey Department of Health, Health Facilities Evaluation and Licensing, Office of Health Care Finance (hereinafter "DOH"). The purpose of this Bid Solicitation was to solicit Quotes for the completion of Delivery System Reform Incentive Payment (hereinafter "DSRIP") protocols and procedures required by the federal Centers for Medicare and Medicaid Services (hereinafter "CMS"), program administration on behalf of DOH as stipulated under the State's Comprehensive Medicaid Waiver (hereinafter "Waiver"), as authorized by CMS, and development of CMS approved DSRIP design, protocols, and procedures to support the next generation of DSRIP. These services are necessary to assist DOH in its efforts, on behalf of the State, to support access to hospital services and increase the quality of care for New Jersey residents. Bid Solicitation § 1.1 *Purpose and Intent*. The intent of this Bid Solicitation was to award a Contract to that responsible Vendor {Bidder} whose Quote, conforming to this Bid Solicitation, was most advantageous to the State, price and other factors considered. Ibid.¹

¹ This is a procurement of State Contract G8050 Hospital Incentive Program which currently provides for similar services sought under this Bid Solicitation. The subject Bid Solicitation includes various changes, which, among other things, are designed to meet new federal requirements.

In accordance with Bid Solicitation Section 1.3.1 *Electronic Question and Answer Period*, potential Vendors {Bidders} were permitted to submit questions regarding the Bid Solicitation through March 14, 2017. The Bureau issued answers to the questions received through the posting of Bid Amendment #7 on July 13, 2017.²

On August 1, 2017, two Quotes received by the submission deadline were opened by the Division's Proposal Review Unit. Both were forwarded to the Bureau. The Bureau provided the Quotes to the Evaluation Committee ("Committee") for review and evaluation consistent with the criteria set forth in the RFP § 6.7.1 *Technical Evaluation Criteria* which stated:

Each criterion will be scored and each score multiplied by a predetermined weight to develop the Technical Evaluation Score.

- a. Personnel: The qualifications and experience of the Vendor's {Bidder's} management, supervisory, and key personnel assigned to the Blanket P.O. {Contract}, 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.s {Contracts} of a similar size and scope in relation to the work required by this Bid Solicitation {RFP}.
- c. Ability of firm to complete the Scope of Work based on its Technical Quote {Proposal}: The Vendor's {Bidder's} demonstration in the Quote {Proposal} 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. {Contract}.

On September 14, 2017 and October 17, 2017, the Committee, comprised of two members from DOH and one member from the Bureau, reviewed the Quotes received and issued an Evaluation Committee Report (hereinafter "Committee Report") with their findings. The Committee concluded that the Quote submitted by PCG "demonstrated that it accurately and efficiently understood the requirements of the Bid Solicitation [] and that it is capable of providing the services required therein." Committee Report, p. 17.

Based upon the evaluation and the Committee Report, on December 6, 2017, the Bureau issued the NOI advising all Vendors {Bidders} that it was the State's intent to award a Contract to PCG.

On December 20, 2017, the Division received Myers' protest challenging the intended Contract award to PCG. With its protest, Myers requested the opportunity for an in-person hearing. By way of summary, Myers alleges that PCG's Quote should have been deemed non-responsive to the requirements of the Bid Solicitation because PCG's failure to comply with the "express requirement regarding the 10 requisite 'full-time' employees undermines the fundamental fairness of the bidding process in two material ways." Myers protest, p. 7. Myers protest, p. 1. On January 8, 2018, at the Division's request, PCG submitted its response to Myers' protest.

With respect to Myers' request for an in-person hearing regarding the issues raised in 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

² Bid Amendments 1 through 6 extended the Proposal Opening Date from April 7, 2017 to August 1, 2017.

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 Myers’ protest, I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes submitted, the Evaluation Committee Report, the Bureau’s Recommendation Report, and the relevant statutes, regulations, and case law. The issues raised in Myers’ protest with respect to the conformity of PCG’s written Quote to the Bid Solicitation, are sufficiently clear on the written record such that review of the written record 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.

DISCUSSION

Myers alleges that PCG’s Quote should have been deemed non-responsive because PCG’s Quote failed to conform to the requirements of the Bid Solicitation regarding mandatory full-time staffing. Specifically, Myers states that PCG “fail[ed] to commit 10 ‘full-time’ positions for a ‘minimum of 40 hours’ per week for the three (3) year term of the Contract. Instead, PCG’s [Quote] identified a total number of hours that would equate to 10 employees committing only an approximate 33.5 hours per week.” Myers protest, p. 5. In support of its position, Myers points to PCG’s Preliminary Project Budget Plan and states, “[t]he Division’s requirement for 10 ‘full-time’ positions of a ‘minimum of 40 hours’ per week for the three (3) year term of the Contract equates to a total of at least 62,400 hours, exclusive of any necessary support personnel.” Myers protest, p. 3. Myers notes that because PCG’s Preliminary Project Budget Plan identifies only 52,702 hours of work over the three-year Contract term, PCG’s Quote contains a material deviation from the requirements of the Bid Solicitation. Myers protest, p. 6. As will be discussed below, Myers inappropriately co-mingles two discrete requirements of the Bid Solicitation to create a supposed requirement that does not exist in the RFP.

In connection with this protest, I directed the Division’s Hearing Unit to conduct an independent review of the Bid Solicitation requirements and the Quote submitted by PCG, which it did.

First, with respect to the project staffing, the Bid Solicitation identified ten key staff positions for the DSRIP project which include the Account Manager, Clinical Lead, Senior Manager, Business Analyst, Financial Analyst, Quality Assurance, Technical Lead, Information Technology Lead, Statistician, and Data Programmer. See, Bid Solicitation § 3.3 *Project Staffing*. Each key staff position is required to be “full time.” Bid Solicitation §§ 3.3.1 *Account Manager Position*; 3.3.2 *Clinical Lead Position*; 3.3.3 *Senior Manager Position*; 3.3.4 *Financial Analyst Position*; 3.3.5 *Financial Analyst Position*; 3.3.6 *Quality Assurance Position*; 3.3.7 *Technical Lead Position*; 3.3.8 *Information Technology Lead Position*; 3.3.9 *Statistician Position*; 3.3.10 *Data Programmer Position*.

Related to the issue of “full-time” the following questions posed by a potential Vendor {Bidder} and the Bureau’s response, as indicated below, are applicable:

#	Page #	RFP Section Reference	Question (Bolded) and Answer
6		3.3.1 through 3.3.10 Project Staffing	<p>The staff positions in this section are listed as full time. A. Does full time in these requirements speak to the employment status of the individual with the Contractor or is it meant to reflect a minimum number of hours (eg. 40 hours per week) that the individual is expected to work exclusively on this engagement? B. If the latter, will DOH entertain offers from bidders who can efficiently and effectively provide the services required using a full time employee who may at times work less than 40 hours per week on this engagement? C. And/or multiple individuals that meet the required qualifications that will work minimally 40 hours per week on the contract?</p> <p>A. Full-time reflects the minimum number of hours that the individual shall be expected to work exclusively on this engagement.</p>

#	Page #	RFP Section Reference	Question (Bolded) and Answer
			<p>B. The DOH shall not entertain offers from Vendors {Bidders} for hours less than the required minimum of 40 hours.</p> <p>C. Please refer to the above answer provided for part B of this question.</p>
54		T3035 Hospital Incentive program price sheet	<p>Please confirm that any startup costs should be included within the firm fixed cost of contract year one[.]</p> <p>Vendors {Bidders} must submit a firm-fixed price for each year of the Blanket P.O. {Contract} that covers all Vendor {Bidder} costs for price lines 1-11. Firm Fixed Price is defined as: “A price that is all-inclusive of direct cost and indirect costs, including, but not limited to, direct labor costs, overhead, fee or profit, clerical support, equipment, materials, supplies, managerial (administrative) support, all documents, reports, forms, travel, reproduction and any other costs.”</p>
55		T3035 Hospital Incentive program price sheet	<p>Please confirm that the Vendor’s annual proposed firm fixed price will be paid in 12 equal monthly installments (with 10% quarterly retainage applied) for each of the Tasks listed.</p> <p>Yes, this is confirmed.</p>

The Bureau’s response to the question clarified that “full-time” for each of the identified key staff positions equated to a minimum of 40 hours per week.

In response to Bid Solicitation Section 4.4.4.3.1 *Staffing*, which required that Vendors {Bidders} submit the qualifications for the personnel who would fill the key staff positions, PCG identified ten individuals. PCG specifically indicated that each person identified would have a time commitment of 100% time or sole commitment to the State’s DSRIP Contract. PCG Quote, p. 69-72. Further, PCG noted:

Public Consulting Group, Inc. (PCG) has chosen key personnel who are highly qualified and motivated to execute the activities defined in the RFP, and who will be committed to the project without exception over the term of the engagement. In addition to these key personnel, NJ Department of Health will be able to access PCG consultants and other staff to meet their needs.

[PCG Quote, p. 69, emphasis added.]

Further, in its Quote, PCG stated that the personnel would have a full time commitment to the Contract. PCG Quote, p. 72. As such, there is no deviation from the requirement of the Bid Solicitation that each of the key staff members be committed full-time to the Contract. As will be discussed below, while each of the identified key staff members is committed to, and will work “full-time” on the State’s Contract, those hours are not required to be solely dedicated to the activities/tasks identified in the Bid Solicitation’s Scope of Work, or as detailed in the Preliminary Project Budget Plan required by Bid Solicitation Section 4.4.3.3.5 *Preliminary Project Budget Plan*.

Second, the Bid Solicitation identified certain activities/tasks to be completed which comprise the Contract’s Scope of Work. Those activities/tasks are as follows:

- Bid Solicitation § 3.4 Hold and Attend Regular Meeting with CMS, DOH and the Integrated Health Care Delivery System

- Bid Solicitation § 3.5 Preparation of Waiver Required Report(s) CMS
- Bid Solicitation § 3.6 Development of Metrics, Baselines, and Improvement Targets
- Bid Solicitation § 3.7 Hospital Submitted Applications, Reports and Supplemental Data Books
- Bid Solicitation § 3.8 Semi-Annual Analysis of Metrics and Expected Improvement Targets
- Bid Solicitation § 3.9 Attribution Tasks
- Bid Solicitation § 3.10 Hospital Data Review and Payment Formula Tasks
- Bid Solicitation § 3.11 Metrics, Gap Reduction, Hospital Achievements, and Reference Materials Tasks
- Bid Solicitation § 3.12 Provide Training and Prepare Materials
- Bid Solicitation § 3.13 Learning Collaborative (LC)
- Bid Solicitation § 3.14 Maintain DSRIP Information System, Learning Collaborative Portal and Website
- Bid Solicitation § 3.15 Data Warehouse Development and Quarterly Update
- Bid Solicitation § 3.16 Preparation of Reports and Information Tasks
- Bid Solicitation § 3.17 Requirements for DSRIP Information Systems (DIS)

In addressing the requirement for completing the activities/tasks identified in the Scope of Work, the Bid Solicitation requested that the Vendor {Bidder} submit a Preliminary Project Budget Plan with its Quote addressing the:

The Vendor {Bidder} shall submit a Preliminary Project Budget Plan that captures the budget for the term of the Blanket P.O. {Contract}, broken down by quarter. The Preliminary Project Budget Plan should serve to demonstrate to the State that the Vendor's {Bidder's} suggested Preliminary Project Budget Plan is realistic, attainable, and appropriate; and that the estimated number of hours and staff required to complete each activity, based on the labor categories and all-inclusive hourly rates provided on the price schedule, are within the Preliminary Project Budget Plan. At a minimum, the Preliminary Project Budget Plan should include the Vendor's {Bidder's} expectation for each of the following:

- a. Estimated number of hours required to complete each activity on an annual basis for the three (3) year Blanket P.O. {Contract} term; and
- b. Anticipated budget for each activity based on the firm-fixed price for tasks and all-inclusive hourly rates for labor categories provided on the price schedule on an annual basis for the three (3) year Blanket P.O. {Contract} term.

The Vendor's {Bidder's} Preliminary Quarterly Budget Plan will serve as the first draft of the Final Quarterly Budget Plan required pursuant to Section 3.18 of this Bid Solicitation {RFP}.

[Bid Solicitation § 4.4.3.3.5 *Preliminary Project Budget Plan*; See also, Bid Solicitation § 3.18 *Project Budget Plan*.]

In its Quote, PCG included a matrix detailing the activities/tasks to be completed, with the proposed time necessary to complete each activity/task identified and the firm fixed price for each identified activity/task. See Matrix below. These prices for the specific tasks are firm-fixed prices.

August 1, 2017

New Jersey Department of the Treasury
 Hospital Incentive Program
 RFP # 17DPP00119

4.4.3.3 BLANKET P.O. SCHEDULE AND PLANS

4.4.3.3.5 Preliminary Project Budget Plan

At a minimum, the Preliminary Project Budget Plan should include the Vendor's (Bidder's) expectation for each of the following:
 a. Estimated number of hours required to complete each activity on an annual basis for the three (3) year Blanket P.O. (Contract) term; and
 b. Anticipated budget for each activity based on the firm-fixed price for tasks and all-inclusive hourly rates for labor categories provided on the price schedule on an annual basis for the three (3) year Blanket P.O. (Contract) term.

Below is PCG's preliminary project budget broken down quarterly. Total costs of Price Line items have been calculated using a combination of quarterly level of effort estimates and a blended labor rate based on the likely mix of labor classes (those included in price lines 12-21) needed:

Price Line	Description	Year 1				Year 2				Year 3				Total Hours	Blended Rate	Total Cost Year 1	Total Cost Year 2	Total Cost Year 3	Total Cost			
		Q1	Q2	Q3	Q4	Y1 Tot	Q1	Q2	Q3	Q4	Y2 Tot	Q1	Q2							Q3	Q4	Y3 Tot
1	Hold and Attend Regular Meetings with CMS, DOH, and the Integrated Health Care Delivery System (Section 3.4)	220	220	220	220	880	181	181	181	181	725	142	142	142	142	570	2174	\$200	\$175,968	\$144,934	\$113,901	\$434,803
2	Preparation of Waiver Required Reports to CMS and Preparation of Reports and Information Tasks (Sections 3.5 and 3.16)	205	205	205	205	818	169	169	169	169	674	132	132	132	132	530	2022	\$215	\$175,968	\$144,934	\$113,901	\$434,803
3	Development of Metrics, Baselines, and Improvement Targets and Quarterly Analysis of Metrics and Expected Improvement Targets (Sections 3.6 and 3.8)	285	143	71	71	571	235	118	59	59	470	185	92	46	46	369	1410	\$185	\$105,581	\$86,961	\$68,340	\$260,882
4	Hospital Submitted Applications, Reports, and Supplemental Data Books (Sections 3.7)	1035	518	259	259	2070	853	426	213	213	1705	670	335	168	168	1340	5115	\$170	\$351,936	\$289,869	\$227,802	\$869,606
5	Attribution Tasks (Section 3.9)	587	587	587	587	2346	483	483	483	483	1932	380	380	380	380	1519	5797	\$150	\$351,936	\$289,869	\$227,802	\$869,606
6	Hospital Data Review and Payment Formula Tasks (Section 3.10)	1650	825	412	412	3299	1359	679	340	340	2718	1068	534	267	267	2136	8153	\$160	\$527,904	\$434,803	\$341,702	\$1,304,410
7	Metrics, Gap Reduction, Hospital Achievements, and Reference Materials Tasks (Section 3.11)	201	101	50	50	402	166	83	41	41	331	130	65	33	33	260	994	\$175	\$70,387	\$57,974	\$45,560	\$173,921
8	Provide Training and Prepare Materials (Section 3.12)	1035	518	259	259	2070	853	426	213	213	1705	670	335	168	168	1340	5115	\$170	\$351,936	\$289,869	\$227,802	\$869,606
9	Learning Collaborative (Section 3.13)	147	147	293	587	1173	121	121	242	483	966	95	95	190	380	759	2899	\$150	\$175,968	\$144,934	\$113,901	\$434,803
10	Maintain DSRIP Information System, Learning Collaborative Portal, and Website and Requirements for DSRIP Information System (DIS) (Sections 3.14 and 3.17)	1100	1100	1100	1100	4399	906	906	906	906	3623	712	712	712	712	2848	10870	\$160	\$708,872	\$579,738	\$455,603	\$1,739,213
11	Data Warehouse Development and Quarterly Update (Section 3.15)	825	825	825	825	3299	679	679	679	679	2718	534	534	534	534	2136	8153	\$160	\$527,904	\$434,803	\$341,702	\$1,304,410
	Total	7289	5186	4281	4574	21329	6003	4271	3526	3767	17567	4718	3357	2771	2961	13806	52702		\$3,519,360	\$2,898,688	\$2,278,016	\$8,696,064

Public Consulting Group, Inc.

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PCG's matrix contains its preliminary project budget broken down quarterly. "Total costs of Price Line items have been calculated using a combination of quarterly level of effort estimates and a blended labor rate based on the likely mix of labor classes." PCG Quote, p. 27. The hours identified on the matrix are per activity/task, not per employee, and do not represent the total number of hours to be spent by the key staff toward the Contract. Rather, the hours identified represent the time necessary to complete the specific activity/tasks identified in the Bid Solicitation Scope of Work. PCG's preliminary calculation regarding the time necessary to complete each of the identified activities/tasks is 52,702 hours. PCG Quote, p. 27. This is irrespective of the 40 hours per week PCG's employees on this contract will work.

Additionally, in response to the protest, PCG states that, "[i]n developing its project budget, PCG accounted for the fact that not every hour that an individual team member works on the engagement could be attributable to one of the specific tasks listed on the chart or otherwise billable. This does not mean that the ten listed workers will work fewer than 40 hours per week; rather, it recognizes the reality that some time spent on the project may not map directly to one of the eleven tasks listed." PCG Response to Protest, p. 2.

In sum, Myers misinterprets the requirements of the Bid Solicitation, conflating the full-time staffing requirements and the number of hours in the preliminary budget to create a supposed requirement that the proposed budget be based on the sum of those employees' full-time hours for the three year base term. However, that is not what the RFP required. The requirement of Bid Solicitation Section 3.3 *Project Staffing*, that Vendors {Bidders} identify the key staff who would be committed full-time to the Contract, is independent of the requirement in Bid Solicitation Section 4.4.3.3.5 *Preliminary Project Budget Plan*

that Vendors {Bidders} provide a Preliminary Project Budget Plan with the Quote. In response to the Bid Solicitation, PCG submitted a Quote which identified 10 key staff members who would be 100% committed to the State's Contract. PCG has confirmed that its employees will work full time. Bid Solicitation Section 4.4.3.3.5 *Preliminary Project Budget Plan* required a Preliminary Budget Plan that identified the activities/tasks set forth in the Bid Solicitation's Scope of Work, indicating the estimated time to complete each activity/task along with the firm-fixed price for each.

Contrary to Myers' assertion, PCG's Quote does not contain a "non-waivable material defect" from the requirements of the Bid Solicitation. Rather, PCG's response to each of these independent requirements conforms to the Bid Solicitation.

CONCLUSION

Based upon the foregoing, I find no reason to disturb the Bureau's recommendation. Accordingly, I sustain the December 6, 2017 NOI. This is my final agency decision with respect to the protest submitted by Myers.

Thank you for your company's continuing interest in doing business with the State of New Jersey and for registering your company with [NJSTART](http://www.njstart.gov) at www.njstart.gov, the State of New Jersey's new eProcurement system.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

c: C. Kimmett, Esq.
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