



## State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
OFFICE OF THE DIRECTOR  
33 WEST STATE STREET  
P. O. BOX 039  
TRENTON, NEW JERSEY 08625-0039  
<https://www.njstart.gov>  
Telephone (609) 292-4886 / Facsimile (609) 984-2575

PHILIP D. MURPHY  
*Governor*

ELIZABETH MAHER MUOIO  
*State Treasurer*

SHEILA Y. OLIVER  
*Lt. Governor*

MAURICE A. GRIFFIN  
*Acting Director*

August 12, 2021

*Via Electronic Mail Only:* [Brad.Erickson@prometric.com](mailto:Brad.Erickson@prometric.com)

Brad N. Erickson, Account Director  
Prometric LLC  
1501 South Clinton St.  
Baltimore, MD 21224

Re: I/M/O Bid Solicitation #20DPP00498 Prometric LLC  
Protest of Notice of Intent to Award  
T2637 – Insurance and Real Estate License Examinations and Selected Services, DOBI

Dear Mr. Erickson:

This final agency decision is in response to your correspondence on behalf of Prometric LLC (Prometric) which was received by the Division of Purchase and Property's (Division) Hearing Unit on July 6, 2021. In that letter, Prometric protests the Procurement Bureau's (Bureau) June 21, 2021, Notice of Intent to Award letter (NOI) issued for Bid Solicitation #20DPP00498 - T2637 Insurance and Real Estate License Examinations and Selected Services – DOBI (Bid Solicitation).

By way of background, on February 18, 2020, the Bureau issued a Bid Solicitation on behalf of the Department of Banking and Insurance (DOBI). The purpose of the Bid Solicitation was to award up to two (2) Master Blanket Purchase Orders (Blanket P.O.s), one (1) for the Division of Insurance (DOI) and one (1) for the Real Estate Commission (REC), 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 may award any and all price lines. 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 § 1.1 *Purpose and Intent*.

On November 19, 2020, the Division's Proposal Review Unit opened two (2) Quotes submitted by the submission deadline of 2:00 p.m. eastern time. One Quote was received from Prometric bidding on only the DOI portion of the Bid Solicitation and one Quote was received by PSI, LLC. (PSI), bidding on both the DOI and the REC portions of the Bid Solicitation. After conducting a preliminary review of the Quotes received for compliance with the mandatory requirements for Quote submission, both Quotes were forwarded to the Bureau for review and evaluation consistent with the requirements of Bid Solicitation Section 6.7 *Evaluation Criteria*.

After completing its review and evaluation, on May 19, 2021, the Bureau prepared a Recommendation Report that recommended that a Blanket P.O. be awarded to PSI for both the DOI and

REC scopes of work. Accordingly, on June 21, 2021, the Bureau issued the NOI advising the Vendors {Bidders} that it was the State's intent to award a Blanket P.O. to PSI consistent with the May 19, 2021, Recommendation Report.

On July 6, 2021, Prometric wrote to the Division's Hearing Unit stating that it was protesting the intended award of a Blanket P.O. to PSI. In summary, Prometric argues that the Quotes were not fairly evaluated to the extent that the technical scores for the DOI and the REC components were combined resulting in an unfair disadvantage to Prometric.

In consideration of Prometric's protest, I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes received, the relevant statutes, regulations, and case law. This review of the record 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.

A review of the record of this procurement confirms that the Bid Solicitation was structured with two separate scopes of work representing two distinct functional areas within DOBI. By way of summary, with respect to the DOI examinations, Bid Solicitation Section 3.1 *DOI Examinations* requires the following:

The Vendor {Contractor} shall develop and conduct:

- A. Separate Producer Line of Authority examinations for: life; accident and health or sickness; property; casualty; personal lines; surplus lines; title; and limited line bail bond as identified in N.J.A.C. 11:17-2.2;
- B. The Public Adjuster licensing examination;
- C. Insurance Pre-licensing Instructor examinations; and
- D. Future examinations if enacted by legislation.

[Bid Solicitation Section 3.1.1 *Overview*.]

In contrast, Bid Solicitation Section 3.2 *Real Estate Commission* requires:

The Vendor {Contractor} shall:

- A. Conduct real estate licensing examinations, record keeping, and related duties;
- B. Deliver pass/fail notices to the following candidates:
  - 1) Salespersons and Salespersons (Referral);
  - 2) Brokers and Broker-salespersons;
  - 3) Real Estate Pre-Licensing Instructors; and
  - 4) Any additional candidates that may fall under the REC due to legislative changes;
- C. Provide computerized, electronic examination system for administration, reporting, and maintenance requirements;
- D. Create, maintain, and share continuing education (CE) credit records of real estate licensees, if required, and provide the SCM with access to these records; and
- E. Charge and collect Examination Fees from test candidates; no expenses, operating or otherwise, incurred by the Vendor {Contractor} as a result of work performed under this Blanket P.O. shall be passed onto the State at any time.

The Vendor {Contractor} shall ensure that REC’s data is not accessible to DOI.

[Bid Solicitation Section 3.2.1 *Overview*.]

During the Bid Solicitation Question and Answer period, in an effort to clarify its understanding of Bid Solicitation Section 1.1 the *Purpose and Intent*, a potential Vendor {Bidder} submitted a question to the Division pursuant to Section 1.3.1 *Electronic Question and Answer Period*.

#	Bid Solicitation Section Reference	Question (Bolded) and Answer
1	General	<p><b>In the 2014 RFP for this project (RFP 15-X-23487), it was required to submit two separate proposals? One for DOI and one for REC. This requirement is not included in the current RFP. Can you please clarify whether a single proposal submission is preferred, or if you prefer separate submissions for DOI and REC?</b></p> <p>Two (2) separate Quotes are not required. <u>Vendors {Bidders} may submit one (1) Quote in response to either DOI or REC’s requirements, or one (1) Quote in response to both DOI and REC’s requirements. Up to two (2) Master Blanket P.O.s may be awarded as a result.</u></p> <p>Pursuant to Bid Solicitation Section 1.1, if one (1) Blanket PO is awarded in which the Vendor {Contractor} establishes a shared, singular system, the Vendor {Contractor} must ensure that DOI and REC cannot access the other’s data.</p> <p>Vendors {Bidders} are cautioned that this new Bid Solicitation addresses current requirements. Vendors {Bidders} should not rely upon or use data from the prior Blanket P.O.</p>

[Emphasis added.]

Based upon the Bid Solicitation and the Answer provided above, Prometric proceeded to submit a Quote related only to the DOI scope of work.

A review of the Evaluation Committee (Committee) Report indicates that the Committee reviewed and scored each Quote using the evaluation criteria identified in Section 6.7.1, *Technical Evaluation Criteria*:

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., 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.

The Committee Report reveals that in conducting the technical review of the Quotes, the Committee created a blended score for PSI's Quote submission.

Vendor {Bidder}	Criterion A (1,500 Max)	Criterion B (1,500 Max)	Criterion C (2,000 Max)	Total Technical Score (Max 5,000)	Average Technical Score (Max 1,000)	Ranking
PSI	1,050	1,110	1,600	3,760	752	1
Prometric	810	780	1,000	2,590	518	2

Rather than evaluating PSI's Quote submission for the DOI scope of work and the REC scope of work separately using the criteria listed above, the Committee scored PSI's entire Quote for both scopes of work together.

Prometric believes that it was this blended scoring that placed it at a disadvantage. In support of its position Prometric points to the following:

Example #1: PSI included two separate Project Team Organization Charts – one for DOI and one for REC. The combined list of personnel for both DOI and REC from PSI could not fairly be evaluated against the number and combined expertise of the personnel offered by Prometric for only the DOI function.

Example #2: In response to Criteria #2, experience of the firm with similar contracts, PSI lists the number of insurance contracts and real estate contracts they currently hold. The combined list of contracts for both DOI and REC from PSI could not fairly be evaluated against the experience offered by Prometric for the DOI function alone.

Example #3: The scopes of work for DOI and REC have different requirements. PSI provided separate responses within its proposal to the DOI and REC scopes of work. The combined responses to the requirements for the DOI and REC from PSI could not fairly be evaluated against the information provided by Prometric solely for the DOI function.

[Prometric Protest, pgs. 3-4.]

The Committee's blended score could have the unintended effect of, for example, aggregating the personnel and experience submitted by PSI for the separate DOI & REC scopes of work resulting in a higher ultimate score for PSI. In fact the Committee in reviewing the Vendors {Bidders} current insurance contracts indicated that the 16 contracts submitted by PSI demonstrated significant experience but did not break down the number of contracts for DOI v. REC. This gave the appearance and may have resulted in the Committee giving more weight to PSI (combining both DOI and REC experience) as more experience in general. Rather, the Committee should have scored the relevant experience for each scope of work. Such a separated side by side comparison would more accurately reflect the Bidder's experience with respect to the scope of work sought.

Our Supreme Court has reiterated "[t]he public interest underlies the public-bidding process in this State." Barrick v. State, 218 N.J. at 258 (2014). The "public bidding statutes exist 'for the benefit of the taxpayers and are construed as nearly as possible with sole reference to the public good.'" Ibid. (citing Keyes Martin & Co. v. Dir., Div. of Purchase & Prop., 99 N.J. 244, 256 (1985)). 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). As noted by the Supreme Court, in all publicly procured contracts the "conditions and specifications must apply equally to all prospective bidders. Otherwise, there is no common standard of competition." Hillside Twp. v. Sternin, 25 N.J. 317, 32 (1957). The Court further explained: "Every element which enters into the competitive scheme should be required equally for all and should not be left to the volition of the individual aspirant to follow or to disregard and thus to estimate his bid on a basis different from that afforded the other contenders." Id. at 322

Here, the Committee's method for evaluating and scoring the Quotes resulted in the conditions and specifications not being equally and fairly applied as it related to each separate scope of work. I note that in conducting the pricing analysis, the Bureau did in-fact break down the pricing for each function, DOI and REC.

Based upon the foregoing, I find that it is necessary to remand this matter back to the Procurement Bureau with instructions that they more fully score each Quote based upon the two (2) separate functions, respectively, for DOI and REC, thereafter making a determination of which vendor submitted the best proposal for each function. The resulting evaluation may result in separate award for each function or a single award for both functions. This is my final agency decision on this matter.

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

Sincerely,

  
Maurice A. Griffin  
Acting Director

MAG: RUD/DK

cc: M. Tagliaferri  
S. Fletcher  
B. Tran  
PSI, LLC