



State of New Jersey

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

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June 25, 2024

Via Electronic Mail Only

Donna L. Thompson, Esq.
DL Thompson Law, PC
P.O. Box 679
Allenwood, NJ 08720

Re: I/M/O Bid Solicitation #21DPP00639 Hunter Carrier Services LLC
Protest of Notice of Intent to Award
T1776 – Data Communications Network Services

Dear Ms. Thompson:

This final agency decision is in response to your letter on behalf of Hunter Carrier Services LLC (Hunter Carrier) received by the Division of Purchase and Property's (Division) Hearing Unit on April 30, 2024 (Protest). In that letter, Hunter Carrier protests the Procurement Bureau's (Bureau) April 19, 2024, Notice of Intent to Award letter (NOI) issued for Bid Solicitation #21DPP00639 – Data Communications Network Services (Bid Solicitation).

By way of background, on January 26, 2022, the Bureau issued the Bid Solicitation on behalf of the State of New Jersey, Office of Information Technology (NJOIT). The purpose of the Bid Solicitation was to solicit Quotes for Data Communications Network Services that will provide basic data network connectivity, as well as associated support services. 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.

NJOIT is responsible for the technology infrastructure used by the Executive Branch of New Jersey State Government. The services covered by this contract will be used as the infrastructure for the State of New Jersey's Garden State Network (GSN), which enables data communications between different State sites, and allows for Using Agencies to reliably and securely connect to the internet. Currently, the vast majority of State sites are connected to the GSN via ethernet services.

In accordance with Bid Solicitation Section 1.3.5, *Optional Pre-Quote Conference*, an optional Pre-Quote Conference was held on February 8, 2022, providing all potential Bidders with an overview of the Bid Solicitation and Quote submission procedures and requirements. Representatives from six (6) potential bidding entities attended (AT&T, Carousel, DNS, Hunter Carrier, Crown Castle, and Verizon).

In accordance with Bid Solicitation Section 1.3.1, *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 February 25, 2022. Eight (8) Bid Amendments were issued for this Bid Solicitation, which provided revisions to the Bid Solicitation and responses to questions received from potential Bidders.

Bid Amendment #	Date Issued	Contents
Bid Amendment 1	2/14/2022	Pre-Quote Conference Attendees List
Bid Amendment 2	3/31/2022	Quote Submission due date extended from 6/10/2022 to 9/2/2022
Bid Amendment 3	7/26/2022	Quote Submission due date extended from 9/2/2022 to 11/4/2022
Bid Amendment 4	10/17/2022	Quote Submission due date extended from 11/4/2022 to 1/13/2023
Bid Amendment 5	12/28/2022	Quote Submission due date extended from 1/13/2023 to 4/20/2023
Bid Amendment 6	4/6/2023	Quote Submission due date extended from 4/20/2023 to 5/31/2023; Answers to first round of electronic Bidder questions posted to NJSTART; Revised Bid Solicitation posted to NJSTART; 2 nd Q&A period opened until 4/27/2023
Bid Amendment 7	5/18/2023	Quote Submission due date extended from 5/31/2023 to 6/21/2023
Bid Amendment 8	6/1/2023	Answers to 2 nd round of electronic Bidder questions posted to NJSTART

On June 21, 2023, the Division's Proposal Review Unit opened eleven (11) Quotes. The eleven (11) Quotes were deemed administratively complete by the Proposal Review Unit and released to the Bureau for further review and evaluation.

The Bureau determined that the Quotes submitted by Brightspeed of New Jersey, Inc. (Brightspeed), Cablevision Lightpath, Inc. (Lightpath), MetTel, Granite Telecommunications LLC (Granite), Comcast Communications Management LLC (Comcast), Data Network Services (DNS), and Crown Castle Fiber LLC (Crown Castle), were either fully or partially non-responsive due to non-compliance with several mandatory elements of the Bid Solicitation. Recommendation Report at pgs. 3-5. The Bureau found that the following Quotes met, and complied with, the mandatory requirements for at least one award-eligible section of the Bid Solicitation to be released to the Evaluation Committee:

1. AT&T
2. Carousel Industries of North America (Carousel)
3. DNS
4. Hunter Carrier Services LLC Hunter Carrier)
5. Crown Castle
6. Verizon Business Network Services LLC (Verizon)

These six (6) Quotes were released to the Evaluation Committee in accordance with Bid Solicitation Section 6.5, *Quote Evaluation Committee*. The Committee was composed of three (3) voting members from NJOIT, one (1) voting member from the Bureau, and four (4) non-voting members from the Bureau (1), NJOIT (1), and the New Jersey Judiciary (2). Evaluation Committee Report at p. 7-8. The Committee was responsible for performing the technical evaluation of the responsive Quotes received based upon the evaluation criteria set forth in Bid Solicitation Section 6.7, *Evaluation Criteria*, which stated in part:

- 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.

Prior to the public advertisement of the Bid Solicitation, in January 2021, representatives from NJOIT and the Bureau assigned relative weights for the three (3) Evaluation Criteria. The assigned weights are as indicated on the timestamped score sheet shown below:

9/NOV '21 2:53PM

T1776 - Data Communication Networking Services		
Vendor (Bidder) for DS-1 and DS-3 Services shall provide the following requested sample prices. Vendor (Bidder) shall provide its pricing in the table format provided below as if new service. The Total 3-Year Cost = 36 months x Monthly Recurring Charge (MRC) + Non-Recurring Charge (NRC). Vendor (Bidder) shall populate MRC and NRC columns.		
The Vendor (Bidder) must also attach a thorough description of the proposed rate structure that includes a price list that clearly identifies all pricing components, including one-time charges, surcharges and mileage charges (if applicable) as per Service Description requirements listed in Section 3.4.1.1		
Additionally, the Vendor (Bidder) is invited to propose discounts to their standard pricing for the following options; bulk orders, service quantity commitments, and Provisioning/Maintenance/Performance abilities that are superior to the State requirements provided in Section 3.3.6. The Vendor (Bidder) must include a description of these discounts along with the pricing.		
Configuration 1: Section 3.4.1 Private Line Data Services- DS1 & DS3		
DS-1 Location A - Location B - 10 miles		
Monthly Recurring Cost (MRC)	Non-Recurring Charge (NRC)	Total
		\$ -
Configuration 2: Section 3.4.1 Private Line Data Services- DS1 & DS3		
DS-3 Location A - Location B - 20 miles		
Monthly Recurring Cost (MRC)	Non-Recurring Charge (NRC)	Total
		\$ -
Private Line Total Cost		\$ -
Configuration 1 Weight		50%
Configuration 2 Weight		50%
Private Line Total Weighted Cost		\$ -

The Committee members each conducted an independent analysis of each of the six (6) remaining Quotes. Then, on December 5, 2023, the Committee met to review and consider the Quotes as a group. The four (4) voting members assigned individual technical scores (1-10) for each of the three (3) Evaluation Criteria for each Quote based upon their independent analysis and Committee discussions. Evaluation Committee Report at pgs. 8-9. Assigned scores were multiplied by the criterion weight to produce a weighted score for each criterion.

Bidder	Total Criterion A (Max 400)	Total Criterion B (Max 1200)	Total Criterion C (Max 2400)	Total Technical Score (Max 4000)	Average Technical Score (Max 1000)	Ranking
Verizon	360	1,170	2,100	3,630	908	1
AT&T	320	1,110	1,980	3,410	853	2
Crown Castle	310	870	1,560	2,740	686	3
DNS	280	630	1,440	2,350	588	4
Carousel	260	870	1,140	2,270	568	5
Hunter Carrier	120	270	540	930	233	6

In accordance with Bid Solicitation Section 6.8, *Negotiation and Best and Final Offer (BAFO)*, the Bureau requested a BAFO from Verizon, Carousel, DNS, Crown Castle, and AT&T on December 29, 2023, with responses due by January 10, 2024. The Bidders provided BAFO responses as shown on pages 25 through 30 in the Evaluation Committee Report.

Having completed its evaluation of the Quotes received in response to the Bid Solicitation, on April 19, 2024, the Bureau issued the NOI advising all Bidders that it was the State’s intent to award a Contract to AT&T, Carousel, Crown Castle, DNS, and Verizon.

On April 30, 2024, prior to the close of the protest period, Hunter Carrier submitted its Protest, including a request for an in-person hearing, challenging the Evaluation Committee’s Technical Quote score for Hunter Carrier. By way of summary, Hunter Carrier states that technical score is not indicative of Hunter Carrier’s actual business operations. Specifically, Hunter Carrier alleges that:

1. Hunter Carrier would have provided more than one resume if it realized the Evaluation Committee “sought the resumes of ‘all’ management, supervisory and key personnel assigned to the contract. . . .” [Emphasis in original.];
2. Hunter Carrier does use back-up staff despite making a statement to the contrary in its Quote;
3. Criticism of Hunter Carrier’s infrastructure is misplaced because its infrastructure is hosted on the AWS GOV CLOUD site; and
4. Hunter Carrier only bid for SIP and specific services, and should have been evaluated only on its ability to perform that work because the Evaluation Committee appeared to review its ability to perform all of the services on the contract.

By way of remedy, Hunter Carrier requests an opportunity for an in-person presentation, and to provide the Evaluation Committee with the information Hunter Carrier failed to provide with its Quote. Protest, p. 3.

First, with respect to Hunter Carrier’s request for an in-person presentation as permitted by N.J.A.C. 17:12-3.3(e), “[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 Hunter Carrier. 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 Hunter Carrier on the written record, as such an in-person hearing is not needed. I set forth herein the Division's Final Agency Decision.

I. The Evaluation Committee's Conclusions are Supported by the Record.

A. The Bid Solicitation requirements regarding resumes and staffing were sufficiently clear to provide Hunter Carrier with notice on the connection between information provided and scoring.

Bid Solicitation Section 4.4.4.3, *Resumes*, identifies the personnel the Evaluation Committee would be interested in reviewing as part of a Bidder's Quote, stating:

Detailed resumes should be submitted for **all management, supervisory, and key personnel to be assigned to the Blanket P.O.** Resumes should emphasize relevant qualifications and experience of these individuals in successfully completing Blanket P.O.s of a similar size and scope to those required by this Bid Solicitation.

[Emphasis added.]

Bid Solicitation Section 6.7.1, *Technical Evaluation Criteria*, states that Bidders would be evaluated and scored based on three specific criteria, stating:

- 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.

[Emphasis added.]

In its Protest, the Bidder indicates that it had not submitted resumes for all management and supervisory personnel stating:

Not realizing the Evaluation Committee sought the resumes of "all" management, supervisory and key personnel to be assigned to the Contract, Hunter submitted only the resume for its CEO, Ivo Allen. The Committee found it would be helpful to see more resumes for additional personnel for the management of this Contract.

* * *

Again, with the submission Hunter did not realize the Committee was interested in evaluation of personnel beyond the CEO. I believe consideration of the resumes of the many other highly qualified representatives of Hunter Carrier Services will cause the Committee to reevaluate the “poor” scoring evaluation.

[Protest, Pgs. 1-2.]

The Evaluation Committee correctly determined that Hunter Carrier only submitted one resume with its Quote. Bid Solicitation Section 4.4.4.3, *Resumes*, clearly states that that “resumes should be submitted for **all** management, supervisory, and key personnel to be assigned to the Blanket P.O.” Emphasis added. Based on the submission of one resume, and Bid Solicitation Section 6.7.1’s evaluation criteria that personnel would be evaluated based on “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”, the Evaluation Committee came to the determination that the “Bid Solicitation requirements are extensive and having a single person responsible for managing the entire Contract causes some concern.” Evaluation Report p. 24.

A review of the record shows that Hunter Carrier attended the Pre-Quote Conference which utilizes a PowerPoint slide presentation. Slide 7 of that presentation informs potential bidders that “not submitting requested information (“should”) could impact technical score.” This information, along with the guidance provided in the Bid Solicitation sections on resumes and Quote evaluations, supports a determination that the Evaluation Committee acted reasonably in its evaluation, and was not arbitrary in its scoring. Having reviewed the Bid Solicitation and Hunter Carrier’s Quote, I see nothing that causes me to question that determination, or the scoring of the Evaluation Committee for Criterion A.

Similarly, Hunter Carrier claims the Evaluation Committee erroneously took issue with the statement that “Hunter Carrier services does not use any back-up staff and the CEO is directly responsible for management of the Contract.” Even if this statement is intended to convey that their company does not hire inexperienced temporary staff, but instead rely on its own qualified personnel, that information was not available to the Evaluation Committee in Hunter Carrier’s Quote. As noted above, the Bid Solicitation was sufficiently clear on what a Bidder should provide in its Quote, and exactly how that information would be utilized during evaluations. With respect to this claim, I see nothing that causes me to question that determination, or the scoring of the Evaluation Committee for Criterion A.

In its April 30, 2024, protest, Hunter Carrier seeks to “fix” its submission deficiency due to its misunderstanding regarding the terms of the Bid Solicitation. Allowing Hunter Carrier to revise its information after the Quote submission deadline would result in an impermissible supplementation of the Quote, which the Division cannot allow as doing so would be contrary to the Court’s holding in In re Protest of Award of On-Line Games Prod. & Operation Servs. Contract, Bid No. 95-X-20175, 279 N.J. Super. 566, 597 (App. Div. 1995). In On-Line Games, the Appellate Division held that “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”. *Id.* Here, the Division cannot accept the supplemental resumes, as doing so is an impermissible supplementation, change and correction to the submitted Quote.

B. The Evaluation Committee’s Concerns Regarding Infrastructure Were Supported by the Information Contained in Hunter Carrier’s Quote.

Hunter Carrier next asserts that the Evaluation Committee erroneously criticized Hunter Carrier's infrastructure because its hosted on a secure hosting facility. Specifically, Hunter Carrier argues the following in its protest:

Criticism of Hunter's infrastructure is misplaced; Hunter's infrastructure is hosted on the AWS GOV CLOUD site, the most secure hosting facility available. Hunter can provide the State of New Jersey access into site, or Hunter can build out network into a private cloud specifically for the client as they are currently doing for the FAA. Additionally, Hunter maintains multiple Tier 1 providers for DID redundancy, Bandwidth and Twilio. Hunter also provides a private APN network to its clients, directly from the client to A WS GOV CLOUD, as well as FirstNet.

[Protest at p. 3.]

The Bid Solicitation outlines the requirements used by the Evaluation Committee to reach its determination regarding Hunter Carrier's infrastructure. In pertinent part, that section reads

3.1.1 STATEWIDE VENDOR {CONTRACTOR}

A Statewide Vendor {Contractor} shall provide countywide service to at least 17 of New Jersey's counties. Service shall be provided via the Vendor's {Contractor}'s **own infrastructure** inclusive of UNE-P elements or via **its own infrastructure** and that of its Subcontractors. The Vendor {Contractor} shall have the necessary partnership agreements, network-to-network connectivity and processes in place to deliver service through or with another party.

[Emphasis added.]

Of importance here, and as recognized in the Evaluation Committee Report on Page 25, Bid Solicitation Section 3.1.1 indicates that service shall be provided over an infrastructure that is at least partially provided by the Contractor. That is not the case with Hunter Carrier, at least not according to the one-page Management Overview provided in their response, or in its Protest Letter. Hunter Carrier uses other provider's infrastructure as a means to deliver their service, and that runs directly contrary to the requirements of the Bid Solicitation.

The Evaluation Committee found that "Hunter Carrier's Quote did not demonstrate that Hunter Carrier would be able to successfully complete Contract requirements." *Evaluation Committee Report* at p. 25. Having reviewed the Bid Solicitation and Hunter Carrier's Quote, I see nothing that causes me to question that determination, or the scoring of the Evaluation Committee for Criterion C.

C. The Evaluation Committee's Concerns Regarding Whether Hunter Carrier would be able to successfully complete Contract requirements Were Supported by the Information Contained in Hunter Carrier's Quote.

Hunter Carrier finally asserts that the Evaluation Committee incorrectly found Hunter Carrier would not be able to successfully complete the Contract's requirements because it "does one thing and does it right." However, as shown above by the facts relied upon in this matter, as drawn from the Evaluation Committee Report, the Recommendation Report, and Hunter Carrier's Technical Quote, the record supports that the Evaluation Committee acted reasonably in its scoring.

The Evaluation Committee Report reveals the deliberations and opinions of the Evaluation Committee members as they reviewed each Quote against the requirements of the Bid Solicitation, prior to the individual members scoring each Quote. A review of all of the evaluated Quotes shows the Evaluation Committee was thoughtful in its analysis of each one based on the documentation provided, and that the Evaluation Committee was not arbitrary, capricious, or unreasonable in its evaluations.

Despite the above clear language in the Bid Solicitation establishing the technical requirements and evaluation criteria, Hunter Carrier submitted a Quote that was adequate to be responsive to the requirements sufficient to be evaluated, but left the Evaluation Committee with concerns. Permitting Hunter Carrier to now supplement its Quote after Quotes have been opened would place Hunter Carrier in a position of advantage over other bidders by otherwise undermining the necessary common standard of competition required by New Jersey's courts and procurement laws.

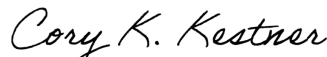
CONCLUSION

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 April 19, 2024, Notice of Intent to Award. This is my final agency decision.

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.

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.

Sincerely,



Cory K. Kestner
Chief Hearing Officer

c: M. Dunn
J. Pastuzyn