



State of New Jersey

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

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August 9, 2024

Via Electronic Mail Only mike@rtzassociates.com

Michael Zawadski, CEO
RTZ Associates Inc.
3736 Mt. Diablo Blvd.
Lafayette, CA 94549

Re: I/M/O Bid Solicitation 23DPP00818 RTZ Associates Inc.
Protest of Notice of Intent to Award and Rejection of RTZ Associates Inc. proposal
T3053 DoAS Care/Case Management System (C/CMS)

Dear Mr. Zawadski:

This final agency decision is in response to your letter dated July 16, 2024, submitted on behalf of RTZ Associates Inc. ("RTZ") which was received by the Division of Purchase and Property's ("Division") Hearing Unit. In that letter, RTZ protests the July 2, 2024, Notice of Intent to Award ("NOI") issued by the Division's Procurement Bureau ("Bureau") for Bid Solicitation 23DPP00818 – T3053 DoAS Care/Case Management System (C/CMS) ("Bid Solicitation"). The record of this procurement reveals that the Quote submitted by RTZ was deemed non-responsive on the grounds that RTZ failed to submit oral presentation materials with their Quote submission as required by Section 3.27 of the Bid Solicitation.

By way of background, on May 11, 2023, the Procurement Bureau issued the Bid Solicitation on behalf of the Department of Human Services ("DHS"), Division of Aging Services ("DoAS"). The purpose of the Bid Solicitation was to solicit Quotes to engage a Contractor to provide a cloud-based system that is configurable and/or customizable to meet the State's requirements for the care and case management of individuals, including their federal reporting needs, that are serviced by the DoAS and their partner agencies ("System"). The System is to have the ability to be utilized on an enterprise-wide basis for DoAS, their partner agencies and for other DHS Divisions. Bid Solicitation Sec. 1.1, *Purpose and Intent*. It is the intent of the State to award a Contract to that responsible Bidder whose Quote, conforming to this Bid Solicitation is most advantageous to the State of New Jersey ("State"), price and other factors considered. The State may award any or all price lines.

In accordance with Bid Solicitation Section 2.5, *Optional Pre-Quote Conference*, an Optional Pre-Quote Conference was held on May 22, 2023. Representatives from thirty-three (33) potential vendors attended, although RTZ did not attend this Optional Pre-Quote Conference. In accordance with Bid Solicitation Section 2.1, *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 June 20, 2023. A second Electronic Question and Answer Period was conducted to address questions

related to the answers provided to the 352 questions received during the first Electronic Question and Answer Period. RTZ did not submit any questions during either of the two (2) Question and Answer Periods. The electronic portal was available to all potential Bidders until 2:00pm Eastern Time on November 15, 2023. Four (4) Bid Amendments were issued for this Bid Solicitation, which provided extensions to Quote Submission due date and revisions to the Bid Solicitation and responses to questions received from potential Bidders.

On January 12, 2024, the Division's Proposal Review Unit ("PRU") opened twenty-four (24) Quotes which were received by the submission deadline of 2:00 pm Eastern Time. Quotes were received from the following entities: Arka Information Systems ("Arka"); AssureCare ("Assure"); Brite Systems Inc. ("Brite Systems"); CGI Technologies and Solutions ("CGI"); Comagine Health ("Comagine"); Creative Information Technology Inc. ("Creative Information"); Dimagi, Inc. ("Dimagi"); FEI Com, Inc. d/b/a FEI Systems ("FEI"); Hoover Blanket Inc. ("Hoover"); Kamaletdos LLC ("Kamaletdos"); Masnet Technologies LLC ("Maxnet"); MERP Systems, Inc. ("MERP"); Mon Ami, Inc. ("Mon Ami"); MTX Group Inc. ("MTX"); New Jersey Innovation Institute ("NJII"); Patient Care Intervention Center ("Patient Care"); PruTech Solutions, Inc. ("PruTech"); Ready Computing Commercial Solutions ("Ready Computing"); RTZ Associates Inc. ("RTZ"); Slalom, Inc. ("Slalom"); Son Information Systems ("Son"); VirtualHealth ("VirtualHealth"); Visual Vault, LLC ("VisualVault"); and WellSky Human & Social Services Corporation ("WellSky"). After conducting an initial review of the Quotes received for compliance with mandatory Quote submission requirements, the Quotes of MTX and Slalom were rejected for failure to provide an Ownership Disclosure Form as required pursuant to Section 3.13.2 of the Bid Solicitation. Eleven bidders were provided with a formal notice and warning letter from the PRU due to their company's lack of compliance with Business Registration Certificate at the time of Quote opening. The eleven (11) bidders were: Comagine Health; FEI; Hoover Blanket; MERP; Mon Ami; Patient Care; PruTech; Ready Computing; RTZ; VirtualHealth; and VisualVault. The remaining twenty (22) Quotes were released to the Bureau on February 15, 2024, for further review of compliance with mandatory requirements specific to the Bid Solicitation.

On July 1, 2024, the Evaluation Committee issued its report which recommended that a Contract be awarded to Mon Ami. Evaluation Committee Report, P. 26. On July 2, 2024, the Bureau completed a Recommendation Report ("Recommendation Report"), which similarly recommended that a Contract be awarded to Mon Ami as the Bidder's contract represents the most advantageous offer to the State price, and other factors considered. Recommendation Report, p. 1.

On July 2, 2024, the Bureau issued the Notice of Intent ("NOI"), indicating that it was the State's intent to make Contract awards consistent with the Bureau's recommendation in the July 2, 2024, Recommendation Report.

On July 17, 2024, RTZ submitted a protest letter dated July 16, 2024, to the Division's Hearing Unit challenging the State's award of the Contract to Mon Ami and the State's determination that RTZ's submitted Quote was non-responsive to the requirements of the Bid Solicitation ("RTZ Protest"). RTZ challenges both the way the procurement process for this Bid Solicitation was conducted, as well as the determination that its Quote was non-responsive.

With respect to the procurement process for this Bid Solicitation, RTZ states:

As you are well aware, just as Senator Menendez had a code of conduct to follow, the State of New Jersey has rules that govern its procurement of services. These rules are designed to ensure that the State receives quality services at competitive prices. The procurement process is a covenant between the State, its taxpayers, and bidders. The Division of Purchase and Property's own mission statement says it seeks to "professionally and ethically procure the best valued product and services." It is impossible to imagine that a Bid Solicitation in which the State did not score 22 out of the 24 bids – including all of the leading solutions in this particular market – and then subsequently determined that bid number 23 was outside of "competitive range" and would not be further scored, thus effectively eliminating all competition and creating a sole source award to a start-up with no track record of successfully delivering similar systems for other states could possibly offer the State and the residents it serves the "best value." Instead DPP has failed to administer a bidding process that permits full and free competition as mandated by N.J. Admin. Code § 17:12-1.1.

[RTZ Protest, page 1.]

With Respect to the rejection of RTZ's Quote, RTZ states:

Per the procurement's recommendation report, RTZ's Quote was deemed "non-responsive" because it did not include any demonstration handouts.

Specifically, the recommendation report quotes Section 3.27 ("Oral Presentation") of the Bid Solicitation as follows, "The demonstration materials included in the Quote shall include, without limitation, the proposed Solution(s) name and any identifying informational materials (i.e., brochures, infographics, websites), proposed system customization mock-up images, the slide deck, visual presentation, multimedia files, and all other material(s) the Bidder intends to present or distribute during the demonstration."

Our technical quote did include the proposed Solution's name – GetCare – introduced first in the cover letter and identified throughout – the Solution that we intended to demonstrate should afforded that opportunity by the State. (As noted in our Quote, the system itself is web-based – and not on a public URL – so it cannot be placed into an electronic file format.) We did not intend to present or distribute the other example materials listed – such as "proposed system customization mock-up images" – as those are not relevant for a system such as GetCare that can meet the Bid Solicitation requirements off-the-shelf. As such, we believe we fully met this requirement. . . We were fully prepared to provide a real-time system walkthrough of the proposed Solution (GetCare) but did not need to visually mock-up any images of essential system requirements as our proposal made clear that GetCare already meets all essential system requirements off-the-shelf; i.e. all requirements put forth in Section 4.2 of the Bid Solicitation can be demonstrated. "Please note that GetCare substantively meets all system requirements 'out-of-the-box.' Configuring an existing, proven platform for DoAS (instead of custom development work) ensures a low-risk / high-benefit implementation."

[RTZ Protest, pages 1-2.]

In the protest, RTZ claims that “It is impossible to imagine that a Bid Solicitation in which the State did not score 22 out of the 24 bids – including all of the leading solutions in this particular market – and then subsequently determined that bid number 23 was outside of “competitive range” and would not be further scored, thus effectively eliminating all competition and creating a sole source award to a start-up with no track record of successfully delivering similar systems for other states could possibly offer the State and the residents it serves the ‘best value.’ Instead DPP has failed to administer a bidding process that permits full and free competition as mandated by N.J. Admin. Code § 17:12-1.1.” RTZ Protest page 1. RTZ further asserts that “deeming our proposal ‘nonresponsive’ was not warranted. On 15 different occasions, the Bid Solicitation indicates that failure to provide specific information or documentation ‘may result in the rejection of the Quote as non-responsive.’ Section 3.27 (“Oral Presentation”) has no such language. Furthermore, Section 3.27 of the Bid Solicitation even contemplates bidders not submitting any materials, with the only potential consequence stated being that doing so ‘may affect the Bidder’s technical evaluation score.’” RTZ Protest Page 2. Finally, RTZ asserts that its Quote “should have received a technical evaluation score from the State and should have been provided the opportunity to provide a real-time system walkthrough to show firsthand how GetCare meets all essential system requirements. Based on the Bid Solicitation Solution requirements – and given the fact that GetCare is consistently awarded high scores in similar procurements administered by other states – if the State scored RTZ’s Quote as it should have, we believe that it likely would have determined that GetCare represents the most advantageous offer to the State, price and other factors considered.” RTZ Protest Page 2. RTZ does not request the opportunity for an in-person presentation as permitted by N.J.A.C. 17:12-3.3(b)(1)(iii).

Although RTZ did not request an in-person presentation to challenge the intended Contract award, pursuant to 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, but not limited to, 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 RTZ. The issues raised in RTZ’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 RTZ on the written record, as such an in-person hearing is not warranted.

The New Jersey Courts have long recognized that 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). To that end, the “public bidding statutes exist for the benefit of the taxpayers, not bidders, and should be construed with sole reference to the public good.” Borough of Princeton v. Board of Chosen Freeholders, 169 N.J. 135, 159-60 (1997). The objective of New Jersey’s statutory procurement scheme is “to guard against favoritism, improvidence, extravagance and corruption; their aim is to secure for the public the benefits of unfettered competition.” Barrick v. State of New Jersey, 218 N.J. 247, 258 (2014) (citing Keyes Martin & Co. v. Dir. of Div. of Purchase and Prop., 99 N.J. 244, 256 (1985)). Consistent with this purpose, the New Jersey procurement law provides that “any or all bids may be rejected when the State Treasurer or the Director of the Division of Purchase and Property determines that it is in the public interest so to do.” N.J.S.A. 52:34-12(a).

In point one of their protest, RTZ argued that the Bid Solicitation was not a competitive process because “the State did not score 22 of the 24 bids – including all of the leading solutions in this particular market – and then subsequently determined that bid number 23 was outside of ‘competitive range’ . . . thus effectively eliminating all competition and creating a sole source award”. RTZ Protest page 1. The chart below reflecting the reasons for non-compliance based on the Recommendation Report, shows that each

bidder was found non-responsive for different reasons. The fact that a large number of bidders were found to be non-compliant in and of itself, is not enough to prove that the evaluation process was unreasonable or unfair and cannot “possibly offer the State and the residents it serves the ‘best value’”, as RTZ asserts on Page 1 of its Protest. A closer look at each bidder and the reasons they were found non-responsive demonstrates that the determination of non-responsive was due to each bidder’s individual Quote submission and individual failure to adhere to the clear instructions in the Bid Solicitation as set forth in the chart below.

Company	Bid Solicitation Section	Reason
Arka	3.7 – Joint Venture	Arka submitted a joint venture form indicating that Apex Solutions would be the other entity. Apex Solutions did not submit any forms as required.
	3.19 – Additional Plans	Arka failed to submit a draft Status Report or a draft Requirements Traceability Matrix as was required in Section 3.19.
Kamaletdos	3.19 – Additional Plans	Kamaletdos failed to include a draft plan for any of the 12 Additional Plans required by Section 3.19.
Maxnet	3.19 – Additional Plans	Maxnet failed to provide a draft Training Plan as required by Section 3.19
	3.27 – Oral Presentation	Maxnet failed to submit Oral Presentation materials as required by Section 3.27
RTZ	Section 3.27 – Oral Presentation	RTZ failed to provide oral presentation materials as required by Section 3.27.
AssureCare	6.18, 6.19, 6.20(b) - Security	For each Section, AssureCare failed to state how they would implement security controls as required by each Section.
Comagine	3.13.8.1 – Small Business and/or Disabled Business Set Aside	Comagine failed to respond to a request for information as to Comagine’s good faith efforts to obtain Small Business and/or Disabled Veterans for subcontracting services.
MERP	4.1 - Overview of Scope of Work	Pursuant to Section 4.1, approximately 4000 users were expected to use the system. MERP provided pricing for 400 users, instead of pricing for the required 4000 users.

Patient Care	Section 3.13.12 – State of NJ Security Due Diligence Third-Party Information Security Questionnaire	Patient Care failed to complete some sections of the Questionnaire and other sections lacked detail.
Son	Section 3.13.12 – State of NJ Security Due Diligence Third-Party Information Security Questionnaire	Son's quote was deemed incomplete because many of the referenced policies were not provided for review and other responses were cut off and/or lacked detail.
VisualVault	Section 4.3.14 – Turnover Plan	Pursuant to Section 4.3.14, at the end of the contract, the hardware must become property of the State and the Contractor must deliver all hardware to the State. VisualVault stated that they would turn over all hardware if there was "an NDA in place", however they refused to ship any hardware and said the "transfer responsibility requirement [of Section 4.3.14] was not applicable".
Hoover Blanket	Section 3.19 – Additional Plans	Hoover Blanket failed to provide a draft of the Communication Management Plan with their Quote as required under the Section.
	Section 3.11 – Bidder Additional Terms Submitted with the Quote	Hoover Blanket submitted a Software Maintenance & Support Agreement which requires the State agree to an annual subscription plus additional fees.
Brite Systems	Section 3.11 – Bidder Additional Terms Submitted with the Quote	Brite Systems included the following language with their Quote submission: "Any deviation that constitutes a change in time, scope, or funds by 10% must be resolved by an amendment to the contract . . ."
CGI	Section 3.11 – Bidder Additional Terms Submitted with the Quote	CGI added to their Offer and Acceptance page that "Contractor's acceptance and signing of this page is conditional upon the Contractor's ability to negotiate key terms with the State in the event of a Contract award . . . If the State and Contractor are unable to agree on mutually satisfactory terms, the Contractor will not be contractually obliged to provide any goods, products,

		or services to the State nor be subject to penalties of any nature or kind.”
Creative Information	Section 3.11 – Bidder Additional Terms Submitted with the Quote	Creative Information submitted a copy of their End User Licensing Agreement with their Quote.
Dimagi	Section 3.11 – Bidder Additional Terms Submitted with the Quote	Dimagi including additional terms and conditions for third-party vendors with their Quote.
FEI	Section 3.11 – Bidder Additional Terms Submitted with the Quote	FEI included language that “Unanticipated tasks . . . will result in unanticipated costs. More information regarding unanticipated tasks will be found in the executed contract.”
PruTech	Section 3.11 – Bidder Additional Terms Submitted with the Quote	PruTech included language with its Quote submission that license costs (if applicable) are not included in estimates and that provisional of licenses will be provided by NJDoAS.
Ready Computing	Section 3.11 – Bidder Additional Terms Submitted with the Quote	With their Quote submission, Ready Computing stated that the fixed pricing fees would only be incurred in the first service year but that a license would be an ongoing annual cost. Additionally, any services outside the scope of the Implementation or Sustainment service would be \$180/hour.
Virtual Health	Section 3.11 – Bidder Additional Terms Submitted with the Quote	With their quote, Virtual Health submitted “Appendix F – Sample VH license and Service Agreement_Tepmplate_Updated_2023”, and a document titled “VirtualHealth NJDHS Terms and Conditions Issues List”. Both of these documents contain additional terms and conditions to the State of New Jersey Standard Terms and Conditions.
WellSky	Section 3.11 – Bidder Additional Terms Submitted with the Quote	On their Offer and Acceptance Form, WellSky inserted the highlighted language in section 1. Section 1 states “1. [Bidder] has read, understands and agrees to all terms, conditions, and specifications set forth in the Bid Solicitation and State of New Jersey

		Standard Terms and Conditions consistent with the negotiated agreement in effect between the parties (June 8, 2022) and the BAA (July 5, 2022) and agrees to furnish the goods, products, and/or services in compliance with those terms”.
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Each of the Bidders were found non-responsive for different reasons. Nine (9) of the twenty four (24) bidders were found to be non-responsive due to the addition of material terms that conflicted with Bid Solicitation Section 3.11. Each of these nine (9) bidders added different language so while all were found non-responsive for not adhering to the same Bid Solicitation section (3.11), there was no other common thread among them as each added different language, and in some cases entire documents to their Quote. Four (4) different bidders failed to include plans required under Bid Solicitation Section 3.19, *Additional Plans*, while the remaining non-responsive bidders generally failed to satisfy the submission of some other required document. This review shows that the majority of the bidders satisfied the majority of the requirements, but failed to meet a mandatory requirement in a unique way, and there was nothing “not competitive” about the structure of the Bid Solicitation’s requirements.

Potential Bidders were permitted to submit questions regarding the terms and conditions of the Bid Solicitation by June 20, 2023. Three hundred fifty-two (352) questions were received. A second electronic question and answer period was provided to address revisions made following the first electronic question and answer period, with questions due by November 15, 2023. During the second question and answer period, an additional forty-nine (49) questions were received. RTZ did not submit any questions during either electronic Question and Answer period.

Bid Solicitation, Section 3.27, *Oral Presentation*, the section at issue here, states:

3.27 ORAL PRESENTATION

At the request of the State, selected Bidders shall present a software demonstration. The Bidder shall include in its Quote the presentation materials it intends to present to the State if selected for the demonstration. The demonstration materials included in the Quote shall include, without limitation, the proposed Solution(s) name and any identifying informational materials (i.e., brochures, infographics, [websites](#)), proposed system customization mock-up images, the slide deck, visual presentation, multimedia files, and all other material(s) the Bidder intends to present or distribute during the demonstration. Where Bidder has a digital version of its presentation materials, the digital version of the files shall be included with the Quote for use during the demonstration uploaded as an attachment to the Quote submitted through NISTART. The demonstration is an opportunity for the Bidder to give a [90-minute](#) visual presentation on the Solution’s capabilities to meet the requirements of the Bid Solicitation. The demonstration will also include an additional 15-minute question and answer period where the Bidder [may be asked](#) to clarify certain aspects of its proposed Solution.

Bidders invited to give a demonstration shall provide a presentation of the following:

15

1. Real-time system walkthrough of the proposed Solution software demonstrating off-the-shelf capability to meet any and/or all essential system requirements; and
2. [Visual mock-up images](#) of any essential system requirements, as listed in the Scope of Work (Section 4) that will require custom programming.

[The State and the Bidder will coordinate if the oral presentation will be virtual or on-site.](#)

Bidders may only present materials and information that [are provided](#) in its Quote. No supplemental information outside of the material submitted with the Quote [shall be presented or provided during the demonstration](#). The State will not consider or score any such supplemental information. A Bidder’s failure to include demonstration materials may affect the Bidder’s technical evaluation score.

During the initial responsive review of a Quote, the Division is charged with ensuring that the Contract is awarded to that responsible Bidder whose Quote, conforming to the Bid Solicitation, is most advantageous to the State of New Jersey, price and other factors considered. Bid Solicitation Section 1.1 *Purpose and Intent*. A responsive Quote is a Quote that is deemed by the Division and/or evaluation committee to have adequately addressed all material provisions of a Bid Solicitation's terms and conditions, specifications, and other requirements. N.J.A.C. 17:12-1.3. A Quote that is not compliant or responsive to the material requirements of the Bid Solicitation shall not be eligible for further consideration for award of a Contract and the bidder offering said Quote shall receive notice of the rejection of its Quote. N.J.A.C. 17:12-2.7(c). Here, the State determined that the Quote submitted by RTZ contained a material deviation from the requirements of the Bid Solicitation rendering the Quote non-responsive.

The question before me is whether the failure of RTZ to provide oral presentation materials with the submission of their Quote was a material deviation rendering the Quote non-responsive or if the failure could have been waived. To be deemed non-responsive, RTZ's Quote would have had to materially deviate from the requirements of the Bid Solicitation such that the State would have no assurances that the Contract would be performed consistent with the requirements of the Bid Solicitation. In determining whether a material deviation exists, it is firmly established in New Jersey that material conditions contained in bidding specifications may not be waived. Twp. of Hillside v. Sternin, 25 N.J. 317, 324 (1957).

In Meadowbrook Carting, supra, 138 N.J. at 315, the New Jersey Supreme Court adopted the test set forth by the court in Twp. of River Vale v. Longo Constr. Co. for determining materiality. 127 N.J. Super. 207 (Law Div. 1974). "In River Vale, Judge Pressler declared that after identifying the existence of a deviation, the issue is whether a specific non-compliance constitutes a substantial [material] and hence non-waivable irregularity." In re Protest of Award of On-Line Games Prod. And Operation Servs. Contract, 279 N.J. Super. 566, 594 (App. Div. 1995), citing River Vale, supra, 127 N.J. at 216. The River Vale court set forth a two-part test for determining whether a deviation is material:

First, whether the effect of a waiver would be to deprive the [government entity] of its assurance that the contract will be entered into, performed and guaranteed according to its specified requirements, and second, whether it is of such a nature that its waiver would adversely affect competitive bidding by placing a bidder in a position of advantage over other bidders or by otherwise undermining the necessary common standard of competition.

[River Vale, supra, 127 N.J. at 216.]

"If the non-compliance is substantial and thus non-waivable, the inquiry is over because the bid is non-conforming and a non-conforming bid is no bid at all." River Vale, supra, 127 N.J. Super. at 222.

The Bid Solicitation makes clear that certain requirements are mandatory and not subject to discretion. Specifically the Bid Solicitation Section 9.0 *Glossary* states:

Must – Denotes that which is a mandatory requirement.

Shall – Denotes that which is a mandatory requirement.

This mandatory language is repeated in Bid Solicitation Section 3.27, *Oral Presentation* which states in pertinent part, "At the request of the State, selected Bidders **shall** present a software demonstration. The Bidder **shall** include in its Quote the presentation materials it intends to present to the State if selected for the demonstration. The demonstration materials **shall** include, without limitation, the proposed Solution(s) name and any identifying informational materials (i.e. brochures, infographics, websites), proposed system

customization mock-up images, the slide deck . . . and all other material(s) the Bidder intends to present or distribute during the demonstration.” Emphasis added.

In its protest, RTZ claims that they “include[ed] the proposed Solution’s name – GetCare” but that they “did not intend to present or distribute other example materials listed . . . as those are not relevant for a system such as GetCare that can meet the Bid Solicitation requirements off-the-shelf”. Within the Bid Solicitation, items listed as “shall” are mandatory requirements. While RTZ may have felt they did not need to provide “the other example materials listed – such as ‘proposed system customization mock-up images’ as those are not relevant for a system such as GetCare”, they are not the arbiters of what is necessary to submit under the Bid Solicitation. All mandatory requirements in the Bid Solicitation must be met for a Quote to be deemed responsive.

RTZ’s argument that “deeming our proposal ‘non-responsive’ was not warranted because although stated in other sections that failure to provide information or documents may render a quote non-responsive, in this section it was not explicitly stated that failure to provide information ‘may result in the rejection of the Quote as non-responsive’”. The Bid Solicitation must be read as a whole document. Pursuant to Bid Solicitation Section 9.0, *Glossary*, it is very clear that items denoted as “must” or “shall” are mandatory requirements. Bid Solicitation Section 3.27 contains the language “The Bidder **shall** include in its Quote the presentation materials it intends to present to the State if selected . . . ” (Emphasis added).

RTZ erroneously points to language at the end of Bid Solicitation Section 3.27 as evidence that the items denoted as shall are not necessary by pointing to the language “A Bidder’s failure to include demonstration materials may affect the Bidder’s technical evaluation score”. What RTZ fails to realize is that this paragraph of Bid Solicitation Section 3.27 relates to Bidders invited to give a demonstration. The full, relevant portion of this part of Bid Solicitation Section 3.27 reads:

The screenshot shows a document page with a black border. At the top, it says "Bidders invited to give a demonstration shall provide a presentation of the following:". Below this is a list of two items: 1. Real-time system walkthrough of the proposed Solution software demonstrating off-the-shelf capability to meet any and/or all essential system requirements; and 2. Visual mock-up images of any essential system requirements, as listed in the Scope of Work (Section 4) that will require custom programming. Below the list is a red line of text: "The State and the Bidder will coordinate if the oral presentation will be virtual or on-site." At the bottom, there is a paragraph: "Bidders may only present materials and information that are provided in its Quote. No supplemental information outside of the material submitted with the Quote shall be presented or provided during the demonstration. The State will not consider or score any such supplemental information. A Bidder's failure to include demonstration materials may affect the Bidder's technical evaluation score."

Bidders invited to give a demonstration shall provide a presentation of the following:

15

1. Real-time system walkthrough of the proposed Solution software demonstrating off-the-shelf capability to meet any and/or all essential system requirements; and
2. Visual mock-up images of any essential system requirements, as listed in the Scope of Work (Section 4) that will require custom programming.

The State and the Bidder will coordinate if the oral presentation will be virtual or on-site.

Bidders may only present materials and information that are provided in its Quote. No supplemental information outside of the material submitted with the Quote shall be presented or provided during the demonstration. The State will not consider or score any such supplemental information. A Bidder's failure to include demonstration materials may affect the Bidder's technical evaluation score.

Clearly stated, a bidder invited to provide an oral presentation can only “present materials and information that are provided in its Quote. No supplemental information outside of the material submitted with the Quote shall be presented or provided during the demonstration.” This paragraph does not contemplate a bidder who submitted none of the required information listed in Bid Solicitation Section 3.27. It limits those who provided required information from bringing additional information to the oral presentation that the Evaluation Committee did not have a chance to review in the full context of that bidder’s Quote. The warning of “A Bidder’s failure to include demonstration materials may affect the Bidder’s technical evaluation score” is to inform bidders that they should provide all information with their

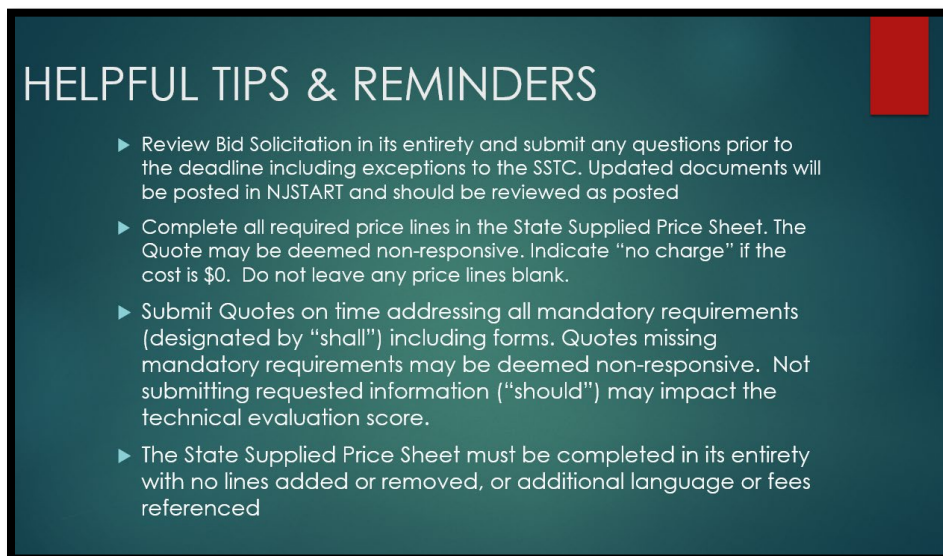
Quote that they would use during the oral presentation if they are selected. This is in contrast to RTZ's argument that failing to provide any information (other than the solution name) could merely affect their technical score, where in fact, it renders their Quote non-responsive.

Although the State has broad discretion to select among qualified and responsive Bidders in public contracting matters, the discretion afforded to the Director, "is not limitless." See, In re Request for Proposals #17DPP00144, 454 N.J. Super. 527, 559 (App Div. 2018). "In line with the policy goal of thwarting favoritism, improvidence, extravagance, and corruption, the Division may not award a contract to a bidder whose proposal deviates materially from the [RFQ's] requirements." Ibid., quoting, Barrick v. State, 218 N.J. 247, 258-59 (2014)). For that reason, the Division's governing regulations mandate stringent enforcement to maintain the equal footing of all Bidders and to ensure the integrity of the State's bidding process. Notably, "a proposal that is not...responsive to the material requirements of the [RFQ] shall not be eligible for further consideration for award of contract, and the bidder offering said proposal shall receive notice of the rejection of its proposal." N.J.A.C. 17:12-2.7(c).

As part of the Bid Solicitation process the Division conducted an Optional Pre-Quote Conference pursuant to Bid Solicitation Section 2.5. The purpose and intent of the Pre-Quote Conference is set forth in that section:

The purpose of the Optional Pre-Quote Conference is to address procedural questions regarding the Bid Solicitation and Bidder Quote Submission Requirements only. No substantive questions regarding the Bid Solicitation Scope of Work will be accepted or answered during the pre-Quote conference. All questions are to be submitted during the Electronic Question and Answer Period.

As part of this Pre-Quote Conference, and because the Division has been presented with the issue of Quotes failing to include all required information, as well as the insertion of conflicting terms, multiple times in the past, and the following information is specifically included in the standard Pre-Quote Conference presentation:



HELPFUL TIPS & REMINDERS

- ▶ Review Bid Solicitation in its entirety and submit any questions prior to the deadline including exceptions to the SSTC. Updated documents will be posted in NJSTART and should be reviewed as posted
- ▶ Complete all required price lines in the State Supplied Price Sheet. The Quote may be deemed non-responsive. Indicate "no charge" if the cost is \$0. Do not leave any price lines blank.
- ▶ Submit Quotes on time addressing all mandatory requirements (designated by "shall") including forms. Quotes missing mandatory requirements may be deemed non-responsive. Not submitting requested information ("should") may impact the technical evaluation score.
- ▶ The State Supplied Price Sheet must be completed in its entirety with no lines added or removed, or additional language or fees referenced

[Pre-Quote Conference – Slide Deck page #6]

The Division expressly advises and warns Bidders to include all of the mandatory requirements under the Bid Solicitation, including forms. The Division includes this language knowing how the courts have addressed this issue in the past and to help Bidder's avoid repeating the same mistakes.

Despite the clear language provided as guidance in the Pre-Quote Conference Slide Deck, and included in the Bid Solicitation, RTZ failed to include mandatory information in its Quote. RTZ's Quote contained a non-waivable deviation rendering the Quote non-responsive as the State would not be ensured that the contract would be performed as required by the Bid Solicitation's requirements. River Vale, *supra*, 127 N.J. Super. at 222. Moreover, as shown above, the Bid Solicitation's requirements were competitive because the majority of bidders were able to satisfy the majority of requirements, but then failed to provide some mandatory piece of information or added conflicting terms despite clear guidance on how to complete the bidding process.

N.J.S.A. 52:34-12a(g) grants the Division discretion to make an award

with reasonable promptness, after negotiation with bidders where authorized, by written or electronic notice to that responsible bidder whose bid, **conforming to the invitation for bids**, will be most advantageous to the State, price and other factors considered[.]

[Emphasis added.]

Similar language is found in N.J.A.C. 17:12-2.7(c), which states that a

proposal that is not compliant with the provisions of N.J.A.C. 17:12-2.2 or **responsive to the material requirements of the RFP shall not be eligible for further consideration for award of contract**, and the bidder offering said proposal shall receive notice of the rejection of its proposal.

[Emphasis added.]

As RTZ correctly stated in its protest, the State must follow its procurement laws, and those laws include "Requiring adherence to material specifications maintains a level playing field for all bidders competing for a public contract." Barrick v. State, 218 N.J. 247, 259 (2014). RTZ's failure to provide mandatory information is a material deviation which cannot be waived. Waiving RTZ's omissions of mandatory information would adversely affect competitive bidding by placing RTZ in a position of advantage over other bidders, who submitted Quotes with the mandatory documents and information with their Quotes in conformance with the requirements of the Bid Solicitation. Accordingly, the State correctly determined that the Quote submitted by RTZ was nonresponsive because it failed to include the required documents which directly conflicted with the terms and conditions of the Bid Solicitation.

Based upon the findings set forth above, I find no reason to disturb the determination that the Quote submitted by RTZ was non-responsive to the requirements of the Bid Solicitation. Accordingly, I sustain the July 2, 2024, Notice of Intent to Award. This is my 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. Please monitor the Division's [NJSTART](#) website for future bidding opportunities for these services.

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.

Sincerely,

A handwritten signature in cursive script that reads "Cory K. Kestner".

Cory K. Kestner
Acting Chief Hearing Officer

CKK:CMD

c: M. Dunn
B. Cegerenko