



## State of New Jersey

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

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June 11, 2024

*Via Electronic Mail only wtrowsdale@tompkinsmcguire.com*

William H. Trowsdale, Esq.  
Tompkins, McGuire, Wachenfeld & Barry, LLP  
3 Becker Farm Road  
Suite 402  
Roseland, NJ 07065-1726

Re: I/M/O Bid Solicitation #24DPP00927 – Cambium Assessment, Inc.  
Protest of Bid Rejection and Cancellation of Solicitation  
T3149 – New Jersey Next Generation Assessments in English Language Arts and Mathematics (NJSLA-ELA; NJSLA-M) and New Jersey Graduation Proficiency Assessment (NJGPA)

Dear Mr. Trowsdale:

This final agency decision is in response to your correspondence dated June 5, 2024, submitted on behalf of Cambium Assessment, Inc. (“Cambium”), received by the Division of Purchase and Property’s (Division) Hearing Unit on June 5, 2024 (“Protest”). In that correspondence Cambium protests the Procurement Bureau’s (“Bureau”) rejection of Cambium’s bid and the cancellation of the Bid Solicitation #24DPP00927, Title T3149 New Jersey Next Generation Assessments in English Language Arts and Mathematics (NJSLA-ELA; NJSLA-M) and New Jersey Graduation Proficiency Assessment (NJGPA) (“Bid Solicitation”). The record of this procurement reveals that the Quote submitted by Cambium was deemed non-responsive for having failed to complete fields on the State-Supplied Price Sheet, as required by Bid Solicitation Section 3.26, *State-Supplied Price Sheet Instructions*. The record further reveals that the Quote submitted by Cambium was deemed non-responsive as it did not bid on numerous items required in Section 4.2, *Essential Requirements*, of the Bid Solicitation.

By way of background, on December 7, 2023, the Bureau issued the Bid Solicitation on behalf of the Department of Education (“DOE”). Bid Solicitation Section 1.1, *Purpose and Intent*. The purpose of the Bid Solicitation was to solicit Quotes to engage a Contractor to develop and implement New Jersey’s Student Learning Assessments for English Language Arts and Mathematics (NJSLA-ELA/M) and the New Jersey Graduation Proficiency Assessment (NJGPA).

It is the intent of the State to award Contracts to those responsible Bidders whose Quotes, conforming to this Bid Solicitation are most advantageous to the State of New Jersey (“State”), price and other factors considered. The State may award any or all price lines. Ibid.

In accordance with Bid Solicitation Section 2.1 *Electronic Questions and Answer Period*, potential Bidders were permitted to submit questions regarding the Bid Solicitation by December 21, 2023. On

January 18, 2024, the Bureau posted Bid Amendment #1 to update the Quote opening date while reviewing the questions posed. On January 26, 2024, the Bureau posted Bid Amendment #2 to update the Quote opening date while continuing to review the questions posed. On February 2, 2024, the Bureau posted Bid Amendment #3 to update the Quote opening date while continuing to review the questions posed. On February 9, 2024 the Bureau posted Bid Amendment #4 with the answers to questions posed. No questions were submitted requesting instructions or clarification on completing the State-Supplied Price Sheet.

On February 23, 2024, the Division's Proposal Review Unit opened two (2) Quotes which were received by the submission deadline of 2:00 p.m. Eastern Time. After conducting an initial review of the Quotes received for compliance with mandatory Quote submission requirements, the two Quotes were forwarded to the Bureau for evaluation.

In conducting the review of the Quotes, the Bureau determined that Cambium's submitted Quote was non-responsive as further explained in the Recommendation Report as shown below:

Per Bid Solicitation Section 3.26, *State-Supplied Price Sheet Instructions*, the Bidder shall submit a Unit Price for EVERY price line for Year 1 pricing to Year 7 pricing as well as a Unit Price for EVERY price line for Option Year 1 pricing through Option Year 3 pricing. However, on Cambrium's Price Sheet, multiple price lines were listed as "no bid" as follows:

1. Price Lines 4 to 10 for various meetings: Cambrium stated their ClearSight item bank meets the Bid Solicitation's item bank requirements without requiring custom development of NJ-owned items. As such, they would not be conducting these meetings.
2. Price Line 27 for Fall Sampled Field Test: Cambrium stated that they would utilize their ClearSight item bank, and as such, would not be conducting this Fall Sampled Field Test.
3. Price Line 40 for Constructed Response Item (CRI) Scoring – Human-Hand Scoring: Cambrium proposed hybrid automated/handscored for CRIs.
4. Price Line 41 for Constructed Response Item (CRI) Scoring – Machine-Scoring: Cambrium proposed hybrid automated/handscored for CRIs.
5. Price Line 52 for Benchmark Assessment Program – Per NJ Requirements: As stated in previous price lines, Cambrium would utilize their ClearSight item bank and would not be requiring NJ-owned items. They believe ClearSight meets the State's requirements, and as such, no price was provided.

Bid Solicitation Section 3.26, *State-Supplied Price Sheet Instructions*, states:

#### Part A Pricing Instructions

The Bidder must submit its pricing using the State-Supplied Price Sheet accompanying this Bid Solicitation and located on the "Attachments" Tab. The Bidder shall:

- A. Submit a Unit Price for **EVERY** price line for Year 1 pricing to Year 7 pricing;
- B. Submit a Unit Price for **EVERY** price line for Option Year 1 pricing through Option Year 3 pricing;
- C. Submit Unit Pricing as follows:
  1. For the Year 1 Pricing tab:
    - i. Price lines 1-20: per **EACH** meeting;
    - ii. Price line 21: per **EACH** task;
    - iii. Price lines 22-36, 38, 40-44, and 46-48 for the **ENTIRE** task. **Note:** The quantity for these price lines is one (1);
    - iv. Price lines 37 and 39; Per **EACH** delivery;
    - v. Price line 45; Cost per **EACH** study for additional studies; and
    - vi. Price lines 49-53; Per **EACH** month; and
  2. For all other tabs:
    - i. Price lines 1-20; Per **EACH** meeting;

- ii. Price line 21: per **EACH** task;
- iii. Price lines 22-34, 36, 38-42, and 44-46 for the **ENTIRE** task. **Note:** The quantity for these price lines is one (1);
- iv. Price lines 35 and 37; Per **EACH** delivery;
- v. Price line 43; Cost per **EACH** study for additional studies; and
- vi. Price lines 47-51; Per **EACH** month;

[Emphasis in the original.]

Contrary to the instructions in Bid Selection Section 3.26, Cambium entered “No Bid” in Price Lines 4 to 10, Price Line 27, Price Line 40, Price Line 41, and Price Line 52 (see highlighted portion of the Recommendation Report above). Additionally, the price lines listed correlate to items under Section 4.2 titled “*ESSENTIAL REQUIREMENTS*” (emphasis in the original), and therefore Cambium was required to bid on all price lines.

The remaining Quote was then reviewed for responsiveness to the Bid Solicitation’s requirements. After completing its review, the Bureau prepared a Recommendation Report dated April 16, 2024, that recommended that no contracts be awarded as both Bidders’ Quotes were non-responsive, and that the procurement be canceled as both Quotes received are ineligible for further award consideration. “The Department of Education and the [Bureau] are currently exploring alternative contracting vehicles and options for the procurement of the subject services.”

With respect to Cambium’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). In consideration of Cambium’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.

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).

When evaluating a Quote received, if a deviation is found, the question is whether the deviation is material. It is firmly established in New Jersey that material deviations may not be waived. Twp. of Hillside v. Sternin, 25 N.J. 317, 324 (1957). In Meadowbrook Carting Co., 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, the court 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, 127 N.J. Super. 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. Super. 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.” On-Line Games, *supra*, 279 N.J. Super. at 595 (citing 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 multiple times in Bid Solicitation Section 4.2, *Essential Requirements*:

4.2.2 The Contractor **shall** plan to conduct a sampled field test in the fall of 2024.

4.6 The Contractor **shall** provide all applicable resources, including, at the minimum, personnel and software to facilitate the development of test items for operational assessment forms.

4.7.2 The Contractor **shall** develop and be able to routinely deliver the New Jersey Assessment Program in a paper-and-pencil administration mode for those schools identified.

4.7.3.1 The Contractor **shall** comply with the following material/procedure development schedule

4.9.3 The Contractor **shall** meet the following requirements for item writer training meetings:

4.9.4 The Contractor **shall** meet the following requirements for field test item review meetings:

4.9.5 The Contractor **shall** meet the following requirements for English language arts passage review meetings:

4.9.6 The Contractor **shall** meet the following requirements for Range Finding meetings (Operational Items):

6.9.7 The Contractor **shall** meet the following requirements for Range Finding Meetings (Field Test Items);

4.9.8 The Contractor **shall** meet the following requirements for sensitivity and bias review meetings held by the Sensitivity Committee;

4.9.9 The Contractor **shall** meet the following requirements for statistical item review meetings:

4.15.1 The Contractor **shall** propose an assessment design that addresses the following characteristics and functionality . . . **shall** fully address the content standards approved by the NJ State Board of Education;

[Emphasis added.]

If after reviewing the Bid Solicitation a Vendor has any questions or seeks additional information, Bid Solicitation Section 2.1 provides for an *Electronic Question and Answer Period* during which “the Division will electronically accept questions and inquiries from all potential Bidders.” As indicated above, no questions were received related to the State-Supplied Price Sheet.

The combination of the clear bid language in Section 3.26 that the “Bidder shall A. Submit a Unit Price for EVERY price line for Year 1 pricing to Year 7 pricing; B. Submit a Unit Price for EVERY price line for Option Year 1 pricing through Option Year 3 pricing”. The “Essential Requirements” of the project as set forth in Section 4.2 (none of which were optional), the mandatory definitions in the Glossary, and the failure to seek clarification on the submission of pricing, make clear that the every item in the price sheet was a required component of the Bid Solicitation and the State-Supplied Price Sheet. By failing to submit pricing for all lines for all years on the State-Supplied Price Sheet, or providing a clarifying statement with the Quote that the cost for a Price Line was included in another price line, Cambium’s Quote contained a non-waivable deviation rendering the Quote non-responsive. Twp. of River Vale v. Longo Constr. Co., 127 N.J. Super. 207, 222 (Law Div. 1974).

Cambium provided a Price Proposal Narrative (“Narrative”) which proposed that Cambium’s ClearSight item bank would meet all requirements, and as a result, meetings such as those **required** in the following Bid Solicitation Sections: 4.9.3 *Item Writer Training Meeting*, 4.9.4 *Field Test Item Review Meetings*, 4.9.5 *English Language Arts Passage Review Meeting*, 4.9.6 *Range Finding Meetings (Operational Items)*, 4.9.7 *Range Finding Meetings (Field Test Items)*, 4.9.8 *Sensitivity and Bias Review Meetings* and finally 4.9.9 *Statistical Item (Data) Review Meetings* did not need to happen. As these meetings were all included under Section 4.2, *Essential Requirements*, a Quote that did not include these Price Line items would be deemed non-responsive. Additionally, the Narrative decreed that Cambium’s “ClearSight item bank has the depth and breadth of coverage to not require a sampled field test in fall 2024.” As this was an essential element as listed in Section 4.2.2 *Assessment Standards*, Cambium’s failure to bid on it based on their assumption that it was not necessary would also render their Quote non-responsive as this was a mandatory Price Line. Similar to the analysis above, by affirmatively rejecting to engage in the above required activities, in addition to failing to provide pricing for each, Cambium’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.

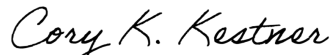
In light of the findings set forth above, I sustain the conclusions in the Bureau’s April 21, 2024, Recommendation Report, that Cambium’s Quote was non-responsive and uphold the Bureau’s decision to

cancel the procurement. This is an unfortunate situation for the State, as the Division encourages competition and appreciates the time and effort put forth in preparing and submitting the Quote.

Thank you for your company's continuing interest in doing business, 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.

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 black ink that reads "Cory K. Kestner". The signature is written in a cursive style with a large, stylized 'C' and 'K'.

Cory K. Kestner  
Chief Hearing Officer

c: R. Regan  
M. Maguire  
B. Tran