



State of New Jersey

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

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October 24, 2024

Via Electronic Mail mroberts@riker.com

Mary Kay Roberts, Esq.
Riker Danzig
1 Speedwell Ave
Headquarters Plaza
Morristown, NJ 07962

Re: I/M/O Bid Solicitation #23DPP00908 GalenusRx
Protest of Notice of Cancellation
T3147 – Risk Reduction Model, DMAHS

Dear Ms. Roberts:

This final agency decision is in response to your protest letter dated October 16, 2024, on behalf of GalenusRx which was received by the Division of Purchase and Property's ("Division") Hearing Unit via electronic protest portal on October 22, 2024 ("Protest"). In that email, GalenusRx protests the Notice of Cancellation ("NOC") letter, dated October 1, 2024, issued by the Division's Procurement Bureau ("Bureau") for Bid Solicitation No. 23DPP00908 – T3147 Risk Reduction Model, DMAHS ("Bid Solicitation"). Specifically, GalenusRx alleges that the State's decision to cancel the Bid Solicitation is "arbitrary, unreasonable and capricious and contrary to the public interest". Protest, page 1. GalenusRx further argues that their bid was compliant, the Division's decision that GalenusRx pricing was unreasonable is not supported and finally that "the Division acted arbitrarily and erroneously in refusing to negotiate with GalenusRx regarding the contract rather than cancel this procurement." Protest, page 1. By way of remedy, GalenusRx requests that the Division reverse its decision to cancel the procurement or alternatively negotiate the contract with GalenusRx.

By way of background, on March 15, 2024, the Bureau issued the Bid Solicitation on behalf of the Department of Human Services ("DHS"), Division of Medical Assistance and Health Services ("DMAHS"). Bid Solicitation Section 1, *Introduction and Summary of the Bid Solicitation*. The purpose of the Bid Solicitation was to "solicit Quotes for a Contractor to develop and maintain a Risk Reduction Program to prescription drug services provided under the New Jersey FamilyCare Medicaid program pursuant to P.L. 1968, c.413 (C.30:4D-1 et seq.), for the purpose of identifying and reducing simultaneous, multi-drug medication-related risk and adverse drug events, enhancing compliance and quality of care, and improving health-related outcomes while reducing total cost of care in a measurable and reportable manner." Bid Solicitation Section 1.1, *Purpose and Intent*.

In accordance with the Bid Solicitation instructions, potential Bidders were permitted to submit questions to the Bureau, through the Division's *NJSTART* eProcurement system, by 2:00 pm eastern time on April 5, 2024. Bid Solicitation Section 2.1, *Electronic Question and Answer Period*. Through the posting of Bid Amendment #3 on May 13, 2024, the Bureau answered the six (6) questions received by Bidders.

On May 24, 2024, the Division's Proposal Review Unit opened one Quote that was received by the submission deadline of 2:00 pm eastern time. After conducting an administrative review of the single Quote received, the Division's Proposal Review Unit released the Quote submitted by GalenusRx to the Bureau for further review and evaluation consistent with the requirements of Bid Solicitation Section 8.9, *Evaluation Criteria*.

The responsive Quote was sent to the Procurement Specialist to review. The Quote pricing was then supplied to the Bureau's Financial Analyst in accordance with Bid Solicitation Section 8.9.2, *Price Evaluation*, to be evaluated for reasonableness.

Upon further evaluation, and as noted in the Bureau's Recommendation Report dated September 20, 2024 ("Recommendation Report"), it was determined that the pricing provided by GalenusRx "exceeded what would appear reasonable". Recommendation Report, page 2. This was determined after the Financial Analyst provided the Bureau the pricing analysis on July 5, 2024, and the Bureau thereafter notified DHS of the Financial Analyst's evaluation. By September 11, 2024, email, DHS informed the Bureau of its request to cancel the Bid Solicitation because the pricing submitted by GalenusRx was unreasonable and far exceeds the amount that the Division is willing to expend for the services requested.

On October 1, 2024, the Bureau issued the NOC advising that the Bid Solicitation would be cancelled. As indicated in the Recommendation Report, DMAHS reviewed GalenusRx's Quote pricing and determined it was "unreasonable and significantly exceeds the amount that DMAHS is willing and able to expend for the services requested". Recommendation Report, page 2. On September 11, 2024, DMAHS formally requested cancellation of the subject Bid Solicitation via email.

In response to the NOC, on October 22, 2024, GalenusRx submitted a letter of protest dated October 16, 2024, to the Division's Hearing Unit challenging the Bid Solicitation cancellation by stating in part:

We are in receipt of the Cancellation Letter and Recommendation Report from the Division of Purchase and Property (the "Division") for T3147 Risk Reduction Model, DMAHS dated October 1 and September 20, 2024, respectively. As set forth in the Cancellation Letter, GalenusRx hereby protests the Division's decision to cancel this procurement in accordance with the Division's administrative regulations, N.J.A.C. 17:12-3.3.

GalenusRx further states in its Protest that the Division's decision to cancel the Bid Solicitation, in spite of GalenusRx fully compliant quote was "arbitrary, unreasonable and capricious and contrary to the public interest". Protest, page 1. GalenusRx claims that their "proposed pricing was reasonable based on industry and market pricing and GalenusRx's substantial experience in successfully providing a similar scope of services in connection with other contracts." Protest, page 1. GalenusRx states that the four (4) line items referred to in the Recommendation Report "represent a small portion of the comprehensive program scope and budget that is designed to save the State over \$80 million per year". Protest, page 1. Finally, GalenusRx states that "the Division acted arbitrarily and erroneously in refusing to negotiate with GalenusRx regarding the contract rather than cancel this procurement." Protest, page 1.

Although GalenusRx requested an in-person presentation as permitted by N.J.A.C. 17:12-3.3(e), it should be noted that "[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 Bureau’s Recommendation Report, advisory communications, the relevant statutes, regulations, case law, and the protest submitted by GalenusRx. 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 GalenusRx on the written record, as such an in-person hearing is not warranted. I set forth herein the Division’s Final Agency Decision.

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), emphasis added. 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).

The Appellate Division has held that “where the contracting authority has rejected all bids after opening and publicizing them... and each bidder’s competitive position has been exposed, rejection of all bids should only occur for cogent or compelling reasons.” In re Failure to Award to the Lowest Responsible Bidder RFP 09-X-20513 Contract T0002 for Provision of Bottled Water Servs., 2010 N.J. Super. Unpub. LEXIS 1641, *7 (App. Div. July 2, 2010) (quoting Bodies by Lembo, Inc. v. County of Middlesex, 286 N.J. Super. 298, 309 (App. Div. 1996) (relying on the local public contracts law N.J.S.A. 40A:11-1 *et seq.*, which does not explicitly contain the authority to cancel an RFP); See also PENPAC, Inc. v. Morris Cty. Mun. Utilities Auth., 299 N.J. Super. 288, 296 (App. Div. 1997), *certif. denied*, 150 N.J. 28 (1997) (stating that “[t]he decision to reject all bids must not be ‘arbitrary or capricious and it must be free from fraud, collusion and bad faith.’”). Here, the Bureau recommended, and I concur, that it is in the public interest to cancel the Bid Solicitation. As discussed in the Recommendation Report, NOC, and below, this decision was based on both cogent and compelling reasons.

GalenusRx argues that the Bureau’s focus on four (4) price lines and deeming those to “exceed what would appear reasonable” fails to provide any “analyses to support the Division’s conclusion that GalenusRx’s proposed pricing is unreasonable.” Protest, page 1. Further, GalenusRx states that the four (4) line items referenced in the Recommendation Report “represent a small portion of the comprehensible program scope and budget that is designed to save the State over \$80 million per year.” Protest, page 1.

The State-Supplied Price Sheet consisted of fifteen (15) Price Lines in total. Price Lines 2-7 specify deliverables required from the Contractor. Price Lines 8-15 provide pricing for “All-Inclusive Hourly Rates for Additional Work/Special Projects” State-Supplied Price Sheet, tab 2. In the Recommendation Report, the Division’s Financial Analyst performed an analysis of the labor rates for Price Lines 2, 3, 6 and 7 and found the following:

- o Price Line 2 – Initial Assessment – requires 30 days to complete, if every title listed had one (1) person working the entire 30 days, and we allowed for two (2) Quality Staff, and two (2) Accountants; the estimated cost would be \$113,000 vs. the bid cost of \$300,000.
- o Price Line 3 – Weekly Reports – calculating a full day's labor for all titles, with two (2) days from Quality Staff and Accountants, the estimated cost is \$230,000 vs. the bid cost of \$500,000.
- o Price Line 6 – Annual Quantified Interventions Performed – the cost of \$150,000 for a compilation of weekly reports is financially unfeasible.
- o Price Line 7 – Ad hoc Annual Total Cost of Care – the cost of \$150,000 does not match the effort of work required by the Scope of Work.

[Recommendation Report, page 2.]

The Recommendation Report further states that “The Quote’s pricing was then reviewed by DMAHS, and it was determined that the pricing from the sole Bidder is unreasonable and significantly exceeds the amount that DMAHS is willing and able to expend for the services requested”. Recommendation Report, page 2.

DMAHS submitted an e-mail to the Bureau on September 11, 2024 formally requesting cancellation of the T3147 Bid Solicitation because this function is already provided by a third-party vendor with respect to FFS members and the MCO’s perform internal reviews of their own claims. Additionally, DMAHS stated in an email on September 12, 2024, “that the pricing from the sole bidder is unreasonable and far exceeds the amount that the Division [DHS] is willing to expend for the services requested. As such the pricing submitted from the bidder is unacceptable.”

As indicated above, a budget and Scope of Work were developed prior to the advertisement of the Bid Solicitation. As noted in the Recommendation Report, DMAHS “intends to restructure its pricing format and pursue a waiver of advertising contract for these services”. Recommendation Report, page 2. At the time that the proposed budget and scope of work was developed, the Bid Solicitation advertised and the proposals received, DMAHS could not have anticipated the substantial difference between the proposed budget and the amounts for deliverables in GalenusRx’s Quote.

As detailed above, GalenusRx’s costs set forth in the State-Supplied Price Sheet for the project far exceeds the State’s budget for the proposed services. As such, I find that the excessive submitted total cost for the project alone constitutes cogent and compelling reasons to cancel this Bid Solicitation.

Pursuant to the State’s Standard Terms and Conditions attachment (“SSTC”), referenced in Bid Solicitation section 1.4, *Order of Precedence of Contractual Terms*, and by reference made a part thereof, Section 6.6, *Availability of Funds* states:

The State’s obligation to make payment under this contract is contingent upon the availability of appropriated funds and receipt of revenues from which payment for contract purposes can be made. No legal liability on the part of the State for payment of any money shall arise unless and until funds are appropriated each fiscal year to the using agency by the State Legislature and made available through receipt of revenue.

If DMHAS does not have sufficient funds allocated as part of the State’s annual budget process to pay the fees listed in GalenusRx’s Quote, that would constitute additional cogent and compelling reasons to cancel this Bid Solicitation.

Finally, GalenusRx claims that “the Division acted arbitrarily and erroneously in refusing to negotiate with GalenusRx regarding the contract rather than cancel this procurement.” Protest, page 1. Pursuant to Bid Solicitation Section 8.11, *Negotiation*, a bidder would need to be in the “competitive range” for the Bureau to enter negotiations with a bidder. Here, GalenusRx Quote was found to “exceed what

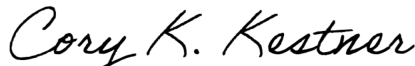
would appear reasonable” based on the Financial Analyst analyses on the labor rates for the deliverables in Price Lines 2, 3, 6 and 7. Recommendation Report, page 2. Additionally, Bid Solicitation Section 8.11, *Negotiation*, states that “[n]egotiations will be conducted only in those circumstances where it is deemed by the Director to be in the State’s best interests and to maximize the State’s ability to get the best value”. In this case, as evidenced by the decision to cancel the Bid Solicitation, and memorialized in the Recommendation Report, the Director relied upon the Financial Analyst’s evaluation as well as DHS’ decision to cancel because the provided pricing exceeded the budget allocated by DHS and determined that canceling was in the best interest of the State versus engaging in negotiations as an option under the Bid Solicitation.

Based upon the foregoing, I find no reason to disturb the Bureau’s recommendation that the subject Bid Solicitation be cancelled. Accordingly, I sustain the October 1, 2024, letter which cancelled the subject Bid Solicitation. As indicated in the Recommendation Report, the Division does not intend to issue a reprourement for these services because DMAHS intends to restructure its pricing format and pursue a waiver of advertising contract 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.

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. 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 my final agency decision on this matter.

Sincerely,



Cory K. Kestner
Acting Chief Hearing Officer

CKK\CMD

c. R. Regan
W. Higgins
J. Rodriguez

