



State of New Jersey

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

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May 23, 2025

Via Electronic Mail Only to maeve.cannon@stevenslee.com

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Re: I/M/O Bid Solicitation #23DPP00796 Pioneer Credit Recovery Inc.
Protest of Notice of Intent to Award
T1426 – Administration of Deficient and Delinquent Tax Accounts

Dear Ms. Cannon:

This final agency decision is in response to your letter on behalf of Pioneer Credit Recovery Inc. (Pioneer Credit) received by the Division of Purchase and Property's (Division) Hearing Unit on September 20, 2024 (Protest). In its letter, Pioneer Credit protests the Division's Procurement Bureau's (Bureau) September 6, 2024, Notice of Intent to Award letter (NOI) issued for Bid Solicitation #23DPP00796 – Administration of Deficient and Delinquent Tax Accounts (Bid Solicitation), which identified Coast Professional, Inc. (Coast Professional) as the intended awardee.

By way of background, on August 9, 2023, the Bureau issued the Bid Solicitation on behalf of the Department of the Treasury, Division of Taxation (Taxation). The purpose of the Bid Solicitation was to solicit Quotes for a Contractor to perform administration, resolution and collection of deficient and delinquent taxes. Bid Solicitation Sec. 1.1, *Purpose and Intent*.

As noted in Bid Solicitation Section 1.2, *Background*, Taxation is tasked with the responsibility of administering and collecting most State taxes. Although most individual and business taxpayers voluntarily comply with their filing and payment tax obligations, a percentage of taxpayers may not fully or timely file and pay. Despite multiple billing and outreach notices, and collection and enforcement programs operated by Taxation, some accounts do not resolve due to purposeful evasion strategies employed by some taxpayers, the unawareness of taxpayers that tax obligations have been incurred or changed financial circumstances requiring payment arrangements.

An Optional Pre-Quote Conference was held on August 24, 2023, providing all potential Bidders with an overview of the Bid Solicitation and Quote submission procedures and requirements. Representatives from eight (8) potential bidding entities attended (including Pioneer Credit and Coast Professional). Bid Solicitation Section 2.5, *Optional Pre-Quote Conference*.

Bidders were permitted to submit questions regarding the Bid Solicitation and the Standard Terms and Conditions, until 2:00 P.M. Eastern Time on September 7, 2023. Bid Solicitation Section 2.1, *Electronic Question and Answer Period*. One hundred five questions were received from potential bidders. ON February 1, 2024, the Bureau posted Bid Amendment #5 which provided revisions to the Bid Solicitation and responses to questions received.

On February 21, 2024, the Division's Proposal Review Unit opened the two (2) Quotes received by the Quote submission deadline. The two (2) 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 Pioneer Credit and Coast Professional met, and complied with the mandatory requirements of the Bid Solicitation, and both Quotes were sent to the Evaluation Committee. The Evaluation Committee was composed of four (4) voting members and two (2) non-voting members. Evaluation Committee Report at p. 6. The Evaluation Committee was responsible for performing the technical evaluation of the responsive Quotes received, based upon the evaluation criteria set forth in Bid Solicitation Section 8.9.1, *Technical Evaluation Criteria*, which stated:

The following criteria will be used to evaluate and score Quotes received in response to this Bid Solicitation. Each criterion will be scored, and each score multiplied by a predetermined weight to develop the Technical Evaluation Score:

- A. Personnel: The qualifications and experience of the Bidder's management, supervisory, and key personnel assigned to the Contract, including the candidates recommended for each of the positions/roles required;
- B. Experience of firm: The Bidder's documented experience in successfully completing contracts 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 Bidder's demonstration in the Quote that the Bidder understands the requirements of the Scope of Work and presents an approach that would permit successful performance of the technical requirements of the Contract.

Prior to the public advertisement of the Bid Solicitation, representatives from Taxation and the Bureau assigned relative weights for the three (3) Evaluation Criteria and the Price Sheet Consumption Model. The assigned weights as indicated on the timestamped Evaluation Criteria Sheet, as well as the Price Sheet Consumption Model shown below:

QUOTE SCORE SHEET

BID SOLICITATION TITLE:	T1426 - Administration of Delinquent and Delinquent Tax Accounts
BID SOLICITATION NO.:	23DPP00796
VENDOR (BIDDER) NAME:	
DATE SCORED:	

SCORING LEGEND
9 - 10 Excellent
7 - 8 Very Good
5 - 6 Good
3 - 4 Fair
1 - 2 Poor

EVALUATION CRITERIA		SCORE	WEIGHT	SUBTOTAL
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;		25	
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		30	
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.		45	
TOTAL SCORE			100	

NOTE: Each score must be a whole number, decimals and fractions are not permitted
SCORE x WEIGHT = SUBTOTAL

EVALUATOR PRINTED NAME:	
EVALUATOR SIGNATURE:	

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Price Sheet Consumption Model									
Bid Solicitation #23DPP00796- T1426 - Administration of Delinquent and Delinquent Tax Accounts									
Price Line	Description	Weight	Unit of Measurement	Contract Year 1	Contract Year 2	Contract Year 3	Contract Year 4	Contract Year 5	Total Projected Fees
Collection Rate (Bid Solicitation Section 4.3.3)									
1	Contractor Fee Eligible Revenue Collected \$1.00 and above	100.0%	Collection Percentage is	0.00%	0.00%	0.00%	0.00%	0.00%	\$ -
100.0%									
Price Line	Description	Estimated Hourly Rate per Year	Unit of Measurement	Contract Year 1	Contract Year 2	Contract Year 3	Contract Year 4	Contract Year 5	Total Project Labor
All-Inclusive Hourly Rate for Call Center/Customer Service Outsourcing Jobs (Bid Solicitation Section 4.4.8.2)									
2	All-Inclusive Hourly Rate for a Senior Manager/Project Manager as reference in Bid Solicitation Section 4.4.8.2, Bullet A	2032	Hour	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$ -
3	All-Inclusive Hourly Rate for a Supervisor as reference in Bid Solicitation Section 4.4.8.2, Bullet B	2032	Hour	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$ -
4	All-Inclusive Hourly Rate for an Assistant Supervisor as reference in Bid Solicitation Section 4.4.8.2, Bullet C	2032	Hour	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$ -
5	All-Inclusive Hourly Rate for a Representative as reference in Bid Solicitation Section 4.4.8.2, Bullet D	2032	Hour	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$ -
6	All-Inclusive Hourly Rate for Clerical Support as reference in Bid Solicitation Section 4.4.8.2, Bullet E	2032	Hour	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$ -
7	All-Inclusive Hourly Rate for a Trainer as reference in Bid Solicitation Section 4.4.8.2, Bullet F	360	Hour	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$ -
All-Inclusive Hourly Rate for Extended Operational Hours for Support Services and Assistance (Bid Solicitation Section 4.5.1.2)									
8	All-Inclusive Hourly Rate for a Senior Manager/Project Manager Extended Operational Hours for Support Services and Assistance as reference in Bid Solicitation Section 4.5.1.2	280	Hour	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$ -
9	All-Inclusive Hourly Rate for a Supervisor Extended Operational Hours for Support Services and Assistance as reference in Bid Solicitation Section 4.5.1.2	280	Hour	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$ -
10	All-Inclusive Hourly Rate for an Assistant Supervisor Extended Operational Hours for Support Services and Assistance as reference in Bid Solicitation Section 4.5.1.2	280	Hour	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$ -
11	All-Inclusive Hourly Rate for a Representative Extended Operational Hours for Support Services and Assistance as reference in Bid Solicitation Section 4.5.1.2	280	Hour	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$ -
12	All-Inclusive Hourly Rate for Clerical Support Extended Operational Hours for Support Services and Assistance as reference in Bid Solicitation Section 4.5.1.2	560	Hour	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$ -
13	All-Inclusive Hourly Rate for a Trainer Extended Operational Hours for Support Services and Assistance as reference in Bid Solicitation Section 4.5.1.2	50	Hour	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$ -
								Grand Total	\$ -
*Price used to rank Quotes in accordance with Bid Solicitation Section 3.5.2									

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The Evaluation Committee members each conducted an independent analysis of the Quotes. Then, on May 30, 2024, the Evaluation 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 the Evaluation Committee discussions. Evaluation Committee Report at page 8. Assigned scores were multiplied by the criterion weight to produce a weighted score for each criterion.

Bidder	Total Criterion 1 (1,000)	Total Criterion 2 (1,200)	Total Criterion 3 (1,800)	Total Technical Score (Max 4,000)	Average Technical Score (Max 1,000)	Ranking
Coast	775	930	1485	3190	798	2
Pioneer	825	930	1485	3240	810	1

After the technical evaluation was completed, in accordance with Bid Solicitation Section 8.12, *Best and Final Offer (BAFO)*, the Bureau requested a BAFO from Pioneer Credit and Coast Professional on May 30, 2024, with responses due by June 24, 2024. The Bidders provided BAFO responses as shown on page 14 in the Evaluation Committee Report, and shown below.

Bidder	Evaluation Model Total Original Price	BAFO Price	% Change	Technical Ranking	Price Ranking
Coast	\$27,778,916.57	\$27,575,914.68	-1%	2	1
Pioneer	\$31,282,119.04	\$30,199,915.85	-3%	1	2

Having completed its evaluation of the Quotes received in response to the Bid Solicitation, on September 6, 2024, the Bureau issued the NOI advising all Bidders that it was the State's intent to award a Contract to Coast Professional.

On September 20, 2024, prior to the close of the protest period, Pioneer Credit submitted its Protest in response to the NOI. Pioneer Credit alleges that Coast Professional Quote was non-responsive to multiple requirements of the Bid Solicitation. Specifically, Pioneer Credit alleges that Coast Professional's Quote:

1. Reserved the ability to implement remote access despite at least five explicit prohibitions on remote access.
2. Repeatedly evidenced its plan to export State data to third party systems in violation of explicit requirements that all access to State systems occurs solely within the mandated on-site location.
3. Proposes to discuss Federal tax liabilities with taxpayers in contravention of an explicit prohibition on the sharing of Federal Tax Information with taxpayers.
4. Indicates that it will research taxpayer credit histories in violation of the Fair Credit Reporting Act.
5. Indicates that it intends to utilize prohibited means of communication with taxpayers.
6. Proposes the use of a lockbox instead of the State's mandated payment processing procedures.
7. Renders the mandatory provision of twelve (12) reserved parking spaces for state employees "subject to negotiation with the landlord."

[Pioneer Credit Protest, page 2.]

Additionally, Pioneer Credit argues that the Evaluation Committee failed to consider the revenue guarantee in its Quote. By way of remedy, Pioneer Credit requests that Coast Professional's Quote be rejected as non-responsive, and that an award be made to Pioneer Credit. Protest, page 30. The Division subsequently solicited a response to the protest from Coast Professional.

Pursuant to N.J.A.C. 17:12-3.3(d) any "protest accepted by the Director shall be resolved by written decision on the basis of the Director's review of the written record including, but not limited to, the written protest, the terms, conditions and requirements of the RFP, the proposals submitted in response to the RFP, the evaluation committee report and/or the award recommendation document, pertinent administrative rules, statutes, and case law, and any associated documentation the Director deems appropriate." In-person presentations are fact-finding for the benefit of the Director and she has the sole discretion to determine if an in-person presentation is necessary to reach an informed decision on the matter(s) of the protest. N.J.A.C. 17:12-3.3(e). 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 Pioneer Credit's Protest¹, I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes received, Evaluation Committee materials, the Protest, 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 on the written record. I set forth herein the Division's final agency decision.

DISCUSSION

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)).

When evaluating Quotes received, 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, price and other factors considered. Bid Solicitation Section 1.1 *Purpose and Intent*. A responsive Quote is one that has 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 cannot materially deviate from the requirements of the Bid Solicitation or the State will have no assurances that the contract would be performed consistent with the requirements of the Bid Solicitation. Furthermore, 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 Co. v. Borough of Island Heights, 138 N.J. 307, 315 (1994), 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,

¹ Pioneer Credit did not request an in-person hearing.

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, 127 N.J. Super. at 216.]

The Acting Director of the Division has longstanding broad discretion to make determinations in public contracting matters. See N.J.S.A. 52:34-12(d); In re Jasper Seating, 406 N.J. Super. 213,222-24 (App. Div. 2009). The legislative purpose of N.J.S.A. 52:34-12(d) makes clear it is in the Acting Director's exclusive discretion to determine "which bid will be most advantageous to the State, 'price and other factors considered.'" Comm'l Cleaning v. Sullivan, 47 N.J. 529 (1996). The Acting Director's decision should not be interfered with "in the absence of bad faith, corruption, fraud or gross abuse of discretion." Keyes Martin v. Dir., Div. Purchase & Prop., 99 N.J. 244, 253 (1985).

For the reasons set forth below, I sustain the Bureau's decision to award the Contract to Coast Professional.

I. The Bureau Correctly Determined that Coast Professional's Quote was Responsive to the Bid Solicitation's Requirements.

Pioneer Credit alleges that Coast Professional's Quote did not comply with the Bid Solicitation requirements for the Implementation Plan. Bid Solicitation Section 3.19 *Implementation Plan*, required:

Each Bidder shall include as part of its Quote a **draft Implementation Plan**, beginning with the date of notification of Contract award and lasting no longer than 52 weeks. Refer to *Bid Solicitation Section 4.4 – Contractor – Implementation Period*.

The implementation draft plan should include the following elements:

- A. A detailed timetable for the Implementation Plan period of 52 weeks. This timetable should be designed to demonstrate how the Bidder will become fully operational to provide the services required under this Contract;
- B. The Implementation Plan should demonstrate how the Bidder will obtain the required documentation for services under this Contract;
- C. The Implementation Plan should include training all management, supervisory and key personnel that will be assigned to execute the required services of the Contract; and
- D. The Implementation Plan should include the Bidder's plan to provide the required office location in accordance with *Bid Solicitation Section 4.4.1, Office Location and Hours of Operation*;

[Emphasis added.]

After contract award, in accordance with Bid Solicitation Section 4.4, *Contractor – Implementation Period*, the Contractor and the State Contract Manager (SCM) shall review the draft Implementation Plan, and the Contractor shall submit a final Implementation Plan for approval. Specifically,

The Contractor shall meet with the SCM within **10 business days** after Contract award to review the Implementation Plan (refer to *Bid Solicitation Section - 3.19 Implementation Plan*). The Contractor shall detail how it shall maintain compliance with Taxpayer Bill of Rights and the Uniform Tax Procedure Act, N.J.S.A. 54:48-1 et seq., and the Federal Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.). The Contractor shall submit the final Implementation Plan for approval by the SCM within 45 calendar days after Contract award. The SCM reserves the right to require revisions or updates to the final Implementation Plan, within timeframes specified by the SCM, until the final Implementation Plan is approved by the SCM.

[Bid Solicitation Section 4.4, *Contractor – Implementation Period*, emphasis in the original.]

As required, Coast Professional submitted a draft implementation plan with its Quote. As discussed below, Coast Professional's draft implementation plan met the requirements of the Bid Solicitation, any necessary revisions will be discussed with the SCM prior to the approval of the Final Implementation Plan.

A. Coast Professional did not reserve the ability to implement remote access in its Quote.

First, Pioneer Credit argues that Coast Professional, reserved to itself the right to allow remote access despite the Bid Solicitation and Bid Amendment #5 prohibiting such access. In support of its position Pioneer Credit cites Questions 65-68 and 71², which address questions related to Bid Solicitation Section 4.4.1, *Office Location and Hours of Operations* which sets forth the requirements that must be met with regard to maintaining office space, work hours, and the types of workers required to perform the tasks established in the Bid Solicitation. Bid Solicitation Sections 4.4.1, *Office Location and Hours of Operations*, establishes the requirement for the physical office space and the daily office hours manned by the awarded Contractor's staff:

The State has determined that due to the nature of this procurement, the Contractor shall maintain an office site within New Jersey and provide access to Taxation personnel. The office location shall be located within the State of New Jersey, specifically within a forty (40) mile radius of Taxation's main office at 3 John Fitch Way, Trenton, New Jersey 08611.

² Question #71 also address a question related to Bid Solicitation Section 4.4.8, *Labor Classifications* which focuses on the job titles required to be provided in the Contractor's performance of the Contract and a description of the responsibilities for each title. The only prohibition established through the Bid Solicitation or after the Electronic Question and Answer Period in Bid Amendment #5 is that the jobs required by Bid Solicitation Section 4.4.8 must be physically performed in the facility required by Bid Solicitation Section 4.4.1. With respect to the labor classifications described in Bid Solicitation Section 4.4.8, *Labor Classifications*, Coast Professional stated, "Coast has read, understands, and agrees to comply with Taxation's collections job descriptions." Coast went on to detail its current staff classifications. Coast Professional Quote, Page 76.

For informational purposes, the space utilized to perform this Scope of Work is approximately 26,000 sq. ft., of which 11,000 sq. ft. is dedicated for the collection activity, which allows seating for approximately 225 employees. On average, the work force consists of approximately 130 employees in the collections area and 50 in the Call Outsourcing Center.

The Contractor shall ensure that its personnel are available to perform the requirements of this Bid Solicitation six (6) days per week, from Monday through Saturday. The Contractor shall ensure that its office hours of operation are from Monday through Friday from 8:00 a.m. through 5:30 p.m., and 8:00 a.m. through 1:00 p.m. on Saturdays, excluding Holidays.

The Contractor shall have 90 Calendar Days after the notice of award of the Contract to provide the State with proof of availability of Office Location. Failure to provide sufficient proof of office location within the 90 Calendar Day timeframe may result in the cancellation of the Contract.

The State reserves the right to inspect the Contractor's identified New Jersey office location, for the purpose of ascertaining whether the Contractor has the necessary facilities as outlined in the Contract.

[Bid Solicitation Section 4.4.1, *Office Location and Office Hours.*]

To this end, in its Quote Coast Professional stated:

Coast has read, understands, and agrees to comply.

Coast will maintain an office within New Jersey and provide access and resources to Taxation personnel as required. Coast will ensure that personnel are available to perform the requirements of this Bid Solicitation six (6) days per week, from Monday through Saturday. Coast operating hours as they pertain to Taxation's contract are as follows:

Monday – Friday: 8:00am EST – 5:30pm EST

Saturday: 8:00am EST – 1:00pm EST

**Excluding Federal Holidays*

[Coast Professional Quote, Page 52, emphasis in original.]

In its Implementation Plan, with respect to Bid Solicitation Section 4.4.1, *Office Location and Hours of Operation*, as required by Bid Solicitation Section 3.19(D) *Implementation Plan*, Coast Professional stated in part:

244	7 Office Location, size & Hours of Operation (4.4.1) 90 Days From Award	60 days	Fri 3/1/24	Thu 5/23/24	
245	7.1 Identify Location (26,000 sq ft, 11,000 Collection)	21 days	Fri 3/1/24	Fri 3/29/24	OB
246	7.2 Purchase/ Lease Location	7 days	Mon 4/1/24	Tue 4/9/24	245 OB
247	7.3 Provide State With Proof Of Availability Of Office Loca	2 days	Wed 4/10/24	Thu 4/11/24	246 OB
248	7.4 Set Location Up	120 days	Fri 4/12/24	Thu 9/26/24	245, Project Manager

Coast Professional Quote, Exhibit XII Implementation Plan, Page 14.³

Therefore, the Evaluation Committee properly concluded that Coast Professional's Quote, on this point, complied with the requirements of Bid Solicitation Section 4.4.1 *Office Location and Office Hours*.

In the protest, Pioneer Credit conflates the requirements of Bid Solicitation Section 4.4.1 *Office Location and Office Hours*, which requires that the Contractor maintain an office in New Jersey, with Coast Professional's draft Implementation Plan which addressed how it will comply with the security requirements detailed in Bid Solicitation Section 6.14, *Remote Access*, which outlines the information and controls required when utilizing remote access.

Bid Solicitation Section 6.14, *Remote Access*

The Contractor shall strictly control remote access to the Contractor's internal networks, systems, applications, and services. Appropriate authorizations and technical security controls shall be implemented prior to remote access being established. Remote access controls shall include at a minimum:

- A. Establishing centralized management of the Contractor's remote access infrastructure;
- B. Implementing technical security controls (e.g. encryption, multi-factor authentication, IP whitelisting, geo-fencing); and
- C. Training users in regard to information security risks and best practices related remote access use.

In the event the Contractor shall be approved to utilize State-provided remote access connectivity to conduct work on systems, networks, and data repositories managed and hosted within the New Jersey Garden State Network (GSN) for State approved business, the Contractor shall collaborate with the State in accordance with State defined usage restrictions, configuration/connection requirements, and implementation guidance for remote access into the GSN.

Bid Solicitation Section 6.14 does not preclude remote access, rather it requires that the Contractor has controls in place. Coast Professional's draft Implementation Plan identifies the requirements set forth above for compliance with remote access if permitted by Taxation.

128	4.13 Remote Access (6.14)	3 days	Fri 3/8/24	Tue 3/12/24	
129	4.13.1 Establishing Centralized Management Of The Contractor's Remote Access Infrastructure	1 day	Fri 3/8/24	Fri 3/8/24	127 CIO, Director of OPS, ISO, Security Analyst, Security Network Engineer
130	4.13.2 Implementing Technical Security Controls	1 day	Mon 3/11/24	Mon 3/11/24	129 Security Analyst, Security Network Engineer
131	4.13.3 Training Users In Regard To Information Security Risks And Best Practices Related Remote	1 day	Tue 3/12/24	Tue 3/12/24	130 Director of OPS, Training Specialist

Coast Professional Quote, Exhibit XII Implementation Plan, Page 8.

Similarly, it appears that Pioneer understood the requirements of the Bid Solicitation to permit and contemplates using a remote workforce, stating that "[r]emote employees use two-factor authentication."

³ In its Quote Coast Professional marked all its Exhibits as "Confidential and Proprietary." The Division wrote to Coast Professional, and in a document dated March 6, 2024, Coast Professional responded to the Division requesting only that its audited financial statements in Exhibit XXIV be designated as "Confidential and Proprietary."

See Pioneer's Quote, page 77 "Identification and Authentication Methods (User Security)". Both Coast Professional and Pioneer followed the Bid Solicitation's direction addressing remote access. .

Accordingly, I find that the Evaluation Committee properly concluded that Coast Professional's complied with these requirements of Bid Solicitation.

B. Coast Professional's Quote does not contain evidence of a plan to export State data to third-party systems in violation of explicit requirements that all access to State systems occurs solely within the mandated on-site location.

Pioneer Credit argues generally that Coast Professional's Quote makes repeated references to exporting data in contravention of the Bid Solicitation's requirements. Protest, pages 9-15. Specifically, Pioneer Credit argues that "Coast ... indicated that it intended to implement the Contract by exporting the data to its external systems." Protest, page 12. Pioneer Credit points to Coast Professional's draft Implementation Plan in support of its assertion. *Id.*

Nowhere in Coast Professional's technical Quote did Coast Professional indicate that it intended to export data to a third-party system. Rather, in response to Bid Solicitation Sections 4.4.1, *Access to TAXNET and TULIPS and Tax Information*, and 4.4.2, *Computer and Software Compatibility*, Coast Professional stated "Coast has read, understands, and agrees to comply." Coast Professional's Quote, p. 44 and 60. Further in its Quote, Coast Professional stated that it will:

- Access the Taxpayer Case List within the TAXNET/TULIPS System
- Access the Taxpayer Case List within the TAXNET/TULIPS system to determine any conflicts regarding contact with a specific deficient or delinquent taxpayer
- Document the call in TAXNET/TULIPS

[Coast Professional's Quote, p. 88.]

Pursuant to Bid Solicitation Section 4.11, *Contractor Transition Plan*, the awarded "Contractor shall fully cooperate with the newly awarded ensuing T1426 contractor in all aspects to ensure a seamless transition of services [including] . . . at a minimum . . . **data transfer**. . . ." Emphasis added. The transfer of data is intended to transition documents from the current Contractor (incumbent) to the newly awarded Contractor, and is not inconsistent with the Bid Solicitation's requirement. In its Quote, Coast Professional states that "Coast will collaborate with Taxation and the current Contractor to establish a seamless transition within the timeframe required." Coast Professional Quote, page 119. Additionally, Coast Professional points to their practices in prior large scale ramp ups which include: "ambitious staffing models, transitioning an experienced nucleus of employees, recruiting and hiring in various employment markets, utilizing robust technology, and deploying industry leading analytics". Coast Professional Quote, page 119.

This is especially so when considered against the totality of the record and the recognized need in the Bid Solicitation for files to be transferred to Coast Professional from the Division of Taxation and Pioneer Credit. There is no confusion about the purpose of Coast Professional's use of the words "migration" or "transfer" when the line items are viewed against the surrounding line items, as well as within the full scope of the tasks required by each of the parties as established in the Bid Solicitation.

With respect to a Contractor's duties, Bid Solicitation Section 4.4.2, *Computer and Software Compatibility*, require the awarded Contractor to "provide, at no additional cost to the State, all computer hardware and software necessary to **successfully access the TAXNET system**, or any replacement for TAXNET." Emphasis added. Moreover, that same section advises that the Contractor should "[r]efer to Bid

Solicitation Section 6.12 - Access Management for the **method(s) of connection for access** to the State's TAXNET system." *Id.* (emphasis added). Additionally, there is nothing prohibiting some or all of the work required by the Bid Solicitation Section 4.4.4, *Fraud Protection* from being performed remotely.

There is no suggestion in Coast Professional's Quote that they would be performing work contrary to the requirements of the Bid Solicitation. As such, the contemplated transfer and migration of data as required to complete the transfer of work from the outgoing contractor to the newly award contractor was not contrary to the requirements of Bid Solicitation and are not a material deviation of the Bid Solicitation's requirements.

C. Coast Professional's Quote does not indicate that they will discuss Federal tax liabilities with taxpayers in contravention of an explicit prohibition on the sharing of Federal Tax Information with taxpayers.

Pioneer Credit argues that based on a table provided on page 88 of Coast Professional's Quote, it intends for its employees to "[d]iscuss other state or federal tax liabilities" with taxpayers and insinuates that Coast Professional will attempt to access Federal Tax Information (FTI), which would be in violation of the Bid Solicitation. Pioneer Credit Protest, pages 15-16. Pioneer Credit assumes without factual support that Coast Professional will "share not only federal tax liabilities with the taxpayer, but other state liabilities as well." Pioneer Credit Protest, page 16. There is nothing in Coast Professional's Quote which indicates that they will improperly access federal or other state tax information.

It is correct that Contractor "shall not have access to . . . FTI by accessing Taxation's electronic applications" pursuant to the Bid Solicitation Section 4.3.1 *Access to TAXNET and TULIPS and Tax Information*. On page 66 of their Quote, Coast Professional clearly stated that it "has read, understands, and agrees to comply" with the requirements of Bid Solicitation Section 4.3.1. Pioneer Credit again without factual support is assuming that Coast Professional is planning on accessing and/or sharing FTI in a manner prohibited by the Bid Solicitation. The review of the Coast Professional Quote reveals no such intention. Further, Bid Solicitation Section 4.5.2(E) requires the Contractor to ascertain the existence of "[a]ny other tax liability the taxpayer may have."

Pioneer Credit also states that "the sharing of state tax data other than New Jersey's would appear to run afoul of data re-use provisions of Section 6.7F of the [Bid Solicitation]." Protest, page 16. Bid Solicitation, Section 6.7 *Privacy*, letter F states, "Data Re-Use: All State Data shall be used expressly and solely for the purposes enumerated in the Contract Data shall not be distributed, repurposed or shared across other applications, environments, or business units of the Contractor. No State Data shall be transmitted, exchanged or otherwise passed to other contractors or interested parties except on a case-by-case basis as specifically agreed to in writing by the state Contract Manager." Again, there is nothing in Coast Professional's Quote to suggest that it will use State tax data for any purpose other than that of the State of New Jersey as required by the Contract.

As such, the Division does not find anything in Coast Professional's Quote that is contrary to the Bid Solicitation requirements.

D. Coast Professional does not indicate that it will research taxpayer credit histories in violation of the Fair Credit Reporting Act.

Next, Pioneer Credit argues that Coast Professional's statement that it will "[r]esearch taxpayers credit bureau history," is in violation of § 1681b(a)(3)(A) of the Fair Credit Reporting Act. Protest, page 16-17. Pioneer Credit bases its argument on a table in Coast Professional's Quote outlining this task as one of

the responsibilities of a caseworker prior to taxpayer phone contact. Protest, page 17. Additionally, Pioneer Credit argues that “[p]ulling a credit bureau report on a taxpayer here is a violation of the FCRA. Any qualified vendor bidding on a tax collection contract would know better. Coast’s proposal is materially noncompliant as it proposes terms that are in violation of Federal law.” Protest, page 17.

Turning to the Bid Solicitation, Section 4.5.2, *Determination of Applicability* states in pertinent part:

Prior to contacting the taxpayer identified in the Placement assignment, the Contractor shall research internal and external records to verify the taxpayer’s name, address, and telephone information for completeness and ascertain the existence or history of the following:

- A. Skip Tracing;
- B. Deficient or delinquent taxpayer eligibility history;
- C. Monetary Account activity and filing;
- D. Payment history;
- E. Any other tax liability the taxpayer may have; and
- F. TAXREG Notes.

During the Q&A Period there was only one question received pertaining to Bid Solicitation Section 4.5.2, *Determination of Applicability* was whether Taxation could complete screening to be sure that it is only referring accounts that qualify for collection activity. Bid Solicitation, Amendment #5, Question 82.

Under this Section 4.5.2 in the Bid Solicitation, Coast Professional states: “Coast has read, understands and agrees to comply.” Coast Professional Quote, page 87. In their Quote, Coast Professional states that they will complete “research[] as appropriate” including, “Business credit report, as applicable”. There is no mention as to obtaining an individual’s credit report. Coast Professional’s Quote pages 87-88. A further review of Coast Professional’s Quote shows it did not propose that its caseworkers would pull a debtor’s full credit report. The reference relied upon by Pioneer appears in a general list of discussion topics to be used to assess a taxpayer’s available income—it does not suggest that Coast Professional’s caseworkers will have unfettered access to non-New Jersey tax liabilities. Coast Professional’s reference to “taxpayers’ credit bureau history” must be read in the context of Coast Professional’s Quote, which states that it will utilize its resources to best perform its tasks, within the boundaries of Taxation’s requirements:

Coast has invested substantial company resources in innovative skip tracing tools for [its] Collection teams. Coast continually invests in emerging technologies to meet the changing needs of our clients, to establish a competitive advantage, maintain top performance, and remain compliant with client requirements. These tools provide an advantage when locating taxpayers that permits a more efficient collection process for Taxation. Our caseworkers utilize multiple state-of-the-art tools all from their desks.

[Coast Professional’s Quote, Page 87.]

Further, in support of its statement that Coast Professional intends to comply with the Quote’s requirements, and in addition to the initial training of employees provided by the State, Coast Professional notes that it provides training for its Caseworkers and Representatives with respect to the FCRA, among other areas.

Turning to the FCRA, 15 U.S.C. § 1681, *et seq.*, “promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies.” FTC, *A Summary of Your Rights Under the Fair Credit Reporting Act*, available at: <https://www.consumer.ftc.gov/sites/default/files/articles/pdf/pdf-0096->

[fair-credit-reporting-act.pdf](#). The FCRA limits the uses of a credit reporting agency, 15 U.S.C. § 1681b(b), and requires credit reporting agencies to obtain certain information from requestors prior to providing access to a consumer's credit report. 15 U.S.C. § 1681b(c). A consumer is defined as an individual, 15 U.S.C. § 1681a(c), whereas a person is defined as an individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency or other entity. The limits in 15 U.S.C. 1681b are limits in providing consumer reports, not reports of persons. In addition, the FCRA provides an exception for limited information to be provided from a credit report to a governmental agency, 15 U.S.C. § 1681f, including a state governmental agency, 15 U.S.C. § which provides:

Notwithstanding the provisions of section 604 [15 USCS § 1681b], a consumer reporting agency may furnish identifying information respecting any consumer, limited to his name, address, former addresses, places of employment, or former places of employment, to a governmental agency.

As such, the FCRA does not prevent the (a) request on behalf of the the Division of Taxation the information listed in 15 U.S.C. 1681f, (b) request a credit report for a person who is not a consumer. Nothing in Coast's Professional Quote states that it will do other than this. Therefore, the Division does not find anything in Coast Professional's Quote that is contrary to the Bid Solicitation requirements.

E. Coast Professional is not intending to utilize prohibited means of communication with taxpayers.

Pioneer Credit argues that based on Exhibit XIII of their Quote, Coast Professional intends to "implement various forms of taxpayer communication that are not permitted under the [Bid Solicitation]." Protest, page 18. Specifically, Pioneer Credit argues that "Coast advises that it will implement various forms of taxpayer communication that are not permitted under the RFP, including a website, chat function and texting." Protest, page 18.

There is nothing in the Bid Solicitation nor Amendment #5 to the Bid Solicitation expressly prohibiting Coast Professional from contacting taxpayers via text message. The Bid Solicitation mentions multiple methods of communication between the contractor and a taxpayer, including written communications (Bid Solicitation Section 4.4.9), facsimiles (Bid Solicitation Section 4.5.2.1), written correspondence (Bid Solicitation Section 4.6.1), letter, email or a telephone call (Bid Solicitation Section 4.9.4), phone calls, emails and/or correspondence (Bid Solicitation Section 4.9.6.1), and even requires a website to be necessary for payment (Bid Solicitation Section 4.7). At no point is it stated that sending text messages is not allowed, and these multiple methods of communication should not be viewed as a limit, but merely as some of the methods the State's Contractor may use to engage in work on the State's behalf.

Citizens of the State of New Jersey are protected from the use of unfair or unconscionable means to collect a debt under the Fair Debt Collection Practices Act (FDCPA), §15 U.S.C.S. 1692a(f). This law limits the ways and times in which a debt collector can reach out to a creditor. A debt under the FDCPA is "Any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes . . . ". §15 U.S.C.A. 1692a(5).

Debt incurred by a business is not protected by FDCPA. DepoLink Court Reporting & Litigation Support Services v. Rochman, 430 N.J. Super. 325. Additionally, the obligation to pay taxes is not a "debt" protected by FDCPA. The Third Circuit Court of Appeals has held that "In light of the statutory language and the legislative history limiting the FDCPA to the protection of consumers, we believe the Act does not apply to practices occurring in the course of collection of taxes." Staub v. Harris, 626 F.2d 275, 279 (3d Cir. 1980). As the obligation to pay taxes is not covered by the FDCPA, there is no prohibition against

contacting people via text. Further, even if it was covered by the FDCPA, As of November 2021 the FDCPA allows for debtors to be contacted via text message. 12 CFR Part 1006.

Additionally, Coast Professional represented that it conducts training with respect to FDCPA regulations including yearly industry related training that includes training for employees to learn and adhere to FDCPA. Coast Pioneer Quote, page 47. Accordingly, Coast Professional will keep its employees updated as to any changes to the FDCPA requirements.

As such, the Division does not find anything in Coast Professional's Quote that is contrary to the Bid Solicitation requirements.

F. Coast Professional does not propose the use of a lockbox instead of the State's mandated payment processing procedures.

Pioneer Credit argues that based on Exhibit XIII of Coast Professional's Quote, it intends to use a "Lockbox", although there is no provision in the Bid Solicitation which permits the use of a lockbox. Protest, page 19. A review of Coast Professional's Quote finds one instance of the word "Lockbox" on the Coast Implementation Plan, Exhibit XIII, line 371 as referenced in Pioneer Credit's Protest, page 19. The term Lockbox is not defined in Coast Professional's Quote. There is nothing else in the Quote to suggest that Coast Professional is planning to use a Lockbox in any manner so that it would "materially deviate[] from the RFP's specific requirements" as Pioneer Credit suggests in its Protest. Protest page 20. To assume that Coast Professional will use a Lockbox in a manner not permitted by the Bid Solicitation is speculation by Pioneer Credit. In fact, in their Quote, Coast Professional stated that "Coast has read and understands 4.1", suggesting that it does not intend to deviate from the requirements of Section 4.1 of the Bid Solicitation. Coast Professional Quote, page 44.

As such, the Division does not find anything in Coast Professional's Quote that is contrary to the Bid Solicitation requirements.

G. Coast Professional does commit to provide twelve (12) reserved parking spaces for state employees

Pioneer Credit argues that Coast Professional did not commit to providing the minimum twelve (12) parking spaces for State employees as required by Bid Solicitation Section 4.4.1.3, *Access for Taxation Employees* and instead "hedges its commitment" and "instead qualifies its response by making it subject to negotiation". Pioneer Credit Protest, page 20. In support of its Protest, Pioneer Credit relies upon Coast Professional's statement that the "installation of designated parking spaces signage will be subject to negotiation with the landlord or property management of the facility upon lease agreement." seizes on the language that the **signage** designating those parking spots will be subject to negotiation with the landlord or property manager and claims that this "hedge of this requirement gives Coast an advantage no other bidder shared. Further, it eliminated for Coast the potential risk of having to secure such spots, whatever the cost." Pioneer Credit Protest, page 21.

Contrary to Pioneer Credit's assertion, in their Quote, Coast Professional stated that "[w]e will ensure there are a minimum of 12 parking spaces designated for Taxation employee parking by erecting signage or otherwise identifying the spaces as reserved for Taxation use only." Coast Professional Quote, pages 59-60. Additionally, Coast Professional stated that they "will supply vehicle identification placards for use by Taxation employees to enable visual verification that the spaces are not in use by unapproved vehicles." Coast Professional Quote, page 60.

To the extent that Coast Professional may have to negotiate signage for parking spaces to be utilized with the landlord/property owner, nothing the Bid Solicitation precludes that, nor could it. Moreover, if the landlord or property manager prohibits signage, that does not preclude Coast Professional from otherwise designating twelve (12) parking spots for use by Taxation's employees.

As such, the Division does not find anything in Coast Professional's Quote that is contrary to the Bid Solicitation requirements

II. The Evaluation Committee Did Not Fail to Consider the Pricing Submitted by Either Bidder, But Instead Conducted an Evaluation In Full Compliance with the Clear Terms of the Bid Solicitation.

Pioneer Credit argues that the Evaluation Committee failed to consider "the revenue side of the cost matrix or the revenue guarantee" it provided and that such "such failure is directly contrary the specifications, and failure to consider both results in a flawed pricing determination, to the detriment of pioneer and the citizens of the state." Protest, p.22. In support of its argument, Pioneer directs our attention to the language included in Section 11 Financial Capability of Bidder of its Quote, the letter from Chad Wilson dated February 20, 2024,, as well as a June 21, 2024, letter attached to Pioneer Credit's BAFO submission. A full review of both letters shows that any offer by the Pioneer Credit was at best an invitation to a further negotiation, or possibly an offer that required the inclusion of terms from documents outside the scope of the bidding process, more specifically a current memorandum of understanding (MOU) between Pioneer Credit and the State. Moreover, Bid Amendment #5 explicitly stated that alternative pricing would not be accepted and could lead to a bidder being deemed non-responsive for presenting such information.

As noted in Pioneer Credit's February 20, 2024, letter, prior contracts required the contractor to guarantee annual minimum revenue targets. However, that requirement was removed as part of the current Bid Solicitation. For this Bid Solicitation, revenue guarantees were not a factor in the evaluation of Bidder Pricing. To assist Bidders from erroneously relying upon requirements from prior contracts, the Bureau included language in Bid Solicitation Section 1.2, *Background*, that potential Bidders for this Bid Solicitation "**should not rely upon or use data or information from the [prior] contract when preparing a response to this Bid Solicitation as this Bid Solicitation addresses the State's current requirements.**" Emphasis added. Moreover, Bid Amendment #5 explicitly stated that alternative pricing would not be accepted and could lead to a bidder being deemed non-responsive for presenting such information.

Pioneer Credit's argument focuses on an incorrect use of the consumption model to determine an actual value of the contract.⁴ The value derived from a consumption model was not an indicator of the actual cost to provide the required services, but was instead used to establish a value by which the Evaluation Committee evaluates and ranked the Bidders from most advantageous to least advantageous based on a common set of factors. A review of both the time-stamped consumption model placing one

⁴ Pioneer Credit now raises questions about the evaluation process outlined in the Bid Solicitation on page 24 of its Protest in Footnote 2. The State conducted an electronic Question and Answer Period in accordance with Bid Solicitation Section 2.1, *Electronic Question and Answer Period*, via an electronic portal enabling the Bureau to receive questions from all potential Bidders until 2:00 p.m. on September, 7, 2023. The Bureau received 105 questions overall, with only three regarding evaluation (33, 41, 42). If a potential bidder, such as Pioneer Credit, identifies potential issues or concerns about a Bid Solicitation's specifications, the eQ&A period is the first opportunity to address such concerns. However, N.J.A.C. 17:12-3.3, *Protest procedures; challenges to a specification*, provides an additional process to address these concerns before Quote submission closes. Pioneer Credit did not avail itself of either opportunity here, and the Hearing Unit will defer to the Division of Taxation and the Bureau on the proper method to evaluate the Quotes.

hundred percent of the weight on Price Line 1, and each bidders' pricing for Price Line 1 on their State-Supplied Price Sheet, provides strong support for the Evaluation Committee's final determination that Coast Professional presented a better pricing option because Coast Professional would collect a smaller percentage of any recovered funds during the life of the contract.

A closer review of the exact language of Pioneer Credit's February 20, 2024 and June 21, 2024 letters exhibits a less than firm commitment. The February 20, 2024, letter only states that they "are open to discussions to integrate a minimum performance guarantee on this new contract term." Moreover, although Pioneer Credit in that same letter states it "will guarantee the year five (5) expectation of \$125 million annually", it proceeds to state that it will only "be amendable to this within the parameters of our current memorandum of understanding (MOU) . . . assuming quantity and quality of placements remain consistent and the outsourcing collection strategy does not change." *Id.* The June 21, 2024, letter only stated that it stood by the previously submitted "offer". Protest, page 23.

Despite clear directions in the in Bid Solicitation Section 1.2, *Background*, that potential Bidders for this Bid Solicitation "should not rely upon or use data or information from the [prior] contract when preparing a response to this Bid Solicitation as this Bid Solicitation addresses the State's current requirements", in its February 20, 2024 letter, Pioneer Credit states that it submits a guarantee of revenue because

Past contracts required Pioneer to guarantee annual minimum revenue targets and **per the State Contract Manager**, "A critical term in the contracts required Pioneer to guarantee annual minimum revenue targets. To date, Pioneer has far exceeded those contractual revenue minimums for every contract year since 2006. Pioneer's quality and quantity of work has met or exceeded Taxation's expectations."

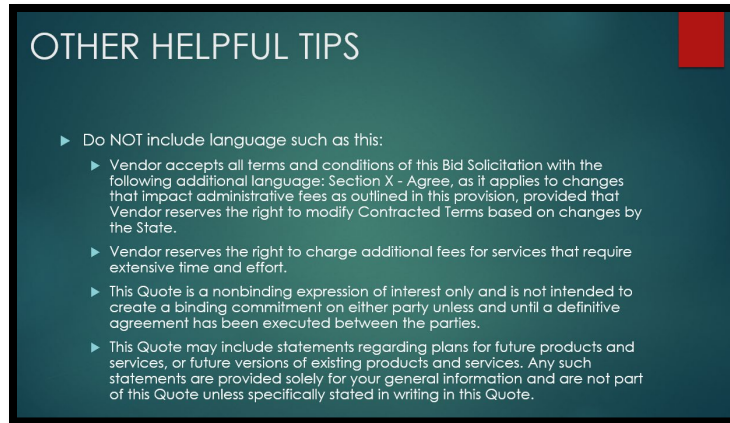
[Pioneer Credit February 20, 2024, letter, page 1 (emphasis added).]

As such, in submitting its Quote, Pioneer Credit erroneously relied on information based its prior contract with the State, despite clear instruction in the Bid Solicitation, thus submitting a Quote that the Evaluation Committee rendered less advantageous to the State.

As part of the Bid process, and as noted by Pioneer Credit on page 7 of its Protest, 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 presentation, the Division includes the following information:



[Pre-Quote Conference – Slide Deck page #7]

While the language included in Pioneer Credit’s February 20, 2024 and June 21, 2024 letters is not identical to the examples in the above slide, the language is certainly similar to the Division’s express warning in the third bullet point to avoid language expressing an interest to engage in future discussions to finalize terms. The Division includes this language to help bidders avoid mistakes that can be avoided.

If Pioneer Credit desired the inclusion of a guaranteed fee as part of the evaluation criteria, it could have requested so during the Electronic Question and Answer period of this Bid Solicitation, although the question seemed to be answered and addressed in Bid Amendment #5. The only question submitted related to pricing from Bid Amendment #5 was Question 44 on page 13 of the Bid Amendment which states:

Are bidders permitted to deviate in any way from any manner of quoting fees you may be expecting? For example, if there is a pricing page in the RFP, can bidders submit an alternate fee structure? If there is no pricing page in the RFP, do you have any preference for how bidders should quote fees or can bidders create their own pricing categories?

The Bidder must submit pricing using the format set forth in the State-Supplied Price Sheet accompanying this Bid Solicitation. Any additional or supplemental versions of the State-Supplied Price Sheet will not be accepted and may result in the Bidder’s Quote deemed non-responsive.

Despite Pioneer Credit’s submission of what can be considered a less than a firm offer the record of the procurement shows that the Evaluation Committee reviewed the provided relevant information properly, and the award is consistent with the records and reasoning relied upon to create and establish both the Evaluation Committee Report and the Recommendation Report.

III. Pioneer Credit Wrongfully Restricts the Director’s Statutory Authority by Reducing It to a Pricing Only Analysis Mandating An Award Based on the Revenue Guarantee Only.

Pioneer Credit argues that N.J.S.A. 52:34-12 mandates that the award be issued to it solely based on the revenue guarantee because it reasons that the guarantee will be the most advantageous. In support of its argument Pioneer Credit notes that the Director has authority to select the most advantageous bid under N.J.S.A. 52:34-12 based on “price and other factors”, while in actuality demanding that the award be

made solely based on price, and would remove the discretion afforded the Director under the State's procurement statutes.

As discussed above Section II above, Pioneer Credit's February 20, 2024, letter submitted with their Quote showed that Pioneer Credit relied on wrong information based on its prior contract with the State when it stated that

Past contracts required Pioneer to guarantee annual minimum revenue targets and per the State Contract Manager, "A critical term in the contracts required Pioneer to guarantee annual minimum revenue targets. To date, Pioneer has far exceeded those contractual revenue minimums for every contract year since 2006. Pioneer's quality and quantity of work has met or exceeded Taxation's expectations." While a minimum performance guarantee is not specified for this opportunity, we acknowledge the assurance it provided to the State and are open to discussions to integrate a minimum performance guarantee on this new contract term.

With this, Pioneer Credit was offering something outside the Scope of Work that was not a requirement of the Bid Solicitation.

Second, the language in N.J.S.A. 52:34-12(g) is much more complex than the singular focus on price offered by Pioneer Credit. That section reads that an

award shall be made 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;

Therefore, in addition to pricing, the bidder must submit a Quote conforming to the Bid Solicitation, and is determined to be most advantageous to the State based on 1) price and 2) other factors.

Pioneer Credit's argument fails to recognize that removal of a revenue guarantee from the current Bid Solicitation requirements rendered it not a relevant factor or advantageous to the State in the current procurement. In this way, the current Bid Solicitation can be distinguished from Pioneer Credit's case law examples because the revenue guarantee was not a different but acceptable pricing method, but rather a method the State was aware of as part of the prior contracts, but made a business decision not to make part of the current procurement requirements. Any business judgment decision regarding revenue guarantees had been made by the State before the Bid Solicitation was advertised and found them to be not significant enough of a factor to be included in the reprocurement of the services under this Contract.

Pioneer Credit also seeks to argue that other factors should have been utilized that would have weighed in favor of incumbency bias. Specifically, Pioneer Credit suggests that the Evaluation Committee and the Director should

weigh the potential distractions and uncertainties that transition and inexperience may bring. A potential new contractor having a full year to implement could pose significant challenges for taxation, potentially leading to operational disruptions and revenue loss. Even after the full implementation is complete, there is no assurance that the new contractor will be able to perform as reliably or as favorably as Pioneer.

[Pioneer Credit Protest, page 29.]

Based on this standard, every incumbent contractor would receive the benefit of an evergreen contract because no agency could be guaranteed that a newly awarded contractor would perform as well as the incumbent. However, this argument ignores the other side of the argument that perhaps the new contractor will perform better than the incumbent. No vendor, regardless of the time and resources expended to provide services to the State, is entitled to a contract in perpetuity. Commercial Cleaning Corp. v. Sullivan, 47 N.J. 539, 546 (1966).

The legislative purpose of N.J.S.A. 52:34-12(d) makes clear it is in the Acting Director's exclusive discretion to determine "which bid will be most advantageous to the State, 'price and other factors considered'". Comm'l Cleaning v. Sullivan, 47 N.J. 529 (1996). "Public bidding statutes exist for the good of the taxpayers, and not bidders, and they must always be construed for the public good". Sevell v. N.J. Highway Auth., 329 N.J. Super. 580, 584 (App. Div. 2000). The Acting Director's decision should not be interfered with "in the absence of bad faith, corruption, fraud or gross abuse of discretion." Keyes Martin v. Dir., Div. Purchase & Prop., 99 N.J. 244, 253 (1985).

There is nothing in the record to show that the Procurement Bureau, Taxation, and the Acting Director did not exercise their business and procurement judgment in the development of the Bid Solicitation. The specifications were not challenged during the advertisement period, which lead to the Evaluation Committee reviewing and making an award that was signed by the Acting Director based on the pricing and other factors properly before it. The award is consistent with the documents and reasoning set forth in both the Evaluation Committee Report and Recommendation Report.

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

Bid Solicitation Section 8.9.2, *Price Evaluation*, provides guidance to Bidders that the evaluation would be based on a weighted consumption model, which therefore means that the award would be made on a calculated number from the figure provided on the State-Supplied Price Sheet. This methodology provides an equal playing field for all bidders.

The Evaluation Committee correctly determined that Coast Professional's bid was "most advantageous to the State, price and other factors considered." Recommendation Report, page 15. The technical evaluation of both bidders resulted in a statistically *de minimus* difference of less than 1% of the final score. As shown above by the facts relied upon in this matter, as drawn from the Evaluation Committee Report, the Recommendation Report, and Coast Professional'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. Because Pioneer Credit fails to demonstrate the presence of "bad faith, corruption, fraud or gross abuse of discretion" in the Division's action, the contract award to Coast Professional should be upheld.

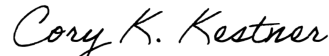
CONCLUSION

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 September 6, 2024, Notice of Intent to Award. This is my 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: Brian P. O'Neill, Esq. Counsel for Coast Professional, Inc.
R. Regan
M. Maguire