



State of New Jersey

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

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June 27, 2025

Erik Dykema, Esq.
BOCHNER PLLC
1040 Avenue of the Americas, 15th Floor
New York, NY 10018
(Via Electronic Mail erik@bochner.law)

Re: Supplemental Final Agency Decision
In Re Bid Solicitation #23DPP00896 T2581 Auctioneering Services

Dear Mr. Dykema:

This supplemental final agency decision is in response the Superior Court Appellate Division's May 13, 2025, order directing the Department of the Treasury, Division of Purchase and Property ("Division") to issue a clarification of the March 10, 2025, final agency decision to further explain "the selection of the unit estimates and estimated monetary amounts used to compare the bids." Appellate Division's May 13, 2025, Order. The supplemental final agency decision also relates to your to your protest application ("Protest") dated February 10, 2025, regarding Bid Solicitation #23DPP00896 – T2581 Auctioneering Services: Internet Auction to Sell Surplus Property ("Bid Solicitation").

By way of background, on June 24, 2024, the Division's Procurement Bureau ("Bureau"), on behalf of the Distribution and Support Services, issued the Bid Solicitation to solicit quotes for internet based auctioneering services to sell surplus property. Bid Solicitation Section 1.1, *Purpose and Intent*. Pursuant to Bid Solicitation Section 1.1, *Purpose and Intent*, the State intended to make one (1) Contract award "to that responsible Bidder(s) whose Quote, conforming to the Bid Solicitation is most advantageous to the State of New Jersey (State), price and other factors considered." On September 24, 2024, the Bureau posted Bid Amendment #2, with answers to the questions received from potential Bidders. Importantly, Bid Amendment #2 noted that revisions were made to the Bid Solicitation, and the State-Supplied Price Sheet,.

On October 30, 2024, the Division's Proposal Review Unit opened three (3) Quotes. After completing its review and evaluation of the Quotes, the Bureau submitted its Recommendation Report recommending that the Contract be awarded to Auctions International, Inc. ("Auctions"). Accordingly, on January 28, 2025, the Bureau issued the Notice of Intent to Award letter advising the Bidders that it was the Division's intent to award a Contract to Auctions consistent with the Recommendation Report.

On February 10, 2025, Muncibid.com, LLC ("Muncibid")¹ submitted its protest challenging the Division's determination to award a Contract to Auctions arguing that the Bureau made mistakes in

¹ As part of the remand, the Division undertook a review all Quotes submitted and found that the Quote submitted by Muncibid contained a deviation from the requirement of the Bid Solicitation – specifically,

calculating Auctions' bid price which incorrectly resulted in Auctions' having the lowest pricing. In support of its Protest, Muncibid stated:

After careful review of the T2581 Bid Tab document, specifically the Price Analysis (pg1) and the State-Supplied Price Sheet of Auctions International, Inc. (pg2), we have discovered an error in Line 5 (ITEM DESCRIPTION: ELECTRONIC PAYMENT FEE) under Auctions International, along with an omission in calculating the proposed electronic payment fee as it pertains to the Bid Fee amounts for each of the three years and across all single asset sale levels.

This error and omission, in turn, changes the amount on Line 5 of the Price Analysis (Pg 1 of the T2581 Bid Tab Document) under "Auction" from \$170,355.00 to \$1,559,066.80 and changes the Totals Rank amount under "Auction" from \$2,904,355.00 to \$4,293,066.80.

Please see a detailed explanation of our findings below. We have also attached a copy of the T2581 Bid Tab document (T2581 Bid Tab Notes and Calculations.pdf) containing our notes outlining our findings, along with an Excel Spreadsheet detailing our calculations.

[Muncibid Calculations, Page 1.]

On March 10, 2025, the Division issued a final agency decision sustaining the intended Contract award to Auctions. On March 12, 2025, the Division awarded the Contract to Auctions with an effective date of May 1, 2025.

On April 17, 2025, Muncibid filed an appeal of the Division's Final Agency Decision. The Appellate Division granted Muncibid's application for leave to file an emergent motion on short notice and issued a temporary stay until further order of the court. On May 12, 2025, the Division requested that the Appellate Division remanded the matter to the Division "to provide the Director with the opportunity [to] review the matter and clarify the basis of the Director's final agency." Appellate Division's May 13, 2025, order.

On remand, I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes received, Muncibid's protest and appeal, the Appellate Division's order, the relevant statutes, regulations, and case law. This review of the record has provided me with the information necessary to

Muncibid submitted the wrong price sheet. Muncibid submitted its Quote with the Bid Solicitation's original price, which provided for the possibility of a flat rate electronic payment fee. However, the Division posted a Bid Amendment with a revised price sheet, which provided for an electronic payment fee tied to a percentage of the cost of the purchased item. "[A] bidder's deviation from a price term in the solicitation is almost invariably material under a River Vale analysis. I17DPP00144, 454 N.J. Super. at 564 (quoting In re Protest of Award of On-Line Games Prod. & Operation Servs. Contract, Bid No. 95-X-20175, 279 N.J. Super. 566, 601-602 (App. Div. 1995)); see also In re Jasper Seating Co., Inc., 406 N.J. Super. 213, 225-26 (App. Div. 2009) (upholding the Division's final agency decision to reject a bid as non-conforming for failure to comply with material price requirements). However, here it is important to note Muncibid bid a \$0 electronic payment fee. Since \$0 and 0% are both zero, we find this is the rare case where Muncibid's deviation is not material.

determine the facts of this matter and to render an informed decision. I set forth herein the Division's Supplemental 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. Bd. 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 N.J., 218 N.J. 247, 258 (2014) (citing Keyes Martin & Co. v. Dir. of Div. of Purchase and Prop., 99 N.J. 244, 256 (1985)).

Further, courts have found an agency can reconsider its prior decisions. See In re Application of Trantino, 89 N.J. 347, 364 (1982) ("In the absence of a legislative restriction, administrative agencies generally have the inherent power to reopen or to modify and rehear prior decisions"); Id. at 365 ("A new development or new evidence relating to established facts or a material misapprehension concerning an essential matter which is critical to an agency determination can constitute a reasonable basis for reconsideration by the agency"); In re Van Orden, 383 N.J. Super. 410, 419 (App. Div. 2006) ("The power to reopen proceedings may be invoked by administrative agencies to serve the ends of essential justice and the policy of the law") (internal quotations omitted); St. Joseph's Hosp. & Med. Ctr. v. Finley, 153 N.J. Super. 214, 223 (App. Div. 1977) ("An "agency is free to alter any prior decision if it concludes that to do so is in the public interest"); In re Bid Solicitation #16-X-23961, Laundry Chems. Statewide, Dkt. No. A-5379-16T3, 2018 N.J. Super. Unpub. LEXIS 2741, *6-8 (App. Div. Dec. 14, 2018) (applying the concept to a State procurement).

Prior to the Bid opening, the Bureau, in consultation with Distribution and Support Services, established the evaluation methodology which was time and date-stamped on "September 18, 2024, 3:20PM.". The estimated annual quantities used in the evaluation of the subject Bid Solicitation were the same estimated annual quantities used in the prior bid solicitation (19DPP00272).The evaluation methodology was as follows:

State-Supplied Price Sheet Bid Solicitation #23DPP00896 T2581 - Auctioneering Services: Internet Auctions to Sell Surplus Property								
Vendor (Bidder) Name:			Refer to Bid Solicitation Section 4.4.5 for Vendor (Bidder) instructions. The Vendor (Bidder) shall provide pricing in the yellow highlighted cells below. The rest will be automatically calculated. The Vendor (Bidder) must not alter the price schedule in any matter.					
Line No.	Item Description	Estimated Annual Quantity*	Unit of Measure	Estimated Line Item Avg Cost	Year 1 % Fee	Year 2 % Fee	Year 3 % Fee	Total Estimated Item Price For 3-Year Term
1	ITEM DESCRIPTION: COMMISSION FEE FOR A SINGLE ASSET THAT SELLS FOR UP TO \$100,000.00	312	EACH	\$ 50,000.00	2%	2%	2%	\$936,000.00
2	ITEM DESCRIPTION: COMMISSION FEE FOR A SINGLE ASSET THAT SELLS FOR \$100,000.01 TO \$500,000.00	2	EACH	\$ 250,000.00	2%	2%	2%	\$30,000.00
3	ITEM DESCRIPTION: COMMISSION FEE FOR A SINGLE ASSET THAT SELLS FOR \$500,000.01 TO \$1,000,000.00	1	EACH	\$ 750,000.00	2%	2%	2%	\$45,000.00
4	ITEM DESCRIPTION: COMMISSION FEE FOR A SINGLE ASSET THAT SELLS FOR OVER \$1,000,000.00	1	EACH	\$ 1,000,000.00	2%	2%	2%	\$60,000.00
5	ITEM DESCRIPTION: ELECTRONIC PAYMENT FEE	1	PCT	\$ 2,050,000.00	2%	2%	2%	\$123,000.00
6	ITEM DESCRIPTION: AUCTION LISTING PRICE, IF ANY	316	EACH		\$ 5.00	\$ 5.00	\$ 5.00	\$4,740.00
Total Quote Cost**				\$1,198,740.00				
* The State makes no guarantee of work volume. ** Price used to rank Quotes in accordance with Bid Solicitation Section 6.7.2.								

The evaluation model included three columns not on the revised State-Supplied Revised Price Sheet, namely “Estimated Annual Quantity”, “Estimated Line Item Avg Cost”, and “Total Estimated Item Price For 3-Year Term”. Columns “Year 1 Unit Cost”, “Year 2 Unit Cost”, and “Year 3 Unit Cost” from the revised State Supplied Price Sheet were renamed in the Evaluation Model price sheet to “Year 1 % Fee”, “Year 2 % Fee” and “Year 3 % Fee” respectively.

To establish a uniform set of standards to evaluate the pricing, the Bureau took the median of the “Item Description” for each Price Line 1 - 4 (with the exception of Price Line 2, where \$250,000 was used in lieu of the true median of \$300,000) and inserted that number into the “Estimated Line Item Avg Cost”. That number was multiplied by the “Estimated Annual Quantity” and then multiplied by a percentage fee proposed by the Bidder. The fees for Years 1-3 were then summed to arrive at a total for the cell “Total Estimated Price For 3-Year Term”.²

With respect to Price Line 5, “Item Description: Electronic Payment Fee”, the Bureau used the “Estimated Line Item Avg Cost” for Price Lines 1-4 and multiplied that estimated sum by the percentage proposed by the bidder to determine the estimate amount that a winning auction bidder would pay the Contractor after winning an auction. In the Protest, Muncibid assumed that all winning auction bidders will pay via electronic payment. Therefore, Muncibid believed that Estimated Annual Quantity results from each of Price Lines 1 - 4 must be multiplied by the 2.77% Electronic Payment Fee from Price Line 5 of Auctions’ Quote, such that Auctions total for Price Line 5 should be \$1,483,335.00 instead of the

² For example, using Price Line 1, Year 1: \$50,000 (“Estimated Line Item Avg Cost”) multiplied by 2% is \$1000. Then, the \$1000 figure was multiplied by 312 (“Estimated Annual Quantity”) which is \$312,000. In the Sample Evaluation, each year had a 2% fee, so the \$312,000 was multiplied by 3 resulting in the “Total Estimated Item Price for 3-Year Term” of \$936,000 for Price Line 1.

\$170,355 figure calculated by the Bureau. However, that is not the case, not all winning auction bidders pay electronically.

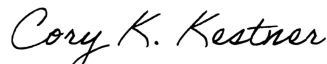
Consistent with Bid Solicitation Section 8.9.2 *Price Evaluation*, which stated “[t]he Procurement Bureau will utilize a weighted consumption/market basket model to evaluate pricing. The pricing model will be date-stamped and entered into the record before Quote opening.” The Bureau, in consultation with Distribution Support Services, the Using Agency primarily charged with overseeing the auction of State surplus property, real estate, and tax seized assets, created the evaluation methodology to estimate the costs to the State. Historically, most auctions fall within the parameters of Price Line 1 in that they are for single items or lots that sell for \$100,000 or less, and the remaining Price Lines fewer transactions.

Here, the evaluation methodology was applied uniformly to the pricing submitted by each Bidder. To the extent that there might have been and underestimate or overestimate as to the quantity for any Price Line is of no consequence.³ Given the estimated units were not included in the original or revised price sheet filled out by the bidders, there was no risk of potential bidder manipulation or patent ambiguity. See Dugan Constr. Co., Inc. v. N.J. Turnpike Auth., 398 N.J. Super. 229 (App. Div. 2008). And, the estimated units were determined before bids were submitted and thus were applied consistently among the bids. James Petrozello Co. v. Chatham, 75 N.J. Super. 173 (App. Div. 1962) (“the failure to promulgate estimates *before the reception of bids* as to future development left the bidders without a common standard upon which to base their bids and created the possibility of an arbitrary computation of future growth ..., so that one bidder rather than another could be favored by the capricious use of these variable factors”) (emphasis in the original).

Bid Solicitation Section 3.35, *State-Supplied Price Sheet Instructions*, and Price Lines 1-4 on the State-Supplied Price Sheet, required Bidders to provide a percentage commission for years 1, 2, and 3 of the Contract. The commission percentage is utilized for contractor billing to the State as directed under Bid Solicitation Section 4.3.1, *Billing and Invoicing*, and in conjunction with Bid Solicitation Section 4.4, *Commission Based on Actual Sale Price*. Price Line 5 required Bidders to provide a percentage Electronic Payment Fee for winning auction bids that may be paid electronically by the Contractor. Price Line 6 required Bidders to provide an Auction Listing Fee, if any, for each auction that would be paid by an Using Agency to the Contractor.

Based upon the foregoing, I find no reason to disturb the Bureau’s recommendation that the Contract be awarded to Auctions. Accordingly, I sustain the Contract award. This is my supplemental final agency decision pursuant to the Appellate Division’s May 13, 2025, order.

Sincerely,



Cory K. Kestner
Acting Chief Hearing Officer

c: Auctions International, Inc.
Liquidity Services Operations, LLC
C. Clarke
D. Warren
O. Olubanjo

³ To the extent that the Division’s March 10, 2025, Final Agency Decision implied that Price Line 5 was not included in the evaluation of the Quotes submitted, that statement was in error. Consistent with the time and date stamped evaluation methodology, all Price Lines were included in the pricing analysis.