



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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July 26, 2022

Via Electronic Mail Only: mdanowitz@sasaudit.com

Michael Danowitz, Principal
Specialty Audit Services, LLC
724 Montgomery Ave.
Narberth, PA 19072

Re: I/M/O Bid Solicitation #22DPP00673 Specialty Audit Services, LLC
Protest of Notice of Intent to Award
T2984 Unclaimed Property Recovery Services

Dear Mr. Danowitz:

This final agency decision is in response to your letter dated June 16, 2022, submitted by Specialty Audit Services, LLC (SAS). That letter was received by the Division of Purchase and Property's (Division) Hearing Unit on June 16, 2022. In that correspondence SAS protests the Notice of Intent to Award (NOI) issued by the Division's Procurement Bureau (Bureau) for Bid Solicitation #22DPP00673 - T0983 Unclaimed Property Recovery Services (Bid Solicitation). The record of this procurement reveals that the Quote submitted by SAS was deemed non-responsive for having failed to "submit a price for Price Line 3" pursuant to Bid Solicitation Section 4.4.5.2. *State-Supplied Price Sheet Instructions*.

By way of background, on August 16, 2021, the Bureau issued the Bid Solicitation on behalf of Department of the Treasury, Unclaimed Property Administration. Bid Solicitation §1.1 *Purpose and Intent*. The purpose of the Bid Solicitation was to solicit Quotes to provide audit examiner services to assist with the reporting and delivery of unclaimed property. Contractors¹ will be performing audits to ensure compliance with the New Jersey Uniform Unclaimed Property Act (Act), N.J.S.A. 46:30B-1 et seq. *Ibid*. It is the State's intent to award up to five (5) Contracts to those responsible Bidders, whose Quotes, conforming to this Bid Solicitation, are most advantageous to the State, price and other factors considered. *Ibid*.

In accordance with Bid Solicitation Section 1.3.1 *Electronic Questions and Answer Period*, potential Bidders were permitted to submit questions regarding the Bid Solicitation by September 14, 2021. On October 8, 2021, the Bureau posted Bid Amendment #1 with the answers to questions posed, none of which addressed or questioned Bid Solicitation Section 4.4.5.2 *State-Supplied Price Sheet Instructions*.

¹ For ease of reference, this final agency decision uses the term Contractor in place of the term *Vendor {Contractor}* in the Bid Solicitation Section 2.2 *General Definitions*

On November 16, 2021, the Division’s Proposal Review Unit opened seven (7) Quotes² which were received by the submission deadline of 2:00 pm eastern time. After conducting an initial review of the Quotes received for compliance with mandatory Quote submission requirements, all seven Quotes were forwarded to the Bureau for evaluation.

In conducting the review of the Quotes, the Bureau determined that SAS’ submitted Quote was non-responsive because SAS “failed to offer a price for Price Line 3, Matching Records – SSA/DMF, as required by Bid Solicitation Section 4.4.5.2, *State-Supplied Price Sheet Instructions*, which states all price lines must be completed.” On its price sheet, as shown on the screenshot below, SAS had indicated “No Bid” for price line 3.³ See May 4, 2022 Recommendation Report, p.3.

Price Sheet T2984 Unclaimed Property Recovery Services Bid Solicitation 22DPP00673					
Vendor (Bidder):			(Enter Info in Yellow Cells)		
Price Line Number	Unit	Description	Rates for Years One (1) through Three (3)		
1	Contingency Rate	Unclaimed Property Recovery Services <i>Bid Solicitation Sections 3.0 - 3.14</i>	12%		
Price Line Number	Unit	Description	Rate for Year One (1)	Rate for Year Two (2)	Rate for Year Three (3)
2	All-Inclusive Hourly Rate	Litigation Services <i>Bid Solicitation Section 3.15</i>	\$ 225.00	\$ 225.00	\$ 225.00
3	Per Record Charge	Matching Records – SSA/DMF <i>Bid Solicitation Section 5.16.1</i>	No Bid	No Bid	No Bid

Thereafter, the remaining Quotes were forwarded to the Evaluation Committee for review and evaluation in accordance with Bid Solicitation Section 6.5 *Quote Evaluation Committee*.

After completing its review and evaluation of the Quotes, the Evaluation Committee recommended that Contracts be awarded to ASUS; EECS; Innovative; Kelmar; and, Kroll. Thereafter, on May 4, 2022 the Bureau prepared a Recommendation Report that recommended that Contracts be awarded to five (5) Bidders. Accordingly, on June 9, 2022, the Bureau issued the NOI advising the Bidders that it was the State’s intent to award Blanket P.O.s consistent with the May 4, 2022, Recommendation Report.

On June 16, 2022, SAS wrote to the Division’s Hearing Unit stating that it was protesting the Bureau’s determination that its submission for Price Line 3, Matching Records – SSA/DMF, rendered the Quote non-responsive. In support of its protest, SAS states:

The following Section, 4.4.5.3, provides further information for completing the State-Supplied pricing sheet.

“All price lines must be filled out in accordance with Section 4.4.5.2. **If the Vendor {Bidder} is not submitting a price for an item on a price line, the Vendor {Bidder} must indicate “No**

² Quotes were submitted by Audit Services US LLC (ASUS); DeH Vealage LLC (DeH); EECS LLC (EECS); Innovative Advocate Group, Inc. (Innovative); Kelmar Associates LLC (Kelmar); Kroll Government Solutions LLC (Kroll); and, SAS.

³ The Quote submitted by DeH was also deemed non-responsive by the Bureau.

Bid” on the State-Supplied Price Sheet accompanying this Bid Solicitation”.

On the State-Supplied Price Sheet that SAS submitted to the State of New Jersey, Price Line 1 was filled out with the firm 's contingency fee and Price Line 2 was filled out with the firm's hourly rate for litigation support.

SAS chose not to bid to perform SSA/DMF matches and filled out Price Line 3 to state "No Bid" in accordance with Section 4.4.5.3.

Based on the stated instructions of T2984, SAS filled out the pricing information correctly on the State-Supplied Price Sheet. **“No Bid” is the phrase that Section 4.4.5.3 specifically states should be used in this situation.** Therefore, SAS did not “fail to submit a price for Price Line 3.”

[SAS’ protest, p. 1-2, **emphasis in the original.**]

In consideration of the SAS protest, I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes received, the relevant statutes, regulations, and case law. This review of the record has provided me with the information necessary to determine the facts of this matter and to render an informed final agency decision on the merits of the protest.

As a threshold issue, a Contractor must to be able to perform all of the work required under Bid Solicitation Section 3.0 *Scope of Work*. Included within the Scope of Work is the requirement that a Contractor, when requested by the State, match holder records against the Social Security Administration/Death Master File records. This is not a service to be performed at the option or discretion of the Contractor. Rather, the terms of the Bid Solicitation Section 3.14 *Matching Records – Social Security Administration/Death Master File (SSA/DMF)* require, that when the State requests the work, the Contractor must perform it. Specifically, the Bid Solicitation stated in part:

At the request of the SCM, the Vendor {Contractor} **shall**⁴:

- A. Perform the matching of policy and/or account records to the SSA/DMF;
- B. Utilize supplementary databases to confirm the accuracy of preliminary matches;
- C. Perform only that work that has been authorized by the SCM; and
- D. Ensure all communication with the SCM is confidential and refrain from communicating with the Holder about the State audit

[**Emphasis Added.**]

Accordingly based upon the plain language of the Bid Solicitation, it is clear that Matching Records – Social Security Administration/Death Master File is a required service.

With respect to the Quote pricing, which after Contract award will set the price that the State will pay the Contractor for performing the services provided, Bid Solicitation Section 4.4.5.2 *State-Supplied Price Sheet Instructions* stated:

⁴ Bid Solicitation Section 2.2 General Definitions defines “shall” as that which “Denotes that which is a mandatory requirement.”

The Vendor {Bidder} must submit its pricing using the format set forth in the State-Supplied Price Sheet/Schedule accompanying this Bid Solicitation. Failure to submit all information required may result in the Quote being deemed non-responsive. Each Vendor {Bidder} is required to hold its prices firm through the Blanket P.O.

The Vendor {Bidder} **must**⁵:

- A. Submit a Firm-Fixed Contingency Fee for Price Line 1. The Contingency Fee will remain unchanged during the term of the Blanket P.O.;
- B. Submit an All-Inclusive Hourly rate for Litigation Support for Blanket P.O. Years One (1) through Three (3); and
- C. **Submit an All-Inclusive Per Record Charge for each match of a Holder's record against the Social Security Administration Death Master Files (SSA/DMF) under Bid Solicitation Section 3.14 for Blanket P.O. Years One (1) through Three (3).**

Note: Price Line 1 will be used for evaluation purposes. Price Lines 2 and 3 will be reviewed for cost reasonableness.

[Emphasis Added.]

Accordingly, inclusion of the word “must” indicates that the submission of a Quote price for section C (price line 3) was required.

As noted above, in support of its protest, SAS states that Bid Solicitation Section 4.4.5.3 permitted it to indicate “No Bid” for price line 3. Unfortunately, SAS misreads this section of the Bid Solicitation to allow it to no bid a required item.

With respect to the use of “No Bid” verses “No Charge”, Bid Solicitation Section 4.4.5.3 stated:

All price lines must be filled out in accordance with Section 4.4.5.2. If the Vendor {Bidder} is not submitting a price for an item on a price line, the Vendor {Bidder} must indicate “No Bid” on the State-Supplied Price Sheet accompanying this Bid Solicitation. If the Vendor {Bidder} will supply an item on a price line free of charge, the Vendor {Bidder} must indicate “No Charge” on the State-Supplied Price Sheet accompanying this Bid Solicitation. The use of any other identifier may result in the Vendor's {Bidder's} Quote being deemed non-responsive.

[Emphasis added.]

Bid Solicitation Section 4.4.5.3 dictated that the Price Sheet / price lines must be completed in accordance with the instructions of Bid Solicitation Section 4.4.5.2 which made clear that “The Vendor {Bidder}

⁵ Bid Solicitation Section 2.2 General Definitions defines “must” as that which “Denotes that which is a mandatory requirement.”

must...Submit an All-Inclusive Per Record Charge for each match of a Holder's record against the Social Security Administration Death Master Files (SSA/DMF) under Bid Solicitation Section 3.14 for Blanket P.O. Years One (1) through Three (3)."

Use of "No Bid" here was not permitted as all awarded Contractors must provide the State with all services identified in the scope of work, including the work specified in Bid Solicitation Section 3.14 *Matching Records – Social Security Administration/Death Master File (SSA/DMF)* requiring Contractors to match policy holder and/or account records to the Social Security Administration Death Master Files to ensure compliance with the New Jersey Uniform Unclaimed Property Act. Performance of the work required by this section of the Bid Solicitation is mandatory. Accordingly, Bid Solicitation Section 4.4.5.2 and Bid Solicitation Section 4.4.5.3 required that Bidders submit a Quote price. While a Bidder could propose to provide this work to the state free of charge, it could not decline to perform the work. This Bid Section's functionality within the Scope of Work is not discretionary but necessary and incident to the work that the using agency needs completed by a Contractor and SAS misreads the Bid to grant itself discretion to ignore or decline to perform the services required under this portion of the Bid. The broad extent of the work to be performed under Bid Solicitation Section 3.14 further enforces the important nexus of the intent and purpose of this passage to the overall scope of the Bid Solicitation. Bid Solicitation Section 3.14 goes on to state:

The Vendor {Contractor} **shall** be prepared and able to:

- A. Identify recordkeeping systems;
- B. Request information from the Holder relating to the policy administration systems used during the period being audited;
- C. Extract required records;
- D. Assemble a data download of any applicable policies and/or accounts for the purpose of performing a match against the SSA/DMF;
- E. Customize the files received into a useable format to help optimize the SSA/DMF matching process while maintaining the integrity of the original files provided;
- F. Limit the extracted data to those policies and/or accounts which, based upon the books and records of the Holder under audit, reflect a last known address in the State of New Jersey;
- G. Perform a match of the policies and/or accounts collected against the SSA/DMF Match records to the SSA/DMF;
- H. Review matching results;
- I. Prepare a comprehensive report of matches (both successful and unsuccessful) to present to the State. The presentation shall include:
 - 1. Schedules of all policies and/or accounts matched to the SSA/DMF, broken down between exact matches, partial/fuzzy matches, questionable matches, and non-matches; and
 - 2. Details concerning supplemental (non-SSA/DMF) database validations;
- J. Address all questions concerning the Vendor's {Contractor's} methodology and determinations;

- K. Assist the State in the review and determination of questionable matches; and
- L. At the request of the SCM, present the Holder with the match results and address any questions and concerns of the Holder.

[Emphasis added.]


The combination of the clear bid language that “all price lines must be filled out in accordance with Section 4.4.5.2.” and the extensive nature of the work described under Bid Section 3.14, make clear that this is a necessary and required component of the Bid Solicitation and the State Supplied Price Sheet. By failing to submit pricing on price line 3, SAS did not bid on work that is required to be performed under the term of the Bid Solicitation. SAS’ Quote contained a non-waivable deviation rendering the Quote non-responsive. Twp. of River Vale v. Longo Constr. Co., 127 N.J. Super. 207, 222 (Law Div. 1974).

In light of the findings set forth above, I sustain the conclusions in the Bureau’s May 4, 2022, Recommendation Report, that the SAS Quote was non-responsive and uphold June 9, 2022, Notice of Intent to Award.

Thank you for your company’s continuing interest in doing business, I encourage you to log into [NJSTART](#) to select any and all commodity codes for procurements you may be interested in submitting a Quote for so that you may receive notification of future bidding opportunities.

This is the Division’s final agency decision. Pursuant to N.J.A.C. 17:12-3.1, this determination is appealable to the Appellate Division of the Superior Court in accordance with the New Jersey Court Rules (R. 2:4-1) which provide a party 45 days to appeal this final agency decision.

Sincerely,


Maurice A. Griffin
Acting Director

MAG: RUD: DK

- c. R. Regan
- K. Popso
- B. Tran