



State of New Jersey

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February 29, 2016

Via Email [hvanderborg@innovativeadvocate.com] and USPS Regular Mail

Heather Vanderborg, Managing Director
Innovative Advocate Group
3 Harding Road, Suite E
Red Bank, New Jersey 07701

Re: Protest of Notice of Intent to Award
RFP# 16-X-23508: Unclaimed Property Recovery Services

Dear Ms. Vanderborg:

This letter is in response to your correspondence dated October 16, 2015 to the Division of Purchase and Property (Division), on behalf of Innovative Advocate Group (IA Group). In that letter, IA Group protests the Division's Procurement Bureau's (Bureau) October 9, 2015 Notice of Intent to Award (NOI) a contract for Solicitation #16-X-23508: Unclaimed Property Recovery Services. The relief IA Group requests is only that the Division re-evaluate its proposal taking into consideration the supplemental information provided in its protest letter along with its original proposal. IA Group specifically challenges the scoring of its proposal as the basis of this protest. IA Group also requested an opportunity to make an in-person presentation.

By way of background, the subject Request for Proposal (RFP) was issued on May 7, 2015 by the Bureau on behalf of the Unclaimed Property Administration (UPA) to solicit proposals for audit examinations to ensure compliance with the unclaimed property statutes and to assist with the reporting and delivery of unclaimed property. (RFP § 1.1 *Purpose and Intent*.) In performing these examinations, the contractors will locate, identify, report and deliver any unreported past due unclaimed property due to the State. (*ibid.*) It is the intent of the State to award multiple contracts to those responsible bidders whose proposals, conforming to this RFP, are most advantageous to the State, price and other factors considered. (RFP § 1.1 *Purpose and Intent*.)

On June 11, 2015 nine proposals received by the submission deadline were opened by the Division's Proposal Review Unit. Thereafter, the Evaluation Committee (Committee) of technical experts met and reviewed the proposals submitted; scoring each proposal in accordance with the evaluation criteria set forth in RFP Section 6.7.1 *Technical Evaluation Criteria*. The Committee was comprised of members of the UPA and the Bureau. The Committee was responsible for performing a technical review and price comparison of the proposals received.

Based upon that review, on October 9, 2015, the Bureau issued its NOI indicating that contracts would be awarded to the following companies:

Audit Services US, LLC
Kelmar Associates, LLC
Verus Financial, LLC
Xerox State & Local Solutions, Inc.

On October 21, 2015, the Division received IA Group's protest letter dated October 16, 2015 stating in part:

. . . Within the report, the Evaluation Committee [] communicates and provides many positive aspects of IA Group in support of meeting the requirements of the RFP; the key members of IA Group have sufficient experience, the number of contracts with other States (which has increased from 5 to 7 since the date of the RFP submission), and further noting the potential of IA Group. However, it seems that the lack of time that IA Group has been in business, as well as the years of experience of its staff, have raised the Committee's concerns of IA Group as a whole. IA Group is challenging the decision of the Committee as we believe that our firm is more than able to successfully complete a contract of the State's size and scope.

. . .

IA [Group] respectfully requests that the State re-evaluates IA Group's proposal, taking into consideration the additional information that has been provided in this letter, along with our original RFP submission, IA Group would like to request an opportunity for an in-person presentation as we would like to further discuss and address any additional questions or concerns that the State may have...

In the protest letter IA Group attempts to supplement its original proposal submission by discussing its business mission; specifically that IA Group prefers to hire and train younger staff rather than the hire experienced professionals. In addition, in the protest letter, IA Group provided supplemental information regarding its current contracts and the company's business processes. Such supplementation is not allowed and is inconsistent with the Appellate Division's reasoning in In re Protest of the Award of the On-Line Games Prod. and Operation Servs. Contract, Bid No. 95-X-20175, 279 N.J. Super. 566 (App. Div. 1995), where the court held that:

[t]he RFP specifically approved of bidders' clarifying or elaborating in their proposals in post-opening proceedings but prohibited supplementation, change or correction. In clarifying or elaborating on a proposal, a bidder explains or amplifies what is already there. **In supplementing, changing or correcting a proposal, the bidder alters what is there.** It is the alteration of the original proposal which was interdicted by the RFP.

[Emphasis added.]

Accordingly, the supplemental information provided by IA Group cannot be considered.

With respect to IA Group's request for an in-person presentation to discuss and address any additional questions or concerns that the State may have, in reviewing the submitted proposals the Committee did not entertain presentations from any of the bidders. All proposals were evaluated based upon the contents of the submitted proposals. A discussion of the proposal with IA Group would afford one bidder an opportunity that the other bidders did not have. Moreover, such a discussion appears to seek and could result in IA Group being permitted to supplement, change, correct and/or alter what was submitted in its June 11, 2015, proposal, potentially placing it in a position of advantage over other bidders. Permitting IA Group to have a meeting with the Director and Committee during which it could potentially supplement its proposal, would also be inconsistent with the Appellate Division's reasoning in On-Line Games Prod., 279 N.J. Super. at 597.

To the extent that IA Group desires to make a presentation regarding its protest, I note that pursuant to N.J.A.C. 17:12-3.3(d)(1), "[t]he Director has sole discretion to determine if an in-person presentation by the protester is necessary to reach an informed decision on the matter(s) of the protest. In-person presentations are fact-finding for the benefit of the Director." Further, "[i]n cases where no in-person presentation is held, such review of the written record shall, in and of itself, constitute an informal hearing." N.J.A.C. 17:12-3.3(d). In consideration of IA Group's protest, I have reviewed the record of this procurement, including the RFP, the proposals submitted, the Evaluation Committee report, the Bureau's Recommendation Report, and the relevant statutes, regulations, and case law. The issue(s) raised in IA Group's protest were sufficiently clear such that a review of the record of this procurement has provided me with the information necessary to determine the facts of this matter and to render an informed final agency decision on the merits of the protest submitted by IA Group on the written record.

Turning to IA Group's challenge of the NOI, I note that the Committee completed its technical review of each proposal submitted using the following criteria set forth in the RFP:

6.7.1 EVALUATION CRITERIA

- a. **Personnel**: The qualifications and experience of the bidder's management, supervisory, and key personnel assigned to the contract, including candidates recommended for each of the positions/roles required;
- b. **Experience of Firm**: The bidders documented experience in successfully completing contracts of a similar size and scope in relation to the work required by this RFP; and
- c. **Ability of Firm to complete the Scope of Work based on its Technical Proposal**: The bidder's demonstration in the proposal 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.

With respect to IA Group's challenge to the contract award, in preparing proposals the RFP required that "the bidder shall describe its approach and plans for accomplishing the work outlined in the Scope of Work . . . The bidder must set forth its understanding of the requirements of this RFP and its ability to successfully complete the contract." (RFP § 4.4.3 *Technical Proposal*.) Specifically, the RFP required that "the bidder shall set forth its overall technical approach and plans to meet the requirements of the RFP in a narrative format. This narrative should demonstrate to the State that the bidder understands the objectives that the contract is intended to meet, the nature of the required work and the level of effort necessary to successfully complete the contract. This narrative should demonstrate to the State that the bidder's general approach and plans to undertake and complete the contract are appropriate to the tasks and subtasks involved." (RFP § 4.4.3.1 *Management Overview*.)

In addition, the RFP requested that the bidder “describe its specific plans to manage, control and supervise the contract to ensure satisfactory contract completion according to the required schedule;” include a contract schedule; set forth a summary of anticipated problems and a proposed solution; and “include information relating to its organization, personnel, and experience, including, but not limited to, references, together with contract names and telephone numbers, evidencing the bidder’s qualifications and capabilities to perform the services required by this RFP.” (RFP § 4.4.3.2 *Contract Management*, RFP § 4.4.3.3 *Contract Schedule*, RFP § 4.4.3.5 *Potential Problems*, and RFP § 4.4.4 *Organizational Support and Experience*.)

As noted above, with respect to the Criteria A - *Personnel*, bidders were guided to set forth the qualifications and experience of the management, supervisory, and key personnel assigned to the contract. The Committee recognized the qualifications and experience of IA Group’s president and managing director; but expressed concerns regarding the inexperience of IA Group’s staff in the area of unclaimed property recovery services. Specifically, the Committee Report states:

IA Group’s president and managing director possess significant experience; however, aside from those staff members, the professional support staff appears to have little or no unclaimed property experience. As a result, the Committee had serious concerns regarding the experience of the staff and its ability to successfully manage the quantity of audit work for the State.

As part of this protest, the Hearing Unit conducted an independent review of IA Group’s proposal in relation to the RFP requirements. Included in this review was, among other things, the technical narrative and the resumes provided pursuant to RFP § 4.4.4.3 which states in pertinent part:

4.4.4.3 RESUMES

Detailed resumes should be submitted for all management, supervisory and key personnel to be assigned to the contract. Resumes should emphasize relevant qualifications and experience of these individuals in successfully completing contracts of a similar size and scope to those required by this RFP. Resumes should include the following:

- a. The individual's previous experience in completing each similar contract;
- b. Beginning and ending dates for each similar contract;
- c. A description of the contract demonstrating how the individual's work on the completed contract relates to the individual's ability to contribute to successfully providing the services required by this RFP; and
- d. With respect to each similar contract, the name and address of each reference together with a person to contact for a reference check and a telephone number.

In reviewing the proposal and resumes the Hearing Unit assessed the inclusion of “information relating to its organization, personnel, and experience, including, but not limited to, references...evidencing the bidder’s qualifications and capabilities to perform the services required.” The review reveals that the president and managing director have prior experience in the area of unclaimed property recovery services; however aside from the listing of aspects of general unclaimed property work, there is little detail in the technical proposal that relates to the experience to the requirements of this RFP. Additionally, for the remaining four (4) members of IA Group’s key personnel who would be performing the audit work, the proposal and resumes reveal limited to no experience in the unclaimed property arena. For each of the remaining four staff members identified as key personnel, the relevant experience is

limited to the time each has worked for IA Group, and each has only performed a limited segment of the scope of work required by this RFP.

Accordingly, I find that given the dearth of relevant successful experience presented for these key staff members, IA Group's proposal provided minimal information to assure the Evaluation Committee that the proposal met Criteria A.

As to Criteria B - *Experience of the Firm*, the RFP requests that the bidder demonstrate that it has successfully complete contracts of a similar size and scope in relation to the work required by the RFP. Specifically, RFP § 4.4.4.5 *Experience with Contracts of Similar Size and Scope* states:

The bidder should provide a comprehensive listing of contracts of similar size and scope that it has **successfully** completed, as evidence of the bidder's ability to successfully complete the services required by this RFP. Emphasis should be placed on contracts that are similar in size and scope to the work required by this RFP. **A description of all such contracts should be included and should show how such contracts relate to the ability of the firm to complete the services required by this RFP.** For each such contract, the bidder should provide two names and telephone numbers of individuals for the other contract party. Beginning and ending dates should also be given for each contract.

The bidder should provide documented experience to demonstrate that each subcontractor has **successfully** performed work on contracts of a similar size and scope to the work that the subcontractor is designated to perform in the bidder's proposal. The bidder must provide a **detailed description** of services to be provided by each subcontractor.

[*Emphasis added.*]

In its report, the Committee noted that IA Group has five (5) state contracts for which it is currently conducting 40 audits. The Committee found that at the time of evaluation, no audits under these five contracts had been completed and it was not convinced that it could successfully complete a contract of New Jersey's size and scope.

An independent review of IA Group's proposal by the Hearing Unit reveals that aside from the state entity name and contact information, the proposal provided the following information in response to RFP § 4.4.4.5 regarding the five (5) state contracts held:

State of Delaware

- Services Provided: Third Party audit examination services provided for unclaimed property reviews
- Contract Date: January 31, 2013 – Present

State of Massachusetts

- Services Provided: Examination and identification of abandoned property from holders that are subject to report and deliver said property under the Massachusetts abandoned property law.
- Contract Date: January 10, 2014 – Present

State of Arkansas

- Services Provided: Examination and identification of abandoned property from holders that are subject to report and deliver said property under the Arkansas abandoned property law.
- Contract Date: December 1, 2013 – Present

State of New Hampshire

- Services Provided: Third Party audit examination services provided for unclaimed property reviews.
- Contract Date: August 13, 2014 – Present

State of Florida

- Services Provided: Examination and identification of abandoned property from holders that are subject to report and deliver said property under the Florida abandoned property law.
- Contract Date: May 23, 2015 – Present

Despite the guidance and the requirements of the RFP, no further information was provided by IA Group in its proposal which could establish that these contracts were of a similar size and scope in relation to the work required by the RFP. No details were provided regarding the volume of work handled, nor did IA Group provide any details on its experience in successfully completing any audits related to these contracts or the specific tasks or duties performed under these contracts. A review of the record also reflects that while the Bureau attempted to clarify this information by reaching out to the contacts listed in the proposal, this inquiry also yielded little information to the successful completion of audits or tasks under the current contracts.

Accordingly, I find that IA Group's proposal provided minimal information regarding its successful completion of contracts of a similar size and scope in relation to the work required by the RFP or even tasks under those contracts which would have assured the Evaluation Committee that the proposal met Criteria B.

With respect to Criteria C – *Ability of the firm to complete the Scope of Work based on its Technical Proposal*, the bidder's technical proposal should demonstrate that it understands the requirements of the scope of work and that it has presented an approach to successfully perform the contract requirements. RFP § 4.4.3 *Technical Proposal requires*:

In this section, the bidder shall describe its approach and plans for accomplishing the work outlined in the Scope of Work section, i.e., Section 3.0.

...

The bidder must set forth its understanding of the requirements of this RFP and its ability to successfully complete the contract. This section of the proposal should minimally contain the information identified below.

[Emphasis added.]

In its report, the Committee noted that IA Group's "proposal provided a clear, but brief summary of IA Group's examination approach," without more.

An independent review of IA Group's proposal conducted by the Hearing Unit reveals that IA Group provided more than a brief summary of its examination approach in response to RFP § 4.4.3.1 *Management Overview*. The Hearing Unit found that IA Group's proposal and attachments responded in detail, describing its approach and plans for accomplishing the work outlined in the SOW.

With respect to Criteria C, I find that based upon the statement in the Committee Report that IA Group only provided a "clear, but brief summary," it is unclear whether the Committee considered the detailed response to the RFP that was set forth in IA Group's proposal and attachments in evaluating IA Group's proposal under Criteria C and, if not, whether this would affect IA Group's technical scoring for Criteria C, and standing for award of contract. Accordingly, I direct the Bureau and Committee to review and evaluate IA Group's proposal with respect to Criteria C.

Based upon the foregoing, and the fact that IA Group did not protest the awards to the intended awardees, I sustain the Bureau's NOI to award contracts to the four (4) current intended awardees and direct the Bureau to proceed with the award to those bidders. However, I remand this matter back to the Bureau for further review and evaluation of the proposal submitted by IA Group in accordance with the findings regarding Criteria C of the technical evaluation set forth herein, and for consideration of whether the IA Group's proposal reaches the competitive range.

Thank you for your company's interest in doing business with the State of New Jersey. I invite you to register your company with [NJSTART](http://www.njstart.gov) at www.njstart.gov, the State of New Jersey's new eProcurement system.

Sincerely,



Jignasa Desai-McCleary
Director

JD-M: RUD

c: P. Michaels
M. Boragine
K. Anderson-Thomas