



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
33 WEST STATE STREET
P. O. BOX 039

TRENTON, NEW JERSEY 08625-0039
<https://www.njstart.gov>
Telephone (609) 292-4886 / Facsimile (609) 984-2575

FORD M. SCUDDER
Acting State Treasurer

JIGNASA DESAI-MCCLEARY
Director

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

May 13, 2016

Via Email [ggolum@wilentz.com] and USPS Regular Mail

Gordon J. Golum, Esq.
Wilentz, Goldman & Spitzer, PA
90 Woodbridge Center Drive
Suite 900, Box 10
Woodbridge, NJ 07095-0958

Re: Protest of Notice of Intent to Award
RFP# 16-X-23964: Fiscal Intermediary and Financial Cash and Counseling Services: DHS

Dear Mr. Golum:

This letter is in response to your letter of protest dated December 4, 2015 to the Division of Purchase and Property (Division), on behalf of Easter Seals New Jersey (Easter Seals). Easter Seals protests the November 23, 2015 Notice of Intent to Award (NOI) a contract for Solicitation #16-X-23964: Fiscal Intermediary and Financial Cash and Counseling Services issued by the Division's Procurement Bureau (Bureau). Easter Seals contends that its proposal satisfied all requirements of the Request for Proposals (RFP), and therefore it was surprised not to receive a contract award.

By way of background, the subject RFP was issued on August 4, 2015, by the Bureau on behalf of the Department of Human Services (DHS) to solicit proposals to engage one contractor to provide statewide fiscal management services, administrative services, and financial counseling services to individuals enrolled in DHS programs (Program).¹ (RFP § 1.1 *Purpose and Intent*.) This solicitation is a consolidation of the three current State contracts for similar services in order to provide efficiencies of operation for DHS and its constituents. (RFP § 1.2 *Background*.) The awarded contract will allow DHS program participants to self-direct and manage the services and budget in their individual plan of care. (RFP § 1.1 *Purpose and Intent*.) This RFP specifically sought a contractor with the knowledge, experience, resources and infrastructure to provide the services requested. (*Ibid.*) It is the intent of the State to award one contract to the responsible bidder whose proposal, conforming to this RFP, is most advantageous to the State, price and other factors considered. (RFP § 1.1 *Purpose and Intent*.)

On September 1, 2015, the Bureau issued Addendum #2 responding to bidder questions which had been received by the Bureau.

On September 11, 2015, five proposals received by the submission deadline were opened by the Division's Proposal Review Unit. The proposals received were reviewed by the Evaluation Committee

¹ The contract awarded through this solicitation will be used by DHS' Divisions of Disability Services (DDS), Aging Services (DOAS), Developmental Disabilities (DDD), and Medical Assistance and Health Services (DMAHS).

(Committee), comprised of DHS and Division employees. The Committee was responsible for performing a technical review of the proposals received. Each proposal was scored in accordance with the evaluation criteria set forth in RFP § 6.7.1 *Technical Evaluation Criteria*:

- 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 RFP.
- 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.

Price was not a consideration in the technical evaluation and each proposal was scored by the Committee without knowledge of the proposed pricing.

The results of the technical evaluation are evidenced in the chart below.

Fiscal Intermediary and Financial Cash and Counseling Services Pre-defined (RFP 6.7.1) Technical Evaluation Criteria	Bidder: PP (Scored 9/25/15)	Bidder: SDS/ CAU (Scored 9/25/15)	Bidder: Easter Seals NJ (Scored 9/25/15)	Bidder: PHMC/Sup ports (Scored 9/25/15)	Bidder: Palco (Scored 9/25/15)
Personnel	231	198	165	165	132
Experience of the Firm	231	198	165	99	99
Ability of the Firm to Complete the Scope of Work based on the presentation in its Technical Proposal.	272	204	170	136	102
Total Technical Score	734	600	500	400	333

Chart 3

On November 23, 2015, the Bureau issued its NOI indicating that a contract would be awarded to PCG Public Partnerships, LLC (PPL). The NOI further advised "that in accordance with the Division's administrative regulations, N.J.A.C. 17:12-3.3 Protest Procedures, the protest period ends with the close of business on December 8, 2015."

On December 4, 2015, the Division received Easter Seals' protest letter which states "[p]lease consider this a Protest of the proposed award under the above referenced RFP in accordance with N.J.A.C. 1:12-3.3. [Easter Seals'] proposal satisfied all requirements for the award and it was surprised not to receive the award."²

² In the protest letter, Easter Seals notes that on November 23, 2015 and November 24, 2015 it filed government records requests with the Division under the Open Public Records Act (OPRA); however as of the date of the protest letter it had not received a response to the OPRA requests. Easter Seals requested an extension of the protest period to permit it time to review the documents requested and file a

In consideration of Easter Seals' protest, I have reviewed the record of this procurement, along with the relevant statutes, regulations, and case law. This review 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 Easter Seals.

With respect to Easter Seals' proposal, the Committee Report noted that "Easter Seals New Jersey's Proposal, when evaluated, demonstrated the firm had strengths in many areas, but not sufficient experience to earn technical points in the competitive range."

In the evaluation of Criteria A – *Personnel*, the Committee report noted that Easter Seals' proposal demonstrates that "... the staff has the ability to speak 23 languages." The report also indicated that "[t]he resumes of the proposed team did not demonstrate evidence of prior exposure to these types of roles, nor credentials relevant to the roles being proposed. The resumes lacked demonstrations of managed care experience and financial counseling." [Evaluation Committee Report, p. 14.] While Easter Seals' proposal did respond to the RFP requirements, setting forth the qualifications and experience of the management, supervisory, and key personnel assigned to the contract, the resumes revealed that the proposed staff "lacked demonstrations of managed care experience and financial counseling."³ Further, the Committee determined that "[e]xperience and high level of expertise relevant to performing the services of this contract were not demonstrated by the resumes" accompanying Easter Seals' proposal.

In connection with this protest, the Hearing Unit performed an independent review of the RFP requirements, Easter Seals' proposal, the personnel noted and the resumes provided. The Hearing Unit determined that Easter Seals' proposal along with the resumes provided indicate that the management and key personnel do have some experience in managing and administering the managed care and financial counseling tasks similar to that required by the RFP. However, Easter Seals' proposal also indicated that "due to the volume of participants anticipated to require counseling services; the personal support and attention required to appropriately serve their needs; and geographic dispersion of the Participants/Authorized Representatives in this program, we are going to subcontract a portion of the counseling services. The subcontracted financial counseling entities are Skylands Family Support and the Tanis Group."⁴ While Easter Seals' proposal indicated these services will be subcontracted, there was no detail provided, either in the proposal or through resumes, regarding the subcontracted personnel or their experience in performing the managed care and financial counseling tasks required by the RFP.

supplemental protest letter. On December 8, 2015, the Bureau's Procurement Specialist wrote to all bidders, including Easter Seals, advising that the protest period had been extended to December 22, 2015. On December 14, 2015 the Division responded to Easter Seals November 23, 2015 OPRA request and on December 17, 2015 the Division responded to Easter Seals November 24, 2015 OPRA request. Easter Seals did not file a supplemental protest letter or request an additional extension of time.

³ In comparison, the proposal of the intended awardee, PPL, included information detailing the qualifications and experience of the staff to be employed on the contract. Specifically, "[t]he Proposal offers a specialized team for the Launch and Implementation phase and specific identification of an Acting Account Manager, who has strong prior exposure to the components of the Vendor Fiscal/Employer Agent (VF/ EA) model and credentials.... The Committee determined the PPL's proposed team, including the Project Launch team, provides a well-balanced approach for managing this contract, exceeding the criteria and the Proposal" (Evaluation Committee Report, p.9-10.)

⁴ Easter Seals' proposal does indicate that The Tanis Group has a combined 55 years of experience between the two founding members of consulting and counseling small businesses and individuals on managing and creating personal budgets; helping them to accomplish their personal and financial goals. (Easter Seals Proposal V1, S3, pg. 1). However, there is no indication that these two individuals will be the personnel performing the subcontracted services.

Based upon the Hearing Unit's review of the record and the statements in the Committee Report, it appears as though that Easter Seals' proposal along with the resumes provided indicate that the management and key personnel do have some experience in managing and administering the managed care and financial counseling tasks similar to that required by the RFP. It is unclear the extent to which the Committee was impressed by the information contained in Easter Seals' proposal; however, even if I were to remand this matter back to the Bureau for more information with respect to Criteria A, Easter Seals would still not be eligible for a contract award based upon proposal scoring. If, upon review by the Bureau, Easter Seals received a score of 10 (the highest available score) resulting in a weighted score of 330 for Criteria A; Easter Seals total technical score would be 665; the technical score for the intended awardee is 734.⁵ Unfortunately, this ambiguity is insufficient cause to remand the matter back to the Bureau.

As to the evaluation of Criteria B – *Experience of the Firm*, the RFP required that the bidder document experience in successfully completing contracts of a similar size and scope in relation to the work required by the RFP. In reviewing Easter Seals' proposal related to Criteria B, the Committee determined that

Easter Seals New Jersey provided a listing of six contracts (please see Proposal p. 20), which did not demonstrate similar size and scope to this RFP.

An evaluation of firm's contract experience demonstrated to the Committee the firm has had little exposure to the Vendor Fiscal/Employer Agent (VF/EA) model.

[Evaluation Committee Report, p. 14.]

The Hearing Unit independently reviewed Easter Seals' proposal, including the six (6) entries listed in response to RFP Section 4.4.4.5 *Experience with Contracts of Similar Size and Scope* in relation to the RFP requirements. The contract resulting from this RFP will be utilized by seven programs to be managed by the successful bidder in support of three DHS divisions. (RFP § 1.2.3.2 *Support Programs*.) These programs have a projected participant volume of approximately 41,500. (RFP § 1.2.4 *Utilization Summary – All Programs, Chart No. 1.*)

In reviewing Easter Seals' proposal for documentation regarding experience in successfully completing contracts of a similar size and scope in relation to the work required by the RFP, the Hearing Unit determined that Easter Seals' proposal did not provide sufficient information to show that the contracts listed were of similar size and scope to that being procured by the RFP. For example, while the successful bidder would be required to provide the Vendor Fiscal/Employer Agent model of Financial Management Services (FMS) services in accordance with the Agent Employment Tax Liability pursuant to IRS code (RFP § 1.1 *Purpose and Intent*.), a review of Easter Seals' proposal shows only a cursory mention of its use and understanding of the VF/EA model. Two (2) of the six (6) contracts listed in Easter Seals' proposal did mention the VF/EA model; however, in the Fiscal Intermediary Services Contract (9/1/14-8/31/15), Easter Seals only stated that “[w]e are uniquely qualified to become the contractor for VF/EA FMS and Counseling Service for DHS due to our vast experience in Fiscal Intermediary services in regard to managing the financial aspects of each program on behalf of participants or their representatives as appropriate.” (Easter Seals Proposal, Volume 1, Section 3: Organizational Support and Experience.) However, there was no detail provided in the proposal to

⁵ I note that Easter Seals' price ranking was 4 out of 5 and that its proposal price was almost 35% higher than that of the intended awardee. Therefore, its proposed price would not have overcome its lower technical score.

demonstrate the knowledge, experience, resources and infrastructure for the VF/EA model for the Financial Management Services and Financial Counsel Services.⁶

I find that the dearth of information in Easter Seals' proposal supports the Committee's determination that Easter Seals' proposal did not demonstrate that it has completed contracts of a similar size and scope. I therefore find no reason to disturb the Committee's evaluation and scoring of Easter Seals' proposal for Criteria B.

Finally, for Criteria C – *Ability of the firm to complete the Scope of Work*, a bidder was required to describe its approach and plans for accomplishing the work identified in the RFP. Regarding Easter Seals' proposal, the Committee report states:

The firm portrayed a reiteration of the RFP's requirements in its Proposal, but did not demonstrate to the Committee the firm understands the nature of the scope of work for the contract resulting from this RFP.

...

Throughout the Committee's review of the materials presented in its Proposal, the Committee determined weaknesses described above sufficiently would prevent Easter Seals from meeting the business needs of this procurement. For example, the firm proposed an 80-day implementation schedule that was not reasonable given the complexity of the anticipated transition (see Proposal p. 42).

Overall, these factors demonstrated Easter Seals New Jersey did not have the ability to complete the Scope of Work in this RFP.

[Evaluation Committee Report, page 14.]

In reviewing Easter Seals proposal for its understanding of the SOW requirements and presentation of an approach that would permit successful performance of the technical requirements of the contract, the Hearing Unit determined that Easter Seals' proposal did reference the VF/EA model. However, there was little to no detail describing its approach and plans for accomplishing the work identified in the RFP through the VF/EA model which differs from the choice model utilized under the current contract. I therefore find no reason to disturb the Committee's evaluation and scoring of Easter Seals' proposal for Criteria C.

Based upon the foregoing, I must sustain the NOI. This is my final agency decision with respect to the protest submitted by Easter Seals. Nonetheless, in light of the consolidation of services, I do encourage all qualified bidders to discuss legal and cost-effective opportunities that would benefit delivery of these programs by DHS.

⁶ By way of comparison, PPL's proposal demonstrates that "firm has experience in transitioning programs (thousands of participants were transitioned in 2012 in Pennsylvania), experience in New Jersey (serviced the Division of Aging Services since 2006), experience with New Jersey's managed care organizations...The Committee determined the firm's expertise delivering services similar in size and scope in multiple states and multiple programs . . . exceeded the criteria." (Evaluation Committee Report, p. 9-10.) (PPL proposal citations omitted).

Thank you for your company's interest in doing business with the State of New Jersey and for registering your company with **NJSTART** at www.njstart.gov, the State of New Jersey's new eProcurement system.

Sincerely,



Jignasa Desai-McCleary
Director

JD-M: RUD

c: P. Michaels
L. Spidener
S. Fletcher