



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

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

ELIZABETH MAHER MUOIO
State Treasurer

MAURICE A. GRIFFIN
Acting Director

December 12, 2019

Via Electronic Mail [eport@debtnext.com] and USPS Regular Mail

Eric Port
DebtNext Software
175 Montrose West Avenue, Suite 170,
Copley, Ohio 44321

Re: I/M/O Bid Solicitation # 18DPP00162
Protest of Notice of Intent to Award, DebtNext Solutions, LLC
T2769 Non-Tax Debt Collection: Management and Related Services

Dear Mr. Port,

This letter is in response to your email, on behalf of the DebtNext Solutions, LLC (DebtNext), to the Hearing Unit of the Division of Purchase and Property (Division), dated November 22, 2019, protesting the Notice of Intent to Award letter (NOI) issued on November 7, 2019 by the Division's Procurement Bureau (Bureau) for Bid Solicitation #18DPP00162 T2769 Non-Tax Debt Collection: Management and Related Services.

By way of background, on February 6, 2019, the Bureau issued Bid Solicitation #18DPP00162 on behalf of the New Jersey on behalf of the Division of Revenue and Enterprise Services (DORES) to solicit Quotes to engage a Vendor {Contractor} to manage the collection of State non-tax debt and provide all related services. Bid Solicitation § 1.1 *Purpose and Intent*. The intent of this Bid Solicitation is to award a Master Blanket Purchase Order (Blanket P.O.) to that responsible Vendor {Bidder} whose Quotes, conforming to this Bid Solicitation, are most advantageous to the State, price and other factors considered. *Ibid*. This Bid Solicitation intends to select one (1) Vendor {Contractor} to provide the classification, distribution, management and review of State non-tax debt. *Ibid*. The Vendor {Contractor} will identify all subcontracted Collection Agencies collecting the non-tax debt throughout the Blanket P.O. term by submitting a Subcontractor Utilization Plan form as needed pursuant to Section 4.4.1.3. *Ibid*.

In accordance with the Bid Solicitation Instructions, potential Vendor(s) {Bidder(s)} were permitted to submit questions to the Bureau, using the Division's **NJSTART** eProcurement system by 2:00 pm on March 1, 2019. See, Bid Solicitation Section 1.3.1 *Electronic Question and Answer Period*.

On March 29, 2019, Bid Amendment #1 was issued, which included answers to thirty-six (36) questions posed and included the Revised Bid Solicitation entitled "T2769 Bid Solicitation Revised 032919."

On April 24, 2019, the Proposal Review Unit (PRU) opened three (3) Quotes, received by the submission deadline of 2:00 pm EST, from the following Vendors {Bidders}:

1. DebtNext;
2. Financial Asset Management Systems, Inc. (FAMS); and
3. Navient Portfolio Management, LLC (Navient).

[See Recommendation Report, pg. 2.]

The PRU determined that the three (3) Quotes met the administrative requirements, and forwarded the Quotes to the Bureau for a substantive review. (See Recommendation Report, pg. 3.) After conducting an initial Quote review for responsiveness to the requirements of the Bid Solicitation, the Bureau determined that DebtNext's Quote was non-response for the following reason:

The Bureau review the Quote submitted by DebtNext and found that DebtNext specifically agreed to 12 out of 15 items listed in Bid Solicitation Section 3.6.2. DebtNext omitted the acceptance of three (3) items. Not accepting these three (3) items would make the performance of the Blanket P.O. by the required terms contrary to the terms of the Bid Solicitation. If DPP were to waive the exception this would provide an advantage to DebtNext over the other bidders. This non-compliance with the Bid Solicitation requirements is a material exception and therefore DebtNext's Quote is deemed non-responsive.

[See Evaluation Committee Report, pg. 3; Recommendation Report, pg. 7.]

On November 7, 2019, a NOI was issued to all Vendors {Bidders}, notifying that it was "the intent of the Director of the Division of Purchase and Property (Division) to make a Master Blanket Purchase Order (Blanket P.O.) award to the following Vendor {Bidder} in accordance with the Quote(s) submitted in response to the above referenced Bid Solicitation:

Navient Portfolio Management, LLC.

[See November 7, 2019 NOI.]

On November 22, 2019, DebtNext submitted an email stating that:

"[W]e were disappointed to learn DebtNext was not evaluated alongside the other bidders due to the non-response of 3 of 15 items found in section 3.6.2 (figure 1). This was an administrative mistake on our part as we agree with all 15 items presented under section 3.6.2 of the RFP. Considering this, we would like to request the Evaluation Committee reconsider our proposal."

[See DebtNext's November 22, 2019 email.]

In consideration of the DebtNext's protest, I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes received, the protest, the relevant statutes, regulations, and case law. The issues raised by the DebtNext are 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 based on the written record. I set forth herein my Final Agency Decision.

The Bid Solicitation Section 3.6.2 *Non-Commissionable Items* set for instances where State shall not pay the Vendor {Contractor} commission. The list of non-commissionable items in Section 3.6.2 were summarized in order from A through O, thus containing fifteen (15) non-commissionable items.

On April 24, 2019, DebtNext submitted its Quote for the Bid Solicitation #18DPP00162. DebtNext's Quote contained a document entitled "RFP Response Document", which included DebtNext's response to Bid Solicitation Section 3.6.2 *Non-Commissionable Items*. In its response, DebtNext stated that "DebtNext and its agency partners concur with items A through L." See DebtNext's RFP Response Document, pg. 27. The Bid Solicitation Section 4.4.3 *Technical Quote* states that "the Vendor {Bidder} **shall**¹ describe its approach and plans for accomplishing the work outlined in the Scope of Work section, i.e., Section 3.0. The Vendor {Bidder} **must**² set forth its understanding of the requirements of this Bid Solicitation and its approach to successfully complete the Blanket P.O." (Emphasis added.) Pursuant to Bid Solicitation Section 3.0 *Scope of Work*, Section 3.1 *Summary*, "[t]he Vendor {Contractor} is responsible to maintain compliance with all the requirements of Section 3.0 including the management of the Subcontractors reporting all of the collection activity information." By stating in its proposal that it only concurs with thirteen (13) out of fifteen (15) non-commissionable items, DebtNext deviated from the mandatory requirements of the Bid Solicitation Section 3.1 *Summary* and Section 4.4.3 *Technical Quote*.

In Meadowbrook Carting Co. v. Borough of Island Heights, the court espoused a two-part test for determining if a change is material:

[F]irst, whether the effect of a waiver [of the Bid Solicitation's terms] would be to deprive the [contracting party] of its assurance that the contract will be ... performed ... according to its specified requirements, and second, whether ... 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 standards of competition.

[138 N.J. 307, 315 (1994).]

Here, it is clear that by accepting only thirteen (13) out of the fifteen (15) non-commissionable items, DebtNext deprived the State of the assurance that the contract would be performed according to its specified requirements, because DebtNext could then argue that it only agreed not to receive contingency fees for instances summarized in items A through L. Next, allowing DebtNext to change its statement and allow it to agree to all fifteen (15) items of Bid Solicitation Section 3.6.2 post bid opening date, would place DebtNext into a position of advantage over other bidders who did not have the opportunity to include acceptance of only some of the fifteen (15) non-commissionable items in their Quote in hopes that the State would accept it. The Bid Solicitation Sections 3.1 and 4.4.3 were clear that "[t]he Vendor {Contractor} is responsible to maintain compliance with all the requirements of Section 3.0" and that "[t]he Vendor {Bidder} must set forth its understanding of the requirements of this Bid Solicitation and its approach to

¹ **Shall** – Denotes that which is a mandatory requirement. Bid Solicitation Section 2.2 *General Definitions*.

² **Must** – Denotes that which is a mandatory requirement. Bid Solicitation Section 2.2 *General Definitions*.

successfully complete the Blanket P.O.” By only accepting thirteen (13) out of fifteen (15) instances where the State will not pay the Vendor {Contractor}, DebtNext failed to comply with the mandatory requirements of the Bid Solicitation.

DebtNext’s statement that “it was an administrative mistake ... as we agree to all 15 items presented under section 3.6.2” is untimely and unacceptable. In I/M/O Protest of Award of On-Line Games Production and Operation Svs. Contract, Bid No. 95-X-20175, the court held that a post-opening commitment to supply an essential missing element for a bid is not a clarification but rather is an “impermissible supplementation ... and flies in the face of our public bidding scheme.” 279 N.J. Super. 566 (App. Div. 1995). Allowing DebtNext to withdraw its statement from its Quote at this time will constitute an impermissible supplementation.

“The Vendor {Bidder} assumes sole responsibility for the complete effort required in submitting a Quote in response to this Bid Solicitation. No special consideration will be given after Quotes are opened because of a Vendor’s {Bidder’s} failure to be knowledgeable as to all of the requirements of this Bid Solicitation.” Bid Solicitation Section 1.4.2. *Vendor {Bidder} Responsibility*. While DebtNext’s statement in Section 3.6.2 of its Quote may have been an administrative mistake, it was DebtNext responsibility to make sure that its Quote met all the mandatory requirements of the Bid Solicitation.

This is an unfortunate situation for the State as the Division encourages competition and appreciates the time and effort put on preparing and submitting the Quote. However, in light of the findings set forth above, I have no choice but to sustain Bureau’s Notice of Intent to Award. This is my final agency decision on this matter.

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

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RD

c: R. Povia
L. Spildener