



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

ELIZABETH MAHER MUOIO
State Treasurer

AMY F. DAVIS
Acting Director

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

October 25 2022

Via Electronic Mail Only: PKelly@avidxchange.com

Paul Kelly, VP
AvidXchange
1210 AvidXchange Lane
Charlotte, NJ 28206

Re: I/M/O Bid Solicitation #22DPP00759 AvidXchange, Inc.
Protest of Notice of Cancellation
T2605 Energy Tracking and Bill Management

Dear Mr. Kelly:

This final agency decision is in response to the letter dated September 23, 2022, submitted by AvidXchange, Inc. (AvidXchange). That Protest Letter was received by the Division of Purchase and Property's (Division) Hearing Unit on September 26, 2022. In that correspondence, AvidXchange protests the Notice of Cancellation issued by the Division's Procurement Bureau (Bureau) for Bid Solicitation #22DPP00759 – T2605 Energy Tracking and Bill Management (Bid Solicitation). The record of this procurement reveals that the Quote submitted by AvidXchange was deemed non-responsive for having failed to “submit a price for Price Line 1h” pursuant to Bid Solicitation Section 3.25. *State Price Sheet Instructions*.

By way of background, on May 19, 2022, the Bureau issued the Bid Solicitation on behalf of Department of the Treasury, Office of Fiscal & Resources. The purpose of the Bid Solicitation was to solicit “Quotes from qualified businesses capable of fulfilling the State's needs for a service and software (the “Solution”) that will comprehensively pay all utility bills and manage utility demand and usage for State real estate assets. Bid Solicitation §1.1 *Purpose and Intent*. It is the intent of the State to award a Contract to that responsible Bidder whose Quote, conforming to this Bid Solicitation is most advantageous to the State, price and other factors considered. The State may award any or all price lines. The State intends to award to a single Bidder.

In accordance with Bid Solicitation Section 2.1 *Electronic Questions and Answer Period*, potential Bidders were permitted to submit questions regarding the Bid Solicitation by June 16, 2022. On July 18, 2022, the Bureau posted Bid Amendment #1 with the answers to questions posed, none of the questions addressed or questioned Bid Solicitation Section 3.25. *State Price Sheet Instructions*.

On August 11, 2022, the Division’s Proposal Review Unit opened three (3) Quotes¹ 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 three Quotes were forwarded to the Bureau for evaluation.

In conducting the review of the Quotes, the Bureau determined that all three quotes were non-responsive for failing to provide a portion of the mandatory quote information as required in Bid Solicitation Section 3.25. *State Price Sheet Instructions*:

Bidder	Section Reference	Requirement	Bidder Response
AvidXchange	3.25 <i>State Price Sheet Instructions</i>	The Bidder shall provide a Firm Fixed Price Per Unit for Priceline’s 1 through 5 on the State-Supplied Price Sheet.	AvidXchange did not complete Price Line 1h on the State-Supplied Price Sheet as instructed to do so in the Section requirement.
EnergyCap	3.25 <i>State Price Sheet Instructions</i>	The Bidder shall provide a Firm Fixed Price Per Unit for Priceline’s 1 through 5 on the State-Supplied Price Sheet.	Energy Cap did not complete Price Lines 1a through 1i on the State-Supplied Price Sheet as instructed to do so in the Section requirement.
Smart Energy Water	3.25 <i>State Price Sheet Instructions</i>	The Bidder shall provide a Firm Fixed Price Per Unit for Priceline’s 1 through 5 on the State-Supplied Price Sheet.	Smart Energy Water did not complete years 2 and 3 on Price Line 2 as instructed to do so in the Section requirement.

[*Recommendation Report 09/09/2022*]

AvidXchange’s submitted Quote was non-responsive because AvidXchange failed to offer a price for Price Line 1h, as required by Bid Solicitation Section 3.25. *State Price Sheet Instructions*. The other two (2) Bidder’s also failed to submit required information on the State Price Sheet, accordingly the Bid Solicitation was cancelled and cancelation letters were sent to all Bidders on September 12, 2022.

In consideration of the AvidXchange 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, the price sheet instructions are clear that the Bidder must submit pricing for all price lines.

The Bidder **shall** provide a Firm Fixed Price Per Unit for Price lines 1 through 5 on the State-Supplied Price Sheet.

[Bid Solicitation Section 3.25. *State Price Sheet Instructions*]

The term “shall” denotes a mandatory requirement as further set forth in the Bid Solicitation’s glossary:

¹ Quotes were submitted by AvidXchange; EnergyCap, LLC and Smart Energy Water, Inc.

Shall – Denotes that which is a mandatory requirement.
[Bid Solicitation Section 9. *GLOSSARY*]

Additionally, a Bidder must be able to perform all of the work required under Bid Solicitation Section 4. *Scope of Work*. Included within the Scope of Work is the requirement that a Contractor identify all suppliers:

4.1.1.2.1. BILL RECEIPT

The Contractor shall contact all the LDCs and **all commodity suppliers** directly and arrange to receive all Participant Energy Account bills directly from all LDCs and competitive energy suppliers. This includes paper bills delivered by the U.S. Mail as well as electronic billing, as long as the electronic billing contains all of the data fields. The Contractor shall ensure that it directly receives all energy supplier bills and invoices on an ongoing basis during the contract term and any extensions. The Contractor shall work with suppliers to request and confirm that the billing address has changed. Any changes to the service locations or bill-to name shall be conveyed by the Contractor to the Participant immediately.

[emphasis added]

Reading the State Price Sheet Instructions in conjunction with the Bid Solicitation Glossary as intended, dictates that the Bidders are required to provide pricing for all price lines 1 – 5 to demonstrate that they are in a position to provide all services required under the bid solicitation.

In its protest the Bidder argues “since the State provided an estimated annual quantity of zero (0) for line item 1h, there was no quantity available to bid on” Unfortunately, AvidXchange misreads this section of the Bid Solicitation and the intent of the estimated number of accounts that will or may require the Bidder’s service. In fact the State Supplied Price Sheet instructions expressly state that the estimates are not an indication of maximum or minimum quantities for the particular service:

3.25. State Price Sheet Instructions

Where the State-Supplied Price Sheet includes an estimate quantity column, Bidders are advised that estimated quantities may vary throughout the Contract term resulting from this Bid Solicitation. There is no guaranteed minimum or maximum volume for these price lines.

Accordingly, Bid Solicitation Section 3.25. *State Price Sheet Instructions* and Bid Solicitation Section 4.1.1.2.1. *Bill Receipt*, require that Bidders submit a Quote for each price line. While a Bidder could propose to provide 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

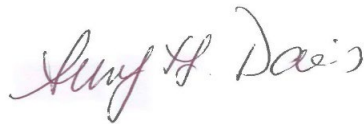
but necessary and incident to the work that the using agency needs completed by a Contractor and AvidXchange misreads the Bid to grant itself discretion to ignore or decline to perform the services required under this portion of the Bid. By failing to submit pricing on price line 1h, AvidXchange did not bid on work that is required to be performed under the terms of the Bid Solicitation. AvidXchange's 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 September 9, 2022, Recommendation Report, that the AvidXchange Quote was non-responsive and uphold September 12, 2022, Notice of Cancellation.

Thank you for your company's continuing interest in doing business with the State of New Jersey, 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,

A handwritten signature in red ink that reads "Amy F. Davis". The signature is written in a cursive style and is positioned above the typed name.

Amy F. Davis, Esq.
Acting Director

AFD: DPK

- c. M. Dunn
- J. Pastuzyn
- K. Manna