



## State of New Jersey

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July 31, 2023

*Via Electronic Mail Only Jon.dierking@touchtoneiq.com*

Jonathan Dierking  
Touchstone IQ LLC  
2000 S. Colorado Boulevard, Annex, STE 460  
Denver, CO 80222

Re: I/M/O Bid Solicitation #23DPP00819 Touchstone IQ LLC  
Protest of Notice of Intent to Award  
T3139 Customer Relationship Management System for Benchmarking, BPU

Dear Mr. Dierking:

This final agency decision is in response to your letter dated June 20, 2023, on behalf of Touchstone IQ LLC (Touchstone) which was received by the Division of Purchase and Property's (Division) Hearing Unit. In that email, you protest the June 5, 2023, Notice of Intent to Award (NOI) issued by the Division's Procurement Bureau (Bureau) for Bid Solicitation #23DPP00819 – T3139 Customer Relationship Management System for Benchmarking, BPU (Bid Solicitation).

By way of background, on December 8, 2022, the Bureau issued the Bid Solicitation on behalf of the Board of Public Utilities. Bid Solicitation § 1.1 *Purpose and Intent*. The purpose of the Bid Solicitation was to solicit Quotes for a customizable customer relationship management (CRM) system for New Jersey's Benchmarking requirement, as defined in the Clean Energy Act of 2018 (CEA. Ibid. The intent of the Bid Solicitation is to award a Contract to that responsible Bidder whose Quote, conforming to this Bid Solicitation, is most advantageous to the State of New Jersey (State), price and other factors considered. Ibid.

On December 19, 2022, in accordance with Bid Solicitation Section 2.5, *Optional Pre-Quote Conference*, an Optional Pre-Quote Conference was held which enabled all potential Bidders to review the Bid Solicitation and Quote submission procedures and requirements. Subsequently, pursuant to Bid Solicitation Section 2.1, *Electronic Question and Answer Period*, an electronic portal enabling the Bureau to receive questions electronically was available to all potential Bidders until 2:00 P.M. Eastern Time on January 4, 2023, with Bid Amendment 1, issued on January 30, 2023, which revised the Quote Submission date from February 10, 2023, to February 15, 2023, and provided Answers to the questions submitted by Bidders during the electronic Question and Answer period.

On February 15, 2023, the Division's Proposal Review Unit opened seven (7) Quotes received by the submission deadline. After conducting an initial review of the Quotes for the compliance with mandatory Quote submission requirements, the Division's Proposal Review Unit (PRU) rejected Quotes

from two (2) Bidders who failed to submit an Ownership Disclosure Form with their Quote, which was a mandatory requirement pursuant to Bid Solicitation Section 3.13.2, *Ownership Disclosure Form*. The PRU forwarded the remaining five (5) Quotes to the Bureau for further review and evaluation consistent with the requirements of the Bid Solicitation Section 8.9, *Evaluation Criteria*.

On June 2, 2023, after completing the review and evaluation of the submitted Quotes, the Bureau prepared a Recommendation Report which recommended that Blanket P.O. award be made to ClearlyEnergy, LLC (ClearlyEnergy), whose submitted Quote was most advantageous to the State, price and other factors considered. Accordingly, on June 5, the NOI was issued advising all Bidders that it was the State's intent to award Blanket P.O.s consistent with the Bureau's Recommendation Report dated June 2, 2023.

On June 20, 2023, the Division's Hearing Unit received Touchstone's protest. By way of summary, Touchstone protests the award to ClearlyEnergy subject to the requirements of the Bid Solicitation. Specifically, Touchstone claims ClearlyEnergy failed to meet the requirements of Bid Solicitation Section 3.24, *Experience with Contracts of a Similar Size and Scope*, that ClearlyEnergy may not be able to provide the services required based on Touchstone's experience, and that pricing was the sole factor in making the award because the technical scores were not properly weighed against the submitted pricing.

I note that pursuant to N.J.A.C. 17:12-3.3(e), "[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 Touchstone's protest, I have reviewed the record of this procurement, including the Bid Solicitation, the submitted Quotes, the relevant statutes, regulations, and case law. The issues raised in Touchstone'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 Touchstone on the written record and, as such, an in-person hearing is not warranted. I set forth herein the Division's final agency decision.

Turning to Touchstone's protest, Touchstone's "CONCERN 1" alleges, without providing any facts or additional information, that:

ClearlyEnergy, Inc., did not sufficiently detail their loss of a similar government customer relationship management system for benchmarking services contract with the City of Boston. The City of Boston chose to end their contract with ClearlyEnergy, Inc. for these services and hired Touchstone IQ LLC to fulfill this software services starting in 2022. As stated within the Bid Solicitation, omission of this necessary disclosure information may be cause for rejection of the Bidder's Quote by the State of New Jersey.

This also raises concerns about their ability to deliver the promised services, and it undermines the credibility of the procurement process. I request a thorough investigation into the accuracy of the submitted information and verification of compliance with all mandatory requirements.

[Touchstone Protest Letter, Page 2.]

Bid Solicitation Section 3.24, *Experience with Contracts of Similar Size and Scope*, sets forth the mandatory requirements for what information must be provided with a bidder's Quote. Specifically, that section reads:

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 services similar to those required by this Bid Solicitation. Emphasis should be placed on contracts that are similar in size and scope to the work required by this Bid Solicitation. 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 Bid Solicitation. For each such contract listed, the Bidder should provide two (2) names and telephone numbers of individuals for contracting party. Beginning and ending dates should also be given for each contract.

The Bidder must provide details of any negative actions taken by other contracting entities against them in the course of performing these projects including, but not limited to, receipt of letters of potential default, default, cure notices, termination of services for cause, or other similar notifications/processes. Additionally, the Bidder should provide details, including any negative audits, reports, or findings by any governmental agency for which the Bidder is/was the contractor on any contracts of similar scope. In the event a Bidder neglects to include this information in its Quote, the Bidder's omission of this necessary disclosure information may be cause for rejection of the Bidder's Quote by the State.

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 Quote. The Bidder must provide a detailed description of services to be provided by each Subcontractor.

ClearlyEnergy provided information in response to this requirement as part of its Quote. Specifically, ClearlyEnergy's Quote provided details related to contracts in Washington, D.C., West Virginia, Nevada, and generally mentioned projects in New Jersey and Maryland. ClearlyEnergy Quote, Pages 16-18. These projects were discussed by the Evaluation Committee on Pages 14 and 15, *Criterion B – Experience of firm*, of the Evaluation Committee's report, with the Committee assigning a score of 7.25 on a scale of 1-10. The report noted that the Committee would have liked more experience on statewide contracts versus local governments, but stated that benchmarking had not been adopted by many states as a reason why the experience may be limited.

The Bid Solicitation section cited by Touchstone requests detailed information regarding contracts of similar size and scope as evidence of a vendor's ability to complete the contract, as well as negative actions taken by other contracting agencies. Touchstone, through its filed protest, has informed the State that ClearlyEnergy's contract ended with the City of Boston, and Touchstone was awarded as vendor for the new contract. However, it is noted that the information provided by Touchstone would not require disclosure under Bid Solicitation Section 3.24, and the information relied upon by the Evaluation Committee supports the eventual determination that "ClearlyEnergy would be capable of handling the benchmarking requirements that are put into place by the State of New Jersey and would be able to successfully meet the Contract requirements." Evaluation Committee Report, Page 15.

In terms of negative actions taken against ClearlyEnergy, prior to award the Procurement Bureau conducted a search of State and Federal lists. Those results, as displayed on Page 5 of the Recommendation Report, determined that ClearlyEnergy is not currently on the New Jersey Suspension and Debarment list, nor currently listed on the Federal Exclusions list on SAM.gov as produced by the Office of Federal Contract Compliance Programs through the federal Department of Labor. Additionally, ClearlyEnergy was not listed on the State of Massachusetts debarment list, containing over 2,300 vendors, when that list was reviewed after Touchstone filed its protest.

Accordingly, no evidence of a negative action regarding ClearlyEnergy has been submitted to the Hearing Unit, and no evidence of negative actions were obtained through the sources where such actions would be publicly noticed. Because the record here supports the Evaluation Committee's analysis of ClearlyEnergy's Quote, and no compliance issues or punitive actions which would patently exclude ClearlyEnergy from being awarded the above-referenced Contract are evident, I see no reason to upset the Evaluation Committee's thorough review and analysis as set forth in the Evaluation Committee's report.

Touchstone states under "CONCERN 2" in its protest letter that it believes ClearlyEnergy cannot perform the contract based on its experience in the industry. While Touchstone's concerns are noted, the publicly advertised Bid Solicitation contained clear requirements for the types and levels of services required to perform the contract. The responsive Quotes were reviewed by a committee containing six (6) individuals, including four (4) from the Board of Public Utilities. As noted on Page 7 of the Evaluation Committee Report:

The Committee was responsible for performing a technical evaluation of the responsive Quotes received. The focus of the Committee's technical review was on the Bidders' demonstrated approaches to performing the requirements of the Scope of Work as identified in the State's Bid Solicitation. The Committee also focused on the Bidders' demonstration that the requirements, including, but not limited to, staffing and technical system requirements, were thoroughly understood and comprehended. The Committee individually reviewed each Quote and then met to review, consider, evaluate, and technically score the responsive Quotes.

The Evaluation Committee Report outlines its analysis of each vendor's Quote based on three established criteria. Each vendor is analyzed based on its personnel, experience, and ability to complete the work based on the vendor's Technical Quote. Regarding the Help Desk, the Evaluation Committee Report, on Pages 16 and 17, discussed ClearlyEnergy's ability to meet the required demand:

Pursuant to Section 4.3, Help Desk, a Help Desk that answers questions from program participants through e-mail and phone communication shall be staffed. ClearlyEnergy stated that it can meet this Contract requirement by partnering with Utility Advantage. ClearlyEnergy stated that Utility Advantage can monitor e-mail and phone call inquiries from building owners regarding NJ Clean Energy and benchmarking initiatives (ClearlyEnergy Technical Quote, PDF Page 5). The Committee noted that, even though there is concern that the Help Desk employees may not be as well versed in benchmarking and clean energy as the Committee would like; the Help Desk is already established and functioning. Utility Advantage will have a level of professionalism that, when interacting with building owners, can represent BPU in a fairly positive light.

The Evaluation Committee analyzed ClearlyEnergy's Technical Quote against the Bid Solicitation's requirements, and determined ClearlyEnergy was qualified and capable to provide the required services. There is nothing in Touchstone's protest letter or the record to overturn the Evaluation Committee's recommended award on a basis of a potential inability to complete the work.

Touchstone's "CONCERN 3" alleges that apparent inconsistencies exist between the Bid Solicitation's requirements and the methodology used to make the award to ClearlyEnergy. A review of the Evaluation Committee Report indicates that the Committee reviewed and scored each Quote using the evaluation criteria identified in Section 8.9, *Evaluation Criteria*, and its subsections:

#### 8.9 **EVALUATION CRITERIA**

The following evaluation criteria categories, not necessarily listed in order of significance, will be used to evaluate Quotes received in response to this Bid Solicitation. The evaluation criteria categories may be used to develop more detailed evaluation criteria to be used in the evaluation process.

##### 8.9.1 **TECHNICAL EVALUATION CRITERIA**

The following criteria will be used to evaluate and score Quotes received in response to this Bid Solicitation. Each criterion will be scored, and each score multiplied by a predetermined weight to develop the Technical Evaluation Score:

- 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 Contract of a similar size and scope in relation to the work required by this Bid Solicitation; and
- C. Ability of firm to complete the Scope of Work based on its Technical Quote: The Bidder's demonstration in the Quote 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.

##### 8.9.2 **PRICE EVALUATION**

For evaluation purposes, Bidders will be ranked from lowest to highest according to the total Quote price located on the State-Supplied Price Sheet accompanying this Bid Solicitation.

Utilizing this methodology, the Committee Report reveals that in conducting the technical review of the Quotes, the Committee established technical scores for the three responsive bidders as displayed in the following table.

Bidder	Total Criterion A (Max 1000)	Total Criterion B (Max 1600)	Total Criterion C (Max 1400)	Total Technical Score (Max 4000)	Average Technical Score (Max 1000)	Ranking
Touchstone	875	1440	1225	3540	885	1
ClearlyEnergy	725	1160	980	2865	716	2
InClima	425	600	525	1550	388	3

These scores were then used to establish the Competitive Range discussed in Section VII of the Evaluation Committee Report as discussed in Bid Solicitation Section 8.11, *Negotiation*. Following the establishment of the Competitive Range, the Bureau requested a Best and Final Offer (BAFO) from Touchstone and ClearlyEnergy.

The Evaluation Committee considered the evaluation criteria identified in Bid Solicitation Section 8.9.1, *Technical Evaluation Criteria*, when it reviewed both ClearlyEnergy and Touchstone’s Quotes for compliance with the Bid Solicitation’s requirements. The Committee determined that both bidders satisfied the Bid Solicitation’s requirements as successfully conveyed in the qualifications of their personnel, the experience of each firm performing contracts of a similar size and scope, and their ability to complete the Scope of Work. See Evaluation Committee Report, pgs. 9-17. After considering the technical evaluation, the Evaluation Committee reviewed the pricing submitted by each bidder in accordance with Bid Solicitation Section 8.9.2, *Price Evaluation*, and determined that making an award to ClearlyEnergy would be most advantageous to the State, price and other factors considered, because:

ClearlyEnergy presented a technical Quote that successfully demonstrated its ability to perform the Scope of Work. The Committee determined that ClearlyEnergy is technically responsive, demonstrated the required experience, and that they actively and effectively understood the requirements of the Bid Solicitation. Additionally, ClearlyEnergy’s proposed pricing was deemed to be the most advantageous and acceptable by the Committee.

[Evaluation Committee Report, page 22.]

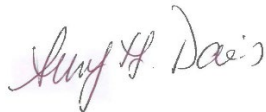
The Division’s Director has broad discretion to select among qualified bidders in public contracting matters. See N.J.S.A. 52:34-12(d); In re Jasper Seating Co., Inc.’s Request for Reconsideration Regarding Request for Proposal No. 07-X-37695, 406 N.J. Super. 213, 222-24 (App. Div. 2009). N.J.S.A. 52:34-12(d) makes clear that the Division’s Director has the exclusive discretion to determine “which bid will be most advantageous to the State, ‘price and other factors considered.’” Commercial Cleaning v. Sullivan, 47 N.J. 539 (1966). The New Jersey Courts have long recognized that the purpose of the public bidding process is to “secure for the public the benefits of unfettered competition.” Meadowbrook Carting Co. v. Borough of Island Heights, 138 N.J. 307, 313 (1994). To that end, the “public bidding statutes exist for the benefit of the taxpayers, not bidders, and should be construed with sole reference to the public good.” Borough of Princeton v. Board of Chosen Freeholders, 169 N.J. 135, 159-60 (1997).

Based on the review of the Quotes submitted, the Bureau recommended a Blanket P.O. award to ClearlyEnergy, because its Quote was the most advantageous to the State, price and other factors

considered, as is required by New Jersey law. The Hearing Unit's review of the record confirms the Bureau's decision. In light of the findings set forth above, I sustain the Bureau's Notice of Intent to Award of Bid Solicitation 23DPP00819. This is my final agency decision on this matter.

Thank you for your company's continuing interest in doing business with the State of New Jersey and for registering your business with **NJSTART** at [www.njstart.gov](http://www.njstart.gov). 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.

Sincerely,



Amy F. Davis  
Acting Director

AFD: CKK

c: M. Dunn  
J. Pastuzyn  
B. Cegerenko