



## State of New Jersey

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November 30, 2016

Via Electronic Mail [[hlegal@nuance.com](mailto:hlegal@nuance.com)] and USPS Regular Mail

Simon J. Senior, Senior Director  
Global Sales Operation  
Nuance Communications, Inc.  
One Wayside Road  
Burlington, MA 01803

Re: Protest of Notice of Intent to Award  
RFP #: 16-X-23969: Data Intermediary Services for the Department of Health

Dear Mr. Senior:

This letter is in response to your October 7, 2016 letter on behalf of Nuance Communications, Inc. (Nuance) received by the Hearing Unit of the Division of Purchase and Property (Division). In that letter, Nuance protests the Division's Procurement Bureau's (Bureau) Notice of Intent to Award (NOI) a contract to Public Consulting Group, Inc. (PCG) for the above referenced solicitation. Nuance alleges that PCG's proposed price is not sufficient to cover the cost for the software license required by the scope of work identified in the subject Request for Proposal (RFP). Nuance requests that the State clarify with the intended awardee that its proposal price includes the required license and requests that the award be conditioned upon the awardee confirming that it has contractually secured pricing for the required software license.

By way of background, the RFP was issued by the Bureau on June 1, 2015, on behalf of the New Jersey Department of Health (DOH) to solicit proposals to engage a contractor to provide data intermediary services between DOH and New Jersey's general and acute care hospitals and ambulatory care facilities. RFP § 1.1 *Purpose and Intent*. The intent of the RFP is to award a contract to the bidder whose proposal, conforming to this RFP is most advantageous to the State, price and other factors considered. RFP § 1.1 *Purpose and Intent*.

DOH has been collecting patient billing information from general and acute care hospitals since the early 1980s. RFP § 1.2 *Background*. In accordance with N.J.S.A. 52:14B-5.1(c), DOH is tasked with maintaining financial reporting standards for all licensed general hospitals and certain special hospitals. RFP § 1.2 *Background*. The system currently used by general and acute care hospitals is known as the New Jersey Discharge Data Collection System (NJDDCS). RFP § 1.2 *Background*. To comply with N.J.S.A. 26:2H-5.1(c), which requires ambulatory care facilities (ACFs) to use a common billing form, much like the one required of general and acute care hospitals, this RFP includes the collection of data from ACFs as a requirement. RFP § 1.2 *Background*. The RFP required that the contractor "build a web interface to a hosted database environment that shall maintain inpatient and outpatient discharge data." RFP § 3.0 *Scope of Work*. In order to accomplish the scope of work identified in the RFP, the contractor is required to purchase a license for 3M™ All Patient Refined Diagnostic Related Group classification system software (3M APR-DRG). RFP § 3.2 *Data Processing & Reconciliation*. 3M APR-DRG

“assigns patients based on severity of illness and risk of mortality subclasses according to a clinical logic that evaluates co-morbidities, age, procedures, and principal diagnosis. 3M APR-DRG is widely used throughout the United States by public and commercial organizations in more than thirty states for payment or public quality reporting.” RFP § 2.2 *Contract Specific Definitions*.

On September 4, 2015, five proposals were received by the submission deadline of 2:00 p.m. and were opened by the Proposal Review Unit.<sup>1</sup> Four of the proposals received were forwarded to the Evaluation Committee (Committee) for review and consideration, as they met the administrative requirements.<sup>2</sup>

The Committee was responsible for performing a technical review of the proposals received using the criteria set forth in RFP § 6.7.1 *Technical Evaluation Criteria* as follows:

#### **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.

Technical scores were given to each proposal based upon an independent reading of the proposals by each Committee member and the results of deliberations conducted by the Committee.

During the evaluation process it became necessary to clarify certain statements contained within the proposals received as permitted by RFP § 6.6 *Oral Presentation and/or Clarification of Proposal which* states in pertinent part:

After the proposals are reviewed, one, some or all of the Bidders may be asked to clarify certain aspects of their proposals. A request for clarification may be made in order to resolve minor ambiguities, irregularities, informalities or clerical errors. Clarifications cannot correct any deficiencies or material omissions or revise or modify a proposal, except to the extent that correction of apparent clerical mistakes results in a modification.

PCG’s original proposal indicated that “PCG’s system will integrate with several inpatient and outpatient software “groupers,” including 3M APR-DRG and 3M AP-DRG.” (See, PCG’s Proposal, p. 57.) On December 4, 2015, the Bureau wrote to PCG stating:

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<sup>1</sup> One proposal was automatically rejected by the Proposal Review Unit because the bidder did not include pricing information. The bidder did not file a protest of the Proposal Review Unit’s determination that the proposal was non-responsive.

<sup>2</sup> The Committee was comprised of four voting members from DOH and one from the Division.

[t]he Evaluation Committee hereby requests that PCG confirm it shall comply with the requirements listed in RFP Section 3.2, specifically, the purchase of 3M's APR DRG software license and Medicare's outpatient grouping software license. Please also confirm that those costs are reflected in the all-inclusive per record processing fee.

On December 11, 2015, PCG responded to the Bureau's clarification letter stating:

PCG's proposal response [is] meant to demonstrate compliance with RFP Section 3.2; we reiterate our intent to comply with the requirements listed in RFP Section 3.2; and we specifically affirm our intent to purchase 3M's APR-DRG software license and Medicare's outpatient grouping software license. Finally, PCG confirms that these costs are reflected in our all-inclusive per record processing fee.

After the evaluation of the proposals was completed, on September 28, 2016 the Bureau issued the NOI which advised bidders that it was the State's intent to award a contract to PCG. On October 7, 2016, the Division received Nuance's protest which states in pertinent part:

The purpose of this letter is to formally protest the planned proposed award as described above by Nuance Communications, Inc. Nuance is concerned that Awardee's pricing may not be sufficient to include the cost to Awardee of the 3M APR-DRG Grouper (hereafter the "3M Grouper") as required by the RFP.

...

Based on Nuance's reading of Awardee's RFP response, Awardee indicates that it has not yet contracted with 3M to secure and fix its licensing costs for the above described level of use. In his December 11, 2015 response to [the Bureau] letter dated December 4, 2015, [PCG] said, "PCG's proposal response meant to demonstrate compliance with RFP Section 3.2; we reiterate our intent to comply with the requirements listed in RFP Section 3.2; and we specifically affirm our intent to purchase 3M's APR-DRG software license and Medicare's outpatient grouping software license. Finally, PCG confirms that these costs are reflected in our all-inclusive per record processing fee." We have been informed that licensee has affirmed that its overall price includes the licensing costs to 3M, even though Awardee may not have finalized its agreement with 3M.

Nuance requests the State clarify with Awardee that Awardee's pricing includes the cost to Awardee of the licensing of the 3M APR-DRG Grouper, and that the Grouper will be used for each transaction for each Hospital as required by the RFP.

Also Nuance requests that the final award to awardee be conditioned upon awardee confirming to the state that it has contractually secured the above-referenced pricing from 3M and that its overall price to the State of 32 cents per transaction include such costs. Nuance has secured the pricing from 3M which supports its somewhat higher proposed price, and is submitting this protest to make sure it has been treated fairly in the selection process.

PCG was asked to provide a response to the protest points in Nuance's October 7, 2016 protest, and on November 11, 2016, PCG submitted its response stating:

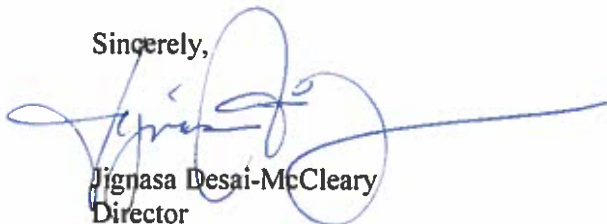
PCG hereby confirms that its proposed pricing includes the licensing cost of the 3M APR-DRG Grouper and that the Grouper will be used for each transaction for each Hospital as required by the RFP. PCG also is confirming that its overall price to the state include such costs. PCG and 3M have an existing contract that fully satisfies the requirements of this RFP and have agreed to amend this contract to cover the Data Intermediary Services project.

With respect to Nuance's protest, the Hearing Unit has verified that during the evaluation process the Bureau clarified that PCG has included the cost of the 3M APR-DRG in its proposal price. Additionally, in response to the protest, PCG confirmed that the cost of the 3M APR-DRG was included in its proposal price; that it has an existing contract with 3M for the 3M APR-DRG; and, that PCG and 3M<sup>TM</sup> have agreed to amend the existing contract to cover the Data Intermediary Project. While Nuance requests that the State condition the award upon PCG confirming it has secured the 3M<sup>TM</sup> pricing for the 3M APR-DRG in compliance with RFP § 3.2, I note that the RFP § 3.2 is a contractor requirement, not a bidder requirement. Contractor requirements are those required after award and PCG has stated its intent to comply with this contractor requirement.

Accordingly, in light of the findings set forth above, I sustain the Bureau's NOI. This is my final agency decision with respect to the protest submitted by Nuance.

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

Sincerely,



Jignasa Desai-McCleary  
Director

JD-M: RUD

c: P. MacMeekin  
J. Karamali  
P. Buckley