



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

ELIZABETH MAHER MUOIO
State Treasurer

SHEILA Y. OLIVER
Lt. Governor

AMY F. DAVIS, ESQ.
Acting Director

August 25, 2023

Via Electronic Mail Only: rwilliams@veritas-hhs.com

Robert G. Williams, Chief Executive Officer
Veritas HHS LLC
1120 Lincoln Street
Suite 1300
Denver, CO 80203

Re: I/M/O Bid Solicitation #22DPP00696 Veritas HHS LLC
Protest of Notice of Intent to Award
T1414 Hospital Based Paternity Acknowledgement Program and Database

Dear Mr. Williams:

This final agency decision is in response to your letter dated August 2, 2023, submitted by Veritas HHS LLC (Veritas), which was received by the Division of Purchase and Property's (Division) Hearing Unit on August 2, 2023. In that correspondence Veritas protests the Notice of Intent to Award (NOI) issued by the Division's Procurement Bureau (Bureau) for Bid Solicitation #22DPP00696 – T1414 Hospital Based Paternity Acknowledgement Program and Database (Bid Solicitation). The record of this procurement reveals that the Quote submitted by Veritas was deemed non-responsive for "not bidding on all price lines listed on the State-Supplied Price Sheet" pursuant to Bid Solicitation Section 3.29, *State Price Sheet Instructions*.

By way of background, on June 21, 2022, the Bureau issued the Bid Solicitation on behalf of Department of Human Services (DHS), Division of Family Development (DFD). Bid Solicitation Sec. 1, *Introduction and Summary of the Bid Solicitation*. The purpose of the Bid Solicitation was to solicit Quotes to engage a Contractor to provide required technical and management services for the Paternity Opportunity Program (POP), in which information is obtained and processed for parents of all children born in the State of New Jersey. Bid Solicitation Sec. 1.1, *Purpose and Intent*. It is the State's intent to award to award to one (1) Contractor, with a set-aside for Small Business Enterprise (SBE) or Disabled Owner Veteran Business (DVOB) for sub-contracting, whose Quote, conforming to this Bid Solicitation, is most advantageous to the State, price and other factors considered. Ibid.

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 November 9, 2022. On December 21, 2022, the Bureau posted Bid Amendment #5 with the answers to questions posed, none of which addressed or questioned Bid Solicitation Section 3.29, *State Price Sheet Instructions*. A second Electronic Question and Answer period was conducted specifically to address questions relating to Section

5.11 Reporting and Supplier Convenience Fee, and was available to all potential Bidders until 2:00 P.M. Eastern Time on January 5, 2023. Bid Amendment #6 was posted on January 13, 2023, noting that no questions were received during the Second Q&A period.

On February 15, 2023, the Division’s Proposal Review Unit opened four (4) Quotes 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 four Quotes were forwarded to the Bureau for evaluation.

In conducting the review of the Quotes, the Bureau determined that Veritas’ submitted Quote was non-responsive because, contrary to Bid Solicitation Section 3.29, *State Price Sheet Instructions*, “Veritas indicated ‘No Bid’ on the State-Supplied Price Sheet for Price Line 4, Statewide Toll-Free Customer Service Center.” Recommendation Report Sec. II.C. page 3. On its price sheet, as shown on the screenshot below, Veritas indicated “No Bid” for Price Lines 3 and 4.

Bidder Name: Veritas HHS		22DPP00696
Category 1: Pre-Operational/Implementation/One-Time Cost		
Price Line	Item	Year 1 All-Inclusive Firm Fixed
1	System Development	No charge
2	Data Center Equipment to Host Software	\$112,209.00
3	Interactive Voice Response (IVR) System Development	No bid
4	Statewide toll-Free Customer Service Center	No bid
5	Vendor Project Manager and Staff	\$10,788.00
6	Statewide Training and Outreach Provided by Vendor	No charge
7	Vendor Travel Costs for Staff Training and Onsite Project Meetings	No charge
8	Disaster Recovery Costs	No charge
Total Category 1: Pre-Operational/Implementation/One-Time Costs		\$122,997.00

Thereafter, the remaining responsive Quotes were forwarded to the Evaluation Committee for review and evaluation in accordance with Bid Solicitation Section 8.9, *Evaluation Criteria*.

After completing its review and evaluation of the Quotes, the Evaluation Committee recommended that a Contract be awarded to Maximus. Thereafter, on July 26, 2023, the Bureau prepared a Recommendation Report that recommended that a Contracts be awarded to Maximus. Accordingly, on July 27, 2023, the Bureau issued the NOI advising the Bidders that it was the State’s intent to award Blanket P.O.s consistent with the July 26, 2023, Recommendation Report.

On August 2, 2023, Veritas wrote to the Division’s Hearing Unit stating that it was protesting the Bureau’s determination that its failure to provide pricing for all price lines rendered the Quote non-responsive. In support of its protest, Veritas states:

This protest is submitted in compliance with N.J. Administrative Code Section 17:12-3.3 (a). Veritas HHS submitted a proposal in response to the above-referenced RFP on February 15, 2023. In the announcement of the tentative contract award received on July 27, 2023, Veritas HHS learned that it had been disqualified on the grounds that it had not provided entries to certain price lines as required in the RFP Section 3.29:

The Bidder shall provide per unit costs for each line item in the State-supplied price sheet by filling out all the beige colored cells.

However, Section 3.29.4 of the RFP modifies that instruction as follows:

All price lines must be filled out in accordance with the instructions above. If the Bidder is not submitting a price for an item on a price line, the Bidder must indicate "No Bid" on the State-Supplied Price Sheet accompanying this Bid Solicitation. If the Bidder will supply an item on a price line free of charge, the Bidder must indicate "No Charge" on the State-Supplied Price Sheet accompanying this Bid Solicitation. The use of any other identifier may result in the Bidder's Quote being deemed non-responsive.

Following those instructions, Veritas HHS entered "No Charge" or "No Bid" in six price lines related to Category I: Pre-Operational/Implementation/One-Time Cost categories only. As indicated in its Technical Proposal, Veritas HHS did commit to providing all services required under the RFP. As a result, Veritas HHS should not have been disqualified for following the instructions in Section 3.29.4 of the RFP.

In addition, Section 3.6 of the RFP states:

If, during a Quote evaluation process, an obvious pricing error made by a potential Contract awardee is found, the Director or his/her designee shall issue written notice to the Bidder. The Bidder will have up to five (5) business days after receipt of the notice to confirm its pricing. If the Bidder fails to respond, its Quote shall be considered withdrawn, and no further consideration shall be given to it.

If the State had determined that entering "No Charge" or "No Bid" entries into the price was an error despite the provisions of 3.29.4, then it should have notified Veritas HHS and provided an opportunity to confirm its pricing. This was not done.

As a result, Veritas HHS has concluded that its entries on the Price Lines were consistent with instructions in the RFP and that our bid should not have been disqualified. We ask that this decision be reversed and that Veritas HHS' proposal be evaluated in the same manner as other submissions in response to this RFP.

[Veritas Protest Letter, Pages 1-2, emphasis in original.]

Veritas' Protest Letter states that it does not request an in-person hearing. 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 Veritas’ 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 Veritas’ 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 Veritas on the written record and, as such, an in-person hearing is not warranted. I set forth herein the Division’s final agency decision.

As a threshold issue, a Contractor must to be able to perform all of the work required under Bid Solicitation Section 4.0, *Scope of Work*. This is highlighted in Bid Solicitation Section 1.1, *Purpose and Intent*, which states that “Bidders must submit a Quote for all price lines as the State intends to award to a single Bidder.”

Veritas argues that it did not provide pricing for Price Line 4¹ because it did not interpret the relevant Bid Solicitation Section 4.4, *Customer Service Requirements*, as requiring one. That section reads as follows:

4.4 CUSTOMER SERVICE REQUIREMENTS

The Contractor **shall** provide the following customer service option:

- A. Phone & Text Access
 - 1. A toll-free number with the ability to receive voicemail messages;
 - 2. Responses to all voicemail messages within one (1) business day;
 - 3. A dedicated number with the ability to receive text messages;
 - 4. Responses to all text messages within one (1) business day;
 - 5. English and Spanish speaking representatives; and

¹ Veritas also argues in its Protest Letter that it did not insert pricing for Price Line 3 because Interactive Voice Response (IVR) System Development was not specifically identified in the Bid Solicitation. It should be noted here first that Veritas was only deemed non-responsive for Price Line 4, and that is the only Price Line discussed in the Bureau’s Recommendation Report. However, for purposes of completeness, I will briefly address the argument here. Bid Solicitation Section 3.2, *Bidder Responsibility*, states that “No special consideration will be given after Quotes are opened because of a Bidder’s failure to be knowledgeable as to all of the requirements of this Bid Solicitation.” Additionally, Bid Solicitation Section 2.1, *Electronic Question and Answer Period*, provided Veritas with an opportunity to raise any concerns or questions regarding the Price Sheet and the IVR requirement. Finally, a review of the other three Bidders’ Price Sheets shows they bid either “No Charge” or “\$0.00” for Price Line 3, and were committed to providing the service. Veritas’ use of “No Charge” for other Price Lines indicates it was knowledgeable of the difference between “No Bid” and “No Charge”, and chose to insert “No Bid” for Price Line 3 despite the requirement in Bid Solicitation Section 3.29 to complete all Price Lines. To the extent Veritas has raised this issue, it’s clear that Veritas did not afford itself of the available opportunities to raise the question in a timely manner prior to being found non-responsive, and that it was aware of the difference between utilizing “No Bid” and “No Charge” on the Price Sheet despite claiming it was committed to providing all of the services in the Bid Solicitation. As such, Veritas would also be non-responsive to the requirements of Price Line 3.

6. The ability to communicate with authorized parents and/or agencies in other languages as needed. Vendor shall acquire and maintain its own Language Line service.
- B. Representatives available at a minimum Monday through Friday, from 8:00 AM-5:00 PM Eastern Standard Time, with the exception of State holidays, to answer questions regarding the collection and processing of paternity acknowledgment information;
 1. English and Spanish speaking representatives; and
 2. The ability to communicate with authorized parents and/or agencies in other languages as needed. Vendor shall acquire and maintain its own Language Line service.

[Emphasis Added.]

The language in Bid Solicitation Section 4.4, *Customer Service Requirements*, clearly includes a mandatory toll-free number, as well as texting options, and that English and Spanish speaking representatives be available at a minimum Monday through Friday, from 8:00 AM-5:00 PM Eastern Standard Time, with the exception of State holidays. Accordingly, based upon the plain language of the Bid Solicitation, it is clear that “Statewide toll-Free Customer Service Center” is a required service.

With respect to the Quote pricing, which after Contract award will set the price that the State will pay the Contractor for performing the services provided, Bid Solicitation Section 3.29, *State-Supplied Price Sheet Instructions* stated:

The Bidder **must** submit its pricing using the State Price Sheet accompanying this Bid Solicitation and located on the “Attachments” Tab.

The Bidder **shall** provide per unit costs for each line item in the State-supplied price sheet **by filling out all the beigh (sic) colored cells**.

Any price changes including hand written revisions or "white-outs" must be initialed. Failure to initial price changes shall preclude a Contract award from being made to the Bidder pursuant to N.J.A.C. 17:12-2.2(a)(8).

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.

[Emphasis Added.]

Accordingly, inclusion of the words “must” and “shall” indicate that the submission of a Quote price for all Price Lines was required.

As noted above, in support of its protest, Veritas states that Bid Solicitation Section 3.29.4 permitted it to indicated “No Bid” for Price Lines 3. Unfortunately, Veritas misreads this section of the Bid Solicitation to allow it to no bid a required item.

With respect to the use of “No Bid” verses “No Charge”, Bid Solicitation Section 3.29.4 stated:

All price lines must be filled out in accordance with the instructions above. If the Bidder is not submitting a price for an item on a price line, the Bidder must indicate “No Bid” on the State-Supplied Price Sheet accompanying this Bid Solicitation. If the Bidder will supply an item on a price line free of charge, the Bidder must indicate “No Charge” on the State-Supplied Price Sheet accompanying this Bid Solicitation. The use of any other identifier may result in the Bidder’s Quote being deemed non-responsive.

[Emphasis added.]

Bid Solicitation Section 3.29.4 dictated that the Price Sheet/Price Lines must be completed in accordance with the instructions of Bid Solicitation Section 3.29, which made clear that “Bidder shall provide per unit costs for each line item in the State-supplied price sheet by filling out all the beige colored cells.”

Use of “No Bid” here was not permitted as an awarded Contractor must provide the State with all services identified in the scope of work. Performance of the work required by Section 4 of the Bid Solicitation is mandatory. Accordingly, Bid Solicitation Section 3.29 and Bid Solicitation Section 3.29.4 required that Bidders submit a Quote price. While a Bidder could propose to provide this 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 Veritas misreads the Bid Solicitation to grant itself discretion to ignore or decline to perform the services required under this portion of the Bid Solicitation. The broad extent of the work to be performed under Bid Solicitation Section 4 further enforces the important nexus of the intent and purpose of this passage to the overall scope of the Bid Solicitation. Bid Solicitation Section 4 goes on to state:

The Contractor **shall** maintain and manage the State’s Paternity Opportunity Program and business processes by executing the stated deliverables and requirements below. To successfully complete these deliverables, the Contractor **shall**, at a minimum:

- A. Participate in business process transition planning and execution, participate in regularly scheduled meetings, and management processes as requested by the SCM;
- B. Work collaboratively with any other agencies or entities that may be engaged by the OCSS to work on the activities related to the Contract;
- C. Implement future changes pursuant to changes in federal or State law and/or policy at no additional cost to the State including having full, detailed knowledge of current federal and state laws, regulations and guidelines applicable to Title IV Part D of the Federal Social Security Act (IV-D) program as well as the tasks and responsibilities outlined within this Bid Solicitation.
- D. Utilize innovative approaches to maintain paternity data, bolster imaging use and fulfill outreach requirements;

- E. Modify or replace equipment, software and processes as new, more effective approaches become available; and
- F. Maintain up-to-date and cutting-edge technology used for efficient, secure and adaptable operations.

[Emphasis added.]

The combination of the clear bid language that “Bidders must submit a Quote for all price lines as the State intends to award to a single Bidder”, the “Bidder shall provide per unit costs for each line item in the State-supplied price sheet by filling out all the beige colored cells”, “All price lines must be filled out in accordance with the instructions above”, and the extensive nature of the work described under Bid Section 4, make clear that providing pricing for all Price Lines is a necessary and required component of the Bid Solicitation and the State Supplied Price Sheet. By failing to submit pricing on Price Line 3, Veritas did not bid on work that is required to be performed under the term of the Bid Solicitation.

Finally, as noted above, with the Protest, Veritas requests that it should have been permitted to revise its pricing based on Bid Solicitation Section 3.6 which states:

If, during a Quote evaluation process, an obvious pricing error made by a potential Contract awardee is found, the Director or his/her designee shall issue written notice to the Bidder. The Bidder will have up to five (5) business days after receipt of the notice to confirm its pricing. If the Bidder fails to respond, its Quote shall be considered withdrawn, and no further consideration shall be given to it.

This language is drawn from the Division’s regulations, found at N.J.A.C. 17:12-2.11, which discuss the different type of proposal errors that may occur.

Veritas submitted a State Supplied Price Sheet which failed to provide a bid for a required Price Line. This is not a “pricing error”, but a failure to provide pricing in accordance with the Bid Solicitation’s clear instructions. Additionally, a Bidder making a pricing error is only allowed to “confirm its pricing”, and not to alter it once Quotes have been opened. Permitting Veritas to provide revised pricing after the Quote opening date would result in an impermissible change or correction to its Quote, which the Division cannot allow as doing so would be contrary to the Court’s holding in In re Protest of Award of On-Line Games Prod. & Operation Servs. Contract, Bid No. 95-X-20175, 279 N.J. Super. 566, 597 (App. Div. 1995) (holding that “in clarifying or elaborating on a proposal, a bidder explains or amplifies what is already there. In supplementing, changing or correcting a proposal, the bidder alters what is there. It is the alteration of the original proposal which was interdicted by the RFP”); see also, Twp. of River Vale v. Longo Constr. Co., 127 N.J. Super. 207, 222 (Law Div. 1974) (stating “If the non-compliance is substantial and thus non-waivable, the inquiry is over because the bid is non-conforming and a non-conforming bid is no bid at all.”) Thus, Veritas’ 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).

This is an unfortunate situation for the State as the Division encourages competition and appreciates the time and effort put forth in preparing and submitting the Quote. In light of the findings set forth above, I sustain the conclusions in the Bureau’s July 26, 2023, Recommendation Report, that the Veritas Quote was non-responsive and uphold July 27, 2023, Notice of Intent to Award.

Thank you for your company's continuing interest in doing business, 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,



Cory K. Kestner
Chief Hearing Officer

- c. M. Dunn
- J. Pastuzyn
- S. Brandbergh