



# State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
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April 2, 2015

Via Electronic Mail [lee.vartan@hkllaw.com] and USPS Regular Mail

Lee D. Vartan, Esq.  
Holland & Knight  
31 West 52<sup>nd</sup> St.  
New York, NY 10019

RE: Protest of Notice of Award of State Contract #T3007  
RFP #15-X-23604 Enhanced Decision and Information System of New Jersey

Dear Mr. Vartan:

This letter is in response to your correspondence dated February 17, 2015, referencing the subject Request for Proposal ("RFP") and regarding the intended award of the subject contract by the Procurement Bureau ("Bureau") of the Division of Purchase and Property ("the Division"). On behalf of your client, Project Performance Company, LLC ("Project Performance"), you protest the slated award of Contract T3007 to Affinity Global Solutions ("Affinity"), contending its proposal was non-compliant with mandatory terms of the RFP. As a result, you request the rescission of the intended award and ask that the contract be awarded to Project Performance as the bidder whose proposal was technically ranked third and offered the second lowest pricing.

I have reviewed the record of this procurement, including the RFP, relevant statutes, regulations, and case law, and all relevant proposals. This review has provided me with the information necessary to determine the facts of this matter and to render an informed determination on the merits of Project Performance's protest without an in-person presentation. N.J.A.C. 17:12-3.2(d)(1).

By way of background, the Bureau publicly advertised the subject RFP on behalf of the Office of Management and Budget ("OMB") to solicit proposals from bidders for the Enhanced Decision and Information System of New Jersey ("EDISON") project. EDISON will replace the existing system used to create and monitor the State-wide budget with a Commercial Off-the-Shelf ("COTS") product. OMB's mission is to provide strategic direction, financing alternatives, and asset management to guide the prudent allocation of limited resources within the policy framework set by the Governor of the State of New Jersey, and to accurately implement and reflect the results of those policies and subsequent financial transactions in the State Budget, in the State Accounting System, and in the State's Comprehensive Annual Financial Report. The intent of the RFP was to award the contract to a single responsible bidder whose proposal, conforming to the RFP, is most advantageous to the State, price and other factors considered.

The Bureau received five proposals by the revised proposal opening deadline of October 21, 2014. All five proposals were deemed facially responsive. Pricing was removed from all proposals,<sup>1</sup> and the Evaluation Committee<sup>2</sup> determined that two of the proposals were non-responsive to material mandatory requirements of the RFP and not evaluated further.

The Evaluation Committee conducted a complete technical review of the remaining three proposals: those submitted by Project Performance, Affinity, and CGI Technologies and Solutions Inc. (“CGI”). Each bidder was also asked to provide an oral presentation and demonstration to the Evaluation Committee in accordance with RFP Section 6.6, *Oral Presentation and/or Clarification of Proposal*. The Evaluation Committee assessed each proposal, assigned a weighted and average total technical score, and then requested each bidder to provide a Best and Final Offer (“BAFO”). In response to the BAFO request, Project Performance reduced its pricing from \$19,981,275 to \$19,292,000. Affinity and CGI did not alter their price offers. Taking into account pricing and technical score, the three bidders were ranked as follows:

Bidder	Average Technical Score	Total Cost Proposal	Final Rank
Affinity	796	\$5,332,366	1
Project Performance	768	\$19,292,000	2
CGI	800	\$26,789,600	3

The Committee recommended the subject contract be awarded to Affinity and the Bureau issued a Notice of Intent to Award Letter on February 2, 2015.

In Project Performance’s letter of protest, it first argues that Affinity failed to comply with the “non-functional” requirements of the subject RFP by simply listing the requirement in its proposal and responding “comply,” and therefore should be disqualified from contract award. More specifically, Project Performance claims that Affinity did not address the non-functional requirements relating to hardware, software, training, data conversion and migration, Service Level Requirements, and an Interface Plan in its proposal. In support of this argument, Project Performance references RFP Section 4.4.3.2.8 *Responses to RFP Section 3, Statement of Work for Functional (Appendix) and Non-functional Requirements (Section 6)*, which provides in relevant part:

When discussing non-functional requirements, which are listed in RFP Sections 3.2 and 3.4-3.15, the Bidder must list each requirement, and directly under each of the requirements discuss how that requirement will be met, including any assumptions, risks or issues related to satisfying that requirement. Any Bidder’s proposal that does not follow this format may<sup>3</sup> be deemed nonresponsive.

Contrary to Project Performance’s contention, a review of Affinity’s proposal shows it did discuss the non-functional requirements outlined in RFP Sections 3.2 and 3.4 to 3.15 in Sections 1 and 5 of its proposal. Indeed, the Evaluation Committee found, specifically related to these requirements, that

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<sup>1</sup> Pricing was removed from the submitted proposals in order to maintain the Evaluation Committee’s objectivity throughout the technical review process.

<sup>2</sup> The Evaluation Committee was comprised of five voting members and 34 subject matter experts who served as technical advisors and included representatives from the Division of Purchase and Property, Office of Management and Budget, Department of Children and Families, Treasury Division of Administration, Office of Legislative Services, Treasury Division of Revenue and Enterprise Services, and the New Jersey Office of Information Technology. Two external consultants also acted as advisors to the Committee.

<sup>3</sup> As defined in RFP Section 2.1, “may” denotes “that which is permissible, not mandatory.”

Affinity “committed to meeting all of the State’s non-functional requirements” and that its approach to “training, service requests, and documentation was particularly good.” It also found that Affinity “would house system documentation in the iBARS Wiki, which is searchable, printable, context sensitive and linked to the application via a help icon on the application icon bar.” I address each alleged deficiency below.

The non-functional requirements included the following subsections:

**3.2 Non-Functional Requirements**

3.2.1 COTS Products, Features and Licensing

3.2.2 Performance Requirements

3.2.3 Network Requirements

3.2.4 Hardware-Related Requirements

**3.4 Other Software Requirements**

3.4.1 Toolkits

**3.5 Interface Requirements**

3.5.1 Interface Plan

3.5.2 Automated Interfaces

**3.6 Conversion Requirements**

3.6.1 Data Conversion Migration Plan

**3.7 Training, Knowledge Transfer and Documentation Requirements**

3.7.1 Technical Training

3.7.2 User Training (including OMB/OLS User Training, Agency User Training, Advanced Report Generation Training, training manuals, and supplemental training)

3.7.3 Knowledge Transfer

3.7.4 Documentation

**3.8 Warranties on Software and Deliverables and On-Going Maintenance**

**3.9 Service Level Requirements**

**3.10 Project Requirements**

3.10.1 Proposed Implementation Approach (including Work Break-Down Structure (WBS), Schedule and Implementation Sequence)

3.10.2 Requirements related to the Performance of Work (including Use of State Data and Non Performance or Departure of Contractor’s Personnel)

3.10.3 Project Facilities, Location and Travel Expenses

3.10.4 Other Project Requirements (Signing security forms, Obtaining an Identification Badge, Quality Assurance (QA) Contractor, and state’s Contractual Project Manager)

**3.11 Project Deliverables**

3.11.1 Written Deliverables Requirements

3.11.2 Contract Deliverables

3.11.3 Mandatory Deliverables (including Project Management, Detailed Requirements Analysis and Validation, establishment of the Hosted Environments, Design Document, Supplemental Plans and Analyses, Test Plan, Testing and Test Results, Documentation, Training, Implementation, and Post Implementation)

**3.12 Deliverables Schedule**

**3.13 Status Meetings and Stats Reporting**

**3.14 Change Orders**

**3.15 Performance Evaluations**

In response to hardware requirements, including the COTS product, performance and network requirements, addressed in RFP Section 3.2.4, Affinity agreed to all RFP specifications. While the RFP did not list specific hardware requirements, other than mandating that the contractor was required to provide all necessary hardware to host the EDISON application, Affinity agreed to provide the necessary hardware. Affinity also provided detailed information in Section 1.04, *Hosting*, of its proposal, including:

[Affinity's] hosting services are provided internally without depending on any 3<sup>rd</sup> party. The system's architecture is "classic" using fully redundant dedicated hardware. The [Affinity] data center is feed [sic] by two independent Internet connections, Fiber (25Mbit and two Cable networks, each 20Mbit). Application access is shared between both fiber and cable Internet connections. Power is provided through the local power grid supplemented by battery and building-wide generator backup. Nightly backups transfer the IBARS<sup>[4]</sup> application, setup and database both to local, rotated, offline storage and also to our backup data center.

Affinity further addressed the Disaster Recovery Plan required in RFP Section 3.2.4 in its proposal at Section 5.08.01 *Disaster Recovery Plan (DRP)*, where it accounted for several levels of disaster and the steps needed for recovery. Affinity also addressed a *Data Archive Plan, Cutover Support Plan, and Post Implementation and Close Out* in its proposal at Sections 5.08.02, 5.08.03, and 5.09.

In response to RFP Section 3.2.4.3, requiring the bidder to identify "the minimum hardware and software requirements for end-user workstations," bidders were expected to know the State's minimum requirements. In Attachment 2, *Functional Requirements*, Affinity indicated that its proposed EDISON solution would meet the State's minimum requirements "out of the box," that the solution be web-based and function with Internet Explorer Versions 7 and higher. As these were the only minimum requirements listed, and Affinity expressly agreed to them, I find this section is satisfactorily addressed by Affinity's proposal.

Regarding software, the RFP did not require a bidder to propose a specific software solution, but set forth certain requirements that the software must meet. Affinity agreed to all of these specifications. In response to RFP Subsections 3.2.1, *COTS Products, Features and Licensing*, and 3.4, *Other Software Requirements*, Affinity addressed the software requirements in a detailed narrative description of the functionality of its software in its proposal at Section 1.01 and in its Appendix F.

Affinity also committed to making any State-specific enhancements or customizations part of the base product, so that the State would not have to adapt these enhancements to new product releases, as required in RFP Section 3.2.1.1, through its response "comply." RFP Section 3.2.1.1, as amended by Addendum #3, Part 2, provided:

#### **3.2.1.1 CUSTOMIZABLE PRODUCT**

The Contractor shall provide an EDISON solution that allows for extension of the COTS software's capabilities as follows:

- Configuration and customization of the base COTS software; and
- Integration with other COTS products and State legacy systems and data warehouse.

If the Bidder is required to make changes to the code of the software product(s) being bid in order to meet the State's requirements, the Bidder must either:

- a. certify that all such code changes will be incorporated into the base software product, so that the State will not be required to modify or create custom code in order to install software product upgrades; or
- b. certify that its approach to managing all such code changes in future upgrades to the base product will not require code re-work or modification, so that the State will not be required to modify or create custom code in order to install software product upgrades.

Affinity's response to this section indicated that it intends to comply with the exact language expressed in (a): "certify that all such code changes will be incorporated into the base software product, so that the

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<sup>4</sup> Internet Budget Analysis and Reporting System.

State will not be required to modify or create custom code in order to install software product upgrades,” and not the disjunctive phrase contained in (b) of this section.

Affinity also included the mandated matrix comparing the proposed software, function by function, against the State’s needs in its Appendix A. RFP Subsection 4.4.3.2.8 required all bidders to compare, in a separate attachment to the proposal, the functionality of the software being proposed, with the State’s functional requirements, in order to ensure that the State’s needs could be met with minimal need for software customization.

In response to training requirements set forth in RFP Section 3.7, *Training, Knowledge Transfer and Documentation Requirements*, Affinity provided a full discussion of its approach to training and the manner in which it intended to satisfy the State’s training needs in Section 5.07 of its proposal. I note that the RFP sections pertaining to training are all contract deliverables and were not required to be provided with the proposal. Nonetheless, Affinity’s proposal included a training plan, training manuals, train-the-trainer materials, and end user training information and timeframes of each type of training in its proposal. The Evaluation Committee Report also noted that Affinity’s “approach to training, service requests, and documentation was particularly good. For example, [Affinity’s] training plan provided additional sessions after the standard training cycle to accommodate scheduling conflicts and other unanticipated events.”

Concerning data conversion requirements set forth in RFP Section 3.6, *Conversion Requirements*, Affinity dedicates Section 5.05 of its proposal to *Supplemental Plans and Analysis*. In this section, Affinity states, “Once the initial Fit-Gap Analysis is completed and accepted, the documents associated with the Supplemental Plans and Analysis can be developed. This process will occur while system development and configuration is being undertaken.” Affinity also included a comprehensive list of all documents it will prepare. Since the RFP states that it is the responsibility of the contractor, and not the bidder, to prepare and deliver the data conversion plan, Affinity’s response was sufficient.

In response to RFP Section 3.9, *Service Level Requirements*, Affinity stated it would comply with all of the State’s specific Service Level Requirements. This section specified the manner in which the contractor shall implement functionality and assign priority ratings for troubleshooting and problem resolutions telephone calls. Affinity’s proposal is clear on how it proposes to meet the State’s need for timely technical support, as it specifies in Section 1.03:

Our support model provides every client with a direct primary and secondary dedicated contact. Cell phone numbers are provided for these individuals to provide 24 [hour] support. [Affinity] issues IDs to key State staff to our online issue tracking system in order to key and/or monitor the progress and resolution of issues. It is our goal to provide immediate action on any issue raised. We do this by cross training project managers and developer responsibilities with service and support resources. This allows us to rapidly adjust resources between support and development through the course of any work day.

Concerning an Interface Plan, described in RFP Section 3.5, Affinity states that that it will develop the Interface Plan once the initial Fit-Gap Analysis is completed and that the “process will occur while system development and configuration is being undertaken.” (See Affinity Proposal Section 5.05.) Because the RFP required the contractor to provide an interface plan, and not the bidder, and because Affinity not only states how the plan will be developed but also lists all the requirements and states that it will comply with them in its plan, Affinity’s response was sufficient. Additionally, RFP Section 3.10.1.2 required the bidder to provide its proposed Project Plan in detail, including the Work Break-down Structure, timeframes, the implementation sequence of budget software components, and additional activities related to mandatory deliverables. Affinity provided the required information in its proposal at Appendix C *Work Breakdown Structure- Project Timeline*, where it included a highly detailed plan of 483

itemized tasks to be implemented along with the projected start and end dates, predecessors, and resource names.

Affinity's proposal did not always conform to the stylistic guidelines outlined in the RFP, which may have been confusing for the protester and seems to underlie the complaints in the protest letter. However, as noted above in RFP Section 4.4.3.2.8, a proposal that does not follow the outlined format may, not must, be deemed nonresponsive. Additionally, while a deviation from required terms of the RFP may constitute a noncompliance, such noncompliance is not always a material deficiency. New Jersey courts have developed a two-prong test to consider "whether a specific noncompliance constitutes a substantial and hence non-waivable irregularity." Twp. of River Vale v. R. J. Constr. Co., 127 N.J. Super. 207, 216 (Law Div. 1974). The two-prong test requires a determination of

first, whether the effect of a waiver would be to deprive the municipality of its assurance that the contract will be entered into, performed and guaranteed according to its specified requirements, and second, whether it is of such a nature that 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 standard of competition.

[Ibid.; see also Meadowbrook Carting Co., Inc. v. Borough of Island Heights, 138 N.J. 307, 315 (1994) (affirming the two-prong River Vale test).]

In this case, first, because Affinity did include the required information elsewhere in its proposal, the State was assured that the contract would be entered into, performed, and guaranteed according to the requirements of the RFP. In light of this finding, I need not reach the second prong. Therefore, I find Affinity's variance from the specified formatting requirement to be non-material.

In its second point of protest, Project Performance argues that Affinity's proposal was also noncompliant with three additional RFP requirements:

- Affinity included only one client contact for four of its reference projects in response to RFP Section 4.4.3.2.5;
- Affinity did not include a listing of key personnel to be assigned to the contract in contradiction to RFP Section 4.4.3.2.7 and that submitted resumes were deficient; and
- Affinity's proposed Deputy Project Manager may not meet the requirements of RFP Section 4.4.3.2.7.2.

I address each alleged deficiency below.

First, regarding Project Performance's assertion that Affinity's proposal is not compliant with the terms of the RFP by not providing two client references for each of its reference projects, RFP Section 4.4.3.2.5 states:

**4.4.3.2.5 REFERENCES FOR PROJECTS USED TO MEET BIDDER QUALIFICATIONS**  
**(SECTION 3)**

(Shall not exceed 10 pages in length with no smaller than a 12 point font)

- The Bidder or the Bidder's subcontractor should provide, in response to the last three (3) bullets in RFP Section 4.4.3.2.4 directly above:
  - The beginning and ending dates for each contract listed in RFP Section 4.4.3.2.4 above; and
  - The names, positions, e-mail addresses and telephone numbers of two (2) clients for each contract/project listed in RFP Section 4.4.3.2.4 above. These references must have served

in a leadership position on the projects cited and have knowledge of how well the project was executed.

For example, if a total of six (6) projects are listed in response to the 2nd and 3rd bullets in RFP Section 4.4.3.2.4 above and two (2) projects or applications are listed in response to the 4<sup>th</sup> bullet in RFP Section 4.4.3.2.4 above, the Bidder should supply the names, positions, e-mail addresses and telephone numbers of sixteen (16) people.

[(All emphases added.)]

“Should,” as defined in RFP Section 2.1 denotes “that which is recommended, not mandatory.” Although Project Performance is correct in asserting that Affinity’s proposal identified only one client contact for four out of five of its reference projects, the Bureau was able to utilize the information provided to conduct reference checks of Affinity’s past projects. The Evaluation Committee stated in its report that Affinity’s software and personnel received “very high ratings,” noting that its references reported Affinity’s projects “have come in on time and on budget, [its] service and responsiveness are excellent,” and further that Affinity “often exceeded client expectations.” Thus, I find this point of protest to be without merit.

Second, Project Performance states that Affinity did not provide the required listing of key personnel to be assigned to the contract, and conversely, if the presumed key personnel are those for whom resumes were included, the resumes are deficient for not including start and end dates of all relevant contracts and for not including two client contacts for each relevant contract. These requirements are addressed in RFP Section 4.4.3.2.7, which provides in relevant part:

**4.4.3.2.7 IMPLEMENTATION AND PROJECT MANAGEMENT APPROACH AND PLAN AND QUALIFICATIONS OF PERSONNEL (SECTION 5)**

....

In this section of the proposal, the Bidder shall include a qualifications summary for all management and key personnel to be assigned to the contract. Detailed resumes for all management and key personnel to be assigned to the contract must be included as an attachment to the proposal. Resumes must include the following:

- A description of each relevant contract and the individual's role while assigned to that contract;
- Beginning and ending dates for the assignment of the individual to the relevant contracts;
- Beginning and ending dates for each relevant contract, in addition to the dates referred to in the second bullet above; and
- With respect to each relevant contract, the name, position, telephone number and e-mail addresses of two (2) clients to contact as a reference. These references must have served in a leadership position on the projects cited and have knowledge of how well the project was executed.

Failure to provide reference contact information may deem the proposal non-responsive.

Resumes should not contain the social security number, home addresses, personal telephone number and/or other personal information about the individual whose resume is being submitted.

[(Emphasis added.)]

The record reveals that Affinity dedicated Sections 8, 9, and 10 of its proposal to its key project staff, experience requirements, and organization charts. These sections included a project organization chart,

which outlined the key personnel that would be assigned under the subject contract, summaries of experiences, and a complete organizational chart of the company.

Additionally, Affinity included complete resumes of all the key personnel in its Appendix D. As noted above, the failure to include the reference contact information as stated in Section 4.4.3.2.7 above "may deem the proposal non-responsive." The record reveals that the seven resumes submitted for the listed personnel each include, for the most part, only one contact reference per contract listed in the individual's resume. However, as reflected in Affinity's technical score and in the Evaluation Committee's report, these references were sufficient to provide the Committee guidance on each individual's relevant work experience. In conducting these reference checks, the proposed key personnel "received excellent ratings" and were "characterized as easy to work with, as well as being consistently available when needed." Therefore, I find Affinity's proposal to be responsive in this category.

Project Performance also protests that Affinity did not include "beginning and ending dates for each relevant contract" in the required resumes. However, each resume lists the individual's dates of employment with Affinity, and Affinity provided complete dates for each contract in Section 3 *References*, namely those contracts with the states of Wyoming (2001 to present), New Hampshire (2008 to present), North Dakota (1996 to present), Kansas (2001 to present), and Montana (1998 to present). Therefore, the element of the RFP requiring start and end dates of all relevant contracts was sufficiently addressed.

Third, Project Performance asserts that it is "unclear" whether Affinity's proposed Deputy Project Manager, Jesse Schauer, meets the requirements of RFP Section 4.4.3.2.7.2. This section provides the follow description of this position:

• Deputy Project Manager

Duties: Assists in the implementation of the EDISON solution, to include the coordination and management of the translation of the detailed technical and business requirements into EDISON components, technical and user testing, data conversion, integration of systems, and interfaces between EDISON and other systems. Performs the functions and duties of the Project Manager when that person is on vacation, sick or otherwise temporarily unavailable.

Education: Bachelor's Degree from an accredited college or university.

Experience: At least two (2) years of experience, in a leadership position, installing an Information Technology system in a government environment in the United States or elsewhere.

Affinity included a detailed resume for Mr. Schauer, a Senior Technical Analyst, in its proposal in Appendix D. This resume described Mr. Schauer's B.S. in Management and M.S.E. in Software Engineering, as well his prior work experience with Affinity, from 2010 to the present, on government contracts with the States of Montana, Wyoming, and North Dakota. As a Senior Technical Analyst, Mr. Schauer assisted in the development and design for the Internet Budget Analysis and Reporting System ("IBARS") project upgrade for the state of Montana, a contract Affinity has held since 1998. Furthermore, in conducting reference checks with the state of Montana, the Bureau was advised that Mr. Schauer led the development and implementation of the publication module during the upgrade from the BARS systems to the IBARS system. In conducting a reference check with the state of Wyoming, the Bureau was advised that since 2010 Mr. Schauer has led the on-going budget system support effort. These experiences satisfy the requirements of the RFP.

In response to Project Performance's contention that other proposals were deemed non-responsive for failing to provide similar types of information, those instances are distinguishable. For example, a proposal was deemed non-responsive for failing to include any information concerning a proposed Project

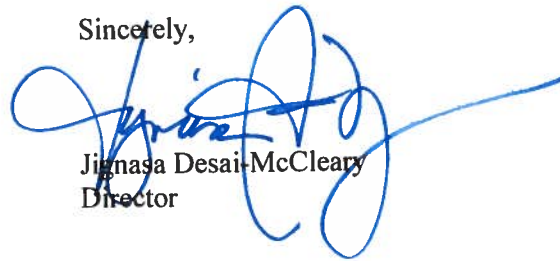


Manager's education and failing to include reference checks specific to the individual. As opposed to the instant matter, the Bureau could not use information contained elsewhere in the proposal or reference checks to clarify whether an individual met RFP specifications.

In light of the findings set forth above, I must uphold the findings of the Bureau and the intended award of the subject contract to Affinity, as it submitted a responsive proposal rated in the "good" range and proposed the lowest cost proposal of a firm fixed price of \$5.3 million over the 10-year life of the contract. This is my final agency decision on the matter.

Please convey the Division's appreciation for Project Performance's interest in doing business with the State of New Jersey and for registering with **NJ STARF**, the State of New Jersey's new eProcurement system, which is scheduled to go live in the near future.

Sincerely,



Jignasa Desai-McCleary  
Director

JD-M:DF

c: G. Olivera  
P. MacMeekin  
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