



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

CHRIS CHRISTIE
Governor

FORD M. SCUDDER
State Treasurer

KIM GUADAGNO
Lt. Governor

JIGNASA DESAI-MCCLEARY
Director

February 17, 2017

Via Electronic Mail [PPJosephson@duanemorris.com] and USPS Regular Mail

Paul P. Josephson, Esq.
Duane Morris, LLP
1940 Route 70 East, Suite 100
Cherry Hill, NJ 08003-2171

Re: Protest of Notice of Intent to Award
RFP #: 16-X-23676: Accounting and Billing Services: MVC Surcharge System, Billing, Collection
and Related Services

Dear Mr. Josephson:

This letter is in response to your March 30, 2016 and May 16, 2016 letters on behalf of Xerox State & Local Solutions, Inc. (Xerox) received by the Division of Purchase and Property's (Division) Hearing Unit. In the March 30, 2016 letter, Xerox requested an extension of time within which it would be permitted to file its protest.¹ In addition, Xerox set forth the preliminary basis for its protest of the Notice of Intent to Award (NOI) a contract to Gila, LLC d/b/a Municipal Services Bureau (MSB) for Solicitation# 16-X-23676: Accounting and Billing Services: MVC Surcharge System, Billing, Collection and Related Services. Specifically, Xerox alleges that the proposal submitted by MSB contained material deviations which were impermissibly waived and/or overlooked by the Evaluation Committee. On May 16, 2016 Xerox submitted a supplement to its March 30, 2016 protest letter, and further requested the opportunity to make an in-person presentation.

BACKGROUND

By way of background, the Request for Proposal (RFP) was issued by the Division's Procurement Bureau (Bureau) on June 12, 2015 on behalf of the Division of Revenue and Enterprise Services (DORES) and the Motor Vehicle Commission (MVC) to solicit proposals to engage a Contractor to develop a new Surcharge Billing and Collection System and to provide surcharge billing services including but not limited to the following elements: surcharge billings, collections, reconciliation and disbursement of payments,

¹ Prior to submitting the March 30, 2016 protest letter, on March 23, 2016, Xerox submitted a request pursuant to the Open Public Records Act (OPRA) with the Treasury Government Records Access Unit. On April 1, 2016, the Division granted Xerox's request for an extension of the protest period for 5 days after Xerox received the documents responsive to its OPRA request. Upon receipt of the documents which were responsive to the OPRA request, Xerox requested another extension of time to submit its protest. Because the Division has already accepted Xerox's March 30, 2016 letter as a protest, on May 6, 2016 the Division granted Xerox until on May 16, 2016 to supplement its protest.

handling telephone inquiries and correspondence, and conducting collection activities.² (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.

On October 15, 2015, two proposals received by the submission deadline of 2:00 p.m. were opened by the Proposal Review Unit and subsequently forwarded to the Bureau. Both proposals were then sent to the Evaluation Committee (Committee) for review and consideration. The Committee was comprised of six voting members which included representatives from the New Jersey Office of Information Technology (OIT), MVC, the Division, and DORES. There were also subject matter experts who served as technical advisors to the Committee and included representatives from MVC, DORES, the Division and OIT.

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.

The technical scores were based upon an independent reading and consideration of the proposals by each Committee member and the results of discussions and deliberations conducted by the full Committee.

During the evaluation, it became necessary to clarify certain statements contained within the proposals received by both MSB and Xerox 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.

² The key using agency and business owner of the Surcharge Program is MVC: DORES partners with MVC to ensure accurate, efficient and responsive services to the community with respect to the services provided. This solicitation is to procure collection services similar to those provided under T-2403 *Accounting and Billing Services: MVC Surcharge Billing and Related Services*.

In reviewing MSB's proposal, the Bureau found that there was an ambiguity between MSB's price sheet and its narrative proposal. Therefore, the Bureau sought to clarify MSB's intent with respect to its proposal pricing and on November 16, 2015 sent a letter to MSB stating, *inter alia*, the following:³

In the review of your firm's proposal submitted in response to the above referenced RFP, there are statements included in the Management Overview and Mobilization and Implementation Plan sections of the proposal and the pricing sheet that require clarification. The following is a list of items requiring clarification:

...

2) Printing and Mailing Costs

MSB states in its Mobilization and Implementation Plan on pages 8 and 9 that "Unlike Texas' Surcharge Program, mailing costs are entirely pass-through for the NJMVC Surcharge Program, for which the State compensates MSB for printing and postage expenses."

RFP Section 3.3.4 PRINTING AND MAILING REQUIREMENTS requires that the Contractor shall include all costs associated with printing and mailing notices and may use self-mailers as approved by the SCM.

Your price sheet did not include Printing and Mailing Notices and Correspondence.

Please confirm that your price sheet as submitted incorporates all costs associated with printing and mailing.

[November 16, 2015 clarification letter to MSB.]

In response to the Bureau's request, on November 23, 2015, MSB responded stating:

MSB's price sheet as submitted incorporates all program costs into two aggregated categories, 'Customer Service, Support and Primary Collections' and 'Collections -- Litigation Service.' The percentage listed for the category 'Customer Service, Support and Primary Collections' was submitted based on the State's willingness to utilize a support fee structure as outlined on the pricing sheet by MSB. MSB included the price for mailing into the contingency price to ensure the State would benefit knowing that MSB was incented to have mail be as effective as possible; if mail did not yield payments for surcharges, the costs would be absorbed by MSB without offset.

³ The Bureau also sought to clarify MSB's proposal with respect to its maintenance of the STARS program; credit card payments; non-recurring costs; and, new system development costs. (Bureau's November 16, 2015 clarification letter to MSB.) In addition, the Bureau sought clarification of Xerox's proposal with respect to its interface requirements; document imaging and management; data confidentiality; contract schedule; and maintenance of the STARS system. (Bureau's December 3, 2015 clarification letter to Xerox and Bureau's February 25, 2016 clarification letter to Xerox.)

The State has asked MSB to withdraw its recommendation of this supporting fee structure in the State's clarification Request #3A. Absent utilization of this support fee structure, the price listed for 'Customer Service, Support and Primary Collections' needs to be modified accordingly.

Taking the above into account, MSB confirms that the price sheet as submitted incorporated all costs associated with printing and mailing.

[MSB's November 23, 2015 Response to Clarification.]

On November 24, 2015, the Bureau wrote to MSB stating:

MSB's response to Clarification Request #2 states that "The State has asked MSB to withdraw its recommendations of this supporting fee structure in the State's Clarification Request #3a. Absent utilization of this supporting fee structure, the price listed for 'Customer Service, Support and Primary Collections' needs to be modified accordingly."

...

The RFP makes no mention of a "supporting fee structure." In addition, RFP Section 4.4.5 requires the Bidder to "submit its pricing using the format set forth in the State-supplied price sheet/schedule(s) accompanying this RFP," and "Failure to submit all information required will result in the proposal being considered non-responsive." (sic).

The State requires that MSB **confirm** that the pricing submitted is inclusive of all costs and addresses all requirements of the RFP or it must withdraw its proposal.

[November 24, 2015 Supplemental Clarification Letter.]

On November 27, 2015 MSB responded as follows:

...

MSB's Response to Clarification Request: MSB confirms that the pricing submitted is inclusive of all costs and addresses all requirements of the RFP.

[MSB's November 27, 2015 Response to Supplemental Clarification, emphasis added.]

After the proposal evaluation was completed, on March 15, 2016, the Division issued the NOI advising the bidders that it was the State's intent to award the contract to MSB. In recommending that the Division award a contract to MSB, the Bureau noted in part that:

MSB's narrative did demonstrate to the Committee that MSB understood the objectives that the contract is intended to meet. Although not required to do so in RFP Section 4.4.3.2, MSB's narrative specifically addressed how the firm planned to meet the State's Immediate, Intermediate and Long Term Requirements as identified in RFP Section 3.1 Implementation Timeline and Transition Requirements.

MSB's proposed Project Schedule, Mobilization and Implementation Plan and Collections Methodology meet the requirements of the RFP and demonstrate a thorough understanding of the intent of the procurement and the RFP requirements. MSB met all of the State's requirements as described in RFP Section 4.4.3 for submitting a proposal and being awarded a contract for the development and operations of a new MVC Surcharge System as defined in the Accounting and Billing System: MVC Surcharge Billing and Related Services project.

...

MSB's proposed solution met the State's requirements to transition to a new system within 18 months of contract award. The Committee determined that the Bidder's system is an excellent fit with the State's needs, especially in the areas of data migration and integration, call center operations, the remittance process, problem escalation, management reporting and metrics. The committee noted MSB's use of current technology, sensitivity to legislative concerns, understanding of the challenges New Jersey's program faces and approach to providing a high level of service.

[March 8, 2016, Recommendation Report, p. 3.]

Xerox's March 30 protest letter and May 16 supplemental protest letter followed. On July 18, 2016, MSB submitted its response to the protest.

DISCUSSION

As the outset, with respect to Xerox's request for an in person hearing regarding the issues raised in its protest. I note that pursuant to N.J.A.C. 17:12-3.3(d)(1), "[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 Xerox's protest, I have reviewed the record of this procurement, including the RFP, the proposals submitted, the Evaluation Committee report, the Bureau's Recommendation Report, and the relevant statutes, regulations, and case law. The issue(s) raised in Xerox'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 Xerox on the written record.

Xerox's March 30, 2016 Protest Letter

In its March 30, 2016 letter, Xerox set forth the preliminary basis for its protest specifically alleging that:

The Evaluation Committee erred in its respective evaluations of the Xerox and MSB proposals. Xerox believes some of these errors were in the nature of material deviations in the MSB Proposal that were effectively (and erroneously) waived or overlooked, and that others were in the evaluations of the respective technical proposals and qualifications of bidders scoring. Xerox accordingly reserves the right to expand upon the grounds for its

protest upon receipt of the Award Recommendations, MSB's proposal, and other components of the procurement record.

[Xerox March 20, 2016 protest letter, p. 2-3.]

In this initial protest letter, Xerox focuses on MSB's proposal pricing. Xerox alleges "that the proposed contract award to MSB violates fundamental principles of black-letter procurement law in New Jersey in at least one critical regard: the MSB proposal contained a material deviation in its pricing and MSB was permitted not one but two chances to materially modify its pricing proposal in an attempt to save the proposal from automatic rejection."⁴ (Xerox's March 30, 2016 protest letter, p. 3.) More specifically, Xerox states that the RFP required that:

[t]he pricing sheet on which bidders were *required* to submit their bids mandated that bidders detail numerous components determining their total pricing, including but not limited to:

- Customer Service, Support and Primary Collections (to be bid as a contingent fee as percentage of revenue collected)
- Printing and Mailing of Notices and Correspondence (to be bid on cost per piece)
- Returned Mail Processing (to be bid on cost to piece)
- Accepting and Processing Payments (to be bid on cost per transaction type)
- Document Image Management (to be bid on cost per piece)

[Xerox's March 30, 2016 Protest Letter, p. 3.]

Xerox asserts that while its proposal pricing conformed to the RFP and price sheet requirements, MSB's proposal pricing: (i) failed to include any pricing detail as required by the specifications; (ii) included additional pass through costs; (iii) noted that other costs would be subject to negotiation; and (iv) included a higher conditional contingency fee.⁵ Xerox also points to MSB's Proposal Price Sheet alleging that MSB qualified its proposal price by stating that the "[p]rice does not include a surcharge partial payment processing fee per payment processed and electronic payment (ACH and credit card) convenience fee which is paid by constituent at time payment is tendered" and stating that "[b]oth the installment payment fee and convenience fee can be negotiated with the State and are necessary components to maintain the pricing as shown in cell C7." (Xerox's March 30, 2016 Protest Letter, p. 3; MSB Price Sheet, DPP 812.) Xerox alleges that "MSB unilaterally sought to lower its apparent bid price by shifting payment processing costs the State intended to bear to [drivers]. Thus, MSB submitted pricing that plainly deviated from the State-mandated pricing sheet." (Xerox's March 30, 2016 letter, p. 4.) Accordingly, Xerox states that MSB's proposal was non-responsive.

⁴ Xerox's statement that MSB's proposal was saved from "automatic rejection" confuses a term of art used by the Division. For the Division, an "automatic rejection" is a term used synonymously with "administrative rejection" of those proposals submitted without the proper forms being included or signed. Whether or not pricing is accurate or fully encompassing is not a cause for automatic or administrative rejection.

⁵ Xerox notes that it proposed a contingent fee of 3.79% which was adjusted to 3.74% in response to the State's request for a Best and Offer (BAFO) and that its proposal pricing included the detailed per piece and per transaction amounts for each required line item noted above. (Xerox's March 30, 2016 Protest Letter, p. 3.) In contrast, Xerox states that MSB's proposal had a higher and conditional contingent fee of 4.35% and, contrary to the RFP requirements, failed to include any pricing detail for the categories listed above. (Xerox's March 30, 2016 Protest Letter, p. 3.)

With respect to proposal pricing, RFP § 4.4.1.8 Pricing required that “[t]he Bidder must submit its pricing on the State supplied Price Sheet/Schedule and supply any additional pricing information as directed in RFP Section 4.4.5 Price Schedule/Sheet.” RFP § 4.4.5 goes on to say “[t]he bidder must submit its pricing using the format set forth in the State-supplied price sheet/schedule(s) accompanying this RFP. Failure to submit all information required will result in the proposal being considered non-responsive.”

Further, as to printing and mailing costs, RFP § 3.3.4 Printing and Mailing Requirements states:

[t]he Contractor shall print and mail to foreign, domestic and military addresses all notices including specialized system generated correspondence/notices that have been developed by the Contractor and agreed upon and approved by the [State Contract Manager (SCM)]. **The Contractor shall include all costs associated with printing and mailing notices and may use self-mailers as approved by the SCM.**

[Emphasis added.]

Thus, the RFP language is clear, submitted pricing was required to be inclusive of all costs associated with printing and mailing notices. Moreover, the price sheet required that bidders insert costs associated with printing and mailing notices (see images below):

Timeframe (Fiscal Years) Service Capability/Component	All Unit/Type Pricing Sheet							Total Cost
	One (1)	Two (2)	Three (3)	Four (4)	Five (5)	Six (6)	Seven (7)	
Costs								
Customer Service, Support and Primary Collections	\$	\$	\$	\$	\$	\$	\$	0.00%
Printing and Mailing Notices and Correspondence	\$	\$	\$	\$	\$	\$	\$	0.00%
Returned Mail Processing	\$	\$	\$	\$	\$	\$	\$	0.00%
Accepting and Processing Payments								
Batch that are mailed and processed internally	\$	\$	\$	\$	\$	\$	\$	0.00%
Manual that are hand delivered or information taken over the phone	\$	\$	\$	\$	\$	\$	\$	0.00%
Payments for Electronic that are received via website or IVR (payment by phone)	\$	\$	\$	\$	\$	\$	\$	0.00%
Document & Image Management	\$	\$	\$	\$	\$	\$	\$	0.00%
Collections - Litigation Services	\$	\$	\$	\$	\$	\$	\$	0.00%
Systems and Technology	\$	\$	\$	\$	\$	\$	\$	0.00%
Options - Maintenance and Support of SaaS	\$	\$	\$	\$	\$	\$	\$	0.00%
Overall Total Proposal Cost	\$	\$	\$	\$	\$	\$	\$	0.00%

Timeframe (Fiscal Years) Service Capability/Component	Unit of Measure	Cost per unit or percentage
Transition, Non-recurring / One-time costs	Total Cost for Contract	\$ -
Customer Service, Support and Primary Collections	Contingency Fee as a percentage of revenue collected	0.00%
Printing and Mailing Notices and Correspondence	Cost per piece	\$ -
Returned Mail Processing	Cost per piece	\$ -
Accepting and Processing Payments		
Batch that are mailed and processed internally	Cost per transaction type	\$ -
Manual that are hand delivered or information taken over the phone	Cost per transaction type	\$ -
Payments for Electronic that are received via website or IVR (payment by phone)	Cost per transaction type	\$ -
Document & Image Management	Cost per piece	\$ -
Collections - Litigation Services	Contingency Fee as a percentage of revenue collected	0.00%

In support of its position that MSB's proposal was non-responsive, Xerox states that the Bureau "appropriately rejected MSB's response, noting that the RFP did not permit a "supporting fee structure" to be paid by [drivers] and reminding MSB that under RFP Section 4.4.5 failing to submit all pricing information in the format set forth in the State-supplied price sheet/schedule "will result in the proposal being considered non-responsive." (Xerox's March 30, 2016 Protest Letter, p. 4.) Xerox alleges that "MSB unilaterally changed the fundamental basis for comparing the proposals, price, and in so doing materially deviated from fundamental pricing requirements of the RFP. Having submitted a bid that materially deviated from the RFP's requirements, MSB's bid was a nullity. It should have been rejected, without any opportunity to materially modify its patently nonresponsive proposal." (Xerox's March 30, 2016 Protest Letter, p. 4.)

Xerox further states that though the Director of the Division has the authority to waive deviations, which constitute minor irregularities pursuant to RFP § 6.1 *Right to Waive*, those conditions permitting a waiver did not exist, and that "allowing MSB to withhold its pricing information until after bid opening ceded to it the unfair advantage of retaining the discretion to stay in the bidding or withdrawing without penalty." (Xerox's March 30, 2016 Protest Letter, p. 5.) Relying upon the Court's decision in In re Protest of the Award of the On-Line Games Prod. & Operation Servs. Contract, Bid No. 95-X-20175, 279 N.J. Super. 566, 597 (App. Div. 1995), Xerox states that permitting a bidder "to submit only partial pricing that is unambiguously conditioned upon further negotiation with the State is unacceptable under our laws" and that permitting MSB to withdraw a pricing condition results in an impermissible supplementation, change or correction to its proposal. (Xerox's March 30, 2016 Protest Letter, p. 7-8.)

After reviewing all of the protest documents, including all of Xerox's protests and MSB's response thereto, the Committee Report, and the relevant bids, the Hearing Unit finds that the Bureau's clarification is consistent with the law. In conducting its investigation of Xerox's allegations of the pricing submitted by MSB, the Hearing Unit determined that there was some confusion in MSB's pricing. MSB's proposal stated "[u]nlike Texas' Surcharge Program, mailing costs are entirely pass-through for the NJMVC Surcharge Program, for which the State compensates MSB for printing and postage expenses." (MSB's Proposal dated September 8, 2015, p. 8-9.) MSB's price sheet, however, did not list any per unit or percentage costs associated with the printing and mailing of notices and correspondence indicating that these fees were incorporated into the proposal price set forth on the price sheet. As such, a discrepancy between the narrative proposal and proposal pricing existed. Accordingly, as permitted by the RFP and the applicable case law, the Bureau properly requested that MSB clarify the terms of the submitted pricing in its bid.

In On-Line Games, the court held that "[t]he RFP specifically approved of bidders' clarifying or elaborating in their proposals in post-opening proceedings but prohibited supplementation, change or correction. 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." 279 N.J. Super. 566, 597 (App. Div. 1995).

Here, contrary to Xerox's assertion, MSB's proposal was responsive. The RFP did not request that a bidder supply the underlying fee structure used to calculate the price proposed. If MSB needed to change its underlying fee structure, as long as the price proposed to the State did not change, the proposal was responsive. The requests for clarification from the Bureau to MSB did not change the basis for comparing proposals and did not permit MSB to change or add the contingency fee or annual fee proposed for the performance of the work required under the contract. Rather, what the Bureau sought and what MSB confirmed, was that the proposal price as originally submitted on the price sheet was inclusive of all costs and addressed all requirements of the RFP. Xerox's protest of MSB's proposal pricing is therefore without merit.

Xerox's May 16, 2016 Supplemental Protest Letter

On May 16, 2016, the Division received a supplemental protest letter in which Xerox raised several additional protest issues. Each of those additional protest points is addressed below.

1. A representative from DORES was included on Evaluation Committee.

First, Xerox complains that the current State Contract Manager (SCM) was impermissibly excluded from the Committee as a result of being named as a reference by Xerox, and that no member of DORES' staff sat on the Committee. Xerox argues that without the SCM, "the Committee commenced its work without the most important representative at the table: the current (and presumably future) State Contract Manager who has and will have primary responsibility for the contract performance, if not the project." (Xerox's May 16, 2016 Supplemental Protest letter, p. 5.) Moreover, Xerox contends that the only appropriate basis to disqualify the DORES representative would have been if he had a financial interest in a bidder or if he was unwilling to sign the State's certification indicating his compliance with the State's rules to ensure the integrity of the Committee's proceedings. (*Ibid.*) Xerox contends that it had no notice that "a vendor's reference is per se disqualified from serving as a member of an evaluation committee." (*Ibid.*)

With respect to the makeup of the Committee, N.J.S.A. 52:34-10.3(c) states in pertinent part that "[i]n all cases, persons appointed to an evaluation committee shall have the relevant experience necessary to evaluate the project." With that in mind, "the Director retains the discretion to reject proposed members, remove sitting members and add additional members to an evaluation committee." N.J.A.C. 17:12-2.7. The Division should always be aware of the public's interest in State procurements and possible conflicts of interest, and should take the appropriate actions to insulate the procurement process from those potential conflicts. See generally, Keyes Martin & Co. v. Director, Div. of Purch. & Prop., 99 N.J. 244, 260-64 (1985). Here, all members of the Committee had the requisite knowledge and experience to conduct an evaluation of the proposals submitted and none had any possible conflicts of interests which could have affected the public's confidence in the procurement process.

Upon receipt of the proposals, the Bureau noted that Xerox had named as references the DORES Chief of Staff and two (2) other Committee voting members, Frank Patrone (Patrone) from MVC and Dario DaCosta (DaCosta), the State Contract Manager (SCM) from DORES. So as to prevent any appearance of impropriety, and to protect the integrity of the procurement process, and guard against any potential conflict of interest or potential allegation of favoritism or bias, the Bureau determined that both the MVC and DORES' Committee voting members, who had been specifically named as references in Xerox's proposal, should be removed from the Committee and replaced with qualified representatives from both of those agencies. Thus, an alternate member from DORES was selected in DaCosta's place and an alternate member from MVC was selected in Patrone's place.⁶

The Division ensures that the individuals constituting the Committee have the relevant experience necessary to evaluate the project in accordance with N.J.S.A. 52:34-10.3 and seeks to avoid conflicts of interest in the procurement process. The Division's governing regulations state that "members of evaluation committees shall conduct evaluations of proposals objectively, impartially, and with propriety. The Director retains the discretion to reject proposed members, remove sitting members and add additional members to an evaluation committee." N.J.A.C. 17:12-2.7(a)(1). Here, the Bureau perceived a conflict of interest, where an evaluator is listed as a reference for one of the bidders, and took steps to rectify the issue. Moreover, no vendor should receive notice of the identity of the Committee members until after contract award. N.J.S.A. 52:34-10.3.

⁶ Additionally, three non-voting technical advisors from MVC were added to the Committee along with one voting and three non-voting members from OIT.

Xerox's assertion that there was no representative from DORES on the Committee is false, and incorrectly assumes that the constituency of an evaluation committee must include members from the using agency. Of course, while there is no requirement in the law or the RFP that the SCM be a member of the Committee, it should be pointed out that the former SCM who replaced DaCosta on the Committee had previously served as the SCM for several years and had more experience and knowledge regarding the MVC Surcharge program and STARS than DaCosta, who had only recently been appointed to the position. To the extent Xerox claims that the absence of the current SCM as a voting member somehow deprived the Committee of some necessary expertise, any such argument is without merit.

2. All of the information received from Xerox's references was considered and included as part of the Evaluation Committee's review and consideration of Xerox's proposal.

Xerox alleges that the Committee disregarded the highly positive statements from its State references, specifically by DORES staff, and that the Committee failed to contact its out-of-state references stating that its listed references "did not receive clear and proper inquiries concerning Xerox's performance." (Xerox's May 16, 2016 Supplemental Protest letter, p. 6-7.) In its proposal, Xerox listed the following references:

- MVC Surcharge Billing and Related Services
Dario DaCosta, Program Manager
Frank Patrone, Surcharge Manager
- Arizona Supreme Court
Dave Byers, Director, Administrative Office of the Courts
Christine Weigand, Consolidated Collections Unit Manager
- Philadelphia Municipal Court
Joseph Hassett, Deputy Court Administrator
Christopher Waters, Director of Finance

[Xerox Proposal, Section 3.5-3.]

The Hearing Unit's review of the record of this procurement reveals that the Committee made diligent efforts to contact each of Xerox's references and considered all of the information received from the references.

Initially, Xerox alleges that the Committee disregarded the highly positive statements from its State references, specifically the positive information provided by DORES staff. (Xerox May 16, 2016 Supplemental Protest Letter, p. 6.) Xerox states that the Committee's own notes from the references reveal that "DORES is satisfied with Xerox and recommended contracting with Xerox again." (*Ibid.*) Xerox continues by alleging that "the process was deprived of the voice and experience of the State employees with direct responsibility for this contract, and a voice plainly supportive of Xerox." (*Id.* at 7.) However, a review of the Committee Report reveals that the Committee received both positive and negative feedback from Xerox's State references. Specifically, the Committee Report notes "the reference reported that Xerox was responsive with issues or requests; [but] there have been issues with credit card processing that continue to go unanswered; and, that Xerox's knowledge of the State's Surcharge Program make them easy to work with since they know the system so well." (Committee Report, p.7.)

The Hearing Unit's review of the Committee's reference questionnaire reveals that both Patrone and DaCosta gave positive and negative feedback to the Committee. (Xerox's May 16, 2016 protest, Exhibit D.) While it is true that Patrone and DaCosta gave Xerox positive references, both also had negative statements regarding Xerox's performance on the current contract: specifically they noted that "up until recently there have not been issues," "[they] have been responsive up until the last few months," "fixes (band aid) put in place for the time being. Not being fixed the way it should be fixed" and "weaknesses are

dealing with 3rd party vendors, especially in last few months with card issues.”⁷ (Responses to Vendor Reference Questions, November 16, 2015.) The Committee considered all of the relevant information supplied to it from Xerox’s State references, including both positive and negative feedback.

As to Xerox’s contract with the Arizona Supreme Court, in an attempt to solicit information regarding Xerox’s contract with Arizona, the Committee contacted Mr. Byers and Ms. Weigand, Xerox’s listed references. On November 12, 2015 the Committee contacted Mr. Byers who informed the Committee that he was not the appropriate contact and that Ms. Weigand should be contacted instead. (Email Chain Re. Surcharge References, dated May 31, 2016.) On November 12, 2015, the Committee emailed questions to Ms. Weigand requesting information regarding Xerox’s contract with the State of Arizona. (Ibid.) On November 23, 2014 the Committee called Ms. Weigand and followed-up with a second email containing the Committee’s questions which sought information related to Xerox’s contract with Arizona. (Ibid.) Specifically, on November 23, 2015 the Committee wrote to Ms. Weigand:

Good morning and thank you again so much for getting back to me. I attached the questions we would like to know regarding your contract with Xerox. Place forward back your answers at your earliest convenience. If you have any further questions or concerns please do not hesitate to contact me.

[Ibid.]

Ms. Weigand did respond to the Committee’s email stating that she would reply to the email with responses to the questionnaire ASAP. (Ibid.) On November 24, 2015, a reminder email was sent to Ms. Weigand; however, no response was received. (Ibid.) In fact, the Bureau advised the Hearing Unit that no response has been received from Ms. Weigand to date. With respect to Xerox’s assertion that the questionnaire emailed to Ms. Weigand was specific to MSB’s work as a subcontract for Xerox; the Hearing Unit reviewed the questionnaire that was attached to the November 23, 2015 email to Ms. Weigand. The questionnaire is general, using the term “vendor” and is comprised of basic open-ended questions seeking information regarding vendor performance not related to any specific entity or contract. (Ibid.)

In addition, on November 13, 2015, the Committee contacted Mr. Hassett, the Deputy Court Administrator for the Philadelphia Municipal Court, who had been listed a reference in Xerox’s proposal. Mr. Hassett stated that he was surprised to learn that he was listed as a reference by Xerox. Mr. Hassett requested that the questions be emailed to him as he needed to obtain approval from the Municipal Court before he acted as reference. On November 13, 2015, the Committee emailed the questions to Mr. Hassett. (Ibid.) A follow-up email was sent on November 17, 2015; however, no response was received. (Ibid.)

As noted in the Committee Report, other than the State references, none of the other references listed by Xerox in its proposal responded to the Bureau’s request for information. References for both Xerox and MSB were contacted and were provided with the same questions, therefore there was no disparate treatment with respect to obtaining information from references.

Accordingly, I find that Xerox’s protest on this point to be without merit.

⁷ The feedback from Xerox’s State references was limited to Xerox’s recent contract performance as neither Patrone nor DaCosta worked on the contract when the Vision System or the STARS program was first implemented by MVC. Therefore, the references could only provide information which was limited to Xerox’s current contract.

3. Evaluation of MSB's and Xerox's proposals.

At the outset, I note that in evaluating proposals received, the Committee's goal is to reach a consensus on the selection of a bidder to be recommended for a contract award. That consensus decision is reached through discussions and deliberations conducted by the entire Committee reviewing each RFP against the RFP requirements and the evaluation criteria. Those evaluation criteria and the weight assigned to each criteria are determined by the Bureau in consultation with the State Contract Manager and/or the Using Agency Representative(s) prior to the proposal opening date. The Committee may utilize the services of an outside consultant to serve as a subject matter expert during its deliberations. At the conclusion of its deliberations, each Committee member scores each proposal. Those scores are representative of the Committee's full discussions and deliberations. Thereafter, the Committee prepared its report recommending a bidder for contract award. That report reflects the Committee members' individual technical scores for each proposal as well as the average technical score for each proposal. (Committee Report, p. 9.) It is the Committee's Evaluation Report and the Bureau's Recommendation Report which reflect the complete technical analysis, discussions and conclusions drawn by the Committee in its review of the proposals submitted.

Here, prior to this RFP being advertised, DORES hired a consultant to act as a subject matter expert. In addition to participating in the Committee discussions as a non-voting member, the consultant prepared an evaluation tool, the Requirements Outline, which lists all of the RFP requirements and represents the consultant's preliminary review of the proposals submitted. The Requirements Outline also contains some but not all comments made by Committee members. As such, the Requirements Outline contains cursory notes and not the comprehensive complete technical analysis, discussions and conclusions drawn by the Committee as a result of the Committee's discussions regarding the proposals submitted.⁸ The Requirements Outline therefore is not determinative. The Requirements Outline should only be viewed as a deliberative tool used by the Committee which led to a deeper analysis of the technical platforms and solutions proposed by the bidders as it relates to the State's business needs. Xerox's reliance on the Requirements Outline and comments made thereon, is misplaced.

In support of the protest, Xerox relies upon the Evaluation Tool/Requirements Outline. (Exhibit E to Xerox's May 19, 2016 Supplemental Protest.) Xerox alleges that there were serious issues with the procurement process pointing to an alleged disparity in the comments made in the Requirements Outline and the statements made within the Committee Report and Recommendation Report. Specifically, Xerox alleges that

Even the most cursory review of the evaluators' comments on the Requirements Outline reveals a different view of the proposals than that reflected in the Evaluation Report or the scoring sheets. The Requirements Outline repeatedly calls out MSB's proposal as lacking detail and information and questioning whether MSB meets the RFP requirements. In contrast, Xerox's proposal was more often than not praised for providing more than required by the RFP, and described as "meets" or "high meets" requirements, presumably indicative of the fact that Xerox's response exceeded RFP requirements.

[Xerox's May 16, 2016, Supplemental Protest Letter, p. 8.]

⁸ The comments contained within the Requirements Outline which note levels of compliance with RFP requirements sometimes incorrectly concludes whether a requirement is that of a Contractor – after award, or a Bidder at the time of proposal opening.

As previously noted, 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.

Utilizing these criteria⁹, the Committee evaluated each proposal submitted against the RFP requirements.

In connection with this protest, the Division's Hearing Unit conducted an independent review of the RFP requirements and both MSB's and Xerox's proposal. With respect to the evaluation of each of the proposals submitted, I note the following:

a. MSB's Proposal

i. Criteria A – Personnel

With respect to RFP § 6.7.1(a), Criteria A - *Personnel*, bidders were requested to set forth the qualifications and experience of the management, supervisory, and key personnel assigned to the contract. Included in this review was among other things, the technical narrative and the resumes provided pursuant to Section 4.4.4.3 of the RFP which states in part:

4.4.4.3 RESUMES

Detailed resumes should be submitted for all management, supervisory and key personnel to be assigned to the contract. Resumes should emphasize relevant qualifications and experience of these individuals in successfully completing contracts of a similar size and scope to those required by this RFP. Resumes should include the following:

- a. The individual's previous experience in completing each similar contract;
- b. Beginning and ending dates for each similar contract;
- c. A description of the contract demonstrating how the individual's work on the completed contract relates to the individual's ability to contribute to successfully providing the services required by this RFP; and

⁹ As noted in the Committee Report, the weight assigned to each of the evaluation criteria was as follows: Personnel 30%; Experience of the Firm 30%; and, Ability of the firm to complete the Scope of Work based on its Technical Proposal 40%.

- d. With respect to each similar contract, the name and address of each reference together with a person to contact for a reference check and a telephone number.

In its proposal, MSB identified and provided the resumes for each of the key staff members. In its report, the Committee noted that with respect to Criteria A - *Personnel*, "[t]he proposed Project Team key members met and exceeded the recommended requirements for education, skills and experience." (Committee Report, p. 12.) The Committee Report detailed the experience of the key members in comparison to the RFP requirements for listed management, supervisory or key positions. (*Ibid.*)

The Hearing Unit's review of the individual resumes included with MSB's proposal for the key personnel, confirms that each person identified as holding a management, supervisory or key position met or exceeded the specific qualifications in the RFP. Each of the resumes reveals that the key personnel proposed has meaningful experience related to the position identified. I find that given the wealth of relevant experience presented for these key staff members, MSB's proposal provided information which assured the Evaluation Committee that the proposal met Criteria A. Therefore I find no reason to question the Committee's scoring of MSB's proposal as to Criteria A.

While the Requirements Outline referenced by Xerox in its protest is not determinative, for the sake of clarity, I will address that document as it applies to this protest. With respect to the resumes submitted, the Requirements Outline notes that there was some concern regarding the allocation of part time resources to the project; however, "detailed resumes were provided and key personnel meet recommended education experience and skill sets." (Requirements Outline, p. 50.) Here, the cursory comments contained in the Requirements Outline are consistent with and reflected in the Committee Report. To the extent that any comments contained in the Requirements Outline may be consistent or inconsistent with the comments contained in the Committee Report, I note that the Requirements Outline is a deliberative tool that contains only preliminary cursory notes of the consultant and reflects only some comments made by Committee members. The Requirements Outline does not reflect the comprehensive and complete technical analysis, discussions and conclusions of the Committee as a result of the Committee's full discussions and deliberations. Rather, the final result and recommendation of the Committee, based upon its full discussions and deliberations, are incorporated into Committee's scoring and the Committee's Report.

ii. *Criteria B - Experience of the Firm*

With respect RFP § 6.7.1(b), *Criteria B - Experience of the Firm*, the RFP requested that the bidder demonstrate that it has the ability to successfully complete contracts of similar size and scope in relation to the work required by the RFP. Specifically, RFP § 4.4.4.5 *Experience with Contracts of Similar Size and Scope* states:

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 the services required by this RFP. Emphasis should be placed on contracts that are similar in size and scope to the work required by this RFP. 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 RFP. For each such contract, the bidder should provide two names and telephone numbers of individuals for the other contract party. Beginning and ending dates should also be given for each contract.

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 proposal. The bidder must provide a detailed description of services to be provided by each subcontractor.

[RFP §6.7.1(b), *Emphasis added.*]

In its proposal MSB identified five contracts, which it stated were of similar size and scope to work sought by the subject solicitation.

With respect to contracts of a similar size and scope, in conducting its review of MSB's proposal, the Committee verified the information contained in MSB's proposal regarding three completed contracts (Texas Department of Public Safety, Central Texas Regional Mobility Authority and City of Austin, Texas) and its development work for the Puerto Rico Highway Toll Authority.¹⁰ Through its review of the information in MSB's proposal and the information provided by the MSB references, the Committee determined that MSB had contracts that were of similar size and scope to the work required by the subject RFP. For example, with respect to the Texas' Driver Responsibility Program, a contract that MSB has held since 2003, MSB built a new cloud based system with similar functionality and requirements to the scope of work required by the subject RFP. (Committee Report, p. 14-15.)

The Hearing Unit's review of the contracts identified in MSB's proposal reveals the following regarding MSB's listed contracts:

Texas Department of Public Safety

August 2004 - August 2019

- Mailing of surcharge bills and non-payment notifications
- Maintenance and operation of the account system of record in support of the Texas Surcharge Program
- Operation of a customer service contact center
- Operation of an in-house lockbox
- Design and operation of a Surcharge Account website allowing for payments by e-check and credit card, designed to aesthetically mirror the State's web presence
- Responding to written inquiries from customers via USPS and email
- Ongoing development of applications and enhancements to cloud service to support changes in legislation or in client's systems
- Management of surcharge collections operations
- Management of surcharge financial hardship and incentive programs

Puerto Rico Highway Toll Authority

February 2015 - February 2022

- Mailing of toll bills and non-payment notifications
- Maintenance and operation of legacy billing system pending installation of Gila/MSB system during phase 2 of contract
- Operation of a customer service contact center
- Operation of an in-house lockbox
- Design and operation of a Toll Account website allowing for payments by e-check and credit card
- Responding to written inquiries from customers
- Ongoing development of applications and enhancements to cloud service to support changes in legislation or in client's systems

¹⁰ The Bureau also reached out for MSB's fifth contract with the State of Hawaii Judiciary; however, no response was received.

- Management of all tolling hardware and toll lane management controllers
- Management of more than a dozen subcontractors originally used by legacy vendor

Central Texas Regional Mobility Authority

May 2008 - December 2017

- Mailing of toll bills and non-payment notifications
- Aggregation and submission of documents required for litigation (non-payment of toll bills is a Class C Misdemeanor in Texas)
- Operation of a customer service contact center
- Operation of an in-house lockbox
- Design and operation of a Toll Account website allowing for payments by e-check and credit card
- Responding to written inquiries from customers
- Ongoing development of applications and enhancements to cloud service to support changes in legislation or in client's systems

City of Austin, Texas

October 2003 - August 2017

- Mailing of Notifications
- Operation of a customer service contact center
- Operation of an in-house lockbox
- Inbound and outbound dialer campaigns
- Custom report generation
- Electronic payment processing
- Responding to written inquiries from customers
- Skip trace services
- Support of warrant round-up programs
- Provision of customized online portal for client and defendants to review accounts, submit documents, and request information

State of Hawaii Judiciary

November 2005 - February 2020

- Mailing of notifications
- Operation of a customer service contact center
- Operation of an in-house lockbox
- Inbound and outbound dialer campaigns
- Custom report generation
- Electronic payment processing
- Responding to written inquiries from customers
- Skip trace services
- Support of warrant round-up programs
- Provision of customized online portal for client and defendants to review accounts, submit documents, and request information

[MSB Proposal, Section 4.4.4.5 p. 1-6, DPP 756-760.]

Consistent with the RFP requirements, MSB provided details regarding its existing contracts, demonstrating that it has contracts that are of a similar size and scope in relation to the work required by the RFP. I find that given the information provided in MSB's proposal, there is no reason to question the Committee's scoring of MSB's proposal as to Criteria B.

With respect to this criteria, the Requirements Outline shows a similar conclusion, indicating that MSB “provided contracts of similar size and scope, including references” and “in its Management Overview, MSB provides a narrative of its contract with the Texas Drive Responsibility Program.” (Requirements Outline, p. 53-54.) As such, the cursory comments contained in the Requirements Outline are consistent with and reflected in the Committee Report. To the extent that any comments contained in the Requirements Outline may be consistent or inconsistent with the comments contained in the Committee Report, I note that the Requirements Outline is a deliberative tool that contains only preliminary cursory notes of the consultant and reflects only some comments made by Committee members. The Requirements Outline does not reflect the comprehensive and complete technical analysis, discussions and conclusions of the Committee as a result of the Committee’s full discussions and deliberations. Rather, the final result and recommendation of the Committee, based upon its full discussions and deliberations, are incorporated into Committee’s scoring and the Committee’s Report.

iii. Criteria C – Ability of the firm to complete the Scope of Work based on its Technical Proposal

Turning to RFP § 6.7.1(c), Criteria C – Ability of the firm to complete the Scope of Work based on its Technical Proposal, bidders were required to describe their approach and plans for accomplishing the work identified in the RFP. The ability of the firm to complete the scope of work based upon its technical proposal represents the most important of the three evaluation criteria based upon the weighted score. RFP § 4.4.3 *Technical Proposal* which states in pertinent part:

In this section, the bidder shall describe its approach and plans for accomplishing the work outlined in the Scope of Work section, i.e., Section 3.0.

...

The bidder must set forth its understanding of the requirements of this RFP and its ability to successfully complete the contract. This section of the proposal should minimally contain the information identified below.

[*Emphasis added.*]

RFP § 4.4.3.2 *Contract Management* continues stating part:

[b]idders shall demonstrate their understanding of the State’s business needs, processes, and objectives as detailed in this RFP, its attachments and referenced supporting documentation. Each Bidder shall, at a minimum, describe the proposed approach for accomplishing the tasks described in Section 3 – SCOPE OF WORK of this RFP.

[*Emphasis added.*]

RFP Section 4.4.3.2 further incorporates by reference RFP § 3.2.2 *Program Requirements* and Appendix 2 *Deliverable Checklist and Schedule* and required that a “Bidder’s proposal must include a description of how the Bidder plans to develop” each of these items, not the actual plan for each of these items. (Addendum #02, dated August 7, 2015, Part 2, Item 12, *emphasis added.*)

At the conclusion of its evaluation of MSB’s proposal, the Committee found that MSB’s proposal “demonstrated a clear understanding of the State’s business needs. [MSB’s] proposal included an approach for all four phases of the project, including the transfer of the maintenance and operations from OIT of the legacy STARS system. [MSB’s] proposed solution meets the RFP’s requirements and commits to developing plans in conjunction with the State.” (Committee Report, p. 16.)

In its protest, Xerox specifically contends that MSB's proposal did not comply with the RFP requirements noting that:

The Requirements Outline repeatedly calls out MSB's proposal as lacking detail and information and questioning whether MSB meets the RFP requirements. In contrast, Xerox's proposal was more often than not praised for providing more than required by the RFP, and described as "meets" or "high meets" requirements, presumably indicative of the fact that Xerox's response exceeded RFP requirements. In many cases, evaluators were instructed that while MSB's many deficiencies did not amount to noncompliance with the RFP, the lack of detail in MSB's proposal should be considered a matter of quality. This should have resulted in lower scoring for MSB on these items.

Despite these comments, the scoring and tenor of the Evaluation Report present a fundamentally different picture, one further obfuscated in the Recommendation Report. Somewhere between preparing the Requirements Outline and the Evaluation and Recommendation Reports, the collective opinion of the respective proposals changed – to ultimately favor MSB over Xerox...

[Xerox's May 16, 2016 Protest letter.]

In response to the concerns raised by Xerox, specifically related to Training Methodology, Operations and Post-Implementation Plan, Architectural Diagrams, Technology Plan, Escalation Plan, Management and Operation Plan, Project Schedule and Tasks/Sub-Tasks the Hearing Unit conducted an independent review of MSB's proposal against the RFP requirements. (Xerox May 16, 2016 Protest Letter, p. 9-10.) The RFP § 4.4.3.2 required that the Bidder describe its plans to develop the items identified in RFP § 3.2.2 and Appendix #2. RFP § 3.2.2 states in part that "the expected contents and format of these deliverables shall be agreed upon by the Contractor and the SCM during the immediate phase. The Contractor shall produce a Deliverables Expectation Document (DED) for each deliverable outlining the expected contents and format of the deliverable, and submit each DED to the SCM for review." With this statement in mind, and as read in conjunction with RFP § 4.4.3.2, a bidder's response need not detail the entire plan for these referenced items. Rather, a Bidder's response of how it plans to develop these items is sufficient to comply with the requirements for proposal of submission. With respect to the proposal submitted by MSB, at a minimum, MSB acknowledged that it would develop the plans identified in the RFP/Appendix; however, in most cases, MSB provided more detail.

By way of examples, a review of MSB's proposal against the RFP requirements reveals the following:

RFP § 3.2.2 *Program Requirements* in part requires that the Contractor produce a Logical System Architecture Review (LSAR) and Physical System Architecture Review (PSAR). In response to the RFP § 4.4.3.2 requirement that the Bidder describe its plans to participate in the LSAR and PSAR, in its Communication Management Plan Approach, in its proposal MSB addressed how it would participate in these reviews. While MSB may not have used the specific terms referenced in the RFP, its description of how it intends to participate the referenced reviews and its proposed deliverables conform to the RFP requirements. Moreover, it is important to note that the bidder cannot, on its own, fully describe the LSAR and the PSAR as these must be developed by the Contractor in conjunction with OIT after contract award.

RFP § 3.2.9 requires that the Contractor develop and submit a disaster recovery plan, the plan will be tested and will be reviewed and updated annually. Appendix #2, which incorporates RFP § 3.2.9 indicates that the due date for the completion of this item is "agreed upon by the Contractor and the State during project initiation." In response to the RFP requirement that the Bidder *describe* its plans for the

development of a Disaster Recovery Plan, as required by RFP § 4.4.3.2. MSB noted “the Director of Information Technology reviews and updates or assigned for updates all system documentation, particularly the Operations Manual and Business Continuity and Disaster Recovery Plan, as changes occur or on a regularly scheduled basis.” (MSB Proposal, p. 21) MSB’s proposal response conforms to the RFP requirement that the Bidder describe how it plans to develop the plan.

As noted above, the Committee determined the MSB’s responses conformed to the RFP requirements. The Hearing Unit’s review of the proposal submitted confirms that MSB responded to each of the RFP requirements. The level of detail provided, certainly would affect the scoring for Criteria C; however, based upon a review of proposal submitted by MSB against the RFP requirements, I find that MSB’s proposal was responsive to the requirements for Criteria C.

To the extent that any comments contained in the Requirements Outline may be consistent or inconsistent with the comments contained in the Committee Report, I note that the Requirements Outline is a deliberative tool that contains only preliminary cursory notes of the consultant and reflects only some comments made by Committee members. The Requirements Outline does not reflect the comprehensive and complete technical analysis, discussions and conclusions of the Committee as a result of the Committee’s full discussions and deliberations. Rather, the final result and recommendation of the Committee, based upon its full discussions and deliberations, are incorporated into Committee’s scoring and the Committee’s Report.

b. Xerox’s Proposal

i. Criteria A – Personnel

As noted above, for Criteria A - *Personnel*, RFP § 6.7.1(a), bidders were requested to set forth the qualifications and experience of the management, supervisory, and key personnel assigned to the contract.

In its proposal, Xerox identified and provided the resumes for each of the key staff members which it proposed to work on the contract – seven in total. Based upon the Committee’s review of the proposed personnel, including Xerox’s summary page and the individual resumes provided, the Committee determined that only four of the seven proposed key members have the skills and experience that meet or exceed the requirements of the RFP for the key positions.

In its report, the Committee stated that three of the key personnel proposed by Xerox did not have the skills and experience requested in the RFP for the identified positions. In addition, Committee Report noted that with respect to Criteria A - *Personnel*, “[t]he project team proposed by [Xerox] contained key personnel currently supporting the State’s Surcharge Program. As the existing program will continue to run while the new platform is developed and implemented, the Evaluation Committee questions the ability of the proposed team to support current operations while developing, testing and implementing a new program that includes data migration from the legacy system.” (Committee Report, p. 20.)

In connection with this protest, the Division’s Hearing Unit conducted a review of the RFP requirements and Xerox’s proposal.

With respect to the three remaining positions identified, (addressed further below) the Committee determined that the individual proposed by Xerox did not have the requisite skills and experience to perform the work requested. With its proposal, Xerox provided a summary page which listed the relevant qualifications and experience for each of the proposed key personnel. In addition, Xerox provided a detailed resume for each of the proposed key personnel.

The Hearing Unit’s review of the resumes submitted with Xerox’s proposal reveals the following with respect to the three remaining positions for which the Committee questioned the qualifications of the proposed personnel:

With respect to the resume for Ms. Ryan, who had been proposed by Xerox as the Project Manager, the Committee questioned her years of experience. For the position of Project Manager, the RFP required that the person assigned perform:

day-to-day management of the project, identifies issues and risks, and recommends possible issue and risk mitigation strategies associated with the project. Is responsible for ensuring that work performed is within scope, consistent with requirements and delivered on time and within budget. Monitors issues, facilitates issue resolution and provides up-to-date status reports. Demonstrates excellent writing and oral communication skills.

[RFP § 3.2.5.1 *Project Manager (Planning, Delivery, and Transition).*]

In its report, the Committee noted:

Ms. Ryan's three (3) years of experience as a Program Manager for NJ Surcharge, three (3) years as a Financial Analyst Manager for New Jersey Family Care and three (3) years as a Management Systems Analyst do not meet the qualification of at least five (5) years of project management in a leadership position on at least three (3) projects of similar size and scope.

A review of the details of Ms. Ryan's resume reveals that she has approximately nine (9) years of experience working with Xerox. She has only held the title of "Project Manager" since 2013, during which time she was the project manager for the current MVC Surcharge program. The Hearing Unit found experience on her resume that may be relevant, but defers to the Committee on the qualifications being sought for the title "Project Manager."

As to the resume of Mr. Desai, the proposed Solution/Integration Subject Matter Expert, it is unclear whether the Committee considered all of the experience identified in his resume. The RFP required that the Solution/Integration Subject Matter Expert provide:

design recommendations based on extensive IT knowledge as well as knowledge of the products constituting the Contractor's proposed solution. Ensures and participates in the development of the Contractor's proposed solution through oversight of the technical design, development, testing, and implementation of the Contractor's proposed solution. Ensures integration of the solution with the State's and partner infrastructure. Ensures a data migration strategy is in place to rapidly and accurately migrate the State's required data elements to the Contractor's proposed solution in line with the Project Schedule.

[RFP § 3.2.5.3 *Contractor's Proposed Solution / Integration Subject Matter Expert (Planning, Delivery, And Transition).*]

In its proposal, Xerox lists the following as Mr. Desai's relevant experience while in Xerox's employ:

Previous experience in completing each similar contract	Beginning and ending dates for each similar contract	Description of the contract and how it relates to this RFP	Reference name, address, phone number and email
Philadelphia Parking	July 2012 – February 2013	Installing and training of VISION including new features required as requested in RFP which includes but not limited to IVR / PBW upgrades, phone system integration, Hand Held implementation	Corinne O'Connor CO'Connor@phitapark.org 215-683-9600
Cleveland Parking	April 2008 – August 2008	Installing and training of VISION including new features required as requested in RFP which includes but not limited to IVR / PBW upgrades, phone system integration, Hand Held implementation	Mana Vargas Mana.Vargas3@xerox.com 216-664-4744

[Xerox Proposal, p. 3.3-9.]

A review of Mr. Desai's complete resume reveals that he has worked for Xerox for over 15 years (1999-present) during which time he managed the Wide Area Network for the Philadelphia regional contracts for 9 years. His resume indicates that in his current position with Xerox he in part:

- Acts as a subject matter expert within Xerox, assisted with implementation of hand-held and other wireless technologies;
- Works closely with project management staff to determine software and hardware requirements for specific client deliverables;
- Maintains a good working relationship with multiple client IT divisions including, City of Philadelphia, Division of Technology (formerly MOIS);
- Has initiated multiple technical projects that improved performance and business functionality;
- Has overseen the mobile digital equipment aspect of the Philadelphia Fire Department's EMS billing system; process included 48 paramedic trucks equipped with wireless technology;

Except as specifically identified by Xerox as being similar contract experience, Mr. Desai's other work with Xerox is not mentioned in the Committee report. The Committee report states that "Mr. Desai's experience included seven (7) months with the Philadelphia Parking Authority installing and training of Vision, and five (5) months at Cleveland Parking installing and training of Vision. Neither of these experiences included migrating customer data and does not meet the [RFP requirement] of a minimum of two (2) years' experience implementing the proposed solution and migrating customer data for such solution." (Committee Report, p. 19.) In response to the Hearing Unit's investigation of this protest point, the Bureau advises that in reviewing Xerox's proposal, the Committee determined that Mr. Desai's qualifications as a Wide Area Network Manager, did not conform to the RFP requirements for the position.

As to the qualifications of Mr. Derasmo, the proposed Call Center Implementation and Technology Subject Matter Expert, again it is unclear from the Committee Report whether the Committee considered all of the experience identified on Mr. Derasmo's resume. With respect to this position, the RFP required that the Call Center Implementation and Technology Subject Matter Expert provide:

design recommendations based on extensive Call-Center and Call-Center technology knowledge as well as knowledge of the solutions constituting the Contractor's response. Ensures and participates in the development of the solution through oversight of the technical call-center, telephony system, ACD and IVR design, development, testing, and implementation. Ensures integration of the solution with the State's and partner business processes and operational processes.

[RFP § 3.2.5.4 Call Center Implementation and Technology Subject
Matter Expert (Planning, Delivery, and Transition).]

Further, the RFP requests that the proposed person have “[a]t least three (3) years of experience as an expert on projects of similar in size and scope to this project, and minimum of two (2) years’ experience implementing the Contractor’s proposed solution and migrating customer business processes in solutions.” (RFP § 4.4.4.3 *Resumes.*)

In its proposal, Xerox lists the following as Mr. Derasmo’s relevant experience while in Xerox’s employ as follows:

- direct management and oversight responsibility from 2005 to present for service delivery of the PocketPEO Handheld Citation Issuance System for the City of Boston. He provided expertise in the area of mobile wireless application development and directed the overall architecture’s design, development and implementation of the City’s handheld citation issuance project that involved the rollout of 180+handheld devices.
- direct management and oversight responsibility for service delivery of all Internet based services (pay by Web, RPP via Web, Customer Portal, etc.). He has provided expertise in the area of eCommerce & eGov applications and directed the overall architecture for the City’s Pay by Web, RPP via Internet, Customer Portal and Constituent Dispute Web Process. Key deliverables included the design, architecture, planning and implementation of these critical web based services.
- direct involvement and oversight responsibility for VISION customer support and development for service delivery of the VISION System for the City of Boston. During his involvement with the project, he has guided the technical architecture and product support of the VISION System and all the VISION subsystems (General Processing, Cashiering, Imaging, Data Warehouse, etc.)

The Committee concluded that Mr. Derasmo’s experience did not meet the RFP requirements noting:

Mr. Derasmo’s experiences implementing and managing the City of Boston PocketPEO Mobile Citation Issuance system, managing and overseeing service delivery of Internet based pay services for the City of Boston’s Office of the Parking Clerk and involvement and oversight of the customer support for the Philadelphia Parking Authority Product Development and Customer Support do not meet the qualification of at least three (3) years as a Call Center expert for projects of similar size and scope to this project.

[Committee Report, p. 20.]

A review of Mr. Derasmo’s resume indicates that he has twenty-three (23) years of experience in the development of large-scale systems integration, data processing and development projects. However, it does not appear that this experience was related to call center projects.

Further, in its report, the Committee expressed an overall concern that the proposed project team was comprised of individuals who support the current surcharge operations for the State. The Committee expressed concerns that the proposed Key Personnel would be able to support both positions noting “[t]he project team proposed by the Bidder contains key personnel currently supporting the State’s Surcharge Program. As the existing program will continue to run while the new platform is developed and implemented, the Evaluation Committee questions the ability of the proposed team to support current operations while developing, testing and implementing a new program that includes data migration from the legacy system.” (Committee Report, p. 20.)

Given the technical nature of many of the RFP requirements, I must defer to the Committee, comprised of the subject experts from OIT, MVC, the Division, and DORES, and its evaluation of the

qualifications of the proposed key personnel. In addition, I agree with the Committee's concerns regarding the ability of the proposed key personnel to support both the current operations while developing, testing and implementing a new program.

Finally, I note that if I were to remand this matter back to Bureau for further review and evaluation of the resumes submitted with respect to the RFP requirements as they apply to Criteria A, even if Xerox were to score the maximum number of points available for this criteria it could not overcome the overall point differential between its proposal and that of MSB. By way of example,

	Criteria A	Criteria B	Criteria C	TOTAL SCORE
MSB	1470	1500	1800	4770
Xerox	780	930	1360	3070
Xerox*	1800	930	1360	4090

* hypothetical score if Xerox received the maximum number of available points for Criteria A.

Therefore, I will not disturb the Committee's score for Criteria A.

Finally, contrary to Xerox's assertions, the statements contained within the Requirements Outline are consistent with the Committee Report. For example, the Requirements Outline notes that "some resumes don't have the years of experience for the positions they are being put forward for as stated in the RFP" and that proposed personnel do "not meet requirements of Staff experience, skills and education." (Requirements Outline, p. 49-50.) To the extent that any comments contained in the Requirements Outline may be consistent or inconsistent with the comments contained in the Committee Report, I note that the Requirements Outline is a deliberative tool that contains only preliminary cursory notes of the consultant and reflects only some of the comments made by some of Committee members.

ii. Criteria B - Experience of the Firm

With respect RFP § 6.7.1(b), Criteria B - *Experience of the Firm*, the RFP requested that the bidder demonstrate that it has the ability to successfully complete contracts of similar size and scope in relation to the work required by the RFP as specifically identified in RFP § 4.4.4.5 *Experience with Contracts of Similar Size and Scope*. The Committee Report notes that Xerox's written proposal was responsive to the RFP requirement that Xerox showed experience with contracts of a similar size and scope. However, as noted in Point 3 above, Xerox's references, other than the New Jersey references, did not respond to the Committee's requests for information and the Committee therefore had no ability to verify the information set forth in Xerox's proposal. Therefore I find no reason to question the Committee's scoring of Xerox's proposal as to Criteria B.

iii. Criteria C – Ability of the firm to complete the Scope of Work based on its Technical Proposal

Turning to RFP § 6.7.1(c), Criteria C – *Ability of the firm to complete the Scope of Work based on its Technical Proposal*, bidders were required to describe their approach and plans for accomplishing the work identified in the RFP. In reviewing Xerox's proposal, the Committee found that:

Xerox submitted a detailed and organized proposal. It was very clear to the Evaluation Committee that the Company has experience with surcharge programs as it currently manages the State's existing surcharge operations. Despite the volume of information Xerox's response was limited in its technical approach for meeting the Immediate, Intermediate and Long Term phases of the project.

The Evaluation Committee noted that [the] Vision (ADABS/Natural) platform proposed [by Xerox] for the new Surcharge [system] is built on a proprietary database, relies on a limited pool of technical resources and is 30 years old.

[The Committee's] three specific concerns with Vision are:

1. Lack of an embedded SQL engine that limits the ability for ad-hoc reporting;
2. Potential constraint on support personnel to support technology and ability to retain resources in the future; and
3. The potential difficulty in upgrading fixes and enhancements on an older platform

[Committee Report, p. 20.]

Further the Committee Report noted that Xerox did not fully address the State's request for a next generation MVC Surcharge System. Rather, as noted by the Committee, Xerox's proposal focused on its current contract with the State. (*ibid.*) Specifically, the Committee stated that "Xerox's narrative mainly addresses its implementation of technology and services as utilized in the current MVC Surcharge system. The Committee noted that Xerox's Management Overview did not include the objectives of the Immediate and Long Term phases which are the Contractor's requirements in RFP Section 3.1 Implementation and Transition Requirements. Throughout the proposal, the company focused heavily on their prior work with the State on the current Surcharge Program." (*Id.* at 17.)

Finally, the Committee Report indicates that Xerox's proposal lacked certain functionality and that Xerox's proposal did not address the RFP requirement for a new surcharge system built on a new platform, which does not rely upon a proprietary database. Therefore, based upon a review of proposal submitted by Xerox against the RFP requirements, I see no reason to disturb the Committee's score for Criteria C.

4. The Division's financial analysis was conducted fairly and in accordance with the applicable laws.

Xerox alleges that MSB's financial capacity to perform the work required under this contract is inadequate compared to the size of the contract sought by the State. Xerox also alleges that the Bureau did not properly evaluate MSB's finances in reviewing the proposal. (Xerox's May 16, 2016, Supplemental Protest Letter, p. 12.)

Specifically, Xerox claims that the Division's "financial review does not recognize that MSB will be required to absorb at least \$15 million and likely more in costs...[which] will have severe impacts on the economics of this contract, and calls into question MSB's financial capacity to absorb these costs." (Xerox's May 16, 2016, Supplemental Protest Letter, p. 12-13.) Xerox contends that if the State proceeds with awarding a contract to MSB, there is a "substantial risk that MSB will not be able to bear these costs, that MSB will dramatically change its level of effort to match the reduction in contract revenues, or that MSB will quickly seek change orders to make up for this significant revenue gap." (Xerox's May 16, 2016, Supplemental Protest Letter, p. 13.)

RFP § 4.4.4.6 *Financial Capability of the Bidder* states "[i]n order to provide the State with the ability to judge the Bidder's financial capacity and capabilities to undertake and successfully complete the contract, the Bidder should submit certified financial statements which include a balance sheet, income statement and statement of cash flow, and all applicable notes for the most recent calendar year or the Bidder's most recent fiscal year." Therefore, in order to determine whether MSB has the financial capacity and capability to successfully complete the contract, the Bureau requested, received and analyzed the financial statements provided by MSB.

In response to its request for documents pursuant to Open Public Records Act (OPRA), Xerox was provided with a redacted version of the State's Financial Review report. That financial review concluded that MSB is financially sound so as to meet the requirements of this solicitation. Additionally, in connection with its review of this protest, the Hearing Unit was able to, and in fact did, review the full financial review report, and found the financial review report to be accurate. The Bureau's financial analyst reviewed the financial statements provided by MSB detailing the earnings, liabilities, return on equity and other newly awarded contracts. Further, I note that MSB's startup costs for the creation of its system which will incorporate the required elements of the RFP (POINT) are nominal as MSB has already developed the program to be utilized in New Jersey for the State of Texas. (MSB's Proposal, p. 5.) In addition, with respect to the mailing and printing costs, MSB can choose to utilize other less costly methods for mailing notices rather than the first class mail currently utilized by Xerox.

As previously noted, in conducting the review of the proposals submitted, the Bureau wrote to MSB to clarify its proposal price. In its response, MSB stated that its proposal price incorporated all RFP requirements. Had MSB's proposal price not been fully inclusive of all RFP requirements, it could have advised the Bureau of the same in response to the clarification letter. Or, in the alternative, MSB could have withdrawn its proposal pursuant to RFP § 1.5.7 *Proposal Errors*.

Accordingly the Hearing Unit found no exceptions to the Bureau's review of MSB's financial statements finding that MSB has the financial capacity and capability to successfully complete the contract. I find that the Division's financial analysis was conducted fairly and in accordance with the applicable laws and I find no grounds to disturb those findings.

5. The extension of the proposal submission deadline was in accordance with the applicable laws.

In its supplemental protest letter, Xerox claims that the extension of the proposal submission deadline from September 9, 2015 to October 7, 2015 was "curious," alleging "[i]t would appear this extension was granted to allow MSB time to prepare a proposal." (Xerox's May 16, 2016, Supplemental Protest Letter, p. 13.)

This procurement was advertised and available for download on June 12, 2015, with bidder questions originally due to be submitted to the Bureau by July 2, 2015. On July 2, 2015, prior to the close of the question and answer (Q&A) period, an error with the eBid system's electronic Q&A occurred. The error was discovered when Xerox wrote to DPP eSupport (esupport@treas.nj.gov), which is maintained by DORES, advising that it was unable to upload questions to the website. DORES then contacted the Division regarding the issues. The Bureau determined that the appropriate course of action was to extend the electronic Q&A. Addendum #1 was posted extending the Q&A deadline to July 29, 2015. On August 7, 2015, Addendum #2 was posted to respond to bidder questions, modify the price sheet and the RFP, and to extend the proposal opening deadline to September 8, 2015.

On August 24, 2015, Addendum #3 was issued to modify the RFP to conform its language to the requirements of Title 15 of the New Jersey Administrative Code. In order to allow all potential bidders sufficient time to address changes to the RFP in their respective proposals, the proposal submission deadline was extended to September 10, 2015. Subsequently, on September 8, 2015, DPP eSupport received an email from a potential bidder seeking a clarification regarding the revised price sheet. In response to the question, a Special Notice was posted along with Addendum #4. With the posting of Addendum #4 which modified the price sheet, the Bureau permitted a second Q&A period through September 16, 2015 and extended the proposal submission deadline to October 7, 2015. On September 15, 2015, DORES notified the Bureau that there were issues with the eBid system's electronic Q&A. Accordingly, Addendum #5 was issued to extend the Q&A period to September 25, 2015, and to extend the proposal submission deadline to October 15, 2015.

Based upon a review of the history of this procurement, Xerox's allegation is without merit. The proposal submission deadline was extended because of issues with the eBid system for the electronic Q&A

which affected all potential bidders. The extensions to the proposal submission deadline allowed all potential bidders sufficient time to incorporate the information provided in the Addenda and revised price sheets into their respective proposals.

Based upon the foregoing, I find no reason to disturb the Committee's determination and scoring of the proposals. Accordingly, I sustain the March 15, 2016 NOI. This is my final agency decision with respect to the protest submitted by Xerox.

Thank you for your company's continuing interest in doing business with the State of New Jersey and for registering your company with **N/START** at www.njstart.gov, the State of New Jersey's new eProcurement system.

Sincerely,



Jignasa Desai-McCleary
Director

JD-M: RUD

c: P. MacMeekin
C. Brennan
B. Cummings