



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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May 4, 2016

Via Electronic [Haywood.Talcove@Inssi.com] and USPS Regular Mail

Haywood Talcove, CEO
LexisNexis Special Services, Inc.
1150 18th Street NW, Suite 275
Washington, DC 20036

Re: T-1616/Data Access Services: Web-Based Investigative and Locator Data

Dear Mr. Talcove:

This letter is in response to your correspondence on behalf of LexisNexis Special Services, Inc. (LexisNexis) received by the Hearing Unit of the Division of Purchase and Property (Division) on April 11, 2016. In that letter, LexisNexis alleges the Method of Operation (MOO) posted on the Division's website for the State contract for Data Access Services: Web-Based Investigative and Locator Data (T-1616) violates State statute; specifically, N.J.S.A. 52:34-6.1 and N.J.S.A. 54:34-6.3.

In pertinent part, the MOO for T-1616 states that "[u]sers are prohibited from circumventing the contract award. Additional/Optional Services shall not bear similarity (in part or in whole) to those services awarded in Category 1 Basic and Advanced and/or Category 2a Ad-Hoc; as noted in the Award Summary." LexisNexis alleges that the MOO by "[f]orbid[ding] state agencies from using Federal Supply Schedules that have better pricing or are otherwise more advantageous, squarely violates [N.J.S.A. 52:34-6.1 and N.J.S.A. 54:34-6.3]." (LexisNexis April 11, 2016, letter.) LexisNexis requests that the Prohibitions section of the MOO be amended as follows:

Prohibitions . . .

- Additional/Optional Services shall not bear similarity (in part or in whole) to those services awarded in Category 1 Basic and Advanced and/or Category 2a Ad-Hoc; as noted in the Award Summary.
- Users are prohibited from circumventing the contract award with a new RFP.
- As required by N.J.A.S. 52:34-6.3, Users are not prohibited from using Federal Supply Schedules for the same or similar items or services, per Treasury guidance at <http://www.state.nj.us/treasury/purchase/Federally-Based/Contracts.shtml>

[LexisNexis April 11, 2016 letter.]

The Division's governing regulations state in pertinent part:

- (a) The Division of Purchase and Property, in and of the New Jersey Department of the Treasury, provides centralized procurement and related services to agencies of the Executive Branch of State government. Within its statutory framework, the primary mission of the Division is to procure, in a timely and effective manner, contracts for the goods and services necessary for the daily operation of State government...

[N.J.A.C. 17:12-1.1.]

Additionally, the Division's regulations at N.J.A.C. 17:12-1A.5 state:

- (a) N.J.S.A. 52:34-6.1 establishes that the Director, on behalf of State agencies of the executive branch of State government, including quasi-State agencies identified in N.J.S.A. 52:27B-56.1 (hereinafter collectively referred to as "State agencies"), shall promulgate Federal supply schedules of the Federal General Services Administration or schedules from other Federal procurement programs (hereinafter collectively referred to as "Federal supply schedule contracts"), as alternate price guides for the purchase of goods and services, subject to the following conditions:

1. The price of the good and/or service being procured is no greater than the price offered to Federal agencies;
2. The State receives the benefit of any contract price reductions, whether statutory, regulatory or contractual in nature, during the term of the contract; and
3. The price of the good and/or service under consideration for purchase via a Federal supply schedule contract is not equal to or greater than the State contract price for the same or equivalent goods or services, unless the Director determines that the best interests of the State are served by use of the proposed Federal supply schedule-based contract.

...

- (d) A vendor offering a good and/or service to State agencies referencing a Federal supply schedule contract must meet the specific eligibility criteria and procedural provisions set forth and standardized in the Department of the Treasury Circular 12-07-DPP, Purchases from Federal Supply Schedules or Schedules of Other Federal Procurement Programs, as amended or re-designated, which is a condition to be communicated to the vendor by the using agency contemplating such purchase activity. The circular is accessible at <http://www.nj.gov/infobank/circular/circindx.htm>.

[N.J.A.C. 17:12-1A.5]

Department of the Treasury Circular 13-15-DPP¹ (Circular 13-15- DPP) establishes the procedure by which the Division will create contracts for goods and services based upon a Federal Supply Schedule when an agency requests that Division do so. The “policy is intended to provide expanded purchasing opportunities for the State and other public agencies while ensuring the integrity of State contracting through an ethical, competitive, and transparent process, in compliance with all State laws, regulations, Legislative Directive and Executive policies.” (Department of the Treasury Circular 13-15-DPP.) Specifically, Circular 13-15-DPP requires:

An agency seeking to purchase goods or services through a Federally-Based Contract may proceed under this Circular when it demonstrates one or more of the following:

1. The goods or services to be purchased are not available under existing State contract(s);
2. The price of the goods or services available to be purchased will be at a better price of value than under existing State contract; or
3. The available goods or service are more advantageous to the State, price and other factors considered, than the same goods or services available under existing State contract. (Under this scenario the Agency must provide a thorough and specific explanation documenting any anticipated cost savings.)

[Department of the Treasury Circular 13-15-DPP.]

As noted in the above regulations, the Division is charged with providing procurement services for the executive branch of the government and the Division’s regulations provide the mechanism for utilizing the Federal Supply Schedules. Other branches of state government have separate procurement authority and are not required to utilize contracts procured by the Division unless they so choose.² Therefore, any State entity, with its own procurement authority, may utilize a Federal Supply Schedule, as permitted by its governing regulations.

Contrary to LexisNexis’ assertion, the MOO for this contract, does not violate the applicable State statutes and does not preclude using agencies from utilizing Federal Supply Schedules. If a using agency desires to use a Federal Supply Schedule, then that using agency must follow to steps outlined in Circular 13-15-DPP.

Accordingly, no modification to the MOO is necessary.

Sincerely,


Maurice A. Griffin
Chief Hearing Officer

MAG: RUD

c: G. Olivera
G. Terwilliger
J. Descoteaux

¹ Department of the Treasury Circular 12-07-DPP, Purchases from Federal Supply Schedules or Schedules of Other Federal Procurement Programs, was amended on February 5, 2015 and became Circular 13-15-DPP.

² There are also Executive Branch Commissions, Authorities and quasi-agencies that have specific procurement authority.