



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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September 19, 2019

Via Electronic Mail [kfiet@sidley.com] and USPS Regular Mail

Kyle J. Fiet, Esq.
Sidley Austin, LLP
1501 K Street, N.W.
Washington, DC 20005

Re: I/M/O Bid Solicitation #17DPP00118 KPMG, LLP
Protest of Notice of Intent to Award
T2599 – Quality Assurance/Project Management Services for IT and Non-IT Projects

Dear Mr. Fiet:

This letter is in response to your correspondence of June 13, 2019, on behalf of KPMG, LLP (KPMG) which was received by the Division of Purchase and Property's (Division) Hearing Unit. In that correspondence, KPMG protests the Notice of Intent to Award issued by the Division's Procurement Bureau (Bureau) for Bid Solicitation #17DPP00118: T2599 – Quality Assurance/Project Management Services for IT and Non-IT Projects (Bid Solicitation).

By way of background, on August 8, 2017, the Bureau issued the Bid Solicitation on behalf of New Jersey State Agencies to solicit Quotes to create a pool of up to five (5) Vendors {Contractors} to provide Project Management and Quality Assurance services related to Information Technology engagements, including, but not limited to, applications development, network upgrades, systems implementations, process automation, e-government/web enablement, infrastructure planning initiatives, modernization efforts, enterprise solutions, and the development of Bid Solicitations. Bid Solicitation § 1.1 *Purpose and Intent*. Additionally, the Bid Solicitation sought Quotes to create a second pool of up to five (5) Vendors {Contractors} to assist Agencies with providing Project Management and Quality Assurance services for Non-Information Technology engagements and Quality Assurance services for programs related to Non-Information Technology engagements, including, but not limited to, project monitoring, change request management, and standards and procedures. *Ibid*. It is the State's intent to award Master Blanket Purchase Orders (Blanket P.O.s) to those responsible Vendors {Bidders}, whose Quotes, conforming to the Bid Solicitation, are most advantageous to the State, price, and other factors considered. *Ibid*.

In accordance with the Bid Solicitation Instructions, potential Vendors Bidders were permitted to submit questions to the Bureau, using the Division's *NJSTART* eProcurement system through August 22, 2017. *See*, Bid Solicitation Section 1.3.1 *Electronic Question and Answer Period*. The Bureau received 124 questions, among which was the following:

Please consider adding the following clause: Use of Vendors. State acknowledges and agrees that Contractor-controlled parties, member Firms of KPMG International, and other third party service providers (collectively, Vendors) may have access to Confidential Information from offshore locations, and that the Contractor uses Vendors within and outside of the United States to provide at Contractor's direction administrative or clerical services to Contractor. These Vendors may in the performance of such services have access to State's Confidential Information. Contractor represents to State that with respect to each Vendor, Contractor has technical, legal and/or other safeguards, measures and controls in place to protect Confidential Information of State from unauthorized disclosure or use. Contractor shall be responsible to State for Contractor-controlled, member Firms or Vendor's failure to comply. The change as requested is to align the terms to common industry practice, including professional standards and firm policy. We have a long history of reaching mutually agreeable engagement terms and conditions with many governmental entities, including the State of New Jersey and we expect to likewise be able to resolve this item.

Through the posting of Bid Amendment #2 on October 20, 2017 and Bid Amendment #6 on December 12, 2017, the Bureau answered all 124 questions received. In response to the question posed above, the Bureau responded as follows:

The State declines to amend the Bid Solicitation {RFP} as requested. As a Blanket P.O. {Contract} primarily for the performance of services, all services shall be performed in the United States, see N.J.S.A 52:34-13.2. Please refer to Bid Solicitation {RFP} Sections 7.1.2, 7.1.2.1, and State of New Jersey Standard Terms and Conditions (SSTC) Section 3.6. Furthermore, pursuant to Bid Solicitation {RFP} Section 5.9.2, "The Vendor {Contractor} must not store or transfer State of New Jersey data outside of the United States." Additionally, please refer to SSTC Section 5.8(a) of the Bid Solicitation {RFP} regarding the use of subcontractors.

As stated in Bid Solicitation {RFP} Section 4.1 General, "Quotes {Proposals} including Vendor {Bidder} proposed terms and conditions may be accepted, but Vendor {Bidder} proposed terms or conditions that conflict with those contained in the Bid Solicitation {RFP} as defined in Section 2.0 of this Bid Solicitation {RFP}, or that diminish the State's rights under any Blanket P.O. {Contract} resulting from the Bid Solicitation {RFP}, will be considered null and void." There shall be no negotiation of terms and conditions after Quotes {Proposals} are opened.

To the extent the last sentence of this question suggests that there may be post-opening revisions, amendments or negotiations, there will not be any alterations to the terms and conditions of the Bid Solicitation {RFP} after the Quotes {Proposals} are opened.

[See, Question 11 on Bid Amendment #6, dated December 12, 2017.]

On January 19, 2018, the Division's Proposal Review Unit opened 33 Quotes received by the submission deadline of 2:00 pm eastern time. Between January 24 and February 14, 2018, the Division's Proposal Review Unit conducted a review of the Quotes received and issued a Notices of Proposal Rejection to Analysis IQ, Inc., Cognizant Technology Solutions (Cognizant) and Refined M, LLC for failure to submit the *Ownership Disclosure Form* with the submitted Quote as required by N.J.S.A. 52:25-24.2, N.J.A.C. 17:12-2.2 and Bid Solicitation Section 4.4.1.2.1 *Ownership Disclosure Form*. A Notice of Proposal Rejection was also issued to Domino Systems, Inc. (Domino) for failure to submit pricing information with its Quote as required by Bid Solicitation § 4.4.5 *Price Sheet/Schedule*.¹

After completing the administrative review of the submitted Quotes, the Proposal Review Unit forwarded those Quotes which conformed to the administrative requirements for Quote submission to the Bureau for review. The Bureau then conducted a preliminary review of those submitted Quotes, to determine whether those remaining Quotes were responsive to the mandatory requirements for Quote submission and were eligible for award based upon statutory requirements. In conducting this review, the

¹ In its protest, KPMG questions why some Vendor {Bidders} received notice of their disqualification and had an opportunity to protest the disqualification prior to the evaluation of the Quotes received. See, KPMG protest p. 7. In response to KPMG's statements concerning the Quotes submitted by Domino and Cognizant, on January 26, 2018 Domino wrote the Division's Hearing Unit protesting the Notice of Proposal Rejection stating:

Thank you for your letter stating that our submission to the Bid # 17DPP00118 was incomplete. I had referred to the RFP document regarding submitting pricing information, and I seemed to have read the instructions that only the pricing information on the NJ Start websites (sic) "Items" tab was to be submitted. I apologize for my oversight.

Following this letter is the pricing sheet. Please accept it as part of my submission to the bid. I appreciate your understanding.

Upon review and consideration of the record of the procurement, including the Bid Solicitation, Domino's submitted Quote and protest, the relevant statutes, regulations, and case law, the Division issued a final agency decision upholding the Proposal Review Unit's Notice of Proposal Rejection concluding that:

Domino's failure to include the State supplied price sheet or any pricing information with its Quote is a deviation from the requirement of the Bid Solicitation that the Vendor {Bidder} submit pricing with the Quote by the submission deadline. The Division cannot permit Domino, or any other Vendor {Bidder}, to submit pricing after the Quote opening deadline has passed, as doing so would place that Vendor {Bidder} in a position of advantage over other Vendors {Bidders} who timely submitted Quote pricing.

[February 14, 2018 Final Agency Decision, p.4.]

On February 27, 2018 Cognizant wrote to the Division's Hearing Unit stating:

We regret to hear the rejection of Cognizant's quote for solicitation #17DPP00118 due to missing *Ownership Disclosure Form* (see attached letter). As per the instructions in the solicitation, any publicly listed company that does not have greater than 10% beneficial interest of any person or company is exempt from providing the *Ownership Disclosure Form*. Additionally, we included the below information in our NJ Start Profile to further assist in clarifying our rationale while providing access to ownership information.

"Cognizant Technology Solutions Corporation is a public traded entity (NYSE CTSH). Additional information on ownership can be obtained at www.sec.gov or at our corporate website <http://investors.cognizant.com/filings>. FORMDEF 14A provides quick access to ownership details. A statement of bidder ownership form is not required per RFP instructions"

Upon review of the Cognizant's correspondence, the submitted Quote, the relevant statutes, regulations, and case law, the Division's Proposal Review Unit determined that Cognizant was able to comply with the statutory requirement for the submission of ownership information through its public filings and therefore a Notice of Proposal Rejection should not have been issued to Cognizant. As such, on March 5, 2018 the Proposal Review Unit issued a letter to Cognizant rescinding the Notice of Proposal Rejection, as the rejection had been issued as result of an administrative error.

Bureau determined that eight Quotes were non-responsive to the mandatory requirements for Quote submission or were ineligible for award based upon statutory requirements. Specifically, the Quotes submitted by Sure Thing Analytics and Impower Energy, Inc. were deemed non-responsive for failing to provide a technical Quote as required by Bid Solicitation Section 4.4.3 *Technical Quote {Proposal}*; the Quote submitted by PM Solutions was deemed non-responsive for failing to provide all-inclusive hourly rates on the price sheet for all professional skill classifications listed for either IT or Non-IT engagements, as required by Bid Solicitation Section 4.4.5.2 *Price Sheet/Schedule Attachment*; the Quotes submitted by Mathtech, Inc. and North Highland Company were deemed non-responsive for not disclosing all parties owning a 10% or greater interest in the corporation or partnership on the submitted *Ownership Disclosure Form* as required by Bid Solicitation Section 4.4.1.2.1 *Ownership Disclosure Form*; the Quotes submitted by TEK Systems and First Data Government Solutions were deemed non-responsive for taking exceptions to the State of New Jersey's Standard Terms and Conditions; and, the Quote submitted by KPMG was deemed non-responsive because:

KPMG was deemed non-responsive due to Source Disclosure requirements. As specified by Section 7.1.2, Source Disclosure Requirements, all Blanket P.O.s primarily for services shall be performed within the United States. KPMG's *Source Disclosure Form* specified that it would be performing "Administrative & Clerical Services" in the location by country of "Off shore". For the reason why these services cannot be performed in the U.S., KPMG stated the following:

"As is the case with most large professional services Firms, KPMG uses third party service providers within and without the United States to provide at KPMG's direction administrative and clerical services to KPMG. These third party service providers may in the performance of such services have limited access to information, including but not limited to Confidential Information, received by KPMG from or at the request or direction of the State of New Jersey. These third parties will not be providing direct services as part of KPMG's engagement delivery to NJ and KPMG will not use off-shore resources for direct engagement delivery without the State's prior written consent."

By proposing to provide a portion of its services to the State outside of the United States, KPMG materially deviated from the requirements of the Bid Solicitation. The Bureau notes that the Division would be unable to certify that these services cannot be performed in the United States, as multiple Quotes for these services were received that complied with Source Disclosure requirements.

Based upon the above, the Bureau determined KPMG's Quote to be non-responsive and ineligible for award due to its failure to meet the aforementioned Source Disclosure requirements.

[Evaluation Committee Report, p. 6-8; Recommendation Report 4.]

The remaining Quotes were forwarded to the Evaluation Committee for review and evaluation consistent with the requirements of Bid Solicitation Section 6.7 *Evaluation Criteria*. After the completing the review and evaluation of the Quotes received, those Vendors {Bidders} whose submitted Quotes were within the competitive range, having received a technical evaluation score of "good or better" (score over

500) were asked to submit a Best and Final offer as permitted by Bid Solicitation Section 6.8 *Negotiation and Best and Final Offer (BAFO)*. The BAFO pricing submitted by those Vendors {Bidders} was then evaluated by the Bureau using a consumption model. On March 4, 2019 the Evaluation Committee prepared a report recommending Blanket P.O. awards for the both the IT and Non-IT Engagements sought by the Bid Solicitation. On May 28, 2019, consistent with the Evaluation Committee Report, the Bureau prepared a Recommendation Report which recommended that Blanket P.O.s be awarded as follows:

IT Engagements

1. CGI Technologies and Solutions (CGI);
2. Cognizant Technology Solutions U.S. Corporation (Cognizant);
3. ESytems Inc. (Esystems);
4. Health Tech Solutions, LLC (Health); and
5. Price Waterhouse Coopers Public Sector, LLP (PWC).

NON-IT Engagements

1. CGI Technologies and Solutions (CGI);
2. Cognizant Technology Solutions U.S. Corporation (Cognizant);
3. Grant Thornton LLP (Grant);
4. Maximus Human Services Inc. (Maximus); and
5. Price Waterhouse Coopers Public Sector, LLP (PWC).

[Recommendation Report, p. 1]

KPMG was not listed as an intended awardee.

On May 31, 2019, consistent with the Evaluation Committee Report and the Recommendation Report, the Bureau issued a Notice of Intent to Award (NOI) letter advising all Vendors {Bidders} of those companies who were recommended for a Blanket P.O. award.² Subsequent to the issuance of the NOI, KPMG requested and received a copy of the Bid Solicitation award file. The Bureau provided KPMG with a copy of that file which included the redacted Quotes submitted by all Vendors {Bidders}; the date and time stamped evaluation criteria and consumption model; and the BAFO responses from the Vendors Bidders.

On June 13, 2019 KPMG submitted its protest to the Division's Hearing Unit stating in part:³

The Division's disqualification of KPMG's Proposal was arbitrary, capricious, and inconsistent with New Jersey law, because the Division (1)

² On July 11, 2019 the Bureau reissued the NOI extending the protest period to July 26, 2019.

³ In its protest letter, KPMG made the following request for documents:

KPMG respectfully requests that the Division provide (1) copies of all *Source Disclosure Forms* that were submitted by other vendors in response to the RFP; and (2) all evaluation documents that discuss the source disclosure requirement. These document requests are directly applicable to KPMG's protest grounds and are limited in scope so as to minimize any burden on the Division in producing them.

[KPMG June 13, 2019 protest, p. 15.]

On July 12, 2019, the Bureau provided KPMG with the Bid Solicitation Award file which included the *Source Disclosure Forms* submitted by all Vendors {Bidders}, the Evaluation Committee Report and the Recommendation Report. KPMG's request was also forwarded to the Division's Open Public Records Act (OPRA) Unit for review.

disqualified KPMG based on a clear misreading of the Proposal, (2) misread the RFP and New Jersey's domestic preference statute, (3) acted unfairly by providing other vendors with an opportunity to correct and clarify their proposals without providing KPMG the same opportunity, and (4) violated the plain language of the RFP by disqualifying KPMG during the preliminary evaluation phase based on KPMG's source disclosure.

[KPMG protest, p. 1.]

In consideration of KPMG's protest, I have reviewed the record of this procurement, including the Bid Solicitation, KPMG's submitted Quote and protest, the relevant statutes, regulations, and case law. This review of the record 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. I set forth herein the Division's Final Agency Decision.

In 2005, the New Jersey Legislature enacted N.J.S.A. 52:34-13.2, which requires that "every State contract primarily for the performance of services shall include provisions which specify that all services performed under the contract or performed under any subcontract awarded under the contract shall be performed within the United States." N.J.S.A. 52:34-13.2(a).⁴

Consistent with the Legislative requirement, the subject Bid Solicitation required that "prior to an award of Blanket P.O. {Contract}, the Vendor {Bidder} is required to submit a completed *Source Disclosure Form*. The Vendor's {Bidder's} inclusion of the completed *Source Disclosure Form* with the Quote {Proposal} is requested and advised." Bid Solicitation Section 4.4.2.3 *Source Disclosure*. The Bid Solicitation goes on to state:

Pursuant to N.J.S.A. 52:34-13.2, all Blanket P.O.s {Contracts} primarily for services awarded by the Director shall be performed within the United States, except when the Director certifies in writing a finding that a required service cannot be provided by a Vendor {Contractor} or Subcontractor within the United States and the certification is approved by the State Treasurer. Also refer to Section 3.6 Service Performance Within U.S. of the SSTC.

Pursuant to the statutory requirements, the intended Vendor {Contractor} of a Blanket P.O. {Contract} primarily for services with the State of New Jersey must disclose the location by country where services under the Blanket P.O. {Contract}, including subcontracted services, will be performed. The *Source Disclosure Form* accompanies the subject Bid Solicitation {RFP}. **FAILURE TO SUBMIT SOURCING INFORMATION WHEN REQUESTED BY THE STATE SHALL**

⁴ The law only provides for a limited exception to the requirement, stating:

- (b) The provision of subsection a. of this section shall not apply whenever:
 - (1) the Director of the Division of Purchase and Property or the Director of the Division of Property Management and Construction, as appropriate, certifies in writing a finding that a service is required by the Executive Branch of the State and that the service cannot be provided by a contractor or subcontractor within the United States and the certification is approved by the State Treasurer.

[N.J.S.A. 52:34-13.2(b)(1), *emphasis added.*]

PRECLUDE AWARD OF A BLANKET P.O. {CONTRACT} TO THE INTENDED VENDOR {BIDDER}.

If any of the services cannot be performed within the United States, the Vendor {Bidder} shall state with specificity the reasons why the services cannot be so performed. The Director shall determine whether sufficient justification has been provided by the Vendor {Bidder} to form the basis of his or her certification that the services cannot be performed in the United States and whether to seek the approval of the Treasurer.

[Bid Solicitation Section 7.1.2 *Source Disclosure Requirements.*]

To determine whether the requirements of the Bid Solicitation and the Bureau's review and evaluation of the Quotes submitted were consistent with the requirements of the Division's Hearing Unit undertook a review of the legislative history of the statute and the associated case law. A review of the legislative history reveals that in response to "published reports [indicating] that telephone inquiries by welfare and food stamp clients under New Jersey's Families First Program were being handled by operators in Bombay, India, after the contractor moved its operations outside of the United States as a cost cutting measure" the legislature proposed a law requiring that "only citizens or persons authorized to work in the US pursuant to federal law may be employed in performing certain State contracts." See, S494, introduced January 13, 2004. After review, the Senate State Government Committee recommended modifications and amendments to the proposed law, among which were the following:

~~[The Director of the Division of Purchase and Property and the Director of the Division of Property Management and Construction in the Department of the Treasury shall include, in every]~~ a. Every State contract primarily for the performance of services [;] shall include provisions which specify that [only citizens of the United States and persons authorized to work in the United States pursuant to federal law shall be employed in performance of] all services performed under the contract or performed under any subcontract awarded under the contract shall be performed within the United States.

Those modifications were incorporated into P.L. 2005, c. 92 as adopted. In signing the bill into law Acting Governor Richard J. Codey stated "[t]oday New Jersey is taking an important step to protect our workers and keep jobs from going overseas... With this bill, we are sending a clear message that if a company wants to take jobs from our hard working families and send them overseas, then it will not do business with the state." See, Governor's press release May, 05 2005; available at <https://repo.njstatelib.org/bitstream/handle/10929.1/21490/ch92gov.pdf?sequence=2&isAllowed=y>. Unfortunately, the legislative history does not appear to show any concession in law for today's global economy and there is limited case law which would offer any guidance here.⁵

In determining the meaning of a statute, we consider first the plain language of the statute. If the language is clear, we interpret the statute consistent with its plain meaning. If the language is not clear, we look to the legislative history to aid in determining the legislative intent of the statute. After all, our goal is to interpret the statute consistent with the

⁵ The only New Jersey case referencing N.J.S.A. 52:34-13.2 offers little guidance on how the statute and the legislative intent should be interpreted. See, *In re Bid Solicitation #11-X-21175, Snow Removal & Salting Servs. Statewide*, 2012 N.J. Super. Unpub. LEXIS 2760, 2012 WL 6599794.

intent of the Legislature. Nevertheless, we should strive to avoid statutory interpretations that lead to absurd or unreasonable results.

[*Oberhand v. Director, Div. of Taxation*, 193 N.J. 558, 568 (2008), *internal citations and quotations omitted, emphasis added, see also, State v. Lewis*, 185 N.J. 363, 369 (2005), *stating* (“our goal in construing a statute is to discern and effectuate the Legislature’s intent. We start by considering the plain language of the statute. If the language is clear, we interpret the statute consistent with its plain meaning...whatever be the rule of construction, it is subordinate to the goal of effectuating the legislative plan as it may be gathered from the enactment when read in the full light of its history, purpose and context.”); *State v. Gill*, 47 N.J. 441, 444 (1966) *stating*, (“in any event, whatever be the rule of construction, it is subordinate to the goal of effectuating the legislative plan as it may be gathered from the enactment when read in the full light of its history, purpose and context. Interpretations which lead to absurd or unreasonable results are of course to be avoided, and so far as the terms of the legislation and proper consideration of the interests of those subject to it will fairly permit, the statutory objective is to be fulfilled”).]

Reviewing the procurements in light of the law, I first note that the subject Bid Solicitation was primarily for services and therefore the vendors were required to submit a *Source Disclosure Form*. See, Bid Solicitation §§ 1.1 *Purpose and Intent*, 4.4.2.3 *Source Disclosure*. While KPMG was not required to submit the *Source Disclosure Form* with the submitted Quote, it did, allowing the Bureau to review the form and make a determination as to whether KPMG was eligible or ineligible for a Blanket P.O. award based upon statutory requirements. Importantly, even if KPMG had not included the form with the submitted Quote, the Bureau would have requested that the form be submitted prior to the evaluation in order for the Bureau to determine whether KPMG would be eligible for a Blanket P.O. award. KPMG’s submitted *Source Disclosure Form* disclosed the following:

	STATE OF NEW JERSEY DEPARTMENT OF THE TREASURY DIVISION OF PURCHASE AND PROPERTY		
	33 WEST STATE STREET, P.O. BOX 230 TRENTON, NEW JERSEY 08625 0230		
SOURCE DISCLOSURE FORM			
BID SOLICITATION #:		17DPP00118	VENDOR/BIDDER: KPMG LLP
The Vendor/Bidder submits this form in response to a solicitation issued by the State of New Jersey, Department of the Treasury, Division of Purchase and Property (Division), in accordance with the requirements of N.J.S.A. 17:24-13.2.			
INSTRUCTIONS			
List every location where services will be performed by the Contractor and all Subcontractors. If any of the services cannot be performed within the United States, the Contractor shall state, with specificity, the reasons why the services cannot be performed in the United States.			
Name of Contractor / Sub-contractor	Performance Location Country	Description of Service(s) to be Performed Outside of the U.S.	Reason Why the Service(s) Cannot be Performed in the U.S.
KPMG LLP	Off shore	Administrative & Clerical Services	See attached
KPMG LLP	United States	Quality Assurance/Project Management Services	

SOURCE DISCLOSURE CERTIFICATION ATTACHMENT

Administrative and Clerical Services:

As is the case with most large professional services Firms, KPMG uses third party service providers within and without the United States to provide at KPMG's direction administrative and clerical services to KPMG. These third party service providers may in the performance of such services have limited access to information, including but not limited to Confidential Information, received by KPMG from or at the request or direction of the State of New Jersey. These third parties will not be providing direct services as part of KPMG's engagement delivery to NJ and KPMG will not use off-shore resources for direct engagement delivery without the State's prior written consent.

After conducting its preliminary review of the Quotes, the Bureau concluded that KPMG's Quote was non-responsive and that it was ineligible for a Blanket P.O. award because its submitted *Source Disclosure Form* indicated that it would be performing administrative and clerical services off-shore. In the included attachment, KPMG further noted that "KPMG uses third party service providers within and without the United States to provide at KPMG's direction (sic) administrative and clerical services to KPMG." Within its submitted Quote KPMG did not describe the administrative or clerical services to be performed, where the services would be performed or who would be performing the services. As noted in the attachment to KPMG's *Source Disclosure Form*, KPMG indicated that it intended to use third-party service providers, which may be based outside of the United States to perform administrative and clerical services. It is unclear whether the services to be performed by KPMG outside of the United States would have been in support of the State's contract or in support KPMG's other business operations. However, KPMG did not include a Subcontractor Utilization Plan as required by Bid Solicitation Section 4.4.1.3 *Subcontractor Utilization Plan* "Vendors {Bidders} intending to use a Subcontractor shall submit a *Subcontractor Utilization Plan* form." Rather, KPMG signed the Offer and Acceptance Page automatically certifying that it did not intend to use subcontractors. See, Bid Solicitation Section 4.4.1.1.2 *No Subcontractor Certification*. An ambiguity therefore exists in KPMG's submitted Quote and the Bureau should have sought a clarification from KPMG on this issue.

However, as noted above, this procurement was commenced in August of 2017, over two years ago. Because the Bureau deemed KPMG's Quote non-responsive, the Evaluation Committee did not review, evaluate or score KPMG's submitted Quote. Therefore, if this matter was remanded back to for the review and evaluation of KPMG's Quote, the Bureau would have to reconvene the Evaluation Committee.

Additionally, assuming that Evaluation Committee's technical score of KPMG's Quote put it in the competitive range of the responsive Quotes received, KPMG would be entitled to receive a BAFO request from the Division. However, after the issuance of the NOI in this matter, several Vendors {Bidders}, including KPMG requested and received copies of the Bid Solicitation Award File which included the Quote and BAFO pricing. If KPMG were to receive a BAFO request at this juncture, it would have a competitive advantage over all other Vendors {Bidders} in responding to the Bureau's BAFO request.

Accordingly, based upon the foregoing, I overturn the Bureau's Notice of Intent to Award. I remand this matter back to the Bureau and direct it to take steps to cancel and re-bid this procurement. This is my final agency decision with respect to the protest submitted by KPMG.

Thank you for registering your company with **NJSTART** at www.njstart.gov, the State of New Jersey's eProcurement system. I look forward to your company's continuing interest in doing business with the State of New Jersey. I encourage you to log into **NJSTART** to select any and all commodity codes for procurements you may be interested in submitting a Quote for so that you may receive notification of future bidding opportunities.

Sincerely,

A handwritten signature in blue ink, appearing to read "maguff", with a long horizontal flourish extending to the right.

Maurice A. Griffin
Acting Director

MAG: RUD

c: L. Spildener