



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY

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September 19, 2019

Via Electronic Mail [kconfoy@foxrothschild.com] and USPS Regular Mail

Karen A. Confoy
Fox Rothschild LLP
997 Lenox Drive,
Lawrenceville, NJ 08648

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

Dear Ms. Confoy:

This letter is in response to your correspondence of July 26, 2019, on behalf of Mathtech, Inc. (Mathtech) which was received by the Division of Purchase and Property's (Division) Hearing Unit. In that correspondence, Mathtech 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*. 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.

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 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*.

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 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 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 LLC was deemed non-responsive due to Source Disclosure requirements. 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*.

Specifically, on January 19, 2018, Mathtech submitted the following *Ownership Disclosure Form* with its Quote:

**STATE OF NEW JERSEY – DIVISION OF PURCHASE AND PROPERTY
 OWNERSHIP DISCLOSURE FORM**

Bid Solicitation Number: 17DPP00118 Bidder/Offeror: Mathtech, Inc.

PART 1: PLEASE COMPLETE THE QUESTIONS BELOW BY CHECKING EITHER THE "YES" OR "NO" BOX. ALL PARTIES ENTERING INTO A CONTRACT WITH THE STATE ARE REQUIRED TO COMPLETE THIS FORM PURSUANT TO N.J.S.A. 17:21-14. PLEASE NOTE: IF THE BIDDER/OFFEROR IS A NON-PROFIT, THIS FORM IS NOT REQUIRED. PLEASE COMPLETE THE SEPARATE DISCLOSURE (IF ANY) SEPARATE FORM.

	YES	NO
1. Are there any individuals, corporations or partnerships owning a 10% or greater interest in the bidder/officer?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

IF THE ANSWER TO QUESTION 1 IS NO, PLEASE SIGN AND DATE THE FORM. YOU DO NOT HAVE TO COMPLETE ANY MORE QUESTIONS ON THIS FORM. IF THE ANSWER TO QUESTION 1 IS YES, PLEASE ANSWER QUESTIONS 2-4 BELOW.

2. Of those parties owning a 10% or greater interest in the bidder/officer, are any of those parties individuals?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Of those parties owning a 10% or greater interest in the bidder/officer, are any of those parties corporations or partnerships?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. If your answer to Question 3 is "YES", are there any parties owning a 10% or greater interest in the corporation or partnership referenced in Question 3?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

IF ANY OF THE ANSWERS TO QUESTIONS 2-4 ARE YES, PLEASE PROVIDE THE REQUESTED INFORMATION IN PART 2 BELOW.

PART 2: PLEASE PROVIDE FURTHER INFORMATION RELATED TO QUESTIONS 2-4 ANSWERED AS "YES".
 For Questions 2-4 answered "YES", you must disclose identifying information related to the individuals, partnerships and/or corporations owning a 10% or greater interest in the bidder/officer. Further, if one or more of these entities is itself a corporation or partnership, you must also disclose all parties that own a 10% or greater interest in that corporation or partnership. This information is required by statute.

TO COMPLETE PART 2, PLEASE PROVIDE THE REQUESTED INFORMATION PERTAINING TO EITHER INDIVIDUALS OR PARTNERSHIPS/CORPORATIONS HAVING A 10% OR GREATER INTEREST IN THE BIDDER/OFFEROR. IF YOU NEED TO MAKE ADDITIONAL ENTRIES, CLICK THE "ADD AN ENTRY" BUTTON IN THE APPROPRIATE ENTITY TYPE.

Individuals

Name: _____	Date of Birth: _____	Delete Entry
Home Address: _____		
City: _____	State: _____ Zip Code: _____	
Are there additional entities holding 10% or greater ownership interest in the bidder/officer and its parent corporation/partnership?		
<input type="checkbox"/> Yes or <input type="checkbox"/> No		
Add An Additional Individuals Entry		

Partnerships/Corporations

Entity Name: <u>Mathtech Holding Corp. (Ownership of Mathtech, Inc.)</u>	Delete Entry
Partner Name: <u>MA</u>	
Business Address: <u>3405 Kuser Road, Suite 300</u>	
City: <u>Hamilton</u> State: <u>N.J.</u> Zip Code: <u>08820</u>	
Are there additional entities holding 10% or greater ownership interest in the bidder/officer and its parent corporation/partnership?	
<input type="checkbox"/> Yes or <input checked="" type="checkbox"/> No	
Add An Additional Partnerships/Corporations Entry	

Certification: I, being duly sworn upon my oath, hereby represent that the foregoing information and any attachments thereto to the best of my knowledge are true and complete. I acknowledge that I am authorized to execute this certification on behalf of the bidder; that the State of New Jersey is relying on the information contained herein and that I am under a continuing obligation from the date of this certification through the completion of any contracts with the State to notify the State in writing of any changes to the information contained herein; that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification, and if I do so, I am subject to criminal prosecution under the law and that it will constitute a material breach of my agreement(s) with the State, permitting the State to declare any contract(s) resulting from this certification void and unenforceable.

Full Name (Print) Steven E. Young Signature 

Title Sr. Vice President Date Oct 9, 2017

On April 17, 2018, the Bureau sent a letter to Mathtech, requesting clarification regarding its *Ownership Disclosure Form*. Specifically, the Bureau, in its Request for Clarification, asked that Mathtech explain the following:

In Mathtech’s Ownership Disclosure Form (attached) submitted as part of its Quote, it answered “Yes” to Question #4 of Part 1, which asked the following: “If your answer to Question 3 is YES, are there any parties owning a 10% or greater interest in the corporation or partnership referenced in Question 3?” However, in Part 2 of its Ownership Disclosure Form, your firm checked “No” below its disclosure of “Mathtech Holding Corp. (Ownership of Mathtech, Inc.)” in response to the following question: “Are there additional entities holding 10% or greater ownership interest in the bidder/offeror and its parent corporation/partnership”. The Procurement Bureau is requesting that Mathtech clarify this ambiguity.

[See April 17, 2018 Request for Clarification.]

On April 19, 2018, Mathtech sent an email response to the Bureau’s Request for Clarification stating:

Per the clarification letter contained in your email below, please find attached Mathtech’s revised Ownership Disclosure Form. We have expanded the Partnership/Corporations section by adding the entry “Mathtech Holding Corp. & Affiliates Employee Stock Ownership Plan and Trust” with business address information. Is this response sufficient?

With its email, Mathtech attached an updated *Ownership Disclosure Form*, adding Mathtech Holding Corp. & Affiliates Employee Stock Ownership Plan and Trust as an additional entity “holding a 10% or greater interest in the bidder/offeror and its parent corporation/partnership.”

Partnerships/Corporations	
Entity Name: <u>Mathtech Holding Corp</u> Partner Name: <u>NA</u> Business Address: <u>2465 Kumer Road, Suite 200</u> City: <u>Hamilton</u> State: <u>NJ</u> Zip Code: <u>08690</u>	Delete Entry
Are there additional entities holding 10% or greater ownership interest in the bidder/offeror and its parent corporation/partnership? <input checked="" type="checkbox"/> Yes or <input type="checkbox"/> No	
Entity Name: <u>Mathtech Holding Corp. & Affiliates Employee Stock Ownership Plan and Trust</u> Partner Name: <u>NA</u> Business Address: <u>2465 Kumer Road, Suite 200</u> City: <u>Hamilton</u> State: <u>NJ</u> Zip Code: <u>08690</u>	Delete Entry
Are there additional entities holding 10% or greater ownership interest in the bidder/offeror and its parent corporation/partnership? <input type="checkbox"/> Yes or <input checked="" type="checkbox"/> No	
<input type="button" value="Add An Additional Partnerships/Corporations Entry"/>	
Certification: I, being duly sworn upon my oath, hereby represent that the foregoing information and any attachments thereto to the best of my knowledge are true and complete. I acknowledge that I am authorized to execute this certification on behalf of the bidder; that the State of New Jersey is relying on the information contained herein and that I am under a continuing obligation from the date of this certification through the completion of any contracts with the State to notify the State in writing of any changes to the information contained herein; that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification, and if I do so, I am subject to criminal prosecution under the law and that it will constitute a material breach of my agreement(s) with the State, permitting the State to declare any contract(s) resulting from this certification void and unenforceable.	
Full Name (Print) <u>Steven E. Young</u> Signature  <small>Use Hot Enter PIN as a Signature</small>	
Title <u>Sr Vice President</u> Date <u>Apr 17, 2018</u>	

Based on Mathtech's April 19, 2018 response, the Bureau deemed Mathtech's Quote to be non-responsive because it failed to disclose as part of its Quote all corporations, partnerships, or limited liability companies owning a 10% or greater interest in the firm as required by N.J.S.A. 52:25-24.2.

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]

Mathtech 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.¹

On July 26, 2019 Mathtech submitted its protest to the Division's Hearing Unit stating in part:

Mathtech protests: (1) the determination that Mathtech failed to submit a complete Ownership Disclosure Form ("ODF") and was therefore non-responsive to the RFP; (2) the decision that Mathtech's clarification of its ODF, requested by the Division, was improper; (3) the decision not to evaluate Mathtech's technical or pricing proposal, and (4) the issuance of the Notice of Intent to Award which did not include an award to Mathtech.

[Mathtech protest, p. 1.]

¹ On July 11, 2019 the Bureau reissued the NOI extending the protest period to July 26, 2019.

In consideration of Mathtech's protest, I have reviewed the record of this procurement, including the Bid Solicitation, Mathtech'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.

The New Jersey Legislature, in implementing N.J.S.A. 52:25-24.2, mandated that a Vendor{Bidder} must supply its ownership information, prior to or with its Quote, to be eligible to enter into a Contract with the State. N.J.S.A. 52:25-24.2 states in part:

No corporation, partnership, or limited liability company shall be awarded any contract nor shall any agreement be entered into for the performance of any work or the furnishing of any materials or supplies, the cost of which is to be paid with or out of any public funds, by the State, or any county, municipality or school district, or any subsidiary or agency of the State, or of any county, municipality or school district, or by any authority, board, or commission which exercises governmental functions, unless prior to the receipt of the bid or accompanying the bid, of said corporation, said partnership, or said limited liability company there is submitted a statement setting forth the names and addresses of all stockholders in the corporation who own 10 percent or more of its stock, of any class, or of all individual partners in the partnership who own a 10 percent or greater interest therein, or of all members in the limited liability company who own a 10 percent or greater interest therein, as the case may be. If one or more such stockholder or partner or member is itself a corporation or partnership or limited liability company, the stockholders holding 10 percent or more of that corporation's stock, or the individual partners owning 10 percent or greater interest in that partnership, or the members owning 10 percent or greater interest in that limited liability company, as the case may be, shall also be listed. The disclosure shall be continued until names and addresses of every noncorporate stockholder, and individual partner, and member, exceeding the 10 percent ownership criteria established in this act, has been listed.

The Ownership Disclosure Form is specifically addressed in Bid Solicitation Section 4.4.1 .2.1 *Ownership Disclosure Form* which states:

Pursuant to N.J.S.A. 52:25-24.2, in the event the Vendor {Bidder} is a corporation, limited liability company, or partnership, the Vendor {Bidder} must complete an Ownership Disclosure Form.

A current completed Ownership Disclosure Form must be received prior to or accompany the submitted Quote {Proposal}. A Vendor's {Bidder's} failure to submit the completed and signed form with its Quote {Proposal} will result in the rejection of the Quote {Proposal} as non-responsive and preclude the award of a Blanket P.O. {Contract} to said Vendor {Bidder} unless the Division has on file a signed and accurate Ownership Disclosure Form dated and received no more than six (6) months prior to the Quote {Proposal} submission deadline for this procurement. If any ownership

change has occurred within the last six (6) months, a new Ownership Disclosure Form must be completed, signed and submitted with the Quote {Proposal}.

Reviewing the procurements in light of the law, I first note that Mathtech did submit the *Ownership Disclosure Form* with the submitted Quote, allowing the Bureau to review the form and make a determination as to whether Mathtech was eligible or ineligible for a Blanket P.O. award based upon statutory requirements. As noted above, Mathtech initially submitted an *Ownership Disclosure Form* where it answered "Yes" to Question #4 of Part 1, which asked the following: "If your answer to Question 3 is YES, are there any parties owning a 10% or greater interest in the corporation or partnership referenced in Question 3?" However, in Part 2 of its Ownership Disclosure Form, Mathtech checked "No" below its disclosure of "Mathtech Holding Corp. (Ownership of Mathtech, Inc.)" in response to the following question: "Are there additional entities holding 10% or greater ownership interest in the bidder/offeror and its parent corporation/partnership". In response to Bureau's April 17, 2018, clarification letter, Mathtech submitted an updated *Ownership Disclosure Form*, listing Mathtech Holding Corp. & Affiliates Employee Stock Ownership Plan and Trust.

After conducting its preliminary review of the Quotes, the Bureau concluded that Mathtech's Quote was non-responsive and that it was ineligible for a Blanket P.O. award because it failed to disclose all corporations, partnerships, or limited liability companies owning 10% or greater interest in the firm.

In its protest, Mathtech argues that its response to Request for Clarification was permissible. (See Mathtech's April 26, 2019 protest, p. 2.) Mathtech states that Mathtech Holding Corp. & Affiliates Employee Stock Ownership Plan and Trust is structured as a trust under section 401(a) of the Internal Revenue Code of 1986, as amended. The review of the Internal Revenue Code reveals that a trust is not considered a corporation, partnership or a limited liability corporation and, therefore, Mathtech believed that it did not have to disclose the trust because the form only directed Vendors {Bidders} to disclose corporations, partnerships or limited liability corporations. In its response to the Request for Clarification, Mathtech explained that it relied on the language contained in the Part 2 of the *Ownership Disclosure Form*, which directs Vendors {Bidders} to "disclose identifying information related to the individuals, partnerships and/or corporations owning a 10% or greater interest in the bidder/offeror." While Mathtech's reading of Part 2 of the *Ownership Disclosure Form* is correct, Part 1 of the *Ownership Disclosure Form* and the Bid Solicitation Section 4.4.1.2.1 *Ownership Disclosure Form* advised Vendors {Bidders} that *Ownership Disclosure Form* must be submitted pursuant to N.J.S.A. 52:25-24.2, which in relevant part, states that "names and addresses of all stockholders in the corporation who own 10 percent or more of its stock" must be disclosed. (Emphasis added).

Even if I were to accept Mathtech's explanation that it relied solely on the Part 2 of the *Ownership Disclosure Form* and, therefore, did not list the Mathtech Holding Corp. & Affiliates Employee Stock Ownership Plan and Trust, as noted above, this procurement was commenced in August of 2017, over two years ago. Because the Bureau deemed Mathtech's Quote non-responsive, the Evaluation Committee did not review, evaluate or score Mathtech's submitted Quote. Therefore, if this matter was remanded back to for the review and evaluation of Mathtech's Quote, the Bureau would have to reconvene the Evaluation Committee.

Additionally, assuming that Evaluation Committee's technical score of Mathtech's Quote put it in the competitive range of the responsive Quotes received, Mathtech would be entitled to receive a BAFO request from the Division. However, after the issuance of the NOI in this matter, several Vendors {Bidders} requested and received copies of the Bid Solicitation Award File which included the Quote and BAFO pricing. If Mathtech 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 must overturn the Bureau's Notice of Intent to Award as there is now no way that to fairly BAFO Mathtech. 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 Mathtech.

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,



Maurice A. Griffin
Acting Director

MAG: RD

c: L. Spildener