



State of California—Health and Human Services Agency  
Department of Health Care Services



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Re: Formal Appeal to DHCS RFP 13-90486 – Decision

**Dear Ms. Williams and Ms. Freund, and Messrs. Kennedy, Smaglik, and Morrill:**

This letter is in response to 21CT, Inc.'s (the Appellant) appeal of the the Department of Health Care Services, Office of Medi-Cal Procurement's Notice of Intent to Award a contract to OnCore Consulting, LLC (Awardee) pursuant to the Medi-Cal Program Integrity Data Analytics Request for Proposal 13-90486.

**BACKGROUND**

On August 10, 2015, the Department of Health Care Services (DHCS), Office of Medi-Cal Procurement's (OMCP) issued Request for Proposal (RFP) #13-90486 to solicit proposals from firms that are able to provide Medi-Cal Program Integrity Data Analytics (MPIDA) services in order to detect and link fraud schemes in the Medi-Cal environment. Eight (8) proposals were submitted and seven (7) proposals were deemed qualified for formal evaluation. Each such proposal was rigorously evaluated and scored pursuant to the evaluation and scoring criteria set forth in the RFP. On March 16, 2016, DHCS issued a non-binding, Notice of Intent to Award the MPIDA contract to the highest scoring bidder (the Awardee).

On March 23, 2016, unsuccessful bidder (the Appellant) filed its Notice of Intent to Appeal, within five (5) calendar days, in accordance with RFP appeal guidelines. On March 28, 2016, Appellant submitted a formal appeal brief that was later modified upon its receipt of DHCS documents responsive to its Public Records Act (PRA) request. DHCS agreed to allow Appellant five (5) additional calendar days following its receipt of responsive PRA records to submit its modified formal appeal. Appellant was directed to file its updated formal appeal directly with me, Michele Villados, as the assigned DHCS Hearing Officer for this appeal. Appellant did submit an updated formal appeal to the Hearing Officer on June 7, 2016, within the approved extended response time.

Subsequently, the parties involved in this appeal filed the following responsive briefs:

- Awardee's response dated June 10, 2016
- Appellant's response dated June 17, 2016
- Awardee's response dated June 21, 2016
- OMCP's response dated June 23, 2016
- Appellant's response dated June 27, 2016
- OMCP's response dated June 30, 2016

#### **APPELLANT'S GROUND FOR APPEAL AND SUPPORTING ARGUMENTS**

Appellant asserts that its ground for appeal is based on Public Contract Code (PCC) Section 10345(b)(2)(B), which states:

*"The state agency failed to apply correctly the standards for reviewing the format requirements or evaluating the proposals as specified in the request for proposal."*

Initially, in its June 7, 2016 brief, Appellant alleged that DHCS did not correctly apply its RFP requirements in its evaluation and scoring of the proposals based on four supporting arguments. However, Appellant withdrew one of its claims in its June 17, 2016 reply to Awardee's June 10, 2016 response. Accordingly, the following is a high-level summary of Appellant's three primary supporting positions for its appeal:

1. Appellant alleges that Awardee did not comply with the RFP requirements for the provision of client references.
2. Appellant claims that OMCP's proposal evaluation process contained errors and the RFP's cost scoring structure contained anomalies.

3. Appellant asserts that OMCP's narrative evaluation process contained errors, scoring anomalies, and deviation from internal procedures.

### **ANALYSIS AND FINDINGS**

The Hearing Officer reviewed all of the parties' appeal responses, the RFP, its attachments, Administrative Bulletin 3 (containing Bidder Questions and Official Responses), OMCP's internal procurement evaluation procedures, and the DHCS Internal Audit review report. After a thorough and extensive review and analysis of the above-referenced documentation, the Hearing Officer views the first allegation raised in the Appellant's June 7, 2016 brief as the dispositive issue in this appeal. Therefore, the second and third appeal claims will not be addressed by this Hearing Officer.

Compliance with the client references requirement in the RFP is of material importance in the selection of the most responsive and responsible bidder to perform the MPIDA contract. However, in view of the following RFP provisions, the client reference requirement is unclear:

Identify three (3) client references that the proposing firm has serviced within the past five years of the Proposal Submission Date that can confirm their satisfaction with the services and confirm if the proposing firm provided timely and effective services or deliverables.

(RFP, § M.3.d.4, p. 20.)

Identify three (3) clients serviced within the past five years that can confirm their satisfaction with the Proposer's services and confirm that the Proposer provided timely and effective services or deliverables. If possible, identify clients whose needs were similar in scope and nature to the services sought in this RFP. References will also be needed for every subcontractor.

(RFP, § M.3.I, p. 37.)

List 3 clients served in the past 5-years for which the bidding firm provided similar services. List the most recent first.

(RFP, Attachment 4, Client References.)

RFP Main Section M.3.d. applies to the contractor AND every subcontractor.

(RFP Bulletin 3, Questions and Responses, Question 7.)

DHCS is seeking three total references from three different entities. They may include references for both the primary and subcontractors.

(RFP Bulletin 3, Questions and Responses, Question 23.)

The Awardee also found the following provision in Section L a source of inconsistency; however, it appears to govern proposer qualification requirements, rather than the client reference requirement:

Failure to meet all of the following requirements by the proposal submission deadline will be grounds for DHCS to deem a Proposer nonresponsive. In submitting a proposal, each Proposer must certify and prove that it possesses all of the following qualification requirements, which may be met by the main contractor or their approved subcontractors:

(RFP, §L, p. 14.)

Both the Appellant and the Awardee, in their respective briefs, refer to the various provisions describing the client reference requirement as “*inconsistent*” and as causing “*potential confusion*.” Consequently, the Appellant and the Awardee submitted their proposals based on their respective, conflicting interpretations of the client reference requirements. In the case of the Awardee, three references were submitted regarding the Awardee’s key subcontractor and none were provided for itself. In the case of the Appellant, three references were submitted regarding the Appellant itself and none were provided for its subcontractor.

The inconsistency in the various reference requirements cannot be reasonably reconciled. Thus, it cannot be determined if the Awardee satisfied the client reference requirement.

If the client references requirement was immaterial, it could be waived in accordance with the RFP § Q.9.a.2. However, this requirement is material to the verification of bidders’ qualifications to perform the services solicited and cannot be waived.

## **DECISION**

Based on the above analysis and findings, the DHCS Hearing Officer issues the following decision:

- (1) OMCP is directed to reject all bids, rescind the non-binding Notice of Intent to Award, and cancel this procurement;
- (2) OMCP is directed to clarify the client reference requirement in any further procurement; and

(3) The above actions are found to be in the best interest of DHCS and in the interest of providing all qualified bidders a fair opportunity to engage in the bidding process.

Sincerely,

Original Signed By:

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Deputy Director

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