

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

In the Matter of the Appeal filed by Buffalo Computer Graphics, Inc., with respect to the procurement of a Mass Notification System conducted by the New York State Office of Information Technology Services.

**Determination
of Appeal**

SF-20170192

Contract Number – C000460

August 17, 2017

The Office of the State Comptroller has reviewed the above-referenced procurement conducted by the New York State Office of Information Technology Services (ITS) for a new mass notification system (MNS) to replace the current New York State MNS. We have determined the grounds advanced by Buffalo Computer Graphics, Inc. (BCG) are insufficient to merit the overturning of the contract award made by ITS and, therefore, we deny the Appeal. As a result, we are today approving the ITS contract with Everbridge, Inc. (Everbridge) for a MNS.

BACKGROUND

Facts

On January 30, 2017, ITS issued Request for Proposals #ITS-2017-C000460 (RFP) seeking a replacement MNS to be hosted, supported and maintained by the successful vendor with capabilities similar to the current MNS, known as NY-ALERT (*see* RFP, at Section 2.3, pg. 8). Consistent with the requirements of State Finance Law § 163, the RFP provided for a contract award based on best value (*see* RFP, at Section 4.1, pg. 15). Each offeror's proposal was to consist of three distinct parts: the administrative proposal, the technical proposal and the financial proposal (*see* RFP, at Section 5.5, pg. 21). The technical proposal, which was further divided into a pass/fail portion (assessing the RFP's minimum bidder qualifications and mandatory technical qualifications) and a qualitative portion, was worth 60 points (*see* RFP, at Section 5.5.2, pgs. 21-22). The financial proposal was worth 30 points (*see* RFP, at Section 5.5.3, pg. 22). The remaining 10 points were allocated to a potential demonstration given by eligible offerors as described below.

ITS reviewed each offeror's administrative proposal and the pass/fail portion of the technical proposal to determine responsiveness, and then scored the remainder of the technical proposal using a weighted average point system (*see* RFP, at Sections 5.5.1 and 5.5.2, pgs. 21-22). The financial proposal offering the lowest price received the maximum score of 30 while the other financial proposals received a proportionate score based on its relation to the lowest price (*see* RFP, at Section 5.5.3, pg. 22). ITS then combined the technical and financial scores for each offeror and invited only offerors who were susceptible to award to give a demonstration

worth up to 10 points (*see* RFP, at Section 5.5.4, pg. 22).¹ ITS determined a final composite score for each offeror by combining scores from the qualitative portion of the technical proposal, the financial proposal and the vendor demonstration, if applicable (*see* RFP, at Section 5.5.5, pg. 22). By letter dated May 11, 2017, ITS awarded the contract to Everbridge, the offeror receiving the highest final composite score.

ITS provided BCG a debriefing on May 25, 2017. By letter dated June 2, 2017, BCG filed a protest with ITS challenging its award of the contract to Everbridge. ITS denied BCG's protest by letter dated June 12, 2017. BCG filed an appeal of ITS' protest decision with this Office by letter dated June 26, 2017 (Appeal) and ITS responded to the Appeal by letter dated July 13, 2017 (Answer).²

Comptroller's Authority and Procedures

Under State Finance Law (SFL) § 112(2), with certain limited exceptions, before any contract made for or by a state agency, which exceeds fifty thousand dollars, becomes effective it must be approved by the Comptroller.

In carrying out the contract approval responsibility prescribed by SFL § 112, this Office has formally promulgated a Contract Award Protest Procedure (OSC Protest Procedure) governing the process to be used by an interested party seeking to challenge a contract award by a State agency.³ This procedure governs initial protests to this Office of agency contract awards and appeals of agency protest determinations. Because this is an appeal of an agency protest decision, the Appeal is governed by section 24.5 of Title 2 of the Codes, Rules and Regulations of the State of New York.

In the determination of the Appeal, this Office considered:

1. the documentation contained in the procurement record forwarded to this Office by ITS with the ITS/Everbridge contract;
2. the correspondence between this Office and ITS arising out of our review of the proposed ITS/Everbridge contract; and
3. the following correspondence/submissions from the parties (including the attachments thereto):
 - a. BCG's Appeal dated June 26, 2017; and
 - b. ITS' Answer dated July 13, 2017.

¹ Only one of the six offerors, Everbridge, qualified to give a demonstration.

² The Appeal contains most, but not all, of the issues raised in the agency-level protest. This determination will only address the particular issues raised in the Appeal to this Office.

³ 2 NYCRR Part 24.

Applicable Statutes

The requirements applicable to this procurement are set forth in SFL Article 11 which provides that contracts for services shall be awarded on the basis of “best value” to a responsive and responsible offerer.⁴ Best value is defined as “the basis for awarding contracts for services to the offerer which optimizes quality, cost and efficiency, among responsive and responsible offerers.”⁵ A “responsive” offerer is an “offerer meeting the minimum specifications or requirements described in a solicitation for commodities or services by a state agency.”⁶

ANALYSIS OF THE APPEAL

Appeal to this Office

In its Appeal, BCG challenges the procurement conducted by ITS on the following grounds:⁷

1. The scoring methodology was flawed because it placed excessive weight on the lowest price and failed to account for known future costs.
2. ITS failed to determine best value because the scoring methodology used for the technical proposals improperly discounted components of best value such as quality and efficiency.

ITS Response to the Appeal

In its Answer, ITS contends the Appeal should be rejected and the award upheld on the following grounds:

1. The scoring methodology was not flawed and, contrary to BCG’s allegations, the RFP required offerors to include related future costs.
2. ITS properly established technical criteria and followed the evaluation methodology as stated in the RFP which resulted in an award based on best value.

DISCUSSION

1. ITS’ Scoring Methodology

BCG alleges ITS’ scoring methodology improperly afforded excess weight to an offeror’s cost over the technical component, and ITS failed to account for certain future costs that will be incurred during the contract term relating to integration with the existing MNS, local government implementation, and maintenance (*see* Appeal, at pgs. 8-9). As a result, BCG claims ITS’

⁴ SFL § 163(10).

⁵ SFL § 163(1)(j).

⁶ SFL § 163(1)(d).

⁷ In the Appeal, BCG also suggests a particular ITS employee had relationships with other vendors which may have influenced the award of the contract (*see* Appeal, at pg. 3). ITS confirmed this employee did not evaluate any proposals nor was such employee referenced in the procurement record. Therefore, we find no basis for such allegation and deem it unnecessary to address the issue more fully herein.

scoring methodology “violated [State Finance Law] and [ITS] implemented a procurement that is not consistent with previous OSC protest determinations” (Appeal, at pg. 8). ITS maintains the scoring methodology properly arrived at best value and the RFP required offerors to submit appropriate related costs in the proposals (*see Answer*, at pg. 3).

A. Costs Included in the RFP

The cost evaluation methodology used by the procuring agency must bear a reasonable relationship to the cost anticipated to be incurred under the contract (*see SF-20150291*, at pg.7; *SF-20100156*, at pg. 6). Therefore, all costs anticipated to be incurred, including integration and maintenance costs, should have been evaluated as part of the financial evaluation. Accordingly, the threshold question is whether offerors were required to submit such costs as components of the financial proposals. The RFP instructed an offeror to complete each tabbed worksheet in the financial proposal workbook, except Tab 2, Cost Summary, which “auto-calculates and summarizes total costs using data contained in other tabs” (RFP, at Attachment 22, Tab 1). Tab 3 of the workbook provided for monthly support and maintenance costs based on an increasing number of subscribers, taking into account the estimated number of months at each subscriber tier (*see RFP*, at Attachment 22, Tab 3). Tab 4 required an offeror to submit a fixed price for all work and deliverables associated with the implementation of the new system (*see RFP*, at Attachment 22, Tab 4). In Tab 5, an offeror proposed a fully loaded hourly rate for a variety of positions that may be used to develop work plans for additional services if requested by ITS during the contract term (*see RFP*, at Sections 3.4.3 and 3.4.4, pgs. 13-14).

1. Integration Costs. Tab 4 provides for a separate cost component for “Implementation of existing system and user interfaces – end to end system integration and resolution of defects” (RFP, at Attachment 22, Tab 4, Item #4). In addition to migrating the current MNS’ subscribers to the new system, the RFP states offerors are “expected to integrate their solution with existing applications from various state and federal agencies as outlined in [the RFP]” (RFP, at Attachment 18, Section 3.10; *see also RFP*, at Section 3.3.1.2, pg. 12; RFP, at Exhibit 1). ITS confirms “these interfaces are deliverables under the RFP and the successful bidder was required to provide costs for these deliverables in their financial proposal” (Answer, at pg. 4).⁸
2. Local Government and Municipalities’ Implementation Costs. The current MNS has approximately five million subscribers (*see RFP*, at Section 2.2, pg. 7). ITS intends to expand its subscriber base to 20 million over a three-year period (*see RFP*, at Section 2.3, pg. 9). ITS asserts it anticipated, in the RFP, that local governments may choose to use

⁸ BCG specifically challenges an offeror’s ability to estimate the cost of integration with NY-Responds, a product owned and operated by BCG, without contacting BCG prior to submitting a financial proposal (*see Appeal*, at pg. 8). ITS states allowing for such contact “would have been highly unusual as there would be no way to control the flow of information from the incumbent to potential bidders, setting the stage for an uneven playing field” (Answer, at pg. 3). We agree that generally offerors are not required nor expected to consult with incumbents when formulating a cost proposal and that fair competition would seem to preclude such a practice. Furthermore, NY-Responds is but one of seven system interfaces offerors are required to integrate with the new system (*see RFP*, at Section 3.3.1.2, pg. 12). Finally, the RFP required offerors to certify that the prices bid were independently prepared (*see RFP*, at Attachment 5). For these reasons, we believe offerors were properly able to estimate integration costs without first contacting BCG in connection with the preparation of their financial proposals.

the new system and provided for an offeror to propose a corresponding monthly cost to support this growth (*see* Answer, at pg. 4; *see also* RFP, at Attachment 22, Tab 3).

3. Maintenance Costs. The RFP clearly requires offerors to submit maintenance costs (*see* RFP, at Attachment 22, Tab 3).

Based on the foregoing, we are satisfied offerors were required to include costs anticipated to be incurred, including future integration and maintenance costs, in their financial proposals.

B. Prior OSC Bid Protest Determinations

BCG correctly recites this Office's opinion that, generally, state agencies must evaluate all fees and other costs that are likely to be incurred during the contract term when scoring the cost proposal (*see* SF-20080408, at pg. 9). Bid Protest Determination SF-20080408 involved the procurement of an insurer for certain State employee health benefits. There, the procuring agency scored only one cost element included in the proposal without considering other elements impacting costs submitted by the offerors. OSC accepted the agency's position that such single cost element was the best predictor of the costs to the State and upheld the agency's financial scoring methodology (*see* SF-20080408, at pg. 11).

BCG cites another Bid Protest Determination to support its assertion that ITS' financial scoring methodology does not comport with prior OSC determinations (*see* SF-20080185). There, the protestor claimed the procuring agency acted improperly by failing to evaluate certain fees that offerors were required to submit as part of the cost proposal. OSC was satisfied that the agency's cost evaluation was appropriate since those fees, although required to be submitted, were not likely to be incurred (*see* SF-20080185, at pg. 15).

Both prior determinations concerned a procuring agency's failure to evaluate all costs submitted with the financial proposals, which is not at issue here. Moreover, as discussed above, the RFP required offerors to submit all costs impacting the replacement of the existing MNS. In addition, our review of the procurement record indicates ITS evaluated the financial proposals in accordance with the RFP. Consequently, we find ITS' evaluation and scoring of the financial proposals to be consistent with the bid determinations described above.⁹

C. Basis of Award

The RFP provided that the resulting contract would be awarded on the basis of best value (*see* RFP, at Section 4.1, pg. 15). BCG alleges that instead of best value, the financial scoring

⁹ In support of its position, BCG also points to the scoring methodology used by ITS' predecessor (New York State Chief Information Officer/Office For Technology), where "OSC upheld the protest to ITS as the RFP financial scoring methodology was flawed" (Appeal, at pg. 7, citing SF-20100156). However, the flaw at issue there was related to the agency's erroneous calculation of one component of the total cost "because [that component] does not approximate the costs that can be reasonably anticipated to be incurred under the contract" (SF-20100156, at pg. 7). By contrast, the RFP required offerors to use the financial workbook to submit cost components which were then used to auto-calculate a cost summary. BCG has not questioned the underlying method of calculating the individual cost components of the financial proposal, nor has our review of the procurement record revealed any inaccurate calculations. Thus, that rationale used to uphold the protest in that bid determination is inapplicable to the facts in the instant case.

methodology used by ITS “virtually guaranteed a contract award to the low bidder” (*see* Appeal, at pg. 8). We examine this issue in the section below, within the broader context of whether ITS complied with the requirements of State Finance Law § 163 and made an award on the basis of best value.

2. Best Value Determination

BCG asserts ITS failed to determine best value because “the cost components placed excessive weight on low base prices ...[and] other components of best value such as quality and efficiency were improperly discounted” (Appeal, at pgs. 9-10). ITS contends the RFP set forth evaluation criteria and methodology to which ITS adhered when scoring the proposals (*see* Answer, at pg. 5).

As stated above, SFL § 163(1)(j) defines best value as “the basis for awarding contracts for services to the offerer which optimizes quality, cost and efficiency, among responsive and responsible offerers. Such basis shall reflect, wherever possible, objective and quantifiable analysis.” Before rendering such an award, the agency must undertake a cost-benefit analysis and adopt an evaluation methodology reasonably designed to accomplish this result (*see Transactive Corporation v New York State Department of Social Services*, 236 AD2d 48 [1997], *aff’d* 92 NY2d 579 [1998]). In *Transactive*, the Court concluded that “[g]iven the fact that [the procuring State agency] subjected the proposals to technical and financial evaluations, we find that it engaged in the requisite cost-benefit analysis” (*Id.*, at 53).

Based on its experience with the current MNS, ITS created a procurement process that assigned relative weights to the costs proposed as well as the technical quality of proposals. The separate technical and cost evaluations produced a result that, in our opinion, reflects the requisite cost-benefit analysis to meet the standard set forth in the *Transactive* case.

Moreover, we conclude that the method of determining best value undertaken by ITS satisfied the requirements of SFL § 163(7), which requires the contracting agency to document “in the procurement record and in advance of the initial receipt of offers, the determination of the evaluation criteria, which whenever possible, shall be quantifiable, and the process to be used in the determination of best value and the manner in which the evaluation process and selection shall be conducted.”

A. Scoring of Financial Proposal.

BCG takes issue with the fact that while it received the highest technical score, it did not receive the maximum number of points allocable to the technical proposal. However, under the methodology used to score the financial proposals, the proposal offering the lowest price received full points (*see* Appeal, at pg. 9). Essentially, BCG is asserting that the evaluation was flawed since ultimately the determination of best value came down to the scoring of the financial proposals.

The NYS Procurement Guidelines (Guidelines) provide “Once the technical evaluation criteria have been determined, *values must be assigned to the criteria* and any sub-criteria”

(Guidelines, at pg. 35 [emphasis added]). With respect to conducting the cost evaluation, the Guidelines reference the two most common methods for comparing cost proposals: (i) comparison of life cycle costs; and (ii) conversion of price to a weighted point score, the method employed here by ITS (Guidelines, at pgs. 37-38). In the conversion of price to a weighted score method:

Points = (Lowest bid divided by the bid being evaluated) x cost points
(Guidelines, at pg. 38).

Here, we find ITS employed scoring methods for the cost and technical components that are consistent with the Guidelines. ITS developed an evaluation system that allotted 60 of the 100 available points to technical. While none of the offerors received technical scores near the full 60 points, ITS was not required to award the highest scoring proposal the full 60 technical points. Rather, ITS was required to score the technical proposal in accordance with the technical proposal evaluation tool that was established before the receipt of the initial bids. With regard to the financial proposal, consistent with the formula set forth in the RFP and commonly used by procuring agencies, ITS awarded the lowest cost proposal the full 30 points and the other cost proposals their respective relative points. Therefore, BCG's argument in this respect, which is based upon the results of the evaluation rather than the evaluation process used by ITS, is, in our view, without merit (*see* SF-20120274/SF-20120243).

B. Scoring of BCG's Technical Proposal.

BCG points to ITS' scoring of the support plan portion of its technical proposal as proof that ITS improperly discounted certain components of best value (*see* Appeal, at pg. 10). In its technical proposal, BCG proposed two help desk contact numbers, one line for subscribers and another for notifiers. BCG asserts this approach was more efficient and effective than providing a single line and "should have been awarded additional points...not be penalized" (*Id.*). ITS, however, determined two lines would be "cumbersome and inefficient" (Answer, at pg. 5).

BCG also claims its proposed single tenant solution should have earned a higher score (*see* Appeal, at pg. 9). ITS replies the RFP intentionally did not specify how an offeror could meet the MNS hosting requirements because "[b]y focusing on the business objectives and requirements, the RFP leaves it open to bidders to determine the most efficient way to meet those requirements. Such a process encourages creativity and competition" (Answer, at pg. 5).

Our review of the procurement record confirms ITS scored BCG's technical proposal according to the pre-established technical proposal evaluation tool. Generally, this Office accords deference to an agency in matters within that agency's expertise. Supporting MNS users and choosing which solution more closely aligns with the objectives stated in the RFP are clearly matters within ITS' realm of expertise and this Office is unwilling to substitute its judgment for that of ITS. Therefore, we find no basis to disturb ITS' assigned technical scores.¹⁰

¹⁰ Moreover, even *assuming arguendo*, BCG received the maximum number of points available for its support plan, qualified for a demonstration *and* received the full 10 points, BCG would still not have had the highest final composite score.

CONCLUSION

For the reasons outlined above, we have determined the issues raised in the Appeal are not of sufficient merit to overturn the contract award by ITS. As a result, the Appeal is denied and we are today approving the ITS/Everbridge contract for a mass notification system.