

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

In the Matter of the Bid Protest filed by
Republic Services of New York d/b/a Upstate Disposal
with respect to the procurement of
Solid Waste Disposal Services
by the State University of New York at Geneseo

Determination
of Bid Protest
SF - 20020289

December 19, 2002

We are in receipt of a protest filed by Cynthia A. Constantino Gleason, Esq., on behalf of Republic Services of New York d/b/a/ Upstate Disposal ("Upstate Disposal") in connection with a contract award by the State University of New York at Geneseo ("SUNY Geneseo") to Upstate Disposal for solid waste disposal services. The contract award to Upstate Disposal was rejected by this Office on the grounds that the solicitation issued by SUNY Geneseo did not contain a clearly stated method of award. Upstate Disposal challenges the action of this Office, alleging that the solicitation issued by SUNY Geneseo satisfied the requirements of Section 163 of the State Finance Law by describing and disclosing the general manner in which the evaluation would be conducted.

Unlike a commodities contract that is awarded on the basis of lowest price (State Finance Law §163(3)(a)(ii)), State Finance Law §163(4)(d) requires that a service contract be awarded on the basis of a best value determination. "Best value" means the offerer which optimizes quality, cost and efficiency (State Finance Law §163(1)(j)). State Finance Law §163(9)(b) requires that the solicitation issued by the procuring state agency describe and disclose the general manner in which the evaluation and selection shall be conducted and, where appropriate, identify the relative importance or weight of cost and the overall technical criterion to be considered in its determination of best value.

SUNY Geneseo reviewed the proposals received in response to its solicitation and made a contract award to the offerer submitting the lowest priced proposal (Upstate Disposal). While it is permissible for SUNY Geneseo to make an award for the required services solely on the basis of price (see Procurement Guidelines VI-1), this method of award must be disclosed to the offerers. The solicitation issued by SUNY Geneseo did not describe in general terms, or otherwise, how the evaluation and selection of the winning proposal would be conducted or that cost was the sole factor in its determination of best value.

Furthermore, we note that the solicitation issued by SUNY Geneseo required that an offerer provide information with its proposal in addition to the annual cost for the required services. With its proposal, the offerer was required to describe company's experience, experience of the company's managers and supervisors,

specifics as to how the services were to be provided, and any recommendations or suggestions (Summary of General Requirements). Since the general method of award and weight of cost was not disclosed in the solicitation, an offerer could have reasonably concluded that the additional information requested in the solicitation would be considered by SUNY Geneseo in its determination of best value.

The solicitation issued by SUNY Geneseo did not describe the method of award or the relative importance or weight of cost in its determination of best value and, therefore, did not satisfy the requirements of State Finance Law 163(9)(b). Accordingly, the contract award by SUNY Geneseo to Upstate Disposal resulting from this solicitation was properly rejected by this Office.

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