

THOMAS P. DINAPOLI
STATE COMPTROLLER



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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

September 3, 2009

Anne Winters-Bishop
CEO
YWCA of the City of New York
50 Broadway, 13th Floor
New York, NY 10004

Mary Ellen Clerkin
Assistant Counsel and Authorized Contract Officer
State Education Department
The University of the State of New York
Albany, NY 12234

Re: Bid Protest of State Education Department award of
21st Century Community Learning Center Funds
OSC SF-20090284

Dear Ms. Winters-Bishop and Ms. Clerkin:

This letter of determination is in response to the protest (hereinafter "Protest") filed by YWCA of the City of New York (hereinafter "YWCA") of the awards by the New York State Education Department (hereinafter "SED") for 21st Century Community Learning Center funds.¹

This Office has reviewed the issues raised in the Protest as part of our review of the proposed grant awards made by SED of 21st Century Community Learning Center funds. Based upon our review, we have determined that the evaluation and selection methodology used by SED for the proposed grant awards did not provide for the type of normalization that we would expect where, as here, there were significant differences in the scores of the same proposal by

¹ In addition, pending our review of the Protest, this Office received correspondence or protests from other former recipients of grant awards for the 21st Century Community Learning Center funds (Mosholu Montefiore Community Center, The Children's Aid Society, East Side House, and the New York City Mission Society) also raising concerns with respect to the evaluation/selection process used by SED for this fifth round of funding.

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the different evaluators.² While these shortcomings in the evaluation process do not violate any statutory requirement, we would normally require that the procuring agency either correct the shortcomings in the evaluation process and re-score the proposals (to the extent possible and consistent with law)³, or undertake a new procurement (while permitting a short-term interim contract).

In this case, however, because of the need to begin providing services as soon as possible and the number of proposals that were scored (over 300), it does not appear feasible to re-score the proposals. Therefore, the only option is to permit interim awards, based upon the existing scoring, pending a new procurement. Moreover, Federal law requires that such awards have a minimum term of three years (Title IV, Part B, Section 4203, of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001). Therefore, in order to assure the continuation of this vital program, this Office has advised SED, and SED has concurred, that the awards made pursuant to this procurement should be limited to a term of three years, rather than the five-year term of the proposed grant awards and that SED should undertake a new procurement for years after the 2011-12 grant period. SED and OSC have agreed that they will work collaboratively to establish improved evaluation methodologies and procedures for this new procurement.

Sincerely,



Charlotte E. Breeyear
Director, Bureau of Contracts

CEB:mea

² The protest by the YWCA also raises other concerns with the procurement, however, none of these issues go to the legal validity of the award, and, in light of our determination, we need not address such issues.

³ Section 163(7) of the State Finance Law would preclude any change in the evaluation methodology with respect to contracts awards subject to Article 11 of the State Finance Law, but Article 11 does not apply to grant awards to not-for-profit organizations.