

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

In the Matter of the Bid Protest filed by
Ingenix, Inc. with respect to the procurement of
Services to Create a Secure & Comprehensive
Medicaid Data Warehouse & Operational
Support for the Office of Health Insurance
Programs Data Mart conducted by the New
York State Department of Health

**Determination
of Bid Protest**

SF-20090314

Contract Number – C024937

February 2, 2010

This Office has completed its review of the above-referenced procurement conducted by the New York State Department of Health (hereinafter "DOH") and the bid protest filed by Ingenix, Inc. (hereinafter "Ingenix") with respect thereto. As outlined in further detail below, we have determined that the grounds advanced by the protestor are without sufficient merit to overturn the contract award by DOH. We therefore hereby deny the protest and are today approving the DOH contract with CMA Consulting Services (hereinafter "CMA").¹

BACKGROUND

Facts

On November 10, 2008 the DOH issued a Request for Proposals for the New York State Department of Health Medicaid Data Warehouse Replacement/ Office of Health Insurance Programs (hereinafter "OHIP") Data Mart Operational Support Project (hereinafter "RFP"). The successful vendor will be required to design, develop and implement a secure & comprehensive Medicaid Data Warehouse (hereinafter "MDW") and to provide operational support for the OHIP Data Mart. The purpose of the procurement was to create a new MDW capable of meeting the needs of the next decade. The program is necessary to store and maintain Medicaid data and to supply data to Data Marts maintained by State agencies and municipalities. One of the State Data Marts is the DOH OHIP Data Mart which supports research and analytical services for OHIP.

Prior to issuance of the RFP, the DOH developed an evaluation plan, prescribing five key technical evaluation areas, evaluation criteria applicable to the five technical evaluation areas, scoring sheets, relative weights of each the five technical evaluation areas, and evaluation team membership. The technical evaluation areas were: (1) firm capabilities; (2) technical requirements; (3) facilities management; (4) project management; and (5) business requirements. DOH selected best value as the basis for the award of a contract. The RFP delineated the minimum specifications and

¹ We are also today denying a protest to this procurement by Thomas Reuters (Healthcare), Inc.

requirements for a bidder to be considered responsive, and described, generally, the manner in which proposals would be evaluated. As stated in the RFP, the technical proposal value was weighted at seventy five percent (75%), and the cost value at twenty five percent (25%).

Proposals were due on February 9, 2009. DOH received a total of three proposals in response to the RFP from CMA, Ingenix and Thomas Reuters (Healthcare), Inc. (hereinafter "Reuters"). After reviewing the aforementioned proposals, DOH selected CMA's proposal and, in July of 2009, notified all of the proposers of the same. Ingenix requested a debriefing after receiving notice that CMA was the selected proposer, and a debriefing was provided on July 17, 2009.

On July 31, 2009 this Office received a letter of protest, filed on behalf of Ingenix (hereinafter "Protest") challenging the DOH award of the contract to CMA for the services sought by the RFP. A letter dated September 16, 2009 answering the allegations of the Protest was filed with this Office on behalf of CMA (hereinafter "CMA Answer"). A letter dated September 30, 2009 answering the allegations of the Protest was filed with this Office on behalf of DOH (hereinafter "DOH Answer").

Procedures and Comptroller's Authority

Under Section 112 of the State Finance Law (hereinafter "SFL"), before any contract made for or by a state agency, which exceeds fifty thousand dollars (\$50,000) in amount, becomes effective it must be approved by the Comptroller.² In carrying out the aforementioned responsibilities proscribed by SFL §112, this Office has issued Contract Award Protest Procedures that govern the process to be used when an interested party challenges a contract award by a State agency.³ These procedures govern initial protests to this Office of agency contract awards and appeals of agency protest determinations. Because there was no Protest process engaged in at the department level, the Protest is governed by this Office's procedures for initial protests.

In the determination of this Protest, this Office considered:

1. the documentation contained in the procurement record forwarded to this Office by DOH with the DOH/CMA contract;
2. the correspondence between this Office and DOH arising out of our review of the proposed DOH/CMA contract; and
3. the various correspondence/submissions from the parties and the attachments thereto, including:
 - a. Ingenix's July 31, 2009 Protest letter;
 - b. CMA's September 16, 2009 Answer to the Protest;
 - c. DOH's September 30, 2009 Answer to the Protest;

² SFL §112(2).

³ Comptroller's G-Bulletin G-232.

- d. Ingenix's October 13, 2009 Reply and Supplemental Protest Letter (hereinafter "Supplemental Protest");
- e. CMA's October 19, 2009 Answer to the Supplemental Protest Letter (hereinafter "CMA Supplemental Answer"); and
- f. DOH's October 28, 2009 Answer to the Supplemental Protest Letter (hereinafter "DOH Supplemental Answer").⁴

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.⁵ 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."⁶ A "responsive" offerer is an "offerer meeting the minimum specifications or requirements described in a solicitation for commodities or services by a state agency."⁷

SFL §163(9)(a) provides that "a state agency shall select a formal competitive procurement process The process shall include, but is not limited to ... a description of the required specifications governing performance and related factors; a reasonable process for ensuring a competitive field; a fair and equal opportunity for offerers to submit responsive offers; and a balanced and fair method of award."

SFL §163(9)(b) provides that the "solicitation shall prescribe the minimum specifications or requirements that must be met in order to be considered responsive and shall describe and disclose the general manner in which the evaluation and selection shall be conducted."

SFL §163(9)(c) provides that "[w]here provided in the solicitation, state agencies may require clarification from offerers for purposes of assuring a full understanding of responsiveness to the solicitation requirements."

ANALYSIS OF BID PROTEST

Ingenix' Protest to this Office

In its Protest, Ingenix challenges the procurement conducted by DOH on the following grounds:

⁴ We note that the parties provided other written materials during the course of this process which are not indicated in the list of documents cited herein.

⁵ SFL §163(10).

⁶ SFL §163(1)(j).

⁷ SFL §163(1)(d).

1. CMA is not a responsible proposer because it lacks the financial capacity necessary for a procurement of this size, scope and significance. Protest at 5-6 & Reply & Supplemental Protest at 7.
2. CMA is not a responsible proposer because it lacks the experience necessary for a procurement of this size, scope and significance. Protest at 6-10.
3. CMA is not a responsible proposer because it lacks the requisite integrity. This assertion was primarily based upon the indictment of Joseph Bruno, who was at the time CMA's Chief Executive Officer.⁸ Reply & Supplemental Protest at 9.
4. "The [DOH's] evaluation of the three competing proposals was not done in accordance with the RFP and State Procurement Guideline requirements, and this failed to fairly measure the three submissions." Protest at 11. Specifically,
 - a. "[t]he criteria were improperly weighted and scored." Protest at 12 & Reply & Supplemental Protest at 17.
 - b. "Ingenix' proposal was improperly evaluated." Protest at 18 & Reply & Supplemental Protest at 13 & 22.
 - c. The DOH technical evaluation team's composition prevented DOH from properly evaluating the proposals. Reply & Supplemental Protest at 21-22.

CMA's Response to the Protest

In its Answer, CMA contends that the Protest should be rejected and the award upheld on the following grounds:

1. DOH properly determined that CMA was a responsible proposer because "CMA has more than adequate financial capacity to undertake the contract," which was supported by the "considerable financial documentation" DOH required CMA to provide. CMA Answer at 4-5 & Reply & Supplemental CMA Answer at 3-7.
2. DOH properly determined that CMA has sufficient experience to undertake both the general technical and Medicaid specific responsibilities associated with the contract. CMA Answer at 6-8.
3. DOH properly evaluated and found CMA to be a responsible vendor, contrary to Ingenix' assertions regarding purported issues with respect to CMA's integrity. CMA Supplemental Answer at 7.
4. DOH's evaluation of the competing proposals was proper because

⁸ As discussed below, Mr. Bruno was subsequently convicted on two charges and immediately resigned from his position with CMA.

- a. "DOH properly balanced the technical knowledge and Medicaid knowledge of the respective bidders." CMA Answer at 9.
- b. "DOH's evaluation did not disregard any RFP requirements for 'Medicaid knowledge and experience.'" CMA Answer at 14.

DOH's Response to the Protest

In its Answer, DOH contends that the Protest should be rejected and the award upheld on the following grounds:

1. DOH properly determined that CMA was a responsible vendor because
 - a. DOH, in accordance with the Procurement Guidelines and State Finance Law, reviewed CMA's financial and organizational capacity, legal authority to do business in New York State, integrity and past performance. DOH Answer at 4.
 - b. DOH identified an 18 month period "where a potential cash flow shortfall of \$5.6M could possibly materialize" and received assurances that CMA would address the potential risk "through a combination of existing short term assets, a working capital loan and the infusion of cash by the main principal, Kay Stafford, should the need arise." DOH Answer at 4.
 - c. DOH reviewed and assessed the responsibility issue relating to the indictment of former Senate Majority Leader Joseph L. Bruno, utilizing both outside sources and the CMA written discussion of this issue. DOH Answer at 5.
 - d. DOH did not require CMA to provide a letter of credit in excess of the \$12,500,000 required stated in the RFP. DOH Answer at 5.
2. DOH properly determined that CMA had the requisite technical experience to undertake the responsibilities of the contract, which was the focus of the RFP, and "Medicaid program knowledge where appropriate." DOH Answer at 5-6.
3. DOH's evaluation of the three competing proposals was done in accordance with the RFP, applicable State Finance Law and the New York State Procurement Guideline requirements and fairly measured the three submissions. Specifically,
 - a. DOH stated in the RFP that the services being procured were primarily technical in nature and to be supplemented with specific Medicaid knowledge where appropriate, and that DOH would supply knowledgeable staff to work closely with the successful proposer. DOH Answer at 9.
 - b. DOH properly evaluated the proposals in accordance with the established evaluation methodology in accordance with State Finance Law and the New York State Procurement Guidelines. DOH Answer at 9-10.

DISCUSSION

Freedom of Information Request

We recognize that Ingenix sought a variety of documents from DOH under the New York State Freedom of Information Law (hereinafter "FOIL") which, presumably, Ingenix would have utilized in framing and supporting the issues identified in its Protest. Consistent with prior determinations of this Office, since issues raised in the FOIL process do not directly relate to the procurement process at issue, this Office does not consider FOIL issues as part of its review of bid protests, and therefore will not consider Ingenix' argument concerning asserted violations of FOIL. This Office does, however, as part of our review process review allegations that a protestor might assert, based on documentation in the procurement record, whether or not that documentation was made available to the protestor.

Financial Capacity

a. Responsibility:

The Protestor contends that CMA lacks the financial capacity to meet the requirements of the procurement and as such is not a responsible vendor.

DOH undertook a thorough review of CMA's financial capacity, which revealed a potential cash flow shortage of over five and a half million dollars could materialize during the course of the first eighteen months of the contract. To address this issue, DOH requested a plan from CMA as to how CMA would handle such a shortage, should it occur. CMA responded that it planned to address any potential cash flow shortage through a combination of existing short term assets, a working capital loan, and the infusion of cash by CMA's main principal, Kay Stafford, should the need arise. Additionally, Ms. Stafford provided documentation to DOH substantiating her ability to provide these resources. Based upon the financial documentation provided by CMA and CMA's plan to address any potential cash flow shortage, should one arise, DOH determined that CMA possessed the financial capacity to undertake this contract.

As part of this Office's pre-audit review of the proposed contract between DOH and CMA, a review of DOH's vendor responsibility determination was made. We are satisfied with DOH's review of the overall financial responsibility of CMA. As for the potential risk of a cash flow shortage during the first 18 months of the contract, there is no certainty that such an event will occur, and if one should occur, CMA has established a reasonable plan of action to prevent any delay in its performance to DOH. As such, we can find no basis to withhold approval of the contract on this ground.

b. Material Change to Proposal:

The Protestor further contends that the assurances sought by DOH to address any potential cash flow shortfall, and provided by CMA, constitute a material change to the CMA proposal. We do not agree.

DOH conducted a thorough review of CMA's responsibility, including the financial capacity of the company to perform the work sought in the RFP over the life of the contract. As part of that review, DOH determined that there was a potential cash flow

shortage, and requested that CMA explain how it would handle such a shortage, should one occur. As stated above, CMA provided a satisfactory plan to address this possibility should it arise. The CMA plan, provided in response to DOH's request, did not constitute a material change to CMA's proposal, as the plan provided did not advantage CMA or disadvantage any other bidder. At most, the CMA plan was a clarification to its proposal, which was authorized under §F.1 on page XII-16 of the RFP (see SFL §163(9)(c)).

To the extent that Ingenix' argument is predicated on CMA providing for a letter of credit above and beyond those provided for in the CMA proposal, such assertion is not correct. Based upon our review of the procurement record, it is clear to this Office that the Letter of Credit provided by CMA with its original proposal was for the requisite 12.5 million dollars set forth in the RFP, and was not supplemented to address any concerns that the DOH had regarding the potential cash flow problem.

Experience

As for the assertions in the Protest that CMA fails to meet the minimum experience qualifications of the RFP, this Office finds no merit to such argument.⁹

The RFP set forth certain minimum experience requirements, including the following:

The Offeror must discuss all relevant Corporate Experience, including large healthcare programs (e.g., Medicare, Medicaid, commercial insurance) contracts, within the last ten (10) years. As appropriate, Offerors should also list prime Contractors or subcontractors to the Offeror.

The Offeror must provide a minimum of three (3) project summaries that meet the requirements of Section XII.B.2 Proposal Requirements Experience, above. Offerors must provide the following items in the Project Summaries:

1. Title of the project;
2. Name of customer's organization;
3. Customer reference, title, and current telephone number;
4. Start and end dates of the original contract;
5. Total contract value (to the Offeror's organization; e.g., if Offeror was a subcontractor, specify subcontract dollar amount.);
6. Average staff hours in FTEs during operations; and
7. Brief description of scope of work (stress relevance to this contract). (Section XII.D.8.2. of the RFP)

⁹ Among other things, Ingenix contends that CMA is not a responsible proposer because it lacks the experience necessary for a procurement of this size, scope and significance, citing as support for its argument lack of prior experience in developing similar systems and RFP section XII.D.8.2. We note that the RFP does not contain a Section XII. D.2.8. However, as part of this Office's review of the RFP the text quoted by the Protest was found in Section XII.D.8.2 and, therefore, we assume that this was the intended reference.

Additionally, section XII.B.2. "Experience" provides that:

1. The Offeror shall submit evidence to the satisfaction of the Department that it possesses the necessary experience and qualifications to perform the services required including at least the following:
 - a. The Offeror must have a minimum of sixty (60) months of healthcare data analysis experience with Medicaid and/or health and human services organizations, or within other complex healthcare delivery systems such as managed care organizations **OR** the Offeror must have a minimum of sixty (60) months experience in the maintenance and implementation of a suite of commercial-off-the-shelf (COTS) software products for decision support systems within a healthcare delivery system;
 - b. The Offeror must have been the prime contractor for at least three multi-Terabyte data warehouse contracts that have included system design, development, implementation, maintenance and operations; and
 - c. The base data warehouse software product(s) proposed in response to this RFP must be installed and in productive use, in substantially the configuration proposed, by a paying customer external to the Offeror's organization or its corporate organization, for at least six (6) months prior to the due date for submission of proposals in response to this RFP. The purpose of the productive use requirement is to allow time for major defects to be detected and corrected in the Offeror's software, and to ensure that the proposed base software product has a record of proven use in customer environments prior to installation at the Department.
2. An offeror may be disqualified from receiving awards if such offeror or any subsidiary, affiliate, partner, officer, agent or principal thereof, or anyone in its employ, has previously failed to perform satisfactorily in connection with public bidding or contracts. (**emphasis added**)

A review of the procurement record demonstrates that CMA provided the requested information establishing the necessary experience, including the three (3) project summaries, required by the provisions above.

Also alleged in the Protest is the contention that CMA has little experience with Medicaid policy and programs and virtually no experience in implementing Medicaid Data Warehouses, and therefore lacks the experience to provide the requisite services sought in the RFP. Again, after a review of the procurement record, and subsequent auditing questions posed by this Office to DOH as part of the pre-audit process, this Office finds that CMA has the requisite Medicaid experience in light of the fact that CMA itself has experience working on technological programs in the Medicaid field, and key CMA staff, and subcontractors, have significant Medicaid related experience.

Integrity:

a. Former Senate Majority Leader Joseph Bruno:

Ingenix argues that CMA is a non-responsible vendor due primarily to the federal indictment of Former Senator Joseph Bruno, the CEO of CMA at the time the protest was filed.¹⁰ First, it is important to note that CMA's certified vendor responsibility questionnaires, submitted in relation to this procurement, have consistently disclosed, initially, the Federal Indictment, and now the conviction of Former Senator Joseph Bruno. Also, CMA included a written explanation with its certified vendor responsibility questionnaire to elaborate on the aforementioned disclosure regarding the Federal Indictment, which stated:

[o]ver the course of CMA's twenty-five years of service to New York State government, it has established a reputation for honesty and integrity. During this period, neither the Company nor its founder, Kay Stafford, has ever been the subject of criminal investigation or indictment.

In July, 2008, following a distinguished public career of over 32 years, Joseph Bruno, the State's former Senate Majority Leader, joined CMA as its Chief Executive Officer. In a well publicized event, Senator Bruno was recently indicted under federal charges. This indictment pertains exclusively to Senator Bruno's business activities while serving New York State as a public official and does not relate to CMA's business activities in anyway.

Further, it should be noted that Joseph Bruno has not been involved in any aspect of the subject agreement and shall not engage in efforts associated with this contract with the Office of the State Comptroller, or any other NYS Consulting Contract, until such time as the pending charges are fully and finally resolved in his favor. Too, should there be a change in the status of Senator Bruno's legal matter that might have an impact on this Contract, CMA will provide the OSC with full and immediate disclosure regarding same.

CMA remains unwavering in its commitment to the highest standard of Corporate Ethics, and to the provision of

¹⁰ We note that at the time of the protest was filed, there had not been a verdict with regard to any of the charges alleged by the Federal Government in the indictment of Senator Joseph Bruno. Subsequently, however, former Senator Joseph Bruno was found guilty of 2 of the 7 charges in the indictment. In light of these convictions, this Office required DOH to revisit the issue of vendor responsibility, including the submission of an updated vendor responsibility questionnaire. DOH after revisiting the issue of vendor responsibility again found that CMA was a responsible vendor. This opinion, where applicable, addresses the arguments raised by the Protestor accordingly.

exceptional service to the State.

While it is clear that an indictment or conviction of a company or senior official for a serious crime may justify a finding of non responsibility, (*In the Matter of Konski Engineers v. Levitt*, 49 N.Y.2d 850, *Matter of Schiavone Constr. Co. v. Larocca*, 117 AD2d 440), they do not in our opinion mandate such a finding. Rather, in making a determination concerning the responsibility of a vendor, we believe a government agency may consider not only any criminal indictment or conviction, but also, the circumstances involved and any curative action taken by the company, *See, Abco Bus Co. v Macchiarola*, 52 NY2d 938, *revg on dissenting memo of Hopkins*, J at 75 AD2d 831, 833.¹¹

Here as noted by CMA the activities for which Mr. Bruno was indicted, and convicted, related solely to his activities while a state senator and majority leader, prior to his employment by CMA; and they did not in any way relate to CMA or Mr. Bruno's activities at CMA. Furthermore, upon conviction Mr. Bruno resigned his position with CMA, and his ten percent stake in the company was recaptured by CMA without any compensation to Mr. Bruno.

In light of the foregoing considerations, this Office accepts the DOH decision to find CMA responsible despite the conviction of Former Senate Majority Leader Joseph L. Bruno.

b. December 30, 2009, NYS Inspector General Findings:

After all papers were submitted in this matter, the New York State Inspector General's Office issued findings relating to an investigation of CMA and one of its employees in connection with a State Agency contract. The Report was dated December 30, 2009, and found that the employee in question "did submit a false voucher for \$9,107.48 purporting to request payment for the movement of computer equipment when, in fact, it was for the requisition of five laptop computers." Following notice of the Inspector General's finding this Office is informed that CMA coordinated with the Office of Temporary and Disability Assistance to remove the employee from the premises and CMA immediately terminated the employee. DOH noted in its updated evaluation of CMA's responsibility review that, because of the appropriate actions taken by CMA upon learning of the employee's misconduct, DOH still considers CMA to be a responsible vendor. This Office accepts the DOH determination in this matter, and will not withhold approval of the contract on these grounds.

Evaluation

¹¹ In his dissenting opinion in the Appellate Division, which was adopted by the Court of Appeals in its reversal, Justice Hopkins, while concluding that New York City had a rational basis for finding the vendor non-responsible, clearly recognized that "the extent of the criminal record of petitioner's stockholders is a matter to be weighed by the board."

Finally, Ingenix argues that “[t]he [DOH’s] evaluation of the three competing proposals was not done in accordance with the RFP and State Procurement Guideline requirements, and this failed to fairly measure the three submissions.”

a. Criteria Weighting and Scoring:

Ingenix first contends that “[t]he [evaluation] criteria were improperly weighted and scored.” Ingenix states that “[t]he extreme emphasis on technical knowledge and de-emphasis of Medicaid knowledge were inconsistent with RFP objectives and contrary to New York State Procurement Guidelines.”

Addressing the RFP provisions first, Ingenix cites as support for its position various provisions within the RFP, which Ingenix argues makes it clear that the RFP focus was on Medicaid knowledge. Section IV.C of the RFP, set forth below in its entirety, fairly and clearly describes the focus of the services sought in the RFP:

NYSDOH believes that a highly skilled staff with a breadth and depth of data warehouse knowledge, skills and experience is essential for the successful implementation, operation and maintenance of the MDW. However, strong technical skills alone are not enough to guarantee that the data warehouse will be a success. NYSDOH also believes that the data warehouse technical skills of Contractor staff must be supplemented with a background in Medicaid.

The Contractor's staff will work closely with NYSDOH in all phases of the data warehouse contract and under the direction of designated NYSDOH staff. The Contractor's staff will provide knowledge transfer to NYSDOH's technical staff and to the data warehouse users. NYSDOH requires that staff designated as key and core staff, as well as required development staff, work at the primary project site as defined in RFP Section VIII Facility Requirements. This will enable direct interaction with NYSDOH, data warehouse users, publishers and subscribers, the eMedNY data warehouse contractor during Phase 1, and any new eMedNY fiscal agent. RFP at IV-15.

Additionally, Section IV.A of the RFP provides that

[t]he partnership between NYSDOH and the Contractor will be an opportunity to incorporate the expertise and knowledge of the Contractor into the design of NYSDOH's MDW. NYSDOH will commit knowledgeable staff who understand the eMedNY Data Warehouse and the OHIP Data Mart and will work closely with the Contractor. The overall success of the project will depend on the development of a close working relationship including

ongoing communications at all levels between the Contractor and NYSDOH. RFP at IV-1.

Furthermore, as written in the DOH Answer, “[o]f the 14 key and core staff positions identified with specific qualifications in the RFP, only 3 positions listed Medicaid subject area experience as mandatory and 5 additional positions listed this experience as desirable.”

Finally, the DOH Answer cited two additional examples as additional evidence that the intent of the RFP was to obtain technical expertise with specific supplemental Medicaid knowledge in limited areas. The first example was that the RFP required the vendor to re-platform the OHIP data mart, which DOH contends is “completely technical in nature,” requiring no Medicaid program knowledge. The second example of the technical nature of the RFP provided in the DOH Answer was that “Phase I of the MDW portion of the RFP requires the re-platforming of the Medicaid Data Warehouse, with minimal or no changes in the application functionality.” Since this service is not requiring changes to the functionality of the application, DOH points out that any vendor with data warehouse and system design experience should be able to provide satisfactory results.

Based on the foregoing, we concur with DOH that the services sought under this procurement were primarily technical in nature and supplemented by Medicaid program knowledge where appropriate, and the evaluation criteria was consistent with such. Therefore, the procurement was conducted in accordance with the aforementioned New York State Procurement Guidelines.¹²

b. Evaluation of Ingenix Proposal:

Preliminarily, we note that this Office will generally give significant deference to the determination of the procuring agency with respect to the evaluation and scoring of each proposal’s technical merits since the procuring agency is normally better suited to evaluate how well a proposal satisfies the technical requirements imposed by such agency.

Ingenix contends that its proposal “was improperly evaluated.” First, it is important to note that in reviewing the scoring sheets from the evaluation team for this procurement (including, the corresponding comments of the individual evaluators), and the RFP requirements, we find no evidence of bias in favor of or in opposition to any proposer. Additionally, we note that the comments of the evaluators are consistent with the scores given to each proposal. Consistent with both SFL §163, the New York State Procurement Guidelines and the evaluation methodology, the proposals were scored based on the information contained in the submitted materials. Further, our review of the procurement record leads us to conclude that the Ingenix proposal was evaluated

¹² To the extent that Ingenix is arguing that the criteria RFP should have placed greater weight on a proposer’s Medicaid knowledge and experience, this Office defers to the expertise of DOH with respect to which areas of technical proficiency are most important.

consistent with the evaluation methodology established by DOH, as well as the requirements of SFL §163 and the New York State Procurement Guidelines.

While Ingenix correctly states that Medicaid and Data Warehouse experience are relevant, these were DOH's primary concerns in the RFP. Ingenix alleges that "CMA misled evaluators by improperly aggregating its prior contracts in violation of the RFP requirements." As part of this Office's audit of the procurement, we reviewed the pertinent information relating to CMA's prior contracts that were relied upon to meet the RFP mandatory requirements, and are satisfied that CMA met these requirements.

Next, Ingenix argues that it was not properly given credit for the additional 1900 hours it proposed as part of its technical proposal. DOH counters that Ingenix misunderstood the requirements of the RFP and the language used by Ingenix in its proposal, actually "limited and restricted the service that was required." Based on this Office's review of the procurement record, it is clear that Ingenix did limit, rather than expand, the requirements within the RFP. However, even if Ingenix was correct and received the maximum number of points available in this category, Ingenix' score would still have been too low to change the outcome of the procurement. Therefore, such a mistake would be harmless error.

Finally, Ingenix contends that the DOH evaluators assigned to this procurement lacked the appropriate background. Since the evaluators were selected consistent with the established evaluation methodology and this Office has no basis to question the appropriateness of the evaluators, we will not withhold our approval of the contract based on this ground.

CONCLUSION

We find that the issues raised in the Protest are not of sufficient merit to overturn the award by the DOH to CMA and, therefore, the protest is denied and we are today approving the DOH/CMA contract.

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