

THOMAS P. DINAPOLI  
STATE COMPTROLLER



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ALBANY, NEW YORK 12236

STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

September 3, 2009

Donald Bluestone, M.S.W.  
Executive Director  
Mosholu Montefiore Community Center  
Ray and Charles Newman Building  
34500 Dekalb Avenue  
Bronx, NY 10467

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  
21<sup>st</sup> Century Community Learning Center Funds  
OSC SF-20090323

Dear Mr. Bluestone and Ms. Clerkin:

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

This Office has reviewed the issues raised in the Protest as part of our review of the proposed grant awards made by SED of 21<sup>st</sup> 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

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<sup>1</sup> In addition, pending our review of the Protest, this Office received correspondence or protests from other former recipients of grant awards for the 21<sup>st</sup> Century Community Learning Center funds (YWCA of the City of New York, 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 scores of the same proposal by the different evaluators. 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)<sup>2</sup>, 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. Breeyer  
Director, Bureau of Contracts

CEB:mea

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<sup>2</sup> 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.