

THOMAS P. DINAPOLI
STATE COMPTROLLER



110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

October 6, 2009

Mr. Robert H. Gutheil
Executive Director
Episcopal Social Services
305 Seventh Avenue
New York, NY 10001-6008

Ms. Karen Lopiccolo
Director, Bureau of Contract Management
NYS Office of Children & Family Services
52 Washington Street
Rensselaer, NY 12144-2796

Dear Mr. Gutheil and Ms. Lopiccolo:

Re: Bid Protest of Advantage After School Program awards
by the Office of Children and Family Services

This letter is in response to the protest (hereinafter "Protest") filed by Episcopal Social Services, Inc. (hereinafter "ESS") of the contract awards by the Office of Children and Family Services (hereinafter "OCFS") for the Advantage After School Program (hereinafter "AASP"). In May 2009, OCFS issued a Request for Proposals (hereinafter "RFP") for the AASP and awards were announced on July 30, 2009. Prior to that time, ESS had been providing after school services to children that attend MS 302 in the Bronx, and had been receiving funds pursuant to AASP. However, ESS was not selected to receive continued AASP funding resulting from the 2009 RFP. By letter dated September 3, 2009, ESS challenged the awards, claiming that the selection methodology and process used by OCFS was flawed. More specifically, ESS claims that "the experience and very positive track record of its existing program was not given sufficient, if any, weight," and that proper consideration of such would yield a higher score and, ultimately, a contract award.

Preliminarily, we note that normally the agency administering a contract or program is best suited to evaluate and score the individual proposals. As a result, where an agency has established and followed a reasonable and appropriate evaluation methodology, we will give deference to their scoring of individual proposals absent a compelling showing that such scoring is flawed.

OCFS answered the Protest by letter dated September 14, 2009, and described in great detail the process by which it selected winning bidders. In the letter, OCFS explained that proposals were divided by geographic region with ESS being grouped and, therefore, scored and ranked within the New York City, Bronx region. A specific portion of the overall funding was allocated to each region based on a pre-approved formula that considers the youth population between the ages of 5-17 years old. The process was very competitive. Indeed, of the 40 applications that were submitted for the New York City, Bronx region, only eight were awarded AASP funding.

A two phase evaluation process was utilized by OCFS. The initial phase consisted of a pass/fail review to determine whether mandatory criteria were met. Applications meeting these criteria were then subjected to review by two members of the OCFS Technical Review Team. Members of the Technical Review Team received training on the requirements as outlined in the RFP and each of the reviewers scored the applications separately.¹ The Technical Review Team employed an established evaluation tool to score several aspects of the applications, including the Program Development Plan and Activity Description, Pregnancy Prevention Activities, the School Partnership Agreement, Organizational Capacity and the Budget. These scores were then averaged. In addition, applicants could receive up to six more points if the school districts in which they proposed to serve met certain other priority criteria.² Any additional points were then added to the average score. Finally, applications were grouped by region and scores were ranked from highest to lowest. For the New York City, Bronx region, the cut-off score for funding was 97.5; ESS received an overall score of 94.5.

As explained by OCFS, ESS received nearly perfect scores with respect to its Organizational Capacity. This is the section of the review instrument that would pertain to ESS' past experience with the program and positive track record. Accordingly, OCFS has demonstrated that ESS' experience was positively acknowledged during the review process. Conversely, it is noted that ESS' scores in the Program Development Plan and Activity Description section were lower than other programs which were awarded funding in the same region.

Based upon our review, this Office is satisfied that: (i) the evaluation and selection methodology used by OCFS, established in advance of the proposals being received, was reasonable, fair and balanced; (ii) OCFS followed these pre-established protocols in scoring the proposals, including ESS'; and (iii) OSC has no basis to question

¹ If the two scores were more than 15 points apart, the two reviewers would meet to discuss the differences and revise the scores as appropriate. However, the scoring variation for ESS was within this 15-point threshold and, thus, this extra step was unnecessary for its application.

² More specifically, applications received two additional points for each of the following items: no other AASP in that school district, high poverty levels or high teen pregnancy rates in the school districts where AASP sites were to be located. ESS received four (4) additional points in this area.

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the individual scoring by OCFS. As a result, we are also satisfied that the awards are in the best interests of the State, and the Protest is hereby denied.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charlotte E. Breeyear".

Charlotte E. Breeyear
Director, Bureau of Contracts

CEB:mea