

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

In the Matter of the Bid Protests filed by De La Rue North America Inc. and MorphoTrust USA, Inc. with respect to the procurement of secure New York State Driver License/Identification Card documents conducted by the New York State Department of Motor Vehicles

**Determination
of Bid Protests**

**SF20120233
SF20120281**

January 30, 2013

Contract Number – C000751

This Office has completed its review of the above-referenced procurement conducted by the New York State Department of Motor Vehicles (DMV) and the bid protests filed by De La Rue North America, Inc. and MorphoTrust USA, Inc. (“De La Rue” and “MorphoTrust” respectively, and collectively referred to as “Protesters”) with respect thereto. As outlined in further detail below, we have determined that the grounds advanced by the Protestors are without sufficient merit to overturn the contract award by DMV. We, therefore, hereby deny the protests and are today approving the DMV contract with CBN Secure Technologies, Inc. (CBN-STI).

BACKGROUND

Facts

On March 12, 2012, DMV issued RFP #C000751 (RFP) seeking a company that could collect digital images of customers and produce secure New York State driver’s licenses and identification cards. Currently, De La Rue is providing these services to DMV using a teslin card solution. The RFP identified the criteria to be used for evaluation of proposals, disclosed to offerers that cost would account for 20% of the overall score and that, out of the five technical categories (totaling the remaining 80%), Document Security and Durability would account for 30% of the overall score. Alternative card solutions were permitted under the terms of the RFP. Since this was a procurement for services, consistent with the requirements of Section 163 of the State Finance Law (SFL), DMV selected best value as the basis for the award.

DMV received responsive proposals from three firms, De La Rue, MorphoTrust and CBN-STI. The technical proposals of De La Rue and MorphoTrust offered a

base card option, as well as some additional security features at a higher cost. De La Rue and MorphoTrust offered to produce cards using a teslin solution consisting of a core material that involves laser printing, embedded security features and lamination. Alternatively, CBN-STI proposed to use polycarbonate as its base material card solution with a laser engraving process that requires no adhesives or bonding layers. While the teslin cards would have a color photo of each customer, the polycarbonate process proposed by CBN-STI will utilize a black and white laser engraved image.

By letter dated June 22, 2012, DMV notified the Protesters that it planned to award the contract to CBN-STI. While CBN-STI's polycarbonate solution presented the highest price to the State, it was also found to be technically superior, particularly in the area of Document Security and Durability. Thus, notwithstanding that CBN-STI submitted the highest cost proposal and, therefore, received the lowest cost score, CBN-STI's proposal was deemed to be the "best value" (see SFL § 163). Shortly after being notified of DMV's selection, the Protesters filed protests with this Office, challenging DMV's decision to award the contract to CBN-STI and requesting that our Office refrain from approving the contract. In essence, the Protesters argue that this procurement process violated the SFL, was not based on a balanced and fair method and that the award to CBN-STI is not the best value to the State.

Procedures and Comptroller's Authority

Under SFL § 112(2), 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.

In carrying out the 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.¹ These procedures govern (i) initial protests to this Office of agency contract awards and (ii) appeals of agency protest determinations. Because the RFP issued by DMV did not provide for a protest process with DMV, the Protest is governed by this Office's procedures for initial protests filed with OSC (Section 3 of the Contract Award Protest Procedure).

In the determination of this Protest, this Office considered:

1. The documentation contained in the procurement record forwarded to this Office by DMV with the DMV/CBN-STI contract;

¹ OSC's Guide to Financial Operations (GFO) Chapter 11.17.

2. The correspondence between this Office and DMV arising out of our review of the proposed DMV/CBN-STI contract; and
3. The following correspondence/submissions from the parties (including the attachments thereto):
 - a. De La Rue's Protest, dated July 5, 2012
 - b. MorphoTrust's Protest, dated July 10, 2012
 - c. MorphoTrust's Additional Filing, dated July 24, 2012
 - d. De La Rue's Additional Filing, dated July 26, 2012
 - e. DMV's Answer to De La Rue's Protest and Additional Filing, dated August 23, 2012
 - f. DMV's Answer to MorphoTrust's Protest and Additional Filing, dated August 23, 2012
 - g. De La Rue's Reply, dated September 19, 2012
 - h. MorphoTrust's Reply, dated September 19, 2012
 - i. DMV's Answers to OSC's Questions Regarding the Protests, received via e-mail on November 21, 2012
 - j. De La Rue's Response to DMV's Answers to OSC's Questions Regarding the Protests, dated December 3, 2012
 - k. MorphoTrust's Responses to DMV's Answers to OSC's Questions Regarding the Protests, dated December 3, 2012
 - l. CBN-STI's Reply to De La Rue's and MorphoTrust's Responses to DMV's Answers to OSC's Questions Regarding the Protests, dated December 7, 2012
 - m. DMV's Reply to De La Rue's and MorphoTrust's Responses to DMV's Answers to OSC's Questions Regarding the Protests, received via e-mail on December 14, 2012

ANALYSIS OF BID PROTEST

De La Rue Protest to this Office

In its Protest (including its Additional Filing and Reply), De La Rue challenges the procurement conducted by DMV on the following grounds:²

1. The RFP did not sufficiently define the evaluation criteria and overall process.

² We note that the Protesters have also made arguments under the Freedom of Information Law (FOIL) that DMV has not appropriately responded to its respective requests for documents. We decline to address those arguments, however, since this Office is not the proper venue to raise such complaints. Nonetheless, in making our determination, we will review the entire procurement record which includes any documents purportedly withheld by the agency.

2. DMV selected an overly expensive proposal that does not afford the “best value.”
3. CBN-STI did not comply with a mandatory requirement of the RFP, namely the use of color for certain information.
4. This procurement process gives the appearance that the award was steered toward CBN-STI.
5. The Evaluation Sheet contained criteria not listed in the RFP.
6. DMV’s testing of the proposed solutions was unfair and partial.

DMV’s Answer to the De La Rue Protest

In its Answer, DMV contends the De La Rue Protest should be rejected and the award upheld on the following grounds:

1. DMV provided a breakdown of the evaluation criteria and the relative weights for each in the RFP in full compliance with the State Finance Law.
2. DMV conducted the requisite best value analysis, and made a sound policy decision to give more weight in this procurement to security and durability of the document than to cost.
3. CBN-STI included sample documents that provide for options in color that fully comply with the RFP requirements.
4. De La Rue’s assertion that the procurement was steered toward CBN-STI has no factual basis.
5. The Evaluation criteria were properly developed as part of the Evaluation Plan.
6. Testing of De La Rue’s proposed solution revealed security risks that negatively impacted its score.

MorphoTrust Protest to this Office

In its Protest (including its Additional filing and Reply), MorphoTrust challenges the procurement conducted by DMV on the following grounds:

1. CBN-STI could not have satisfied the RFP’s mandatory experience requirements.
2. DMV made mistakes in evaluating the technical proposals.
3. DMV did not afford enough weight to cost.

DMV’s Answer to the MorphoTrust Protest

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

1. CBN-STI met the required experience criteria through a combination of its experience and the parent company’s experience.
2. DMV’s Evaluation Team properly evaluated the technical proposals.

3. DMV employed a rational weighting of cost and the technical evaluation criteria.

DISCUSSION

The Protesters' arguments can be summarized into three categories: 1) the RFP was flawed under the State Finance Law; 2) DMV's evaluation deviated from the requirements of the RFP; and 3) DMV's technical conclusions and scoring were irrational. We will address each of these categories in turn below.

1. The RFP Was Flawed Under the State Finance Law

a. The RFP Did Not Sufficiently Describe the Evaluation Process

First, De La Rue argues that DMV's evaluation process and the technical criteria to be considered were not sufficiently described in the RFP and, further, that since DMV was vague about its evaluation process, the logical conclusion is that it revised the process after the submission of proposals in an attempt to steer the award toward CBN-STI.

SFL § 163(7) provides that, where the basis for award is best value, the state agency must establish "in advance of the initial receipt of offers, the determination of the evaluation criteria ... and the process to be used in the determination of best value and the manner in which the evaluation process and selection shall be conducted." In addition, the agency's 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][b]). Finally, the law requires that "where appropriate, the solicitation shall identify the relative importance and/or weight of cost and the overall technical criterion to be considered by a state agency in its determination of best value" (*id.*).

Thus, while § 163(9)(b) requires that that the RFP disclose the general manner by which proposals will be evaluated, and the relative weight of cost and technical components,³ § 163(7) requires only that the detailed evaluation methodology be finalized prior to the initial receipt of offers – which necessarily will occur after the issuance of the RFP.

Here, the procurement record submitted with this contract includes DMV's "Method for Evaluating Bidder Responses," which clearly predates the receipt of

³ While section 163(9)(b) requires disclosure of the relative weight of cost and technical components "where appropriate" it is generally our view that such disclosure is appropriate in the case of a competitive RFP for services.

offers and DMV has averred that its evaluation methodology was developed concurrently with the issuance of the RFP and finalized prior to the time that the proposals were opened. Therefore, the requirements of State Finance Law § 163(7) were satisfied.⁴ Thus, without any evidentiary support showing otherwise, De La Rue's argument that DMV impermissibly revised the evaluation methodology after the submission of proposals to favor CBN-STI is speculative and must be rejected.

Turning to the information that was required to be published in the solicitation, in this instance, the RFP detailed the minimum requirements for proposals to be considered responsive, and disclosed the categories by which DMV planned to evaluate proposals and their relative weight in the overall evaluation score (see RFP, generally and, in particular, Parts 3.8 and 3.9). Contrary to De La Rue's argument, further specifics regarding DMV's evaluation method and selection process were not required to be disclosed in the RFP. Thus, we are satisfied that DMV complied with the requirements of SFL § 163(9)(b).

b. DMV Improperly Minimized the Value of Cost

Both Protesters contend that cost was not given sufficient weight to arrive at the best value for the State. "Best Value" is defined, in relevant part, as "the basis for awarding contracts for services to the offerer which optimizes quality, cost and efficiency, among responsive and responsible offerers" (SFL § 163 [1][j]). Thus, as the definition makes clear, "best value" is a flexible concept based on a balancing of the cost and the technical benefits of each proposal that turns on the particular circumstances of a given procurement.

The leading case interpreting the requirement for best value procurements is *Transactive Corporation v. New York State Department of Social Services*, 236 A.D.2d 48 (3d Dept. 1997, *aff'd on other grnds*, 92 N.Y.2d 579 [1998]). In *Transactive*, the Appellate Division reviewed a procurement of a complex electronic benefit transfer system. The procuring agency awarded the contract using a competitive range methodology, whereby the cost proposals were first evaluated and scored and technical scores were only considered for those proposers offering a cost that fell within 10% of the lowest cost proposal. Since no other responsive proposer submitted a cost proposal that fell within 10% of the lowest cost proposal, the award was ultimately made without considering any technical scores. One of the grounds asserted in the challenge of the award was that this methodology did not result in a best value award as required by SFL § 163. The Appellate Division rejected this argument, among others, and upheld

⁴ We interpret this provision as requiring that the detailed evaluation methodology be finalized prior to the opening of proposals by the agency.

the contract award.⁵ With respect to the method of award of a service contract, the Court stated:

In awarding a contract for services, a State agency **generally** cannot rely solely on price as the determinative factor but must engage in a cost-benefit analysis since State Finance Law § 163(10) provides that such a contract must be awarded on the basis of best value..." (emphasis supplied).⁶

The Court noted, however, that the agency issued an RFP with extensive technical requirements and established criteria for the evaluation of both the technical and cost proposals. The Court found that the use of a competitive range was permissible since the agency had engaged in the requisite cost-benefit analysis, stating that:

such procedure embodies a cost-benefit analysis as it reflects a determination that where a price proposed by a responsive and responsible bidder is lower than a price offered by another bidder by a stated percentage, any increase in value embodied in the higher price will be offset by the cost savings of the lower priced proposal.⁷

The issue presented in this protest is somewhat the converse of that in *Transactive*, i.e., whether the relatively low weight afforded cost in this procurement violated the requirement that the contract be awarded on the basis of best value. We believe that the clear import of the decision in *Transactive* is that cost can be given a substantially lower weight than technical merit provided that such weighting is based on an appropriate cost-benefit analysis. A cost-benefit analysis necessarily requires subjective judgments concerning the potential for meaningful technical variances between responsive proposals and the potential value to the State from such technical variances. Typically, the more value that exists in potential technical variances between proposals, the more weight that can be allotted to technical factors with, concomitantly, less weight afforded to cost.

Consistent with the foregoing, we believe that substantially more weight may be afforded to technical merit than to cost where such weight is based upon a determination that: (i) there is a real potential for significant and meaningful

⁵ Prior to the commencement of litigation, the procurement under review in *Transactive* had been the subject of a bid protest to this Office, and we also rejected the protest and approved the contract (see SF19960095). The Court's decision thus ratified the determination of this Office.

⁶ *Transactive*, 236 A.D.2d at 53.

⁷ *Transactive*, 236 A.D.2d at 53-54.

technical differences between responsive proposals; (ii) such potential differences would provide additional benefit and value to the State; and (iii) such additional benefit and value would justify potentially greater costs. In the first instance, such determinations must be made by the procuring agency, potentially subject to review by this Office. Generally, this Office will give substantial deference to agency determinations concerning the benefits of potential technical differences between responsive proposals, particularly where such determinations are within the expertise of the agency. However, even where an agency has appropriately given a high weight to technical merit, we must also be satisfied that the actual result is not unreasonable.⁸

In this case, we are satisfied that DMV, consistent with the standards outlined above, appropriately determined that technical merit should be afforded 80% of the weight in determining best value – with only 20% weight being afforded to cost. Specifically, the production of secure driver's licenses and identification cards is a highly specialized procurement of services. While the RFP was clear about what was expected from the winning bidder in terms of technical quality and program implementation, it left open to the bidders' discretion how those requirements would be met. This flexibility provided for the potential of a wide range of technical differences between proposals. Recognizing that, in the case of this specialized procurement, those potential technical differences could be quite significant to the interests of the State, DMV decided prior to issuing the RFP that Document Security and Durability should be the most important evaluation category and, therefore, assigned it a weight of 30%. The remaining four technical categories, which related primarily to overall program implementation (rather than the documents themselves), were collectively afforded a weight of 50%. DMV rated cost second highest after Document Security and Durability, assigning it a weight of 20%. In addition, DMV set a maximum price cap of \$2.50 in the RFP for the Standard DL/ID cards (which accounted for 50% of the total cost score) to ensure that, regardless of the who won on the technical side, the price offered would not be exorbitant. Based on

⁸ Even where an allocation may have been reasonable in theory, it must also be reasonable in result. Where a very high weight is afforded to technical factors, there is the risk that a substantially superior technical proposal will receive such a high score on technical factors, that such proposal will ultimately receive the highest overall score – even where its cost proposal provides for exorbitant and unjustifiable costs. For example, if cost is given a weight of 10 points (with 90 points allotted to technical factors), a proposal that receives a technical score that is more than 10 points greater than the second highest ranked technical proposal will necessarily receive the highest overall score, even where its proposed cost is double, triple or even 50 greater than the costs of the second highest ranked technical proposal (which could be a very good technical proposal). Clearly, at some point such additional cost cannot be justified. Where there is such a large difference between the cost of the highest and second highest scored technical proposal, we require justification from the procuring agency for the increased cost. Here, as outlined in the text, while the difference in cost between CBN-STI and both De La Rue and Morpho Trust is undoubtedly substantial, we are satisfied that such additional costs are justified based upon DMV's reasoned determination that the increased technical advantages of CBN-STI's proposal (primarily its greater security) warrant such increased costs.

the foregoing, we are satisfied that the weighting utilized by DMV reflected an appropriate cost-benefit analysis.⁹

Furthermore, while we recognize that the procurement ultimately resulted in an award to a vendor with a significantly higher cost, we are satisfied that DMV appropriately determined that such additional costs are justified in this case. Based on its research and expertise, DMV expressly opined following its evaluation that the technical variances present in CBN-STI's solution provides substantially greater document security and durability. DMV's expert testing of the sample documents provided by the bidders led it to conclude that the absence of laminated layers, as well as the Level 1 security features in the polycarbonate-based card, offered the best resistance to tampering, counterfeiting and fraudulent presentation of cards. In addition, DMV repeatedly noted in response to the protests that CBN-STI had provided the most detailed and comprehensive explanation of how it intended to implement its document production operations in a manner that provided for a smooth and secure transition from the current vendor. For these reasons, DMV appropriately determined that the benefits of CBN-STI's technical superiority warranted the extra cost to the State.¹⁰

2. DMV's Evaluation Deviated from the Requirements of the RFP

a. CBN-STI Did Not Meet Mandatory Requirements

i. *Price Cap*

Both Protesters argue that the proposal submitted by CBN-STI did not comply with certain mandatory requirements of the RFP. First, De La Rue contends that CBN-STI "probably" exceeded the \$2.50 price cap since it offered to use a

⁹ This Office also disagrees with De La Rue that DMV's May 2011 letter advising De La Rue that the agency must reduce expenditures for the 2011-12 fiscal year provides an "obvious implication that low pricing would be critical to the selection process" for the current procurement. The expenditures under this contract are for a different fiscal year and, more importantly, the RFP clearly disclosed the weighting of the evaluation criteria, showing that cost would account for 20% of the overall score. Any reasonable bidder would have recognized that the letter they received as the prior contractor was not controlling upon this procurement.

¹⁰ While De La Rue attempts to rely on a recent decision of the Maryland State Board of Contract Appeals for its argument that cost was improperly minimized (*see L-1 Secure Credentialing, Inc.*, MSBCA 2793 [2012]), that reliance is misplaced. First, that decision is not controlling on this Office. Moreover, the facts are distinguishable. In the Maryland case, the Board concluded that there was insufficient evidence to conclude that the procuring agency conducted the requisite cost-benefit analysis in accordance with the method prescribed by the RFP. There, the RFP specified that cost would be given equal weight to all technical components combined. The Board held that this was not accomplished or at least not documented. Here, under DMV's pre-established evaluation methodology, cost accounted for 20% of the overall score and the procurement record submitted by DMV shows that the scoring was conducted in accordance with such terms. Thus, while the Maryland Board found that the procuring agency had not afforded enough weight to cost, that finding was based on the fact that the agency had not followed the method set forth in the RFP. Here, that is not the case. DMV followed its pre-established evaluation methodology.

polycarbonate solution. This assertion is belied by the record. Indeed, a review of CBN-STI's proposal indicates that CBN-STI offered a price below the cap for the Standard DL/ID card.¹¹

ii. *Color Requirements*

Second, De La Rue argues that the RFP both expressly and implicitly required use of color for certain data on the card, and that a polycarbonate solution only offers black and white. Item 8.2.4 of the RFP required "color options for demographic data and information tags" (emphasis added). While De La Rue contends this was an express requirement for color features, the RFP clearly only required that a proposal contain options for color for "demographic data and information tags" (that could be evaluated and scored by DMV). The sample documents provided by CBN-STI in its proposal did include options for color that fully comply with this requirement of the RFP. In addition, we disagree with De La Rue that RFP Items 8.1.2, 8.2.9 and 8.4.3 "implicitly" require the use of color. Item 8.1.2 required card formats to accommodate 90 distinguishable designs; Item 8.2.9 required bidders to describe how its product will provide "maximum flexibility" in the design of the card; and Item 8.4.3 required bidders to offer security features that are readily identifiable to the general public without aides or special training. Based upon our review, we do not believe that any of these requirements implicitly requires the use of color and we are satisfied that CBN-STI's proposal met these requirements.

Morpho Trust also argues that CBN-STI's proposed polycarbonate solution would not comply with security requirements set forth in the federal regulations implementing the REAL ID Act of 2005, since those regulations require use of a color photograph. However, we need only note that Morpho Trust cites a federal regulation that has since been amended to allow for use of a black and white photo as offered here by CBN-STI (see 49 CFR 383.153 [a][4], as amended by 76 FR 26854, 26892, May 9, 2011; see also 6 CFR 37.17 [e][2]). Furthermore, we note that the RFP did not require the use of color in the facial image on the card. Therefore, CBN-STI's proposal violated neither the RFP's requirements nor current federal law or regulations.¹²

iii. *Mandatory Experience Requirements*

¹¹ Although we have confirmed that the price offered by CBN-STI was below the cap set by DMV, we do not deem it necessary or appropriate to publish what that price was in this determination prior to the award becoming final.

¹² Use of color as opposed to black and white was also an issue in the Maryland case. There, however, the RFP as well as Maryland state law actually did require a color facial image.

Morpho Trust argues that CBN-STI failed to meet the RFP's mandatory experience requirements. Section 2.6.2 of the RFP required (1) at least five years of experience in the secure printing industry for government entities; (2) the production of identification documents for at least three government entities other than DMV; and (3) contact information for references for each of the three government entities listed where the bidder performed similar services.¹³ While Morpho Trust notes that CBN-STI has only one prior contract with the Commonwealth of Virginia, we find that CBN-STI satisfied the requirement through a combination of its own experience and that of its parent corporation, Canadian Bank Note Company, Limited (CBN).

DMV's response to Question 3 in Addendum 2 to the RFP stated that DMV would "consider the experience and qualifications of a parent and/ or wholly owned subsidiary if it will be a signatory to the contract, or the bidder can otherwise guarantee that the parent and/ or subsidiary will participate and be responsible for the delivery of the goods/services for the duration of the contract." In this regard, CBN-STI included the required parent company guarantee from CBN in the proposal submitted to DMV, and such guarantee was made part of the contract executed by the parties (see Contract Article III, Appendix-B). Thus, as part of its proposal, CBN-STI submitted its experience as well as the experience of CBN. CBN is a Canadian corporation with more than 100 years of experience in providing identification documents and currency for governments. Given the guarantee provided, along with DMV's representation in response to Question 3 in Addendum 2, we find it was proper for DMV to consider the experience of CBN and find that CBN-STI had met the mandatory experience requirements.

b. DMV Used Evaluation Criteria That Were Not Disclosed in the RFP

Upon receiving several documents in response to its FOIL request, De La Rue asserted that DMV's evaluation sheet contained "concealed" criteria that were not contained in the RFP. Specifically, Items 8.2.1 and 8.3.4 of the RFP required bidders to describe all material components of their standard and enhanced card solutions. On DMV's evaluation sheet, the criteria for this item stated that use of polycarbonate would be rated higher for these items and, indeed, where De La Rue received 50% of the total points for "meet[ing the] basic requirement" by offering laminated teslin layers, CBN-STI was awarded the full point value. Similarly, where Item 8.4.7 required at least one Level 1 security feature to be either laser engraved or laser perforated, the criteria stated that laser engraving would be rated higher. For this item, CBN-STI received full points for its laser engraved option, while De La Rue received half of the total points since it met the basic requirement by offering a laser perforated feature.

¹³ Notably, this experience requirement was not limited to government entities in the United States.

We disagree with De La Rue that these preferences (which were contained in the pre-established evaluation instrument) improperly created evaluation criteria not disclosed in the RFP, or that they afforded CBN-STI an unfair advantage. The RFP was clear about what was required in order to be responsive and the evaluators considered all proposals that met such requirements. As discussed previously, while DMV was required by SFL § 163(9)(b) to disclose in the RFP the general manner by which proposals will be evaluated and the relative weight of cost and technical components, it was not required to disclose the detailed evaluation methodology in the RFP. Rather, SFL § 163(7) requires only that the detailed evaluation methodology be finalized by the procuring agency prior to the date of the initial receipt of offers.

Further, the criteria on the evaluation sheet (which, again, was created as part of the evaluation methodology prior to the initial receipt of offers) constituted general instructions to the evaluators as to *how* the pre-established requirements were to be scored. These criteria were based on the research and expertise of the DMV staff who crafted the RFP, following a Request for Information process that assisted in developing the scoring system. Again, there was no requirement that DMV disclose this scoring system to the bidders in the RFP and, moreover, there is no indication that this scoring system was disclosed to CBN-STI or that CBN-STI was otherwise given insider knowledge or afforded an unfair advantage when formulating its proposal. All bidders were given the same information and were free to create the card solution that they deemed most successful under the terms of the RFP. Based on its technical expertise, DMV concluded that a polycarbonate solution provided greater value, and should be scored higher; and the evaluators, in accordance with pre-established evaluation criteria, properly scored CBN-STI's proposal higher because it offered such a solution.

3. DMV's Technical Conclusions and Scoring Were Irrational

a. There is No Rational Basis for DMV's Conclusion that CBN-STI Should Receive a Higher "Experience and Expertise" Score

Morpho Trust argues that it was irrational for DMV to conclude that CBN-STI deserved a higher score in the Experience and Expertise category in light of Morpho Trust's "extensive record" of providing secure identification documents in 42 States, compared with the fact that CBN-STI has only been in existence for four years and has only provided similar services on one contract with Virginia. While we accept for purposes of this analysis that Morpho Trust has a greater range of experience in the production of U.S. driver's licenses, we nonetheless find DMV's conclusions on this technical category to be rational.

Under the pre-established evaluation criteria, two-thirds of the “Experience and Expertise” score was based on responses to Part 17 of the RFP – titled “Implementation.” This included nine factors wherein each bidder described its detailed plan for project management, staff qualifications, transition plan, and training plan. The remaining one-third of this category was based on the survey responses of the bidders’ references (bidders were required to provide three references). While each bidder was required to meet the minimum experience requirements of section 2.6.2, the evaluation of this component was structured such that no points were given for additional past project experience. All three bidders met the minimum requirement of three prior similar contracts (with CBN-STI relying on CBN for two of its references) and a review of DMV’s evaluation tool shows that CBN-STI received a higher score for its proposed implementation plan (in response to the items in Part 17) as well as on the combined survey responses of its references. Thus, it was the structure of the evaluation methodology for this component that accounts for why a newer company with relatively less experience, such as CBN-STI, could score higher than Morpho Trust under “Experience and Expertise.”¹⁴

b. There Is No Rational Basis for the Morpho Trust’s Low Score in Other Technical Categories

Morpho Trust makes several arguments that DMV improperly penalized its score on items in the other technical categories of Image Capture Device and Issuing Office Requirements, Production and Quality Control, Site and Data Security and Document Security and Durability. Generally, Morpho Trust asserts that it provided sufficiently detailed responses on all items under these technical categories and there is no justification for the fact that it ranked third overall.

Notwithstanding the Comptroller’s broad contract review authority under SFL § 112, this Office generally gives significant deference to agency determinations regarding factual issues which are within the agency’s technical expertise. Here, DMV issued an RFP that required detailed and highly technical responses. DMV, as the state agency charged with producing the State’s secure

¹⁴ While we initially questioned DMV as to how factors such as project management, transition plan implementation, staff resources and training fell within the scope of “Experience and Expertise,” DMV explained that it decided to set minimum qualifications for past project experience, and focused the majority of its scoring in this category on project implementation “upon which the future success of a project can be judged ... in order to properly assess a vendor’s ability to achieve delivery success” (DMV’s Answers to OSC’s Questions Regarding the Protests, received via e-mail on November 21, 2012). Further, we note that while this was at issue in the Maryland case (and the Maryland Board found that the agency’s determination that CBN-STI should be ranked higher in the Experience category was erroneous), the structure of that procurement’s evaluation was very different. While, in that instance, the decision of the Maryland agency was found to be entirely devoid of evidentiary support, here, the scoring is consistent with a review of planned project implementation (along with references), not merely the volume of past experience.

identification documents, employs security and investigative professionals who have extensive experience and expertise in this arena. It was this staff that was tasked with evaluating the technical proposals currently at issue. Thus, where the technical conclusions of this evaluation team are supported by the procurement record and are consistent with the pre-established evaluation criteria, this Office will not disrupt them.

Here, a review of DMV's evaluation tool reveals that, while Morpho Trust met the basic requirement on various technical items in question, in the opinion of the evaluation team, Morpho Trust lacked additional substantive details that could have provided the basis for a higher score as "exceeding" the basic requirement.¹⁵ Indeed, the evaluation team noted in one instance that Morpho Trust's response was "highly colloquial" and "lacked technical details." At its debriefing, the evaluation team also advised Morpho Trust of several other items where it could have earned more points by providing a more comprehensive response. Accordingly, we accept the evaluation team's determination to score many of Morpho Trust's responses as simply meeting the basic requirement and, as such, we accept those scores as proper.

c. There Is No Rational Basis for CBN-STI's High Score in Other Technical Categories

While acknowledging that it does not have access to CBN-STI's technical proposal or evaluation materials, Morpho Trust nonetheless argues that DMV also failed to recognize critical problems with CBN-STI's proposed solution. Indeed, Morpho Trust contends that, in light of the vast difference in pricing, the only way that that CBN-STI could legitimately have won is if DMV found that its card security was substantially superior. In this regard, Morpho Trust argues that it offered a laminate card that is more secure and more highly rated than polycarbonate blends and, thus, any conclusion that CBN-STI's card is superior was irrational.

The scoring of the proposals by DMV was consistent with its pre-determined evaluation methodology. The award to CBN-STI resulted from the fact that it scored substantially higher than the Protesters in the most heavily weighted technical category of Document Security and Durability. Indeed, DMV asserted that CBN-STI was awarded the contract based on a determination that it offered a "substantially superior card and the comprehensive documentation to support their bid" (DMV's Answer to Morpho Trust Supplemental Filing, at 17). It is also apparent that this score was to a large extent based on the results of testing that

¹⁵ Conversely, the evaluation team documented its findings that CBN-STI (and De La Rue in some instances) provided a more comprehensive response resulting in higher scores. This was particularly true in the category of Document Security and Durability, which as noted above, accounted for 30% of the final score.

DMV conducted on the sample documents provided by the bidders. According to DMV, when testing the Protesters' teslin documents, it was able to successfully deconstruct, alter and re-laminate their provided samples. Conversely, DMV was unable to successfully make any alterations to the CBN-STI samples.

The Protesters have both asserted that this testing by DMV was one-sided, unfair and partial in that it only focused on weaknesses with lamination, but did not similarly attack weak points of polycarbonate cards. When this Office questioned DMV on this point, DMV responded that its testing of the samples "attempted to simulate commonly made alterations using publicly available tools, e.g. knives, glue etc." Furthermore, DMV stated that "[t]he testing included attempts to lift any security laminate or layer in order to gain access to variable printed information on the documents" (DMV's Answers to OSC's Questions Regarding the Protests, received via e-mail on November 21, 2012).

Notably, we acknowledge that this description of the testing seems to uniformly attack a laminated solution only, and apparently does not address certain alleged flaws in the solid monolithic structure of a polycarbonate card. That being said, DMV has provided an explanation for this approach, namely that while attempts to separate layers of a teslin card and alter information could successfully result in a reassembled card, the same is not true of tampering with polycarbonate. More specifically, DMV asserts that any attempt at degrading a polycarbonate card by common household solvents will be easily recognized and will render the card useless. DMV also avers that, conversely, during the course of this procurement it was successfully able to alter the Protesters' teslin samples in such a manner that would not be recognizable to the naked eye. The implication is that integrity testing that attacks the weakness of polycarbonate would be fruitless since the result is unusable.¹⁶ Also, in response to the questions posed by OSC, DMV provided a lengthy and detailed analysis of the reasons that it concluded that the solution offered by CBN-STI was in fact substantially more secure than the Protesters' offers (DMV's Answers to OSC's Questions Regarding the Protests, received via e-mail on November 21, 2012). Although those reasons have been substantively challenged by the Protesters, we find that DMV's determination is reasonable and substantiated by the record. Therefore, this Office will give deference to the agency determination concerning matters within its expertise.

¹⁶ We note that the Maryland Board came to a different conclusion on this point. Specifically, the Maryland Board found that the evaluation team improperly afforded excessive weight to the fact that the teslin card could be separated and altered while the polycarbonate card could not. There, however, the Board specifically noted that the scoring advantage was not warranted since the evaluation team did not successfully reassemble the teslin card and, thus, once tampered with, it was rendered unusable. The facts of this procurement, as asserted by DMV, are distinguishable since DMV has averred that, in this instance, it was able to successfully reassemble the samples provided by the Protesters.

d. DMV's Evaluation of Sub-Factors Within the "Document Security and Durability" Category Was Irrational

Morpho Trust argues that the manner in which DMV scored the sub-factors within the Document Security and Durability category was irrational and inconsistent with the stated evaluation criteria. Within this category, DMV assigned more potential points to items requiring a description of the materials to be used for card production and the level of ease with which the public could verify security features (see RFP Items 8.2.1 [15 points], 8.2.12 [15 points], 8.3.4 [10 points], 8.4.3 [10 points]). Morpho Trust argues that these factors are merely "peripheral" to document security and that, other factors such as "features which protect the sensitive data" (see RFP Item 8.4.1 [4 points]) and "providing the maximum resistance to compromise attempts" (see RFP Item 8.4.6 [3 points]), were only allotted a combined seven points which is irrational and inconsistent with the RFP's stated evaluation criteria.

We disagree. This is another argument where the Protester is challenging a determination of DMV that was based on its technical expertise. DMV assigned the most points to the sub-factors that it determined were most important in card security and durability – card construction, manufacturing and security features. Given its significant knowledge and expertise, we defer to DMV in its determination to assign a relatively high weight to these sub-factors, including DMV's decision to place a high emphasis on base materials, which appears to be a critical component to document security. Since these sub-factors clearly relate to document security and durability, DMV's decision to place a high emphasis on them is neither irrational nor inconsistent with the stated evaluation methodology. Therefore, Morpho Trust's argument that this sub-factor weighting warrants a rejection of the procurement fails. Notably, our review of DMV's evaluation shows that CBN-STI also scored higher than the Protesters on the sub-factors noted above that Morpho Trust claims should have been giving the most points (see RFP Items 8.4.1 and 8.4.6). So, even if DMV had weighed the sub-factors as Morpho Trust suggests, CBN-STI still would have come out ranked first.

As noted above, Morpho Trust also argues that the actual scores assigned to its proposal for these sub-factors were inconsistent with the stated evaluation criteria. In particular, Morpho Trust contends that its responses on these items – including its offer of a certain specialized laminate card – clearly exceeded the basic requirement and, therefore, it was irrational for DMV to have awarded it anything less than the full point values. However, in DMV's judgment, Morpho Trust merely met the basic requirement on two of these sub-factors (see RFP Items 8.2.1 [7.5 out of 15 points], 8.4.3 [5 out of 10 points]) and, on the other two, while Morpho Trust met the requirement, DMV opined that its responses lacked

sufficient comprehensive details resulting in an even lower score (see RFP Items 8.2.12 [3.75 out of 15 points], 8.3.4 [2.5 out of 10 points]). In essence, Morpho Trust is asking this Office to substitute its own technical judgment for that of DMV. Based upon its expertise in this area, DMV has provided a reasonable explanation as to why Morpho Trust's responses in these areas were somewhat deficient, and we again choose to defer to the procuring agency's determination regarding what was a proper score for Morpho Trust's proposal to receive on these items.

e. DMV's Evaluation of the Alternative Card Options Was Irrational

Finally, Morpho Trust argues that DMV's irrational technical evaluation is confirmed by the fact that it assigned identical scores for Document Security and Durability to the alternative card options proposed by both Protesters. More specifically, Morpho Trust contends that since this technical category had 41 different criterion and the alternate options clearly offered different features, there is no way that both options would end up with identical scores unless DMV ignored the technical differences and did not properly evaluate the alternate solutions. This argument is speculative and DMV has provided a sufficient explanation in response. DMV explained that it evaluated the multiple card options as it said it would in the RFP, and that its technical evaluation team concluded that the second card options provided no additional value in terms of Document Security and Durability. As a result, the Protesters' technical proposals were scored on the base card option, since that provided the most favorable cost score to the Protesters (i.e., the base card was offered at a less expensive price). While DMV did not go into detail as to why the alternative card options did not, in its expert opinion, provide any additional security, we defer to its technical expertise in this area. Therefore, this argument also cannot form the basis for a rejection of the proposed contract to CBN-STI.

CONCLUSION

For the reasons outlined above, we find the issues raised in the protest are not of sufficient merit to overturn the award by DMV to CBN-STI. As a result, the protest is denied and we are today approving the DMV/CBN-STI contract.