

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

In the Matter of the Appeal filed by LMGI, Ltd. with
respect to the procurement of Medicaid Fraud
Investigative Services by the New York State Office
of the Medicaid Inspector General

**Determination
of Appeal**

SF20130258

Contract Numbers – C201301, C201302, C201303

August 28, 2013

The Office of the State Comptroller has completed its review of the above-referenced procurement conducted by the New York State Office of the Medicaid Inspector General (OMIG) for Medicaid Fraud Investigative Services and the Appeal filed by LMGI, Ltd. (LMGI) of the protest determination issued by OMIG with respect thereto. We have determined that the grounds advanced by LMGI are insufficient to merit overturning the contract awards by OMIG. We, therefore, deny the Appeal and are today approving the OMIG contracts with Trooper Tech, Inc. (Trooper Tech), Summit Security Services, Inc. (Summit Security), and MSA Investigations, Inc. (MSA).

BACKGROUND

Facts

On December 14, 2012, OMIG issued an Invitation for Bid (IFB) to acquire a total of fifteen contract Medicaid investigators supplied through investigative firms. The investigators work undercover, conduct Credential Verification Reviews, and provide surveillance-related activities of health care providers and others suspected of defrauding the Medicaid Program. OMIG was specifically looking for investigators that are representative of the multicultural population of the Downstate New York region, where most of the work will be conducted.

Eight bids were received by the January 30, 2013 due date. After bid opening, a compliance evaluation took place to evaluate bids to determine whether the bids were complete and responsive. Subsequent to the compliance evaluation, the bids underwent a technical evaluation of the bidder's mandatory qualifications, individual investigator's mandatory qualifications, and bidder's references. The technical evaluation was scored on a pass/fail basis. OMIG found that the bid submitted by LGMI did not satisfy the mandatory requirements of the IFB and, therefore, failed the technical evaluation and was excluded from consideration.¹ The bids that passed the technical evaluation were then ranked from lowest priced to highest priced and an award was made to the three lowest bidders: Trooper Tech, Summit Security and MSA.

¹ Four other bids failed the technical evaluation and were excluded from consideration.

By letter dated April 29, 2013, LMGI filed a protest with OMIG. By letter dated May 21, 2013, OMIG responded to LMGI's protest. By letter dated June 3, 2013, LMGI submitted an appeal to this Office (Appeal) and by letter dated June 14, 2013, OMIG submitted an answer to the Appeal. In its Appeal, LMGI argues that OMIG's evaluation of bids was inconsistent with the evaluation methodology set forth in the IFB.

Procedures and Comptroller's Authority

Under State Finance Law §112, before any contract made for or by a state agency, which exceeds fifty thousand dollars in amount, becomes effective it must be approved by the Comptroller.

To carry out its contract review and approval responsibilities under 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.² These procedures govern initial protests to this Office of agency contract awards, contract awards made by this Office, and appeals of agency protest determinations. Since this is an appeal of OMIG's protest determination, the Appeal is governed by Section 4 of the Contract Award Protest Procedures.

In the determination of this Appeal, this Office considered:

1. The documentation contained in the procurement record forwarded to this Office by OMIG with the OMIG/Trooper Tech, OMIG/Summit Security and OMIG/MSA contracts;
2. The correspondence between this Office and OMIG arising out of our review of the proposed OMIG/Trooper Tech, OMIG/Summit Security and OMIG/MSA contracts; and
3. The following correspondence/submissions from the parties (including the attachments thereto):
 - a. LMGI's Protest to OMIG, dated April 29, 2013;
 - b. OMIG's Answer to the Protest, dated May 21, 2013;
 - c. LMGI's Appeal to OSC, dated June 3, 2013; and
 - d. OMIG's Answer to the Appeal, dated June 14, 2013.

DISCUSSION

In the Appeal, LMGI argues that OMIG's evaluation of bids was inconsistent with the evaluation methodology set forth in the IFB. Specifically, LMGI asserts that: 1) the number of bilingual investigators it proposed was undercounted; and 2) OMIG failed to investigate resume submissions prior to award of the contracts. Additionally, LMGI asserts that OMIG failed to report allegations of corruption to the Office of the New York State Inspector General.

² Comptroller's G-Bulletin G-232.

Bilingual Investigator Requirement

Section V of the IFB set forth the Mandatory Technical Requirements for bids. Section V, subsection 5(c) required that:

[a] minimum of forty (40) percent of the resumes submitted from their investigative staff must be fluent in both English and one of these second languages (i.e. If five (5) resumes are submitted, one (1) must have Russian as a second language and one (1) must have Spanish as second language):

- i. Russian,
- ii. Spanish,
- iii. Chinese,
- iv. Korean,
- v. Hindi, and/or
- vi. Urdu.

LMGI submitted fifteen individual investigator resumes with its bid. Of the fifteen investigator resumes submitted by LMGI, only five of the investigators spoke one of the second languages listed in the IFB. LMGI asserts that the bilingual requirement was ambiguous and that its bid satisfied the IFB requirement since one of its investigators speaks English and two of the languages listed in Section V, subsection 5(c) of the IFB.

The IFB clearly and unambiguously stated that forty percent of the “resumes” submitted from a bidder’s investigative staff must satisfy the bilingual requirement. The requirements of Section V, subsection 5(c) were also reiterated in response to questions related to this requirement raised by prospective bidders.³ Had LMGI believed that this requirement was unclear or ambiguous, LMGI was afforded the opportunity to seek further clarification from OMIG and should have done so. To meet the forty percent requirement stated in the IFB, LMGI would have had to submit individual resumes for six investigators that speak English and one of the languages listed in Section V, subsection 5(c).

Since LMGI’s bid did not satisfy the mandatory requirement of Section V, subsection 5(c) of the IFB, OMIG properly disqualified LMGI’s bid.

Verification of Bilingual Skills

LMGI claims that OMIG failed to verify that the bilingual investigators proposed by Trooper Tech, Summit Security and MSA were, in fact, bilingual and as such, OMIG lacked a rational basis to award the contracts. OMIG states that: (i) all bidders were treated equally with respect to this mandatory requirement; (ii) bidders were required to include a statement attesting to the accuracy of the information contained within their bid submissions; and (iii) OMIG reserved the right to interview proposed investigative staff to ensure that the bilingual requirements were satisfied prior to making final awards.

Section V, subsection 5(c) of the IFB provides that “OMIG reserves the right to interview those investigative staff identified to ensure the multicultural and language requirements are met

³ See Question and Answer 37 and Question and Answer 59, dated January 14, 2013.

prior to final award.” While it is clear that OMIG reserved the right to conduct interviews to ensure the IFB requirements were satisfied, such interviews were not mandatory and, therefore, were not a necessary prerequisite to contract award. Additionally, as part of the procurement process, bidders were required to attest to the accuracy of the information provided with their bids.⁴ A false attestation by a bidder would provide a basis for OMIG to terminate the contract and conduct a review of the bidder’s responsibility. As such, we do not believe that OMIG was required to conduct interviews of proposed investigators to verify bilingual skills prior to the award of the contracts.

Notification to the NYS Inspector General

LMGI claims that, in violation of New York State Executive Law §55, OMIG failed to report allegations of corruption to the Office of the New York State Inspector General (IG) and the awards of the contracts should be postponed until this Office completes an audit of OMIG. Executive Law §55 provides that “[e]very state officer or employee in a covered agency shall report promptly to the state inspector general any information concerning corruption. . .by another state officer or employee relating to his or her office or employment, or by a person having business dealings with a covered agency relating to those dealings.” As stated in LMGI’s Appeal, the IG’s office contacted LMGI and informed LMGI that its complaint letter was received and referred for investigation.

To date, the IG has not issued any public report, or taken any public action, with respect to this complaint. Under these circumstances, and in the absence of any indication that the IG has evidence of improper actions by OMIG, or one of the entities awarded a contract, we will not suspend this Office’s review of the proposed contracts. In this respect, we note that, consistent with this Office’s normal procedures, we have conducted a vendor responsibility review of Trooper Tech, Summit Security and MSA, and have not found any evidence that would warrant a finding of non-responsibility.

CONCLUSION

For the reasons outlined above, we find that the issues raised in the Appeal are insufficient to merit overturning the protest determination of OMIG, and, therefore, the Appeal is denied. As a result, we are today approving the OMIG/Trooper Tech, OMIG/Summit Security and OMIG/MSA contracts.

⁴ IFB, Section VIII Administrative Requirements, subsection (J) Bidder Certification Requirements.