

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

In the Matter of the Protest filed by Iron Mountain Determination
with respect to the procurement conducted by the
New York State Office of the Attorney General for **SF20130582**
Records and Evidence Storage Services
Contract Number – C103061

February 12, 2014

The Office of the State Comptroller has completed its review of the above-referenced procurement conducted by the New York State Office of the Attorney General (OAG) for records and evidence storage services. We have determined that the grounds advanced by Iron Mountain are insufficient to merit the overturning of the contract award made by OAG, and, therefore, deny the Protest. As a result, we are today approving the OAG contract with Mullen Brothers, Inc., d/b/a The Archive (The Archive) for the records and evidence storage services.

BACKGROUND

Facts

On September 23, 2013, OAG issued a Request for Proposal (RFP) seeking proposals from qualified companies for the purpose of awarding a single five (5) year contract for various evidence and record storage services. OAG received two proposals in response to the RFP by the October 15, 2013 due date, one from The Archive and the other from Iron Mountain.

The RFP provided that proposals would be evaluated on the basis of technical merit (experience, plan of operation, facility inspection, and past performance/references) and cost/pricing. The technical proposal was worth 70% of the score and cost was worth 30%. A bidder's technical and cost scores would be combined, and the bidder with the highest total score would be awarded the contract. OAG conducted an evaluation of the proposals and, on November 12, 2013, issued a conditional award to Iron Mountain. Subsequently, OAG became aware that it had made an administrative error in the scoring process that required a recalculation of the overall scores. After such recalculation, The Archive was the bidder with the highest total score and OAG made a conditional award to The Archive.

By letter dated December 13, 2013, Iron Mountain filed a protest of OAG's contract award to The Archive with this Office.

Procedures and Comptroller's Authority

Under State Finance Law (SFL)§112, generally before any contract for, or by, the State, which exceeds \$50,000, 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.¹ Since this is an initial protest of OAG's contract award, the process is governed by Section 3 of the Contract Award Protest Procedures.

In the determination of this Protest, this Office considered:

1. The documentation contained in the procurement record forwarded to this Office by OAG with the OAG/The Archive contract;
2. The correspondence between this Office and OAG arising out of our review of the OAG/The Archive contract; and
3. The following correspondence/submissions from the parties (including the attachments thereto):
 - a. Iron Mountain's protest to this Office, dated December 13, 2013;
 - b. OAG's Response to the Protest, dated January 7, 2014; and
 - c. Iron Mountain's reply email, dated January 7, 2014.

DISCUSSION

In its Protest, Iron Mountain challenges the technical evaluation process conducted by the OAG in light of the discrepancies in the scoring of its by proposals by the evaluators. Specifically, Iron Mountain questions how one evaluator could have given its proposal a score of "66.5/70 – 95% grade while another evaluator gave Iron Mountain a score a 42.7/70 – 64% grade." Additionally, Iron Mountain questions the subjectivity of the technical scoring of the proposals.

The technical evaluation of the proposals accounted for 70% of the overall scores. The proposals were evaluated on a 100 point system, with the technical scores being allotted 70 points – so that the maximum technical score that a proposal could receive from an evaluator was 70 points.

The technical evaluation scores for the proposals were as follows:

Evaluator	Iron Mountain	The Archive
Evaluator #1	49.50	47.00
Evaluator #2	67.45	70.00
Evaluator #3	43.20	46.45
Total	160.15	163.25
Technical Score	53.38	54.42

¹ Guide to Financial Operations, Chapter IX.17.

There is clearly a disparity between the numerical scores assigned by the three evaluators. The scores of two of the evaluators were relatively close (in the 40s), while one evaluator scored the proposals much higher (high 60s and 70). However, when comparing the scores assigned to the competing proposals by the individual evaluators, the scores are relatively consistent. All three evaluators viewed the two proposals as being fairly even with respect to their technical merit, with no evaluator scoring one proposal more than 7% lower than the score of the other proposal. Accordingly, it would appear that the perceived disparity in scoring is merely a factor of the individual evaluator's scoring philosophy (i.e., two relatively hard scorers as compared to one relatively easy scorer). Since the evaluators viewed the proposals as relatively even with respect to technical merit (with two evaluator's seeing The Archive's proposal as marginally superior and one seeing Iron Mountain's proposal as marginally superior), the award of the contract was ultimately determined by the cost scores. Since The Archive's cost proposal was \$317,332.62 less than that of Iron Mountain, it received the full 30 cost points, whereas Iron Mountain received only 25.91 points. As a result, The Archive was properly determined to provide best value in accordance with the pre-established scoring methodology since its total score was 68.09 as opposed to the total score for Iron Mountain of 63.28.²

As to Iron Mountain's concern with regard to the subjectivity of the technical scoring, initially we note that unless an evaluation is based on a mathematical formula (as with most cost evaluations), technical evaluations inherently have some degree of subjectivity. In this instance, the RFP sets forth the technical criteria upon which the proposals would be evaluated and the relative weight assigned to the various elements: (i) Proposer's experience – 20%; Proposer's Plan of Operation – 40 %; Proposer's Facility Inspection – 5%; and Proposer's Past Performance/References – 5%. The evaluators were provided with the following rating instructions with respect to the evaluation of the elements making up the technical score:

Points	Definition
1-20	Little or minimal information
21-40	Addresses the basic premise of the criterion
41-60	Meets the criteria
61-80	Exceeds the criteria
81-100	Significantly exceeds the criteria

The evaluators' scores for the individual technical elements were multiplied by the weighted factor for the element for a weighted score. The weighted scores were then combined to arrive at the total technical score for the proposal.

² In conjunction with our audit of the proposed contract, we determined that the cost evaluation conducted by the OAG incorrectly extended certain charges in The Archive's proposal (the error did not impact on Iron Mountain's total cost), and thus overstated The Archive's total cost by \$576,000. As a result, The Archives total cost proposal was actually \$893,332.62 less than Iron Mountain's cost proposal. When this correction is applied to the cost evaluation methodology, The Archive's cost proposal continues to receive the full 30 point, but Iron Mountain's cost score is reduced to 18.48, thus significantly increasing the margin by which The Archive is determined to be the best value offerer. Additionally, since the incorrect cost was reflected in the contract originally submitted by the OAG, we returned the contract to the OAG so that the cost to the State in the executed contract correctly reflected the lower total cost to the State. This correction was made, and the contract we are approving today reflects such lower cost.

Our review of the procurement record leads us to conclude that the proposals were evaluated in accordance with the evaluation methodology established by the OAG prior to the receipt of the bids, and this evaluation methodology was consistent with the information set forth in the RFP.

CONCLUSION

For the reasons outlined above, we have determined that the issues raised in the Protest are not of sufficient to merit to overturn the contract award by OAG. As a result, the Protest is denied and we are today approving the OAG/The Archive contract for records and evidence storage services.