

THOMAS P. DiNAPOLI  
STATE COMPTROLLER



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STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

October 16, 2014

Ronald Carara  
Chief of Administration  
Office of the District Attorney  
Richmond County  
130 Stuyvesant Place  
Staten Island, NY 10301

Dear Mr. Carara:

Re: VOCA Grant Program Application  
#OVS01-VOCA-2014-00101

This Office is in receipt of your letter dated August 13, 2014, protesting the funding award made by the New York State Office of Victim Services (OVS) with respect to the grant application submitted by the Richmond County District Attorney's Office (RCDA) for funding under the Victims of Crime Act Victim and Witness Assistance Grant Program (VOCA Program). You assert that because of an ambiguity in the application instructions, RCDA failed to include certain information in its application in response to the Request for Proposals (RFP) issued by OVS and, as a result of such omission, funding for your application was reduced from \$132,273 to \$20,743.

The RFP required that "[a]ll submissions must include the following two Tasks from the Objectives and Tasks portion of the Online Application section. **Any other applicable tasks from that section must also be included in this section of the Applications**" (emphasis added) (RFP, Page 24). The RFP goes on to list the two tasks referenced. It appears that, on the online application, you only provided the first two tasks listed in the RFP and provided performance measures for only those two tasks, even though you assert that other tasks and performance measures were applicable and should have been provided in RCDA's application.

The RFP language bolded above clearly stated that any other applicable tasks should be included in the application. As indicated by OVS, the tasks, performance measures, and objectives provided by RCDA did not support the need for funding of 2.96 full time employees, and thus RCDA's funding request was reduced based upon the need justified by the information provided in its application.

Since RCDA attributes its failure to submit necessary information in response to the RFP to confusion using the new Grants Gateway online application system, RCDA asks that it now be allowed to resubmit its application. Initially, we note that it does not appear that any other bidders experienced confusion with respect to submitting information on this portion of the application. Additionally, it is well-settled law that a state agency may not waive noncompliance with a bid specification if it is material or substantial. A variance is material or substantial when it would impair the interests of the procuring agency, place the bidder in a position of unfair economic advantage, or place other bidders at a competitive disadvantage. *Cataract Disposal, Inc. v. Town of Newfane*, 53 N.Y.2d 266, 440 N.Y.S.2d 913 (1981); *Fischbach & Moore v. NYC Transit Authority*, 79 A.D.2d 14, 435 N.Y.S.2d 984 (2<sup>nd</sup> Dept. 1981); *Le Cesse Bros. Contr. v. Town Bd. Of Town of Williamson*, 62 A.D.2d 28 (4<sup>th</sup> Dep't 1978); *Application of Glen Truck Sales & Service, Inc. v. Sirigano*, 31 Misc2d 1027, 220 N.Y.S.2d 939 (1961).

At this late stage of the procurement process, waiving RCDA's noncompliance with the bid specifications and allowing RCDA to resubmit its bid would place other bidders at a competitive disadvantage, especially bidders who also received reduced funding or no funding at all due to noncompliance with the bid specifications. As a result, such waiver would be material and, thus, impermissible.

Based on the foregoing, the funding determination made by OVS with respect to RCDA's application is supported by the procurement record. Therefore, this Office does not find sufficient merit to uphold your protest and will proceed in its review of the grant awards. The role of OSC's protest review is to ensure the integrity of the process. However, our Office does not evaluate the merit of applications or the agency's programmatic needs which is the responsibility of the Office of Victim Services.

While, unfortunately, RCDA did not receive the full amount of funding requested from OVS under the current VOCA Program, we hope that you will continue to pursue other funding opportunities that New York State makes available.

Sincerely,



Charlotte E. Breyear  
Director of Contracts