

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

In the Matter of the Bid Protest filed by MorphoTrust USA, Inc. with respect to the procurement of an Automated Knowledge Testing System conducted by the New York State Department of Motor Vehicles

**Determination
of Bid Protest**

SF-20140371

Contract Number – C000812

January 16, 2015

The Office of the State Comptroller has completed its review of the above-referenced procurement conducted by the New York State Department of Motor Vehicles (DMV) for an Automated Knowledge Testing System. We have determined that the grounds advanced by MorphoTrust USA, Inc. (MorphoTrust) are insufficient to merit the overturning of the contract award made by DMV and, therefore, we deny the Protest. As a result, we are today approving the DMV contract with Applus Technologies, Inc. (Applus) for an Automated Knowledge Testing System.

BACKGROUND

Facts

In March 2014, DMV issued a Request for Proposals (RFP) for the procurement of an Automated Knowledge Testing System. The RFP sought the delivery of interactive hardware and software which would be contractor-owned, managed, and maintained, but used by the State at DMV locations where driver license knowledge tests are administered (RFP, at § 1.1). This project was intended to increase efficiency in DMV’s test environments and help prevent occurrences of cheating and fraud.

Since this was a procurement for services, consistent with the requirements of State Finance Law (SFL) section 163, the method of award was based on best value. The RFP provided that proposals would be evaluated based on the following criteria and weighting: Technical/Programmatic (how well the proposed system meets DMV’s goals and objectives) (40%); Implementation/Deployment of the proposed system (20%); Cost (25%); and Experience and Expertise (references based on minimum qualifications) (15%) (RFP, at § 9-4).

In April 2014, DMV issued an addendum to the RFP (Addendum 2) that set forth revised mandatory experience qualifications for offerors. Specifically, it required offerors to have “at least five (5) years of verifiable experience creating, implementing and operating a testing system similar in nature, size and scope to the project described in this RFP” (RFP, at § 8-1, as amended by Addendum 2). Furthermore, Addendum 2 required each proposal to contain an Experience Statement citing “five (5) current or recently completed projects that are similar in nature, size and scope to the project described in this RFP” (RFP, at § 8-2, as amended by Addendum 2). Offerors

were expected to provide references who could verify this experience (RFP, at Appendix D, Business Experience and Reference Forms).

DMV received three proposals in response to the RFP and disqualified one, leaving only the proposals of MorphoTrust and Applus for consideration. On July 30, 2014, MorphoTrust received DMV's notification that DMV had rendered a contract award to Applus, pending approval by this Office. Thereafter, by letter dated August 12, 2014, MorphoTrust filed a protest with our Office, asserting that Applus did not meet the mandatory experience qualifications of the RFP.

Comptroller's Authority and Procedures

Under section 112(2) of the State Finance Law (SFL), with certain limited exceptions, 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 aforementioned responsibilities proscribed by SFL § 112, this Office has issued a Contract Award Protest Procedure that governs the process to be used when an interested party challenges a contract award by a State agency.¹ This procedure governs initial protests to this Office of agency contract awards and appeals of agency protest determinations. Because there was no protest process engaged in at the department level, the Protest is governed by section 3 of this Office's procedure for initial protests.

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/Aplus contract;
2. The correspondence between this Office and DMV arising out of our review of the proposed DMV/Aplus contract; and
3. The following correspondence/submissions from the parties (including the attachments thereto):
 - a. The Protest, submitted by MorphoTrust on August 13, 2014.
 - b. DMV's Answer to the Protest, submitted by DMV on October 3, 2014.

Applicable Statutes

The requirements applicable to this procurement are set forth in SFL Article 11 which provides that contracts for services shall be awarded on the basis of "best value" to a responsive and responsible offerer.² Best value is defined as "the basis for awarding contracts for services to

¹ OSC Guide to Financial Operations, Chapter XI.17.

² SFL §163(10).

the offerer which optimizes quality, cost and efficiency, among responsive and responsible offerers.”³ A “responsive” offerer is an “offerer meeting the minimum specifications or requirements described in a solicitation for commodities or services by a state agency.”⁴

SFL § 163(7) further provides that “[w]here the basis for award is the best value offer, the state agency shall document, in the procurement record and in advance of the initial receipt of offers, the determination of the evaluation criteria, which whenever possible, shall be quantifiable, 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.”

Finally, SFL § 163(9)(b) provides that the “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.”

ANALYSIS OF BID PROTEST

Protest to this Office

In its Protest, MorphoTrust challenges the procurement conducted by DMV on the following grounds:

1. Applus is ineligible for award of the contract because it could not have met the RFP’s mandatory experience requirements.

Response to the Protest

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

1. Applus met the mandatory experience requirements of the RFP.

DISCUSSION

Experience Requirement 1: Awardee Must Have at Least Five Years of Experience

Section 8-1 of the RFP required offerors to have “at least five (5) years of verifiable experience creating, implementing and operating a testing system similar in nature, size and scope to the project described in this RFP.” In response to this requirement, Applus submitted a total of seven Experience Statements detailing projects performed by Applus. In accordance with DMV’s standard procedures for reviewing proposals where the bidder provided more experience statements than required, DMV evaluated the first five experience statements listed in Applus’

³ SFL §163(1)(j).

⁴ SFL §163(1)(d).

proposal (after excluding a DMV reference). Based on our review, these five experience statements appear to satisfy the requirement of Section 8-1. The five experience statements related to projects ranging in time from 2003 to the time of proposal submission in May 2014. One project in particular, performed by Applus for the State of Connecticut Department of Motor Vehicles, started in 2003 and was ongoing as of the time Applus submitted its proposal. This project appears to be similar in nature, size and scope to the project described in the RFP. Indeed, under the contract with Connecticut, Applus commissioned, operated and maintained the hardware and software for a vehicle emissions testing system that was provided at 225 different testing stations and administered over 1.1 million tests annually.

We do not agree with MorphoTrust's argument that the projects offered by Applus to satisfy the experience requirements should have been rejected because they do not relate specifically to knowledge testing. Technical specifications related to knowledge testing were separately evaluated and scored as part of the Technical/Programmatic category, which delineated distinct project-specific criteria in Sections 2, 3, 4, 5 and 6 of the RFP. Section 8, dealing with Experience and Expertise, focused instead on the offeror's overall ability to successfully manage a project "similar in nature, size and scope." According to DMV, the Experience and Expertise standard merely required that the proposer's prior experience relate to projects that have similar characteristics, functionalities and scope to the project described in the RFP (DMV's Answer to the Protest, at pg. 3, n. 2). In evaluating the offerors' experience, DMV was looking to ensure that the successful offeror could not only meet project technical requirements, but also adhere to project schedules, properly train staff and provide quality customer service. DMV's interpretation of this standard is consistent with the evaluation criteria specifically set forth in Section 8-2 of the RFP which provided that:

The Experience Statement and related references will be evaluated to assess the proposed Contractor's ability to meet the terms of this RFP, including, but not limited to:

- Ability to meet project technical requirements;
- Ability to adhere to project schedules and meet milestones;
- Communication and responsiveness;
- Staff quality and continuity;
- Quality of system documentation, training materials, and reports;
- Quality of hardware and software;
- References' overall satisfaction with Project. (RFP, at Section 8-2).

Based on our review of this criteria as applied to Applus' Experience Statement, we believe that the project that Applus performed for Connecticut alone satisfies the mandatory minimum experience requirement of Section 8-1.

Experience Requirement 2: Awardee Must Have Performed at Least Five Prior Projects

Section 8-2 of the RFP required offerors to cite "at least five (5) current or recently completed projects that are similar in nature, size and scope to the project described in this RFP." To determine whether Applus had met the requirement, DMV used the same five experience

statements that were evaluated for the Section 8-1 requirement. Again, MorphoTrust argues that these projects were nonresponsive to the requirement since they do not relate to testing a driver's knowledge but, rather, to skills testing or vehicle emissions testing. For the same reasons as set forth above, we do not believe that knowledge testing experience was required in order to satisfy the "similar in nature, size and scope" requirement. The past or current projects offered by Applus appear to have similar characteristics and functionalities as the project described in the RFP, and also appear to be similar, if not larger, in scope. As a result, we conclude that Applus met the mandatory minimum experience requirements of Section 8-2 of the RFP as well.

CONCLUSION

For the reasons outlined above, we have determined that the issues raised in the Protest are not of sufficient merit to overturn the contract award by DMV. As a result, the Protest is denied and we are today approving the DMV/Applus contract for an Automated Knowledge Testing System.