

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

In the Matter of the Bid Protest filed by Fieldware, LLC, with respect to the procurement of a Supervision Fees Collection and Accounting System conducted by the New York State Department of Corrections and Community Supervision

**Determination
of Bid Protest**

SF-20150149

September 10, 2015

Contract Number – C000812

The Office of the State Comptroller has completed its review of the above-referenced procurement conducted by the New York State Department of Corrections and Community Supervision (DOCCS) for an integrated supervision fees collection and accounting system (System). We have determined that the grounds advanced by Fieldware, LLC (Fieldware) are insufficient to merit the overturning of the contract award made by DOCCS and, therefore, we deny the Protest. As a result, we are today approving the DOCCS contract with JPay Inc. (JPay) for the System.

BACKGROUND

Facts

DOCCS administers the State's correctional system and is responsible for, among other things, the organization and oversight of fee collections from released inmates (Releasees). Oftentimes, a Releasee must complete a period of community supervision after release from a State correctional facility and is required to pay a monthly supervision fee of up to \$30. Under certain circumstances, DOCCS may temporarily waive such payments. Currently, Releasees either mail payments to a bank lockbox or deposit them into drop boxes located at DOCCS' area offices. DOCCS determined this process was inefficient and is seeking to improve the method and management of fee collections.

DOCCS issued Request for Proposal 2014-11 (RFP) for a Supervision Fees Collection and Accounting System in November 2014. The RFP provided for a three-phase evaluation process for submitted proposals. The initial phase consisted of a determination of responsiveness to the mandatory requirements of the RFP on a pass/fail basis. In Phase II, DOCCS evaluated a narrative in each responsive proposal, addressing the technical matters listed in the Scope of Services (Scope of Services) attached to the RFP. A passing score of at least 45 of the 75 points allocated to the technical narrative was necessary to advance to the last review phase, the cost component, worth 25 points. The RFP stated the contract would be awarded on the basis of best value (i.e., the responsive proposal receiving the highest total point score). DOCCS received three proposals by the February 11, 2015 due date and found all to be responsive. Two proposals, including Fieldware's proposal, did not receive scores of at least 45 points on the technical narrative and,

thus, did not advance to the last review phase. DOCCS evaluated the cost component of the remaining proposal that scored above the 45-point threshold and subsequently awarded the contract to that bidder (JPay).¹ DOCCS provided Fieldware a debriefing on April 16, 2015 via telephone conference.

Fieldware filed a protest with this Office by letter dated April 20, 2015 (Protest) and DOCCS responded to the Protest by letter dated June 5, 2015 (Answer). Fieldware filed a reply to DOCCS' Answer by letter dated June 17, 2015 (Reply).

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.² 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 agency 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 DOCCS with the DOCCS/JPay contract;
2. The correspondence between this Office and DOCCS arising out of our review of the proposed DOCCS/JPay contract; and
3. The following correspondence/submissions from the parties (including the attachments thereto):
 - a. Fieldware's Protest dated April 20, 2015;
 - b. DOCCS' Answer to the Protest dated June 5, 2015; and
 - c. Fieldware's Reply to DOCCS' Answer dated June 17, 2015.

¹ This Office calculated potential cost scores for the other two proposals based on the cost evaluation criteria set forth in the RFP. When combined with the technical scores awarded to those proposals, the overall scores would not have been greater than JPay's overall score.

² OSC Guide to Financial Operations, Chapter XI.17.

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.³ Best value is defined as “the basis for awarding contracts for services to the offerer which optimizes quality, cost and efficiency, among responsive and responsible offerers.”⁴ A “responsive” offerer is an “offerer meeting the minimum specifications or requirements described in a solicitation for commodities or services by a state agency.”⁵

SFL § 163(7) 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.”

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, Fieldware challenges the procurement conducted by DOCCS on the following grounds:

1. DOCCS’ evaluators inconsistently applied the scoring instructions to Fieldware’s proposal.
2. DOCCS inappropriately deducted points where Fieldware assured compliance with certain technical requirements relating to the provision of services in English and Spanish.
3. Since the RFP imposed a 20-page limit on Fieldware’s narrative response to the Scope of Services, DOCCS should not have penalized Fieldware for lack of detail in such narrative.
4. DOCCS failed to consider a portion of Fieldware’s narrative response to the RFP’s Scope of Services included within the 20-page limit.

³ SFL § 163(10).

⁴ SFL § 163(1)(j).

⁵ SFL § 163(1)(d).

Response to the Protest

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

1. DOCCS gave evaluators detailed scoring instructions based on the criteria set forth in the RFP which evaluators used to score Fieldware's proposal. Any scoring differences in applying such instructions to Fieldware's proposal reflect the fact that evaluators were instructed to score proposals independently.
2. DOCCS scored proposals based on the level of detail provided in accordance with the RFP. At the bidders' conference, which Fieldware attended, DOCCS' procurement team emphasized that bidders should explain how they will comply with a requirement instead of merely stating that they will comply.
3. DOCCS believes 20 pages was sufficient for bidders to provide a detailed response to the Scope of Services and earn the points necessary to advance to the final review phase.

DISCUSSION

Application of Scoring Instructions

Fieldware asserts DOCCS' evaluators did not consistently score its proposal (*see* Protest, at pg. 1). Fieldware concludes that because evaluator comments differed on a particular criterion, evaluators must have inconsistently applied the scoring instructions. DOCCS attributes such variances to the independent nature of the review and the unique perception of each evaluator. DOCCS states it "supplied a prepared detailed evaluation/scoring tool to the evaluation committee and explained what was expected of them including the need to work independently" (Answer, at pg. 2). Our review of the procurement record confirms the evaluators scored the proposals consistent with the evaluation/scoring instructions.

Evaluators generally interpret information in proposals differently which may result in seemingly inconsistent scoring. So long as the scoring is supported by the procurement record, and is consistent with the instructions, we will generally not disturb the evaluators' allocation of points. Our review did not reveal any contradictions between an evaluator's written comments and the score assigned by such evaluator to Fieldware's proposal. Furthermore, the overall score awarded by each evaluator to Fieldware's proposal was, by and large, in line with the scores awarded by the other evaluators. Thus, we are satisfied DOCCS properly instructed evaluators how to score the proposals and evaluators followed such instructions while scoring Fieldware's proposal.

Scoring of Mandatory Requirements

The RFP required bidders to agree to provide services in both English and Spanish in accordance with Executive Order Number 26 (Executive Order) (*see* RFP, Section V[H], at pg.

11). The Scope of Services specified which particular collection services must comply with this requirement (*see* RFP, Attachment B - Scope of Services, Sections I[D.3], [E.2], [E.3] and [G.2]).

In its cover letter, Fieldware assured compliance with the Executive Order but failed to address this requirement in its narrative responses for those specific services. Fieldware asserts verifying compliance with the Executive Order is sufficient and, therefore, its proposal should have been awarded full points for its responses to these items covered within the narrative (*see* Protest, at pg. 1). DOCCS maintains it evaluated proposals in the manner set forth in the RFP, “based on thoroughness in responding to each item” (RFP, Section XI, at pg. 20; *see also* Attachment B - Scope of Services, at pg. 1). DOCCS did not award full points for Fieldware’s responses to these criteria because the responses lacked detail describing how Fieldware would implement the requirement (*see* Answer, at pg. 2). In further support of its position, DOCCS cites a statement made by DOCCS at the bidders’ conference held prior to the date proposals were due, at which a Fieldware representative was present (*see* Answer, at pg. 2). In the transcript from such conference, a DOCCS employee involved with the technical review of the RFP instructed bidders to “address every section, even if it is a simple response....[.] just simply saying you will comply, it does not give me, or anyone else on the evaluation committee, information to determine what makes your proposal unique, better than the next one coming in” (Transcript of Bidders’ Conference held December 18, 2014, lines 7 and 10-12, at pg. 6).

DOCCS determined to award the most points to detailed responses, including those describing how a bidder would comply with the Executive Order when providing certain services. At the bidders’ conference, DOCCS reiterated that proposals should address each criteria in detail, even those solely requiring compliance. This Office generally defers to agency determinations as to matters within the agency’s area of expertise when supported by the procurement record. The RFP established the scoring methodology, which is properly within DOCCS’ expertise, and DOCCS unequivocally communicated to bidders the manner in which it expected bidders to respond to compliance with RFP requirements. Our review of the procurement record confirms the scoring was consistent with the pre-determined scoring methodology set forth in the RFP and that evaluators appropriately awarded a higher score for more detailed responses.

Page Limit for Scope of Services Response

The RFP imposed a 20-page limit on narrative responses to the Scope of Services (*see* RFP, Attachment B - Scope of Services, at pg. 1). Fieldware claims the page limit restricted Fieldware’s ability to provide enough detail in its technical proposal and, therefore, it is unjust for DOCCS to consequently deduct points for lack of detail (*see* Protest, at pgs. 1-2). DOCCS believes 20 pages was adequate to provide detailed responses and earn the available points for the technical component (*see* Answer, at pg. 3). To support its assertion, DOCCS points out that the winning bidder provided sufficient detail within that limit to describe how it would implement each requirement and, therefore, obtained the points required to advance to the final review phase (*see* Answer, at pg. 3).

Initially, we acknowledge that the RFP is somewhat ambiguous as to what items are included within the page limit. More specifically, the RFP instructs bidders to address all items in the Scope of Services “in the proposal response narrative in no more than 20 (twenty) pages,

single-spaced” (RFP, Section X[B], at pg. 19). DOCCS warns bidders that evaluators will not review any responses to the Scope of Services beyond the 20-page limit (*see* RFP, Attachment B – Scope of Services, at pg. 1). However, the RFP also requires bidders to submit company details, an implementation schedule, three letters of reference and a detailed transition plan with proposals (*see* RFP, Section X[D], at pg. 19). While the RFP lists those items separately from the narrative response (presumably indicating that they are not subject to the 20-page restriction), three of those same items (namely, company details, an implementation schedule and letters of recommendation) are required to be submitted as part of the Scope of Services response which is subject to the page limit (*see* RFP, Attachment B - Scope of Services, Sections VI[A], [C] and [F], at pg. 11). In addition, the RFP does not address whether the page limit encompasses attachments or schedules incorporated by reference in the narrative response.

Notwithstanding the RFP’s lack of clarity on this issue, all three bidders submitted narrative responses to the Scope of Services that were deemed responsive to the page limit requirement.⁶ The RFP was explicit that “[a]ll proposed services should be adequately and completely described” (RFP, Section XI, at pg. 20; *see also* Attachment B - Scope of Services, at pg. 1) and the evaluators were charged with assessing whether a proposal provided an acceptable level of detail. A comparison of Fieldware’s 20-page narrative response and that of the winning bidder shows that the latter provided greater detail in the space allotted.⁷ We find the proposals were scored based on the content of the narrative responses, and the 20-page limit did not unfairly impact Fieldware’s response.

DOCCS’ Review of Fieldware’s Narrative Response

Fieldware asserts DOCCS did not review a portion of its technical proposal falling within the 20-page limit (*see* Protest, at pg. 2). However, Fieldware has not provided any evidence to substantiate its claim and our review of the procurement record does not reveal any indication that DOCCS reviewed less than Fieldware’s entire submission.

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 DOCCS. As a result, the Protest is denied and we are today approving the DOCCS/JPay contract for the System.

⁶ The RFP identified certain mandatory requirements, including the 20-page limit, bidders must meet for DOCCS to deem proposals responsive and thus move on to the Phase II technical evaluation (*see* RFP, Section X[C], at pg. 19, and Section XI, at pg. 20). DOCCS determined that all proposals were responsive, and thus met the 20-page limit.

⁷ Moreover, Fieldware’s responses did not fully fill up the page and the blank lines could have been used to provide additional information.