

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

In the Matter of the Protest filed by Argus Community, Inc. with respect to the grant awards for New York City Alcohol and Substance Abuse Prevention Services made by the New York State Office of Alcoholism and Substance Abuse Services

**Determination
of Protest**

SF-20150159

July 9, 2015

The Office of the State Comptroller has completed its review of the above-referenced grant awards for New York City Alcohol and Substance Abuse Prevention Services made by the New York State Office of Alcoholism and Substance Abuse Services (OASAS). We have determined the grounds advanced by Argus Community, Inc. (Argus) are insufficient to merit the overturning of the grant awards by OASAS and, therefore, we deny the Protest.

BACKGROUND

Facts

OASAS issued its New York City Alcohol and Substance Abuse Prevention Services Request for Proposals (RFP) in April 2014, seeking applications to fund alcohol and substance abuse prevention services within the five boroughs of New York City.¹ A portion of the total available \$15.7 million in funding was allocated to each borough and bidders were required to submit separate proposals for each borough in which it sought funding. OASAS conducted a preliminary review of the proposals to determine responsiveness before assigning the proposals to a team of at least three evaluators. Each borough had a different evaluation team. The RFP established the following evaluation criteria and corresponding point values: 1) Demonstrated Successful Relevant Experience (15 points); 2) Organizational Capacity (15 points); 3) Program Approach and Services (35 points); 4) Program Effectiveness (15 points); and 5) Program Budget (20 points). Each evaluation team scored proposals for that team's borough on the first four categories (Program Evaluation), which were worth an aggregate of 80 points. OASAS conducted a separate fiscal assessment of the submitted Program Budgets (Fiscal Assessment) for the remaining 20 points.

Argus submitted proposals for Manhattan (Manhattan Proposal) and the Bronx. OASAS awarded funding to Argus for its Bronx program but determined not to fund the Manhattan Proposal. On May 22, 2015, Argus met with OASAS for a debriefing on the Manhattan Proposal. At the meeting, OASAS provided an overview of the procurement process, including the scoring methodology, and furnished Argus with its overall score, a breakdown of the scores for each category and its ranking among the proposals received for Manhattan. In addition, OASAS reviewed the strengths and weaknesses of the Manhattan Proposal as identified by the evaluators.

¹ As discussed later, OASAS has not, in the past, engaged in a formal competitive process in the selection of its grant recipients for these services.

At Argus' request, OASAS prepared a written summary of the debriefing (Debriefing Letter), a copy of which was filed with this Office as part of the procurement record.

Argus filed a protest with this Office by letter dated May 28, 2015 (Protest) and OASAS responded to the Protest via email on June 3, 2015 (Answer).²

Comptroller's Authority and Procedures

Under State Finance Law (SFL) § 112(2), with certain limited exceptions, before any contract made for or by a state agency, which exceeds fifty thousand dollars, 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.³ 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 the OSC Protest Procedure.

In the determination of the Protest, this Office considered:

1. The documentation contained in the procurement record forwarded to this Office by OASAS with respect to the grant awards;
2. The correspondence between this Office and OASAS arising out of our review of the grant awards; and
3. The following correspondence/submissions from the parties (including the attachments thereto):
 - a. Argus' Protest dated May 28, 2015; and
 - b. OASAS' Answer dated June 3, 2015.

ANALYSIS OF THE PROTEST

Protest to this Office

In its Protest, Argus challenges the decision by OASAS to deny funding of its Manhattan Proposal on the following grounds:

² The Hellenic American Neighborhood Action Committee, Varied Internship Program, Inc., and Crown Heights Service Center, Inc., also expressed concerns to our Office regarding the outcome of this procurement. We considered the issues raised in these complaints in the course of our review of the procurement, and are satisfied that the alleged concerns do not merit overturning the grant awards.

³ OSC Guide to Financial Operations, Chapter XI.17, <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

1. OASAS' determination is subjective and inconsistent with the scoring methodology set forth in the RFP.
2. OASAS should have allocated more points to experience and "proven history of prevention service performance" as part of the overall score.

Response to the Protest

In its Answer, OASAS contends the Protest should be rejected on the following grounds:

1. OASAS applied the scoring methodology as set forth in the RFP to the Manhattan Proposal.
2. The Fiscal Assessment score, which was properly calculated, was the determining factor in the Manhattan Proposal's non-award.

DISCUSSION

For this particular disbursement of grant funding, OASAS determined to select awardees through a competitive procurement process (except for a prevention contract with the NYC Department of Education) "in alignment with the Governor's goal to make all state agencies' procurement processes more transparent and competitive" (RFP, Section I.A., at pg. 4). A fundamental principle of competitive bidding is that the award of contracts be based upon a fair and balanced process that gives an equal opportunity to all bidders. Further, relevant to the issues raised in the Protest, the process must demonstrate that: 1) the scoring system itself was clear; and 2) the evaluators, in assigning scores, arrived at reasonable conclusions.

OASAS prepared the RFP and, on July 16, 2014, trained evaluators on the Program Evaluation review categories and the corresponding scoring methodology set forth in the RFP. The scoring of the Fiscal Assessment component was based on a mathematical formula.

Scoring of the Proposals

Argus states the Manhattan Proposal was nearly identical to the proposal it submitted for the Bronx (*see* Protest, at pg. 1). Since OASAS awarded funding to Argus in the Bronx, Argus reasons OASAS should have also awarded it funding in Manhattan. Of 100 total available points, OASAS assigned an overall score of 84.67 to Argus' Bronx proposal and an overall score of 73.06 to the Manhattan Proposal (*see* Answer, Email from David Sawicki at OASAS to Patti O'Donnell and Brian Fuller at OSC, dated June 3, 2015). Argus attributes the variance in the overall scores to subjective and inconsistent scoring (*see* Protest, at pgs. 1-2). The scoring methodologies for the two components, Program Evaluation and Fiscal Assessment, are set forth below.

1. Program Evaluation

As outlined above, the RFP described the four programmatic areas OASAS used to evaluate and score the technical component of each proposal in a particular borough (*see* RFP,

Section V.D., at pg. 17). The evaluators' Program Evaluation scores were added then averaged to arrive at a final program score for each proposal (*see* RFP, Section V.D., at pg. 17). The RFP further details the various factors evaluators considered when scoring each programmatic area (*see* RFP, Sections VI. A-D, at pgs. 18-22). The evaluation instrument replicates the factors listed in the RFP and provides further guidance to evaluators on scoring each area. When completing the evaluation instrument, evaluators first selected from among designated scoring ranges based on the quality of the proposal as related to the factors in that category. Finally, evaluators were required to provide a written basis for assigning a specific numerical rating within the initial range selected.

Argus earned similar scores for the Program Evaluation component of the Manhattan Proposal and its Bronx proposal (62 and 64.67, respectively, out of a maximum of 80 points) from two different evaluation teams.

2. Fiscal Assessment

For each borough, OASAS awarded the maximum of 20 points to the proposal with the most cost effective budget. According to the RFP, the most cost effective budget has the lowest cost per direct service full time equivalent (FTE) and is calculated by dividing the total funding requested by the total number of direct service FTEs needed to deliver the proposed services (*see* RFP, Section V.E., at pg. 23). Next, OASAS compared the lowest cost per direct service FTE calculated for each of the remaining proposals and "awarded points based on the percentage difference the cost is from the most cost effective budget" (RFP, Section V.E., at pg. 23). Thus, the higher a proposal's cost per direct service FTE, the lower the Fiscal Assessment score.

Argus' Fiscal Assessment scores varied widely. Argus earned 11.07 points for the Manhattan Proposal while its Bronx proposal earned the maximum 20 points. OASAS contends "the fundamental reason Argus did not win the Manhattan bid was because of their budget score" (Answer, Email from David Sawicki at OASAS to Patti O'Donnell and Brian Fuller at OSC, dated June 3, 2015).

OASAS received fourteen proposals in Manhattan (twice the number received in the Bronx), ten of which obtained above the minimum overall score of 70 necessary to be considered for funding. Of those ten, six bidders with the highest combined scores were awarded grants, thereby committing the maximum funding amounts available for Manhattan. Argus' combined score ranked tenth and thus, did not receive an award.

OASAS' Application of the Scoring Methodology to the Proposals

Argus asserts OASAS subjectively and inconsistently applied the scoring methodology to the Manhattan Proposal. With respect to the Program Evaluation, the evaluator training slides, instructions and evaluation instrument, all uniformly reflect the methodology described in the RFP. To ensure scoring consistency, the evaluation instrument limits the evaluator to a pre-determined range of scores associated with the evaluator's assessment of each section of the Program Evaluation. Technical evaluations such as this one inherently have some degree of subjectivity. Evaluators, in reviewing subjective criteria, may, and frequently do, reach different conclusions

and assign different scores. We note, however, that two different evaluation teams reviewed Argus' nearly identical proposals and scored both Program Evaluation components similarly. This suggests the evaluation teams applied the scoring process consistently to Argus' proposals. Our review of the procurement record confirms that the evaluation teams fairly scored the Program Evaluation component of the proposals in a manner consistent with the RFP.

The Fiscal Assessment score is based on a mathematical formula that does not lend itself to subjective interpretation. Our review of the Fiscal Assessment scoring confirms OASAS applied the calculation described in the RFP to all proposals and scored each accordingly.

OASAS' Allocation of Points to Experience

Argus asserts that "providing successful youth prevention services for over 45 years and for over 3 years at the Harlem location in question" should have borne more weight with respect to OASAS' funding determinations (Protest, at pg. 2). The RFP allocated 15 points (of 80) to Demonstrated Successful Relevant Experience and OASAS awarded the Manhattan Proposal 13.66 points in this category (*see* Debriefing Letter dated May 28, 2015, at pg. 2). This Office generally gives significant deference to agencies in structuring procurements to meet their needs, including choosing evaluation criteria and assigning appropriate point values thereto. Here, in our view, the determination of the number of points assigned to the experience portion of the evaluation is a matter properly within OASAS' expertise and thus we will not disturb its allocation.

CONCLUSION

For the reasons outlined above, we have determined the issues raised in the Protest are not of sufficient merit to overturn the funding awards by OASAS. As a result, the Protest is denied.