

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

In the Matter of the Bid Protest filed by ADDAPT with respect to the grant award for the Long Island Regional Manufacturing Extension Partnership Center made by Empire State Development, Division of Science, Technology and Innovation.

**Determination
of Protest**

SF-20160070

Contract Number – C160094

June 14, 2016

The Office of the State Comptroller has reviewed the above-referenced grant award for the Long Island Regional Manufacturing Extension Partnership Center made by Empire State Development, Division of Science, Technology and Innovation (ESD). We have determined the grounds advanced by ADDAPT are insufficient to merit the overturning of the grant award made by ESD and, therefore, we deny the Protest.

BACKGROUND

Facts

The National Institute of Standards and Technology's Hollings Manufacturing Extension Partnership (MEP) is a nationwide network of technical experts and business advisors providing support to small and medium-sized manufacturers through manufacturing extension centers located in each State (*see* RFP, at pg. 1). ESD serves as the New York MEP center for the federal MEP program and also effectuates the objectives of two State programs, the Technology Development Organization Program, and the Industrial Technology Extension Service Program. All three programs are aimed at cultivating the growth of the high tech industry and helping smaller manufacturers modernize. ESD issued its Request for Proposals NYMEP RTDC Competition 15-6111 (RFP) in October 2015, seeking applications for designation as one of the ten regional MEP centers in New York, or as one statewide MEP center. The 11 centers will provide services and assistance that meet the goals of the federal MEP program and ESD. Through this RFP, ESD sought to assist the Regional Economic Development Councils (REDCs, described below), provide services not readily available and increase the number of manufacturers served (*see* RFP, at pg. 2). An offeror awarded such designation for a particular region would receive Federal and New York State funding in an amount based on the number of manufacturers with fewer than 500 employees in that region (*see* RFP, at pg. 4). Offerors could submit a proposal for only one of the 11 designations (*see* RFP, at pg. 7).

REDCs are public-private partnerships responsible for formulating long-term plans for economic growth for particular regions in the State (*see* <http://regionalcouncils.ny.gov/>). Each

REDC identified a specific manufacturing or technology field as its focus (Priority Cluster).¹ The MEP Centers in New York will support the applicable Priority Cluster by providing services, either directly or indirectly through partnerships, “primarily to small- and medium-sized manufacturers, science and technology-based businesses, and start-ups” (RFP, at pg. 2; *see* RFP, at pg. 3). Such services include “entrepreneurial and business assistance, financing and venture capital information, and federal research grant information and assistance” (RFP, at pg. 1).

The reviewers awarded up to 80 points to each proposal for a particular region in the following four main evaluation categories: (1) Economic Opportunity (20 points), (2) Technology Resources and Delivery Mechanisms (20 points), (3) Center Management (20 points), and (4) Budget (20 points) (*see* RFP, at pgs. 16-17). Each main category was subdivided into various criteria with corresponding point values (*Id.*). The reviewers’ scores were combined to produce an initial average score for each proposal. After the initial scores were submitted, reviewers met to discuss the proposals for each region and had an opportunity to change their initial scores (*see* RFP, at pg. 21). The final scores for each proposal were then averaged. The remaining 20 points were assigned by the corresponding region’s REDC, which determined the degree to which the proposal supported the Priority Cluster plan for that region. REDC members awarded 0, 5, 10, 15 or 20 points, according to the endorsement standards set forth in the RFP (*see* RFP, at pg. 15). These scores were averaged and rounded up, producing a single score of up to 20 points for each offeror. The REDC score was added to the reviewers’ final average score to arrive at an overall final score. The proposal with the highest overall final score was awarded the regional designation and the associated funding.

ADDAPT and two other offerors applied for designation as the Long Island MEP Center. The Research Foundation for SUNY, on behalf of Stony Brook University (SBU), had the highest overall score and was awarded the designation for the Long Island region. ADDAPT filed a protest dated January 7, 2016 with this Office (Protest) only challenging the award to SBU for the Long Island region. ESD responded to the Protest by letter dated April 5, 2016 (Answer) and ADDAPT then filed a reply dated April 19, 2016 to the Answer (Reply).

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.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 the OSC Protest Procedure.

In the determination of the Protest, this Office considered:

¹ The Long Island REDC (LIREDC) identified biotechnology as that region’s Priority Cluster (*see* RFP, at pg. 5).

² OSC Guide to Financial Operations, Chapter XI.17, <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

1. The documentation contained in the procurement record forwarded to this Office by ESD with respect to the grant award;
2. The correspondence between this Office and ESD arising out of our review of the grant award; and
3. The following correspondence/submissions from the parties (including the attachments thereto):
 - a. ADDAPT's Protest dated January 7, 2016;
 - b. ESD's Answer dated April 5, 2016; and
 - c. ADDAPT's Reply dated April 19, 2016.

ANALYSIS OF THE PROTEST

Protest to this Office

In its Protest, ADDAPT challenges the decision by ESD to deny funding of its proposal on the following grounds:

1. SBU's partnership with Long Island Forum for Technology (LIFT) will prevent SBU from meeting the performance standards under the RFP because of LIFT's poor performance as the prior Long Island MEP Center and LIFT's financial condition.
2. SBU and LIFT lack the requisite track record and capability for sustainable industry engagement.
3. SBU's plan to deliver training through its Center for Operational Excellence and Center for Corporate Education does not maximize the use of funds spent on training by companies served by the Long Island MEP Center and fails to use regional partners.
4. The scoring and recusal procedures used by the LIREDC resulted in improper scoring of the proposals.

Response to the Protest

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

1. SBU's proposal lists more than twenty partners, including LIFT. ADDAPT's claim that a single partner's past performance and financial condition will prevent SBU from fulfilling its responsibilities under the contract is unsound.
2. The review panel determined SBU and its partners possessed an acceptable track record of performance and scored SBU's proposal accordingly.

3. ESD staff will ensure that all services provided by SBU will be reasonable, effective and appropriate. SBU's use of an out-of-state contractor on other projects has a minimal effect on the services SBU will provide as the Long Island MEP Center under this contract.
4. The LIREDC followed standard recusal procedures for this RFP and required that LIREDC members with a real or perceived conflict of interest recuse themselves. LIREDC members that did not recuse themselves independently scored all proposals using the guidelines set forth in the RFP. The scores were averaged and rounded to the next highest scoring value.

Reply to ESD's Answer

In its Reply, ADDAPT reiterates the arguments raised in the Protest and additionally challenges the procurement conducted by ESD on the following grounds:

1. LIFT will be a critical partner and will undertake "core MEP responsibilities."
2. SBU's agreement with an out-of-state contractor to provide all Lean Manufacturing training, a core MEP responsibility, precludes local contractors from offering this service.
3. LIFEDC member scores were improperly influenced by offerors and inaccurately calculated and reported to the review panel.

DISCUSSION

Partnership with LIFT

ADDAPT asserts SBU will not be able to fulfill its responsibilities under the contract because of its partnership with LIFT, "a proven, ESD-confirmed, non-performing entity in the NYS MEP program" (Protest, at pg. 1).³ ESD disagrees, emphasizing SBU, not LIFT, is the awardee and LIFT is just one of numerous partners named in SBU's proposal. (*see* Answer, at pgs. 1-2). ADDAPT counters that "LIFT was identified as the critical partner who could engage industry as a trade organization and fulfill the 'core MEP responsibilities' for SBU" (Reply, at pg. 2).

As part of our contract approval process, we reviewed SBU's proposal and a work plan identifying the specific tasks LIFT will perform. Certainly, LIFT contributes a unique historical perspective that SBU's other partners lack; however, we do not find LIFT's role governs SBU's ability to meet its contractual responsibilities. ESD acknowledged that RTDCs previously provided most services in-house but found "the [SBU] proposal offers a wider array of services that will be provided from entities from across Long Island" (Answer, at pg. 1). While we consider LIFT to be a significant partner based on the amount it will receive over the life of the contract,

³ LIFT is the currently-designated Long Island RTDC (*see* <http://esd.ny.gov/nystar/RegionalTechCtrs.asp>).

contrary to ADDAPT's claim, the record does not indicate LIFT's role is essential to the success of the newly designated Long Island MEP Center.

ADDAPT also questions LIFT's financial viability in relation to LIFT's ability to assist SBU (*see* Protest, at pg. 1). ESD states it is unreasonable to suggest SBU's performance of the contract could be curtailed by the financial condition of a single partner (*see* Answer, at pg. 2). The RFP required offerors be in good financial standing (*see* RFP, at pg. 7). The procurement record supports ESD's determination that SBU is financially sound. Although the RFP does not require ESD to make similar findings for offerors' partners, this Office, as part of its SFL § 112 contract approval authority, requires subcontractors/partners who are known at the time of award and will be paid \$100,000 or more over the life of the contract, to complete a vendor responsibility questionnaire (*see* OSC Guide to Financial Operations, at XI.16). Responsibility includes, among other things, financial ability to perform under the contract (*Id.*). Furthermore, this Office required ESD to make its own determination regarding LIFT's financial condition, and ESD found LIFT to be financially sound. Our independent review of LIFT's vendor responsibility questionnaire does not provide a basis to overturn ESD's finding. Thus, we accept ESD's conclusion that SBU's partnership with LIFT will not hinder SBU's performance under the contract.

SBU's Technical Merit

ADDAPT alleges SBU and LIFT "lack the requisite track record and capability for sustainable industry engagement (impacting proposal section grades for Current Customer Base, Attraction and Increased Outreach, and Maximize Resources)" (Protest, at pg. 1).⁴ ESD counters that the review panel determined SBU, and the partners named in its proposal (including LIFT), would be able to fulfill the requirements set forth in the RFP (*see* Answer, at pg. 3). ESD also points out that "[t]he review process is designed to evaluate who the best applicant is based on their track record and their plans for operating under [the] grant if awarded" (Answer, at pg. 3).

ADDAPT's allegations relate to the technical scoring of the proposals. Notwithstanding the Comptroller's broad contract review authority under SFL § 112, this Office generally defers to a procuring agency's determinations on factual issues properly within the agency's technical expertise. Thus, when technical conclusions of the reviewers are supported by the procurement record and consistent with pre-established evaluation criteria, this Office will not disturb them. Here, the RFP set forth detailed evaluation criteria, including a description of the offeror's current customer base and a plan to attract more customers, and the procurement record indicates the review panel used these criteria to evaluate the proposals (*see* RFP, at pgs. 16-17). The RFP specified that "[r]eviewers may include ESD staff, staff from federal and other state agencies, and individuals selected from the science, business, and academic communities" (RFP, at pg. 21). ESD is charged with administering the MEP program and consequently possesses extensive expertise in this area. The REDC members are also in an informed position to assess whether the offerors' proposals support such REDC's regional plan. For these reasons, and since the scores of the review

⁴ While ADDAPT does not question SBU's competency as a whole, ADDAPT does question SBU's ability to connect with industry representatives and its use of LIFT to fill that gap (*see* Reply, at pg. 4). Specifically, ADDAPT concedes "[w]e are not questioning the capabilities of Stony Brook University across the board, they are a fantastic resource for this region" (Reply, at pg. 4). Since we concluded above that SBU's partnership with LIFT is not problematic, here we address ESD's evaluation of SBU's technical proposal generally.

panel are consistent with the pre-established evaluation criteria, we find no basis to disturb ESD's determination that SBU and its named partners possess an acceptable track record and are capable of performing under the contract.⁵

Administrative Costs and Use of Non-Regional Partners

ADDAPT further asserts SBU's plan to deliver training through its own Center for Operational Excellence and Center for Corporate Education (together, the Centers) runs counter to the intent of the MEP Program since it will result in (i) less funding available to manufacturers because 50% of the cost will be paid to SBU for administrative costs, and (ii) out-of-state, rather than regional companies providing training (*see* Protest, at pg. 2). Specifically, ADDAPT cites to a contractual arrangement between SBU and the Greater Boston Manufacturing Partnership to "handle all Lean Manufacturing training for the region" and states that "[l]ean training is part of the 'core MEP responsibilities'" (Reply, at pg. 4). ESD responds that its staff "will monitor administrative costs to determine the reasonableness of the expenses under the MEP program" and SBU's use of an out-of-state contractor has a limited effect on its delivery of MEP services under the contract (*see* Answer, at pg. 3).

In their proposals, offerors were required to describe measures to minimize administrative costs "to ensure that as much funding as possible is used to fund service delivery to clients" (RFP, at pg. 17). Moreover, designated MEP Centers must submit quarterly progress and financial reports thereby allowing ESD to monitor administrative costs over the life of the contracts (*see* RFP, at pg. 12). ESD is in the best position to assess the offerors' proposed budgets and how grant funds will be used. Our review of the procurement record indicates ESD did, in fact, consider this criterion; thus, we find no reason to upset ESD's determination.

While ESD encourages the use of regional partners, the RFP does not prohibit offerors from drawing on expertise found elsewhere. Indeed, the RFP requires offerors to describe their "plan to work with partners within in [sic] the region and statewide/national partners to offer companies resources and services ..." (RFP, at pg. 16). Even if we accept ADDAPT's claim that a significant portion of training will be provided by a non-regional partner, since the RFP allows offerors to directly partner with out-of-state companies, this would not provide grounds for overturning the award.

LIREDC Scoring of Proposals

ADDAPT asserts the LIREDC scoring and recusal procedures were not formally communicated to the LIREDC, and alleges certain LIREDC members had conflicts of interest but failed to properly recuse themselves (*see* Protest, at pg. 2). ESD claims the LIREDC members "followed standard recusal procedures" and "were instructed to recuse themselves if any application posed a real or perceived conflict of interest" (Answer, at pgs. 3-4) and certain

⁵ We further note ESD may terminate the contract prior to the end of the designation period for unsatisfactory performance with 30 days' notice (*see* RFP, at pg. 4). Also, ESD may "reduce or remove the funding of an MEP due to poor contractual performance" with 30 days' notice (*see* RFP, at pg. 6). As part of its monitoring of the MEP program, ESD will continue to oversee a designated MEP center's performance to ensure performance standards are maintained throughout the designation period.

LIREDC members did, in fact, recuse themselves. ESD instructed the LIREDC members to award up to 20 points for each proposal by following the scoring matrix set forth in the RFP (*see* Answer, at pg. 4; RFP, at pg. 15). The scores assigned by the LIREDC members that evaluated the proposals were averaged and rounded up to the next highest designated value to arrive at a single score (*see* Answer, at pg. 4).

The RFP clearly sets forth the evaluation criteria and corresponding point values for the LIREDC scoring of the proposals (*see* RFP, at pg. 15). The RFP also states offerors will receive “a single score of 20, 15, 10, 5 or 0 (no fractions)” from the REDC (*Id.*). This single score was arrived at by averaging the scores from each REDC member and rounding that average up to the next highest designated value (either 0, 5, 10, 15 or 20) (*see* Answer, at pg. 4). As part of our review of the procurement record, we examined the individual scores awarded by the non-recused members to each of the three proposals and found them consistent with the RFP instructions. Our review confirmed ESD developed this scoring method (including rounding) before the initial receipt of the proposals to ensure fairness in the scoring process. While ADDAPT complains that the final LIREDC scores were not the true average “mean” score of the LIREDC members, the scores were consistent with the rounding method developed by ESD prior to receipt of the proposals. Additionally, we note that averaging the LIREDC scores without rounding to the next designated value would not have resulted in the grant being awarded to ADDAPT. Furthermore, even if ADDAPT had received the highest score of 20 points, its proposal would not have been successful in securing the Long Island region designation.

ADDAPT alleged the LIREDC scores were improperly influenced when “high level representatives of the university applicants contacted at least a portion of the non-recused graders to advocate for their proposals during the grading period” (Reply, at pg. 4). As part of our contract approval process, we reviewed a list of the recused LIREDC members and inquired about the recusal procedure. The procurement record before us does not reveal any improprieties and ADDAPT has not provided this Office with evidence substantiating its accusations.

CONCLUSION

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