

STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

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In the Matter of the Appeal filed by BEM Systems, Inc. with respect to the procurement of a Right of Way and Real Estate Information Technology System for the New York State Department of Transportation.

**Determination  
of Appeal**

**SF-20180264**

Contract Number – C037711

May 13, 2019

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The Office of the State Comptroller (OSC) has reviewed the above-referenced procurement conducted by the New York State Department of Transportation (DOT) for consultant services to install and implement a modern right of way and real estate information technology system (System). We have determined the grounds advanced by BEM Systems, Inc. (BEM) are sufficient to merit the overturning of the contract award made by DOT and, therefore, we uphold the Appeal. As a result, we are today returning non-approved the DOT contract with Flairsoft, Ltd. (Flairsoft).

**BACKGROUND**

**Facts**

On February 26, 2018, DOT announced its intention to release a Request for Proposals (RFP) seeking a consulting firm to install and implement a System to be used by DOT's Office of Right of Way (OROW).<sup>1</sup> OROW is responsible for "acquiring real estate in a timely manner for transportation purposes and managing or disposing of transportation property on terms beneficial to the people of the State of New York" and maintains information on right of way assets such as leases, signs, surplus property and right of way acquisitions (*see* RFP, at Section 1.2).

Consistent with the requirements of State Finance Law (SFL) § 163, the RFP provided for a contract award based on best value (*see* RFP, at Sections 2.2 and 5.3).<sup>2</sup> Each offeror's proposal was to consist of: a technical and management proposal (technical proposal), a cost proposal, and an administrative proposal (*see* RFP, at Section 5.1). The technical and cost

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<sup>1</sup> The RFP text was released on March 14, 2018 to a list of potential vendors who had expressed interest as instructed by the February 26, 2018 New York State Contract Reporter announcement. BEM's contention that DOT failed to include BEM in the initial distribution of the RFP is discussed later in this Determination.

<sup>2</sup> SFL § 163(1)(j).

proposals were evaluated on a 1450 total point scale, 1000 points allocated to the technical proposal and 450 points allocated to the cost proposal.<sup>3</sup>

Proposals were pre-screened to determine whether each satisfied the RFP's Minimum Responsiveness Requirements (*see* RFP, at Section 5.2). The RFP provided that responsive proposals would be evaluated by members of a Technical Evaluation Committee (TEC) comprised of technical, program and management subject matter experts (*see* RFP, at Section 5.4). The evaluators would review technical proposals and award scores ranging from 0-10 for each criterion, and then these individual scores would be averaged to produce a raw score for a particular criterion (*Id.*). The RFP permitted evaluators to revise initial scores after discussing the technical proposals as a committee (*Id.*). The raw scores for the criteria would be added together for a total raw technical score for each technical proposal (*Id.*). The cost proposal with the lowest total fixed cost to deliver the System would receive the maximum 450 points and other cost proposals with higher total fixed costs would receive proportionately lower cost scores (*see* RFP, at Section 5.5). Initial raw scores for the technical proposals would be added to the cost proposal scores to arrive at an initial best value score (*see* RFP, at Section 5.6). The proposals with the top three initial best value scores would produce a shortlist of offerors that would advance to the interview/demonstration phase of the evaluation process (*Id.*).

By the proposal due date of May 30, 2018, DOT received five proposals. All five proposals passed the pre-screening process and underwent a technical evaluation. On July 20, 2018, DOT announced the shortlist of three offerors determined to be mathematically susceptible for contract award: Flairsoft, BEM and PCC Technology, Inc. (PCC). The shortlisted offerors were invited to provide a demonstration of their proposed System. On July 24, 2018, DOT announced a corrected shortlist; while Flairsoft and BEM remained on the shortlist, PCC was replaced with GeoAMPS, LLC. After the interview/demonstration (demonstration), evaluators independently rescored the technical proposals of the shortlisted offerors, met as a group and were again permitted to revise their scores as a result of the group discussion (*see* RFP, at Sections 5.7 and 5.8).

Subsequently, DOT determined to provide the shortlisted offerors with the opportunity to submit best and final offers (BAFO) (*see* RFP, at Section 5.9). The BAFO process afforded the three shortlisted offerors the opportunity to revise their technical and/or cost proposals (*see* RFP, at Section 5.9). All three shortlisted offerors submitted a BAFO. Evaluators were allowed to revise their technical scores based on their consideration of any new or changed technical proposal information (*Id.*). After this final opportunity for evaluators to rescore offerors' technical proposals, the technical proposal with the highest-rated raw score was adjusted to 1000 points (i.e. the maximum technical points available) and the other technical proposals were adjusted proportionately downward (*see* RFP, at Section 5.10). The cost proposals resulting from the BAFO were rescored, and, as before, the lowest cost proposal was awarded the maximum

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<sup>3</sup> The RFP incorrectly stated that the maximum number of points available was 1500, with 1050 points allocated to the technical proposal and 450 points allocated to the cost proposal. However, the RFP also contained a further breakdown of the categories to be used to evaluate the technical proposals and the associated points for each category, and the total of the points allocated under this breakdown equaled 1000 (*see* RFP, at Section 5.3 and 5.4). Our review of the procurement record shows DOT, in fact, used a maximum score of 1000 to evaluate and score the technical proposals.

450 points and the higher cost proposals received proportionately lower scores (*Id.*). The RFP provided that the final perfected technical scores were combined with the final perfected cost scores to produce a final best value score for each offeror, and the offeror with the highest final best value score would be chosen for award (*Id.*).

On September 14, 2018, DOT informed BEM that it was the tentative awardee. On October 2, 2018, DOT informed BEM that DOT made an error and the tentative award was being made to Flairsoft. On October 3, 2018, DOT formally announced that Flairsoft was the tentative awardee. BEM thereafter requested a debriefing which was conducted by DOT on October 9, 2018.

By letter dated October 22 2018, BEM filed a protest with DOT challenging DOT's award. DOT denied BEM's protest by letter dated November 6, 2018. BEM appealed DOT's denial by letter dated November 14, 2018. DOT denied BEM's appeal by letter dated November 20, 2018.

BEM filed an appeal with this Office by letter dated December 10, 2018 (Appeal) and DOT responded by letter dated January 7, 2019 (Answer).

### **Comptroller's Authority and Procedures**

Under 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 this contract approval responsibility, this Office has issued a Contract Award Protest Procedure (OSC Protest Procedure) governing the process to be used by an interested party seeking to challenge a contract award by a State agency.<sup>4</sup> This procedure governs initial protests to this Office of agency contract awards and appeals of agency protest determinations. Because this is an appeal of an agency protest decision, the Appeal is governed by section 24.5 of the OSC Protest Procedure.

In the determination of the Appeal, this Office considered:

1. the documentation contained in the procurement record forwarded to this Office by DOT with the DOT/Flairsoft contract;
2. the correspondence between this Office and DOT arising out of our review of the proposed DOT/Flairsoft contract; and
3. the following correspondence/submissions from the parties (including the attachments thereto):
  - a. BEM's protest to DOT, dated October 22, 2018;

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<sup>4</sup> 2 NYCRR Part 24.

- b. DOT's protest determination, dated November 6, 2018 (Agency Level Protest Determination);
- c. BEM's appeal to DOT dated, November 14, 2018;
- d. DOT appeal determination, dated November 20, 2018 (Agency Level Appeal Determination);
- e. BEM's Appeal to OSC, dated December 10, 2018; and
- f. DOT's Answer to Appeal, dated January 7, 2019.

### **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.<sup>5</sup> 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."<sup>6</sup> Furthermore, "[w]here provided in the solicitation, revisions may be permitted from all offerers determined to be susceptible of being selected for contract award, prior to award. Offerers shall be accorded fair and equal treatment with respect to their opportunity for discussion and revision of offers."<sup>7</sup>

SFL § 163(9)(b) requires that "[t]he solicitation...shall describe and disclose the general manner in which the evaluation and selection shall be conducted. Where appropriate, the solicitation shall identify the relative importance and/or weight of cost and the overall technical criterion to be considered by a state agency in its determination of best value." Additionally, agencies are required to have a reasonable and fair process for procurements and specifically "...a reasonable process for ensuring a competitive field; a fair and equal opportunity for offerers to submit responsive offers; and a balanced and fair method of award. Where the basis for the award is best value, documentation in the procurement record shall, where practicable, include a quantification of the application of the criteria to the rating of the proposals and the evaluations results, or, where not practicable, such other justification which demonstrates that best value will be achieved."<sup>8</sup>

Where the basis for award is best value, State agencies "shall document, in the procurement record and in advance of the initial receipt of offers, the determination of the evaluation criteria . . . 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."<sup>9</sup> A state agency is required to maintain a procurement record for each procurement "identifying with supporting documentation, decisions by [the state agency] during the procurement process."<sup>10</sup> "Procurement record" is defined as "documentation of the decisions made and the approach taken in the procurement process."<sup>11</sup>

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<sup>5</sup> SFL § 163(10).

<sup>6</sup> SFL § 163(1)(j).

<sup>7</sup> SFL § 163(9)(c).

<sup>8</sup> SFL § 163(9)(a).

<sup>9</sup> SFL § 163(7).

<sup>10</sup> SFL § 163(9)(g).

<sup>11</sup> SFL § 163(1)(f).

## **ANALYSIS OF THE APPEAL**

### **Appeal to this Office**

In its Appeal, BEM challenges the procurement conducted by DOT on the following grounds:

1. DOT failed to notify BEM of the release of the RFP at the same time as the other bidders, resulting in less time for BEM to prepare its proposal.
2. DOT improperly provided Flairsoft with an advantage by affording Flairsoft additional time to prepare for the demonstration presentation and scheduling Flairsoft as the final demonstration.
3. DOT failed to comply with the requirements of the SFL when DOT did not provide BEM with the scores of the other bidders during the debriefing.
4. DOT failed to follow the scoring process set forth in the RFP, as shown by DOT's mistakes in the selection of the shortlisted offerors eligible for award and the contract awardee.
5. The evaluation/scoring process established by the RFP was flawed because allowing offerors to revise their proposals after the demonstration and as part of a best and final offer raises questions as to the fairness of the process. This process potentially provided an unfair advantage to one offeror over another and failed to result in a best value award.

### **DOT Response to the Appeal**

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

1. While DOT cannot be sure when BEM first had access to the RFP, it appears BEM was in receipt of the RFP for a minimum of 45 business days prior to the date proposals were due, which was more than enough time to prepare a proposal of sufficiently high quality to rank BEM among the three finalists.
2. DOT did not provide Flairsoft additional time to prepare for the demonstration presentation. Each proposer received the demonstration presentation agenda one week in advance of its scheduled presentation, giving each finalist equal time to prepare.
3. The SFL requirements for debriefings do not require DOT to provide BEM with scores of the other offerors, but rather requires only "the application of the selection criteria to the unsuccessful offerer's proposal" prior to final award.
4. While DOT initially made two incorrect announcements with regard to selections during the procurement, these errors were corrected as soon as DOT realized the announcements were incorrect. Moreover, DOT submitted the entire procurement record, including all scoring, to OSC for review.
5. DOT determined to allow all shortlisted offerors the opportunity to make best and final offers as specifically permitted by the SFL and the RFP. All shortlisted offerors,

including BEM, improved their proposals. After a review of the best and final offers, Flairsoft's proposal was selected as providing the best value to the State.

## **DISCUSSION**

### **A. Notice of Issuance of the RFP**

BEM asserts DOT failed to notify BEM of the issuance of the RFP at the same time such notification was provided to many of the other potential bidders, resulting in BEM having less time to prepare its proposal (*see* Appeal, at pg. 2). DOT states that it is not aware of the exact date in which BEM first saw the RFP, but BEM was in receipt of the RFP for at least 45 business days prior to the proposal due date. DOT further notes that BEM had adequate time to prepare a proposal of sufficiently high quality to rank BEM among the three finalists (*see* Answer, at pg. 1).

SFL § 163(2) sets forth the operating principles intended to guide the state procurement process, stating: “[t]he objective of state procurement is to facilitate each state agency’s mission while protecting the interests of the state and its taxpayers and promoting fairness in the contracting with the business community.” SFL § 163(9)(a) further requires agencies to have a reasonable and fair process for procurements and specifically “...a reasonable process for ensuring a competitive field; a fair and equal opportunity for offerers to submit responsive offers; and a balanced and fair method of award.”

DOT acknowledges that it did not notify BEM of the issuance of the RFP when DOT communicated this information to other offerors that submitted a letter of interest in the RFP but contends DOT was “under no obligation to separately notify businesses of the opportunity and did so in this case as a courtesy” (*see* Agency Level Protest Determination, at pg.1; Agency Level Appeal Determination, at pg. 1).<sup>12</sup> However, the procurement record submitted to this Office shows DOT took several steps to remedy an initial communication error to ensure all competitors had a fair opportunity to submit proposals. When DOT discovered the initial error in communicating the issuance of the RFP, DOT notified those overlooked by DOT’s communication error, extended the due date, held a second pre-proposal webinar and entertained a second round of questions on the RFP. Moreover, while BEM claims it had less time to prepare its proposal, BEM did, in fact, submit a timely proposal and does not describe how the shorter period negatively affected the preparation of its proposal. Thus, we are satisfied DOT provided all interested offerors with a fair and equal opportunity to submit proposals.

### **B. Demonstration Preparation Time**

BEM asserts DOT improperly provided Flairsoft with an advantage by affording Flairsoft additional time to prepare for the demonstration presentation and scheduling Flairsoft as the final

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<sup>12</sup> On February 26, 2018, DOT announced its intention to issue the RFP on its website and in the New York State Contract Reporter. DOT issued the RFP on March 14, 2018 and proposals were due on May 30, 2018, which exceeded the minimum time period of 15 business days between initial publication of the RFP and the proposal due date required by New York State Economic Development Law § 143 (*see* Agency Level Protest Determination, at pg. 1.)

demonstration, while the other two shortlisted offerors presented about one week prior to Flairsoft (*see* Appeal, at pgs. 4-6).<sup>13</sup> BEM also suggests that the “apparently substantial swing in points” after the BAFO raises questions as to whether “DOT, during the demonstration, may have inadvertently disclosed to Flairsoft information regarding the relative capabilities of its competitors [who presented earlier demonstrations]” (Appeal, at pg. 6). DOT states each proposer was provided with the demonstration presentation agenda one week in advance of its scheduled presentation, giving each finalist equal time to prepare and BEM’s assertion with regard to the sharing of information is pure speculation and has no basis in fact (*see* Answer, at pgs. 1 and 2).

The procurement record submitted to this Office confirms DOT provided the agenda to each of the shortlisted offerors one week before its scheduled demonstration presentation, thereby giving each offeror equal time to prepare.<sup>14</sup> As to BEM’s suggestion that DOT may have “inadvertently disclosed” competitor’s information to Flairsoft providing Flairsoft with an unfair advantage, in addition to DOT’s denial that any such disclosure took place, our review of the procurement record provides no evidence to support BEM’s assertion. Accordingly, we are satisfied no offeror was provided an unfair advantage in the scheduling of, or preparation for, the demonstration presentation.

### **C. Debriefing**

BEM contends DOT’s failure to provide BEM with the scores of the other offerors during the debriefing violated the SFL (*see* Appeal, at pg. 5). DOT responds that the SFL requires a debriefing include the application of the selection criteria to the unsuccessful offeror’s proposal and, only after award, the reasons for selection of the winning proposal (*see* Answer, at pg. 1).

SFL § 163(9)(c)(iv) sets forth the minimum information that must be provided in a debriefing: “(A) the reasons that the proposal, bid or offer submitted by the unsuccessful offeror was not selected for award; (B) the qualitative and quantitative analysis employed by the agency in assessing the relative merits of the proposals, bids or offers; (C) the application of the selection criteria to the unsuccessful offeror’s proposal; and (D) when the debriefing is held after the final award, the reasons for the selection of the winning proposal, bid or offer. The debriefing shall also provide, to the extent practicable, general advice and guidance to the unsuccessful offeror concerning potential ways that their future proposals, bids or offers could be more responsive.”

The procurement record submitted to this Office contained a debriefing agenda which DOT distributed to the offerors when the tentative award was announced. The agenda was clear the debriefing would focus only on the proposal of the offeror being debriefed, but also listed the following topics: overview of the RFP and the proposal evaluation process, the technical

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<sup>13</sup> The shortlist demonstration presentations were held as follows: GeoAMPS on August 6, 2018, BEM on August 7, 2018, and Flairsoft on August 14, 2018.

<sup>14</sup> Correspondence in the procurement record shows BEM made a request to have its presentation moved to the week of August 13-17 due to a presenting team member’s medical situation, but as the demonstration presentation agenda had already been shared with BEM at that point, DOT denied BEM’s request. DOT explained all shortlisted offerors must receive fair and equitable treatment and release of the detailed demonstration agenda was staggered to give all shortlisted offerors the same amount of time to prepare.

evaluation results and the cost proposal and best value evaluation results. During BEM's debriefing, DOT informed BEM of its own score and that Flairsoft's technical proposal had scored higher (*see* Appeal, at pg. 4).

Recent guidance from the New York State Procurement Council directs agencies conducting debriefings to provide "at a minimum, the strengths and weaknesses of a vendor's bid/proposal and...information as to the relative ranking of that bidder's bid/proposal in each of the major evaluation categories as provided for in a bid solicitation document" (NYS Procurement Bulletin Debriefing Guidelines effective January 30, 2019). This information is consistent with the goal of a debriefing: to make the procurement process more transparent and assist vendors in becoming more viable competitors in State procurements (*Id.*).

BEM does not assert that the debriefing provided by DOT was wholly deficient, but instead asserts DOT was legally required to provide BEM with the other offerors' scores. However, SFL § 163(9)(c)(iv) does not specifically require agencies to provide competitors' scores during a debriefing. Based on our review of the procurement record, we conclude that the debriefing provided to BEM was sufficient to satisfy the applicable statutory standard.

#### **D. Evaluation and Selection Process**

BEM's remaining challenge to the procurement relates to the evaluation methodology used by DOT to review and score proposals. More specifically, BEM asserts that DOT's mistakes in the selection of the shortlisted offerors and contract awardee are evidence that DOT failed to follow the scoring process set forth in the RFP, and surmises "there could be other errors in the evaluation process that may have affected the award of the bid" (Appeal, at pg. 5). BEM also expresses "doubts as to whether the [shortlisting and final awardee] scores were correctly tabulated" (Appeal, at pg. 7). BEM further asserts the evaluation and scoring process established by the RFP was flawed because allowing offerors to revise their proposals after the demonstration as part of a best and final offer potentially provided an unfair advantage to one offeror over another and thus failed to result in a best value award (*Id.*).<sup>15</sup>

DOT acknowledges two erroneous announcements with regard to selections during the course of the procurement which DOT corrected as soon as it became aware of the errors (*see* Answer, at pg. 1).<sup>16</sup> DOT claims it properly allowed all shortlisted proposers an opportunity to

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<sup>15</sup> BEM does not allege any improper intent or behavior by DOT staff, but questions the "construct of the process" which provided offerors a further opportunity to amend their cost and technical proposals *after* the demonstration (*see* Appeal, at pg. 7).

<sup>16</sup> The first error occurred in the selection of the three shortlisted offerors when DOT incorrectly transferred data into the scoresheet for one of the offerors. The second error occurred when DOT initially awarded the contract to BEM and, after discovering an error in the calculation of the final BAFO scores during a debriefing being provided to Flairsoft, awarded the contract to Flairsoft. In DOT's Agency Level Appeal Determination, DOT states "it was discovered that the final ranking scoresheet incorrectly included Flairsoft's 'after-demo' technical score in the ranking formula. It should have included the 'after-BAFO' technical score instead. Once this transcription error was discovered, and the 'after-BAFO' technical score was included in the ranking formula, the ranking changed; Flairsoft's score then became the highest, and Flairsoft appeared correctly in the rank order as the Best Value Proposer."



make best and final offers (BAFOs) in accordance with the RFP and the SFL which resulted in Flairsoft being selected as providing the best value to the State (*see Answer*, at pg. 2).

SFL § 163(9)(b) requires that “[t]he solicitation...shall describe and disclose the general manner in which the evaluation and selection shall be conducted. Where appropriate, the solicitation shall identify the relative importance and/or weight of cost and the overall technical criterion to be considered by a state agency in its determination of best value.” Additionally, “[w]here provided for in the solicitation, revisions may be permitted from all offerers determined to be susceptible of being selected for contract award, prior to award. Offerers shall be accorded fair and equal treatment with respect to their opportunity for discussion and revision of offers” (SFL § 163(9)(c)). Finally, where the basis for award is best value, State agencies “shall document, in the procurement record and in advance of the initial receipt of offerers, the determination of the evaluation criteria . . . 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(7)).

As a threshold matter, the evaluation process set forth in the RFP satisfied the statutory requirements of SFL § 163(9)(b) and SFL § 163(9)(c) which permits revisions of proposals from offerers susceptible to award as part of a BAFO process when the solicitation so provides. Here, in Section 5.9 of the RFP, DOT reserved the right to request a BAFO from shortlisted offerers. In the event DOT opted to request a BAFO, Section 5.9 of the RFP permits responding firms to submit revisions to their technical and/or cost proposals and describes the evaluation process with respect to the BAFOs received. Thus, DOT’s determination to provide shortlisted offerers an opportunity to revise their technical and cost proposals as part of the BAFO was authorized under the SFL and the terms of the RFP.

However, our review of the procurement record identified various discrepancies between the evaluation process set forth in the RFP and the more detailed evaluation instrument developed by DOT prior to the receipt of initial offers, and the evaluation actually conducted by DOT. These discrepancies include:

- While not provided for in either the RFP or the evaluation instrument, when an evaluator was unable to comprehend the proposer’s technical solution to a given criterion, the evaluator was allowed to consult with a group of individuals, DOT’s Information Technology Staff (ITS), to interpret the proposal. In addition, the evaluators did not consult with ITS staff on the same criteria for all proposals, raising concerns as to the whether the evaluation was consistent. Additionally, five members of ITS, as a group, also served as one of the evaluators on the TEC. Neither the RFP nor the evaluation instrument describe how this group was to score proposals collectively.
- The total number of available points listed throughout the procurement documentation was inconsistent, contributing to confusion as to the scoring of the proposals.
- While the RFP required evaluators to document the reasons for changes to their evaluation scores, this did not always occur and the comments that were recorded

were difficult to attribute to a specific score revision (*see* RFP, at Sections 5.4, 5.7 and 5.8).

- Certain evaluators provided scores for references when no reference checks were conducted and no process for independently scoring reference checks existed in the technical evaluation plan.

In light of the discrepancies between the evaluation conducted by DOT and the evaluation process described in the RFP and the evaluation instrument, the evaluation and selection process did not satisfy the requirements of SFL §§ 163(9)(b), 163(7).

#### **E. Procurement Record Requirements**

SFL § 163(9)(a) requires that “where the basis for the award is best value, documentation in the procurement record shall, where practicable, include a quantification of the application of the criteria to the rating of the proposals and the evaluations results, or, where not practicable, such other justification which demonstrates that best value will be achieved.” Furthermore, SFL § 163(9)(g) requires that “[a] procurement record shall be maintained for each procurement identifying, with supporting documentation, decisions made by the . . . state agency during the procurement process.”

The procurement record submitted to this Office by DOT with the proposed DOT/Flairsoft contract does not adequately support the evaluation and selection decisions made by DOT in the procurement process and, therefore, does not provide a basis for this Office to confirm that the evaluation process conducted by DOT was consistent with its evaluation plan and resulted in the selection of the “best value” proposal.

Specifically, the multi-stage evaluation methodology established by DOT provided for an initial technical score and three potential score changes during the evaluation process (*see* RFP, at Sections 5.4 and 5.6). These scoring stages set forth in the RFP consist of (i) the initial independent score, (ii) the after group discussion re-score (to determine initial best value), (iii) the after demonstration re-score, and (iv) the after BAFO re-score. However, the scoresheets provided to the evaluators did not have adequate spacing for evaluators to record the various score changes during the multi-stage evaluation process and related comments in support of the reasons for such score changes. Furthermore, even when the scoresheets contained evaluators’ comments, the comments could not be matched with the corresponding scoring stage of the process. As a result of this inability to confirm evaluators’ scores during each stage of the process, this Office was unable to discern the rationale of changes by the evaluators in order to verify DOT’s selection of shortlisted offerors and contract awardee.

Additionally, there is insufficient documentation to support the significant increase in Flairsoft’s technical score as a result of its BAFO. All three shortlisted vendors offered certain BAFO technical clarifications, yet the evaluators only made changes to Flairsoft’s technical score. Flairsoft’s after-BAFO technical score increased in 14 out of the 31 rated criteria, resulting in an increase in Flairsoft’s raw technical score from 762.3 to 827.0 points out of 1000 possible points. In one criterion (System Training) Flairsoft’s score increased from 90 to 132 points out of 150 possible points. The BAFO resulted in enough additional technical points to

substantially change the final award from BEM to Flairsoft, but the documentation supporting this change is vague and ambiguous. And when this Office specifically requested an explanation for the changes in Flairsoft's technical score after the BAFO, the only further information provided by DOT was that Flairsoft significantly reduced the number of customizations required and committed to the addition of a search capability to allow users to access historic comparable sales.

Based on the procurement record maintained by DOT, this Office was unable to confirm that DOT's evaluation and selection decisions were in accordance with the evaluation methodology set forth in the RFP and the evaluation plan and whether the evaluation conducted resulted in a best value award.

## **CONCLUSION**

For the reasons set forth in Sections D and E above, we have determined the issues raised in the Appeal are of sufficient merit to overturn the contract award by DOT. As a result, the Appeal is upheld and we are today returning non-approved the DOT/Flairsoft contract.

