



STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

April 26, 2019

Jeffrey Blend, Esquire
AIDS Center of Queens County
161-21 Jamaica Avenue
Jamaica, NY 11432

Re: SF20190070 – Request for Applications
Number 17650 (RFA)

Dear Mr. Blend:

This letter of determination is in response to the protest (Protest) filed on April 1, 2019 by AIDS Center of Queens County (ACQC) of the awards made by the Department of Health (DOH) for Comprehensive HIV/STD/HCV Prevention and Related Services for Women and Young Women within Communities of Color – Component C (Services) pursuant to Request for Applications Number 17650 (RFA).

The Office of the State Comptroller (Office) has considered the Protest as well as the procurement record submitted to this Office by DOH related to the awards for the Services under the RFA. As detailed below, we have determined that the issues raised in the Protest are not of sufficient merit to overturn DOH's awards for the Services under the RFA.

In the Protest ACQC asserts that DOH failed to follow the process set forth in the RFA to evaluate proposals and award funds. ACQC further asserts that the process used by DOH violates State and federal procurement law prohibiting arbitrary and capricious decisions. In a letter dated April 16, 2019, DOH responds to the Protest stating "the Department followed its evaluation plan and pre-established tool for this RFA" and made awards according to the terms of the RFA.

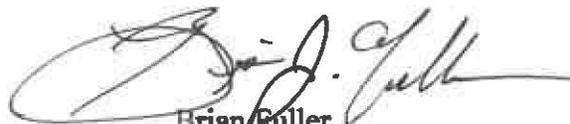
The RFA set forth the methodology that would be used to score the applications, including the maximum number of available points (105 points), a breakdown of the points allocated to each of the four sections to be scored (preference factors – 5 points; community and organization description – 25 points; program design and implementation – 55 points, and budget and justification – 20 points) and the information to be provided for each section (*see* RFA, at pgs. 66-71). The RFA also sets forth the available funding amount and anticipated number of awards allocated to each geographical region. The RFA provided that for Queens County, the region for

which ACQC submitted an application, the annual award amount would be \$200,000 and 1-2 awards would be made (*see* RFA, at pgs. 8-9). The RFA stated “awards will be made to the highest scoring applicants in each region, up to the minimum number of awards indicated for that region. Remaining funding will be awarded to the next highest acceptable scoring applicant(s) from any region until the remaining funding is exhausted or awards have been made to all acceptable scoring applicants” (RFA, at pg. 11).¹ DOH received two applications for Queens County. The application submitted by ACQC received a score of 85.67 points and the other application received a score of 94 points and was funded.

After reviewing the procurement record, including the RFA, the instructions to evaluators, the evaluation instrument and the final scoring sheets, we are satisfied that DOH evaluated the applications in accordance with the terms of the RFA and the evaluation methodology DOH established in advance of receipt of the applications. Moreover, we find DOH’s funding determinations consistent with the process set forth in the RFA.

For the reasons outlined above, we have determined the issues raised in the Protest are not of sufficient merit to overturn the awards for Services made by DOH. As a result, the Protest is denied, and we are today approving the awards for Services made by DOH.²

Sincerely,



Brian Fuller
Director of Contracts

cc: Julie M. Harris, Director, Division of HIV/STD/HCV Prevention
Elizabeth Wood, New York State Department of Health

¹ In the RFA, DOH acknowledged that the currently available funding might not be sufficient to fund all acceptable applications. In case additional funding became available in the future, the RFA identified three categories of applications: 1) approved and funded, 2) approved, but not funded, and 3) not approved. While DOH approved ACQC’s application, ACQC was not funded.

² ACQC has submitted requests under the Freedom of Information Law (Public Officers Law Article 6, “FOIL”) to DOH and this Office seeking information relating to the RFA. In the Protest, ACQC asks this Office to delay acting on the awards made under the RFA and issuing this protest determination until ACQC receives documentation in response to its FOIL requests. Consistent with prior bid protest determinations and the long standing policy of this Office, issues related to the procuring agency’s action or inaction on a FOIL request does not impact our review of the contract award and are not considered as part of our review of bid protests. Furthermore, in making this determination, we have reviewed the entire procurement record which includes any documents related to the procurement that would have been within the scope of ACQC’s FOIL request.