

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

In the Matter of the Bid Protest filed by Parsons Transportation Group, Inc. with respect to the procurement of the New York Vehicle Inspection Program conducted by the New York State Department of Motor Vehicles.

**Determination
of Bid Protest**

SF-20200102

Contract Number – C000879

June 28th, 2021

The Office of the State Comptroller has reviewed the above-referenced procurement conducted by the New York State Department of Motor Vehicles (DMV) for the New York Vehicle Inspection Program (System). We have determined the grounds advanced by Parsons Transportation Group, Inc. (Parsons) are insufficient to merit overturning the contract award made by DMV and, therefore, we deny the Protest. As a result, we are today approving the DMV contract with Opus Inspection, Inc. (Opus) for the System.

BACKGROUND

Facts

On November 14, 2019, DMV issued Request for Proposals For New York Vehicle Inspection Program (NYVIP3) (RFP) seeking a vendor to replace the current vehicle inspection and maintenance program and, among other things, manage annual safety/emission inspections performed by approximately 11,500 inspection stations that are licensed by DMV (*see* RFP, at Section 1-1).

The RFP provided that an offeror's proposal would be scored on the basis of Cost (30%), as well as a review of four technical components, Program Requirements (25%), System Design Requirements (25%), Bidder Eligibility and Experience (15%), and Diversity Practices (5%) (*see* RFP, at Section 3-4). The Program Requirements, System Design Requirements and Bidder Eligibility and Experience components consisted of mandatory requirements, evaluated on a pass-fail basis, as well as scored criteria (*Id.*). The Diversity Practices component consisted of a questionnaire relating to an offeror's diversity practices and was also scored (*see* RFP, at Section 3-4 and Appendix F). For the Cost component, the RFP required offerors to submit an all-inclusive transaction fee for each inspection and costs of all hardware, software and equipment required to install, configure and maintain the System (*see* RFP, at Section 3-3.3 and Appendices D-1 and D-2). The cost proposal with the lowest total cost would receive the full number of available points and other cost proposals with higher costs would receive proportionately lower cost scores (*see* RFP, at Section 3-5). The cost score would be added to the scores for the other four components of an offeror's technical proposal and the offeror receiving the highest combined score would be awarded the contract (*see* RFP, at Section 3-4).

DMV received two proposals (Parsons and Opus) prior to the proposal due date of April 17, 2020. DMV awarded the contract for administration and management of the System to Opus, the offeror submitting the proposal receiving the highest combined score.

Parsons requested a debriefing which DMV provided on July 23, 2020. On July 29, 2020, Parsons filed a protest with this Office (Protest) and on February 1, 2021, DMV responded to the Protest (Answer).

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 this contract approval responsibility, OSC has promulgated the 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.¹ 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 24.4 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 DMV with the DMV/Opus contract;
2. the correspondence between this Office and DMV arising out of our review of the proposed DMV/Opus contract; and
3. the following correspondence/submissions from the parties (including the attachments thereto):
 - a. Parsons' Protest dated July 29, 2020; and
 - b. DMV's Answer dated February 1, 2021.

ANALYSIS OF THE PROTEST

Protest to this Office

In its Protest, Parsons challenges the procurement conducted by DMV on the following grounds:

1. The low technical scores assigned by DMV to the offerors indicate the RFP was poorly established.

¹ 2 NYCRR Part 24.

2. The incumbent, Opus, is charging the same amount per test for the transactional portion of the System as it has been charging under the existing program. Because the scope of work required by the RFP is broader than the scope for the existing program, Opus' technical proposal may not be responsive to the RFP.²

DMV's Response to the Protest

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

1. Although the technical portion of the RFP was worth a maximum value of 700 points, DMV did not establish a minimum number of points required to be awarded to an offeror.
2. The RFP set forth detailed requirements for the System and offerors were able to propose unit and transaction fees that they determined were reasonable and attainable. DMV does not question the validity of the transaction fee that Opus proposed.

DISCUSSION

Evaluation of Technical Proposals

Parsons alleges the low technical scores awarded by DMV “appear to indicate the RFP was poorly established, as the bidders’ technical scores fall well short of the requirements set forth in the RFP” (Protest, at p. 2).³ DMV responds that it “did not set or specify a minimum number of points that must be reached by a bidder in order to be declared the tentative winner of the technical portion of the RFP” and posits “although it is conceivable that a bidder could have obtained the full percentage points for [the technical proposal components], it is possible that the highest scoring proposal in each of those categories would not receive a maximum score” (Answer, at pps. 1-2). DMV also points out that an average score for the technical portion would equate to 350 (of a total possible value of 700 points) and that each of the offerors received technical scores in excess of that average (*see* Answer, at p. 2).

SFL § 163(10) requires that service contracts be awarded on the basis of best value. SFL § 163(1)(j) defines best value as “the basis for awarding contracts for services to the offeror which optimizes quality, cost and efficiency, among responsive and responsible offerors. Such basis shall reflect, wherever possible, objective and quantifiable analysis.” Additionally, SFL § 163(9)(b) requires that the solicitation issued by the procuring state agency prescribe the minimum specifications or requirements that must be met in order to be considered responsive

² Parsons claims it is unable to assess whether Opus was properly awarded the contract without certain documents it requested from DMV pursuant to the Freedom of Information Law (FOIL). Consistent with the long standing policy of this Office enunciated in prior bid protest determinations, issues related to a 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 (*see* OSC Bid Protest Determinations SF-20200069, at fn. 5; SF-20180263, at fn. 5). Moreover, in making this Determination, we have reviewed the entire procurement record which includes the documentation related to the procurement that would have been within the scope of Parsons’ FOIL request.

³ In essence, Parsons is alleging either the RFP was flawed or DMV did not evaluate proposals according to the RFP. Therefore, this Determination will address whether the RFP follows SFL requirements and if technical proposals were evaluated in accordance with the RFP.

and describe and disclose the general manner in which the evaluation and selection shall be conducted. Finally, SFL § 163(7) requires the contracting agency 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.”

Here, the RFP issued by DMV sets forth in detail the evaluation criteria used to review the cost and the technical components of the proposal, and the relative scoring weight of those components (*see* RFP, at Sections 3-4, 4 through 4-8). More specifically, the RFP disclosed that cost would be worth 30% of the scoring and the technical review would be worth 70% of the scoring: Program Requirements (25%), System Design Requirements (25%), Bidder Eligibility and Experience (15%) and Diversity Practices (5%) (*see* RFP, at Section 3-4). The RFP also stated that the contract would be awarded to the offeror receiving the highest score (*Id.*).

This general description of the evaluation and selection process set forth in the RFP satisfied the statutory requirement of SFL § 163(9)(b). Additionally, the procurement record indicates DMV developed its evaluation instrument prior to the initial receipt of bids on April 17, 2020. The evaluation instrument further defined and detailed the evaluation process, establishing a 1000-point scoring plan consistent with the relative weights set forth in the RFP (Cost – 300 points, Program Requirements – 250 points, System Design Requirements – 250 points, Bidder Eligibility and Experience – 150 points, and Diversity Practices – 50 points). The RFP does not require an offeror to receive a certain number of points to be susceptible of being selected for contract award, nor does SFL provide for such a requirement. Therefore, DMV’s evaluation plan satisfied the requirements of SFL § 163(7).

Finally, our review of the procurement record confirms that DMV evaluated the proposals in accordance with the criteria set forth in the RFP (and the evaluation tool) resulting in a total score of 572.93 for the proposal submitted by Parsons and a total score of 672.16 for the proposal submitted by Opus (*see also* Debriefing Summary attachment to DMV’s Answer). DMV made the contract award to Opus, the offeror submitting the proposal receiving the highest score. Accordingly, it is clear that the evaluation and selection process conducted by DMV was consistent with the RFP and the requirements of the SFL, and the award made to Opus was based on a best value determination.

Responsiveness of Opus’ Technical Proposal

Parsons questions whether Opus’ technical proposal is responsive to the RFP requirements since Opus proposed “the same amount per test for the transactional portion of the program as it did in 2012, when it last bid the work” for a scope of work containing new operational and equipment requirements that were not included in the existing vehicle and inspection program (*see* Protest, at p. 2). DMV responds the RFP set forth DMV’s desired features for the System “and all bidders were provided the opportunity to expand upon their offering in the scoreable responses” (Answer, at p. 2). To support its conclusion that Opus’ overall bid was responsive, DMV points to Opus’ higher technical score (*Id.*). DMV further states offerors were free to propose unit and transaction fees that offerors determined were

reasonable and attainable (other than a not-to-exceed price for the initial computerized vehicle inspection system unit) (*Id.*).

SFL § 163(1)(d) provides that a responsive bidder is an “offerer meeting the minimum specifications or requirements as prescribed in a solicitation for commodities or services by a state agency.” The RFP sets forth the mandatory requirements, in Section 2, Terms and Conditions, and in Sections 4 through 4-8, by identifying mandatory technical criteria that offerors had to satisfy to be responsive with an “M” in the column marked “Type” (*see* RFP, at Sections 2, 3-4, and 4 through 4-8). The RFP further provides that proposals will be reviewed to determine whether the mandatory requirements have been met (*see* RFP, at Section 3-4). As discussed above, DMV evaluated the proposals according to the RFP. Moreover, DMV has stated that it “does not question the validity of the transaction fee that Opus proposed” (Answer, at p. 2). Our review of the procurement record supports DMV’s determination that Opus was responsive to the RFP, as written. Accordingly, there is no basis to disturb DMV’s award of the contract to Opus.

CONCLUSION

For the reasons outlined above, we have determined the issues raised in the Protest are not of sufficient merit to overturn the contract award by DMV. As a result, the Protest is denied and we are today approving the DMV/Opus contract for the System.