

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

In the Matter of the Appeal filed by Continental Service Group, Inc. with respect to the procurement of collection agency services conducted by the State University of New York at Albany.

**Determination
of Appeal**

SF-20210121

Contract Numbers – C210002, C210003, C210004
and C210005

January 7, 2022

The Office of the State Comptroller has reviewed the above-referenced procurement conducted by the State University of New York at Albany (UAlbany) for certain collection agency services, as described below. We have determined the grounds advanced by Continental Service Group, Inc. (ConServe) are insufficient to merit overturning the contract awards made by UAlbany and, therefore, we deny the Appeal. As a result, we are today approving the contracts with National Credit Management (NCM) and Recovery Management Services, Inc. (RMS) for collection agency services.

BACKGROUND

Facts

The State University of New York Student Loan Service Center (SLSC) operates under the administration of UAlbany and is responsible for servicing Federal campus-based student loans awarded at twenty-nine SUNY campuses (*see* RFP, Section 1, at p. 1). UAlbany issued a request for proposals (RFP) on April 7, 2021, on behalf of itself and the SLSC, seeking “to contract with two collection agencies for the referral of delinquent Federal campus-based student loans and past-due education receivable accounts” (RFP, Section 1, at p. 1 and Section 16, at p. 16).

UAlbany employed a best value methodology to achieve the stated goal of the RFP, which was to “enable [UAlbany] to determine which contractors are best able to provide collection services for the campus-based loan programs and delinquent [accounts receivable] in compliance with all applicable rules and regulations” (RFP, Section 20, at p. 22). The RFP provided proposals would be scored based on the following criteria: contractor sustainability (15%); references (15%); information security (20%); collection procedures and example correspondence (20%); and experience in education-related and multi-campus collections services (30%) (*see* RFP, Section 20, at p. 22). The RFP noted that “an award will be made to the two contractors with the highest aggregate score” based on these criteria (*see* RFP, Section 20, at p. 22). UAlbany also established “a preset collection fee structure” that would apply uniformly to all awarded contractors; as such, this was not part of the proposal evaluation (*see* RFP, Section 2, at p. 5).

UAlbany received responsive proposals from multiple offerors including ConServe, NCM, and RMS prior to the proposal due date of May 7, 2021. UAlbany awarded contracts for collection agency services to NCM and RMS, the two offerors receiving the highest aggregate scores. NCM and RMS were each awarded two contracts, including one contract each with UAlbany, on behalf of SLSC, for collection services for delinquent Federal campus-based student loans and one contract each with UAlbany for past-due accounts receivable.

ConServe requested a debriefing which UAlbany provided on July 1, 2021. Subsequently, ConServe protested the awards to UAlbany and SLSC on July 8, 2021 (Protest to UAlbany), and UAlbany denied the protest on July 23, 2021 (UAlbany Protest Determination). ConServe then filed an Appeal with this Office on August 10, 2021 (Appeal), and on August 24, 2021, UAlbany responded to the Appeal (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 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.¹ 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 UAlbany with the NCM and RMS contracts with UAlbany or UAlbany, on behalf of SLSC, as the case may be;
2. the correspondence between this Office and UAlbany arising out of our review of the proposed NCM and RMS contracts with UAlbany or UAlbany, on behalf of SLSC, as the case may be; and
3. the following correspondence/submissions from the parties (including the attachments thereto):
 - a. Protest to UAlbany;
 - b. UAlbany Protest Determination;
 - c. Appeal; and

¹ 2 NYCRR Part 24.

d. Answer.²

ANALYSIS OF THE APPEAL

Appeal to this Office

In its Appeal, ConServe challenges the procurement conducted by UAlbany on the following grounds:³

1. UAlbany impermissibly used criteria to evaluate ConServe's proposal that were not disclosed in the RFP, contrary to New York State Finance Law; and
2. UAlbany unreasonably and arbitrarily scored ConServe's proposal based on evaluation criteria that was different from those disclosed in the RFP.

UAlbany Response to the Appeal

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

1. The RFP and its evaluation criteria comply with applicable State law, policy, and guidelines governing UAlbany procurements; and
2. ConServe was not penalized, downgraded or otherwise excluded from a fair, competitive evaluation and UAlbany correctly scored ConServe's proposal based on the proposal responses.

DISCUSSION

RFP Disclosure of Evaluation Criteria

ConServe first alleges that UAlbany "applied evaluation criteria different than those identified in the RFP" (Appeal, at p. 7). Specifically, ConServe maintains that UAlbany "used unquantifiable and unstated evaluation criteria when evaluating proposals under the RFP" (*Id.*). ConServe further expounds "[t]he RFP is clear that UAlbany was able to evaluate proposals of qualified offerors based on only: (1) the Five Evaluation Criteria [identified in the RFP]; and (2) the Mandatory Requirements [set forth in the RFP]. The evaluation of proposals based on any factors beyond these specifically stated evaluation criteria constitutes the application of unstated and unidentified evaluation criteria, which equates to procurement error" (Appeal, at p. 6, emphasis in original). In response, UAlbany asserts the RFP adhered to applicable New York State law, policy, and guidelines (*see* Answer, at p. 2). UAlbany maintains it was "not required

² UAlbany's Answer was not paginated. For purposes of this Determination of Appeal, this Office includes page numbers as they would have appeared, if included.

³ ConServe also asserts the UAlbany Protest Determination is fatally flawed on several grounds and requests such Determination be overturned. We note that this Office conducts a de novo review of the procurement record and conducts its own analysis of the facts pertaining to the procurement.

to clearly state nor specifically identify or quantify the evaluation criteria further in the RFP solicitation than what was presented within the RFP solicitation” (UAlbany Protest Determination, at p. 3).

SFL § 163(9)(b) provides that the “solicitation shall prescribe the minimum specifications or requirements that must be met in order to be considered responsive and 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” (emphases added).

Additionally, the New York State Procurement Guidelines indicate:

The RFP must present the criteria that will be used for the evaluation of proposals. At a minimum, the agency must disclose in the RFP the relative weights that will be applied to the cost and technical components of the proposals. An example would be: 30 percent for cost and 70 percent for technical.

An agency may elect to include in the RFP a more detailed breakdown of the evaluation criteria, such as specifying the relative weights for detailed categories (e.g., Experience = 20 percent, Staffing = 15 percent, energy efficiency = 10 percent, and so forth).

(New York State Procurement Guidelines, at p. 30). The New York State Procurement Guidelines also expressly provide that “criteria and sub-criteria may, but are not required, to be disclosed in the RFP” (New York State Procurement Guidelines, at p. 35).

The RFP requires offerors to meet or exceed the mandatory requirements set forth throughout the RFP in order to be responsive (*see* RFP, Section 21, at p. 22). In addition, the RFP clearly outlined the general manner in which the evaluation method and selection process would be conducted, including the criteria to be scored, and the weight to be allocated to each criterion. Specifically, the RFP lists five general categories and the relative weight in the overall evaluation each area will be given: 15% for contractor sustainability, 15% for references, 20% for information security, 20% for collection procedures and example correspondence, and 30% for experience in education-related and multi-campus collections services (*see* RFP, Section 20, at p. 22).

Contrary to ConServe’s assertions, applicable law and guidelines do not require further specifics regarding the criteria used in UAlbany’s evaluation method and selection process to be disclosed in the RFP. Thus, we are satisfied the RFP complies with applicable law and guidelines set forth above.

Evaluation of Proposals

Next, ConServe alleges that UAlbany “failed to comply with applicable State Finance Law when it evaluated proposals...” (Appeal, at p. 7). As support, ConServe claims “UAlbany

unreasonably and arbitrarily downgraded ConServe's proposal based on evaluation criteria different than those disclosed in the RFP" (Appeal, at p. 2). UAlbany states "[n]o responder was penalized, downgraded or otherwise excluded from a fair, competitive evaluation [and] ConServe provided no legitimate, sustainable, or tangible law, policy or guideline to support . . . its appeal" (Answer, at p. 2).

SFL § 163(10) requires that service contracts be awarded based on best value. SFL § 163(1)(j) defines best value as "the basis for awarding contracts for services to the offerer which optimizes quality, cost and efficiency, among responsive and responsible offerers" and "[s]uch basis shall reflect, wherever possible, objective and quantifiable analysis."

SFL § 163(7) provides that "[w]here the basis for award is the best value offer, the state agency shall 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." A best value determination shall "be based on clearly articulated procedures which require . . . a balanced and fair method, established in advance of the receipt of offers, for evaluating offers and awarding contracts" (SFL § 163(2)(b)).

As stated previously, the RFP outlines how the evaluation of proposals would be conducted and sets forth five general categories of criteria to be scored with each category's corresponding weight. Furthermore, our review of the procurement record shows the proposals were scored using an evaluation tool based on the five general categories in the RFP and crafted in advance of the initial receipt of proposals. Thus, UAlbany evaluated the proposals in accordance with applicable law.

Scoring of ConServe's Proposal

ConServe further asserts UAlbany scored ConServe's proposal in an arbitrary and capricious manner (*see* Appeal, at pp. 2-3, p. 7 and p. 20). In essence, ConServe claims that UAlbany awarded fewer points to ConServe's proposal in three criteria than it deserved. As to the first criteria, UAlbany responds it "was within [UAlbany's] right to assign all, some or none of the 15 credits for [the contractor sustainability] category based on ConServe's response [and] ...no subjectivity to the merits were applied, simply that ConServe identified 4 current litigations" (Answer, at p. 1). With respect to the second criteria, UAlbany states "ConServe did not provide a response to the question as to whether or not it ever had an internal or external data breach [in the information security category]" (*Id.*, at 2.). As to the third criteria, UAlbany responds "ConServe's aggregate experience, in 'this business' as identified in [ConServe's] proposal response [in the experience in education-related and multi-campus collections category] was less than 30%" (*Id.*). UAlbany asserts ConServe's entire proposal was "scored solely based on the information ConServe submitted in their proposal in relation to RFP documented criteria for proposal submission" (UAlbany Protest Determination, at p. 5).

Generally, this Office gives significant deference to a State agency in matters within that agency's expertise and, furthermore, is unwilling to substitute its judgment for that of an agency in matters within an agency's realm of expertise where the agency scored technical proposals in

accordance with a pre-established technical proposal evaluation tool (*see* OSC Bid Protest Determination SF-20170192, at p. 7). We have long recognized that evaluators bring their own subjective views to the evaluation process and may interpret information in proposals differently. However, this Office “will generally not disturb a rationally reached determination of a duly constituted evaluation committee” unless “scoring is clearly and demonstratively unreasonable” (OSC Bid Protest Determination SF-20160188, at p. 8 (upholding evaluation committee’s technical scores where “review of the procurement record confirms the evaluators scored the proposals in a manner consistent with the evaluation/scoring instructions”); *see* OSC Bid Protest Determination SF-20200069, at p. 6; *see also* OSC Bid Protest Determination SF-20210006, at p. 6).

Our review of the procurement record indicates UAlbany scored ConServe’s proposal according to the criteria set forth in the RFP and used the evaluation tool that was crafted prior to receipt of proposals. Moreover, the procurement record reasonably supports the scores the evaluators assigned to ConServe’s proposal. Therefore, we have no basis to disturb the scores UAlbany awarded to ConServe.

CONCLUSION

For the reasons outlined above, we have determined the issues raised in the Appeal are not of sufficient merit to overturn the contracts awarded by UAlbany. As a result, the Appeal is denied and we are today approving the NCM and RMS contracts with UAlbany and UAlbany, on behalf of SLSC, for collection agency services.