

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

In the Matter of the Appeal filed by Springbrook NY, Inc. with respect to the grant award for the provision of Crisis Services for Individuals with Intellectual and/or Developmental Disabilities conducted by the New York State Office for People with Developmental Disabilities.

**Determination
of Appeal**

SF-20210158

Procurement Record – OPD01-0000292-3660243

November 10, 2021

The Office of the State Comptroller has reviewed the above-referenced grant award made by the New York State Office for People with Developmental Disabilities (OPWDD) for Crisis Services for Individuals with Intellectual and/or Developmental Disabilities and Resource Center(s) for OPWDD’s Region 2 (CSIDD). We have determined the grounds advanced by Springbrook NY, Inc. (Springbrook) are insufficient to merit overturning the grant award made by OPWDD to Young Adult Institute, Inc. (YAI) and, therefore, we deny the Appeal.

BACKGROUND

Facts

On June 18, 2021, OPWDD issued a request for applications (RFA) seeking applications from not-for-profit providers of CSIDD for its Region 2 (*see* RFA, Section 1.1.1, at p. 5).¹ Region 2 includes twenty New York State counties, covering the Broome, Central New York, and Sunmount areas (*Id.*, Section 1.3.1.2, at p. 6). OPWDD intended to award one grant contract as a result of the RFA (*Id.*, Section 1.1.1, at p. 5). The awardee would be required to become certified by the Center for START Services at the Institute on Disability at the University of New Hampshire (START Center) (*Id.*, Section 1.3.2, at p. 6).

A team of OPWDD staff evaluated applications and were permitted to seek technical assistance from representatives of the START Center, if needed (*Id.*, Section 7.1.3, at p. 34). The RFA provided for a contract to be awarded based on a “combination of technical merit and cost that would most benefit OPWDD” (*Id.*). The applicant with the highest final composite score (up to 100 points, including the technical, cost, and interview scores minus any penalty points) would be awarded the grant contract (*Id.*, Sections 7.7 and 7.8, at pp. 37-38). The technical proposal was worth up to 70 points, and included the following scoring criteria: philosophy and mission (4 points); vision and goal (4 points); proposed staff (4 points); experience (6 points); description of services (30 points); technology (4 points); development plan for services (4 points); property for

¹ CSIDD is available to individuals 6 years of age or older who meet medical necessity criteria and are eligible for OPWDD services (*see* RFA, Section 1.3.3.1, at p. 6). The goal of CSIDD is to provide short-term crisis services to help stabilize individuals with intellectual and/or developmental disabilities, who have significant behavioral or mental health needs, within their existing care networks (*Id.*).

resource center use (10 points); and, diversity practices (4 points) (*Id.*, Sections 6.7 and 7.3, at pp. 27-32, 35). The cost proposal was worth a maximum of 20 points and considered the following factors: lowest cost (5 points); understanding of annual expenditure requirements for clinical team, start-up and non-personal costs (5 points); whether the applicant utilized correct and reasonable NPS/Admin fees (5 points); and, whether the applicant's budget reflected an adherence to a phased-in staffing pattern (5 points) (*Id.*, Sections 6.8 and 7.4, at pp. 32-33, 35). Penalties could be imposed in the form of a points deduction² if an applicant's required cover letter was incomplete in any material respect (*Id.*, Sections 6.6.2.1 and 7.2.2, at pp. 26, 35). Applicants whose proposals earned the three highest intermediate scores (up to 90 points including the technical and cost scores minus any penalty points) would advance to an interview, worth up to 10 points (*Id.*, Sections 7.5 and 7.6, at p. 36). OPWDD also reserved the right to adjust the technical score based on material differences OPWDD identified between the technical proposal and the substance of the interview (*Id.*, Section 7.6.7, at p. 37).

Applications were due on July 28, 2021, a one-week extension of the original due date of July 21, 2021. YAI, Springbrook, and another vendor submitted applications by the due date and OPWDD awarded the grant contract to YAI, the applicant with the highest final composite score. Springbrook requested a debriefing, which was held with OPWDD on August 25, 2021.

Thereafter, on August 31, 2021, Springbrook submitted a protest of the grant award to OPWDD (Protest to OPWDD) pursuant to OPWDD's bid protest policy, as contained in the RFA (*Id.*, Section 8.16, at pp. 49-50). OPWDD denied Springbrook's protest in a written determination on September 28, 2021 (OPWDD Determination). Springbrook then appealed such denial to this Office on October 12, 2021 (Appeal). OPWDD submitted a response to the appeal on October 25, 2021 (OPWDD 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.³ 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 OPWDD with respect to the grant award;

² The RFA provided that "[t]wo points will be deducted for each missing element and for each instance where the prescribed format is not followed" (RFA, Section 7.2.2, at p. 35).

³ 2 NYCRR Part 24.

2. the correspondence between this Office and OPWDD arising out of our review of the proposed OPWDD/YAI grant award; and
3. the following correspondence/submissions from the parties (including the attachments thereto):
 - a. Springbrook's Protest to OPWDD;
 - b. OPWDD's Determination;
 - c. Springbrook's Appeal; and
 - d. OPWDD's Answer.

ANALYSIS OF THE APPEAL

Appeal to this Office

In its Appeal, Springbrook challenges the grant award decision by OPWDD on the following grounds:

1. The timeframe provided by OPWDD within which to submit applications provided an unfair advantage to providers with CSIDD contracts in regions other than Region 2, such as YAI, who could utilize a prior, successful technical proposal as part of their current application;
2. The RFA provided an advantage to providers with CSIDD contracts in regions other than Region 2 by failing to evaluate regional linkages and the ability to sustain services after the contract term;
3. The fact that OPWDD conducted interviews on the same day OPWDD planned to award the contract makes the interviews appear to be a formality and therefore, the contract would be awarded based on the technical and cost scores;
4. YAI's existing relationships with OPWDD evaluation team members, as a current CSIDD provider in Region 4, and the START Center, provided YAI with an unfair advantage and undermined the independence of OPWDD evaluators in the review of YAI's technical proposal;
5. YAI is not a current Region 2 CSIDD provider and therefore may not have taken into account the need for additional travel and/or personnel costs necessitated by the geography of the region in its cost proposal; and,
6. The appeals process set forth in the RFA does not provide applicants with the proper information needed to appeal a determination.⁴

OPWDD Response to the Appeal

⁴ It is undisputed that Springbrook submitted a timely protest of contract award to OPWDD, OPWDD denied the protest, and Springbrook subsequently submitted a timely appeal of that denial to OSC in accordance with the OSC Protest Procedure. Therefore, because Springbrook has availed itself of all administrative procedures in connection with protesting the contract award, this allegation is rendered moot.

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

1. The timeframe provided by OPWDD within which to submit grant applications was adequate for all interested providers, regardless of whether an applicant had prior experience providing CSIDD;
2. The RFA did evaluate community linkages as part of the technical scoring, and, while not scored, the ability to sustain services for the duration of the contract period was implicit in the RFA;
3. The RFA permitted evaluators to adjust technical scores when the interview revealed a discrepancy with the written technical proposal and adjustments could be made prior to contract award;
4. The OPWDD evaluation team did not seek technical assistance from the START Center for this procurement;
5. OPWDD evaluated the reasonableness of applicants' costs as part of the cost proposal scoring rubric and confirmed with YAI during contract negotiations that it will be providing CSIDD services in Region 2 at the costs in its proposal; and,
6. An error in the RFA regarding the initial bid protest deadline did not prejudice Springbrook since Springbrook timely filed both an initial bid protest with OPWDD and an appeal with OSC.⁵

DISCUSSION

Application Submission Deadline

Springbrook contends that “[t]he timing [] of the technical proposal created an advantage for [YAI] since they currently hold the CSIDD contract in Region 4 [] and were able to utilize their prior successful response as part of their submission to provide CSIDD in Region 2[;]” whereas, “Springbrook had to create a response from scratch” (Appeal, at pp. 2-3). Springbrook further contends that “[f]our weeks was insufficient to truly let providers in Region 2 be able to compete with providers in other Regions who have CSIDD contracts with OPWDD” and “[w]hile OPWDD did provide a one week extension . . . it provided a disadvantage to Springbrook” because “additional time [was not provided] from the outset” (*Id.*, at p. 4). OPWDD maintains the “RFA’s response timeframe provided an adequate response period for all interested providers, regardless of whether they already had experience providing CSIDD services” (OPWDD Answer, at p. 2). OPWDD further submits that “[t]he timeline in the RFA was extended from four (4) weeks to almost six (6) weeks, which is one (1) week shorter than the timeline that was used for the CSIDD RFA in Region 4” (*Id.*).

First and foremost, three applicants submitted applications within the timeframe provided by the RFA, including Springbrook. Despite claiming that the RFA timeframe of nearly 6 weeks was not sufficient, Springbrook did, in fact, complete and submit an application within that allotted timeframe. Springbrook itself concedes that it “met all timelines and requirements” and does not articulate exactly why more time was needed, other than it “would have allowed [Springbrook] more time to work on the technical proposal” (Appeal, at p. 4). Accordingly, we will not disturb

⁵ See fn. 4 *supra*.

OPWDD’s determination that the timeline for submission of applications set forth in the RFA, including the extension, was adequate for all interested providers.

Next, Springbrook alleges that the application submission timeline afforded current CSIDD contract holders, such as YAI, an advantage since those applicants could use prior technical proposals to quickly craft a response to the RFA. However, as OPWDD correctly points out, “the technical scoring rubric was not created from previous bidders’ responses to previous RFAs. The technical scoring rubric was designed to match the technical score weighting and the overall weight of the technical evaluation contained in [] the RFA” (OPWDD Answer, at p. 1). Thus, an applicant under this RFA could not simply copy a prior technical proposal without assessing whether the proposal was actually responsive to the numerous elements required to be addressed under the RFA (*see* RFA, Section 6.7, at pp. 27-32). Inasmuch as all applicants were given the same time to prepare a technical proposal responsive to the particular criteria set forth in the RFA, we find the application submission timeline did not advantage current CSIDD providers.

Technical Evaluation Criteria

Springbrook states the “description of services and experience counted for more than half of the technical score [] and did not require an applicant to provide community linkages or evidence of sustainability to be successful, even though those factors were clearly outlined in . . . the RFA” (Appeal, at p. 2). Springbrook alleges that, as a result, “[t]he lack of prioritization and/or evaluation [of sustainability beyond the three-year contract] provides an advantage to providers out of Region 2 who are currently offering these services in other OPWDD Regions” (*Id.*, at p. 5). OPWDD contends that it “did score the provision of community linkages, among many other criteria, as part of the technical scoring rubric that was consistent with the scoring weights in the RFA” and “the sustainability of bidders’ services was implicit in the RFA – the RFA requested, and bidders proposed to provide sustained CSIDD services for the duration of the contract period” (OPWDD Answer, at pp. 1-2).

The RFA required the technical proposal to include the following regarding community linkages, which was evaluated and scored by OPWDD:

Linkages, outreach and follow-ups. Describe how your agency will:

- Develop formal linkages with local providers in the field;
- Utilize various methods of outreach to become a visible part of the existing network of supports and services; and
- Implement follow-up methods to evaluate effects of treatment strategies.

(RFA, Section 6.7.5.2.2, at p. 28). Thus, the RFA clearly shows that applicants were required to describe community linkages as part of the technical proposal and our review of the procurement record confirms OPWDD scored such criteria.

We now turn to Springbrook’s assertion that OPWDD’s failure to evaluate an applicant’s ability to sustain services after the term of the contract ends advantaged CSIDD providers in other regions. Springbrook’s assertion is premised upon the supposition that, without requiring an

applicant to demonstrate sustainability in Region 2, the applicant may discontinue providing CSIDD in Region 2 at the end of the contract (*see* Appeal, at p. 5). By this, Springbrook is assuming that its ability to sustain services in Region 2 is somehow superior to others merely because it currently provides services there; and, by not including sustainability as a technical criterion to be scored, Springbrook is being divested of such recognition. However, CSIDD providers, like YAI, who have been successfully providing services in other regions and showing the ability to sustain such services also demonstrate sustainability. In fact, evaluating sustainability in Region 2 after the contract terminates may actually favor those CSIDD providers that have already been successfully providing these services through established networks, albeit in other regions.

OPWDD notified applicants that “[f]unds made available through this RFA are intended to provide gap funding for a period of three years while the successful applicant matures its program, establishes and builds their caseload” and “will cover the operating cost differences between the successful applicant’s total spending and the amount the agency will receive in Medicaid payments” (RFA, Section 1.3.5.1, at p. 8). Consistent with its stated goal, OPWDD evaluated an applicant’s ability to strengthen its program during the relevant contract period. Moreover, this Office generally defers to agencies in structuring procurements to meet their needs, including choosing evaluation criteria and assigning appropriate point values thereto. In this case, we find no reason to disturb OPWDD’s technical scores.

Interview Process

Springbrook asserts the fact that OPWDD conducted interviews on the same date OPWDD intended to make the contract award undermined the interview process and “makes it seem as though the interview process was a formality and that the contract would be awarded based on the intermediary score which was the combination of the technical and financial” (Appeal, at p. 5). OPWDD responds the RFA permitted evaluators to “adjust the technical scores when information gathered during the interview reveals a discrepancy with the scored written proposal” and, to the extent evaluators noted discrepancies, “they could have adjusted the technical scores that day” (OPWDD Answer, at p. 3). OPWDD states “evaluators did not adjust Springbrook’s technical score because the information shared during the interview did not create a discrepancy with the scored written proposal” (*Id.*).

As stated above, the RFA required OPWDD to interview applicants with the three highest intermediate scores (*see* RFA, Section 7.6, at p. 36). The RFA further provided evaluators “will conduct interviews using a prepared set of questions based on the criteria listed in section 6.7 of this RFA. Each question will be worth a pre-defined number of points” (*Id.*, Section 7.6.4, at p. 36). Finally, the RFA provided OPWDD may, in its sole discretion, adjust a technical score if it determines material differences exist between information elicited at the interview and an applicant’s written technical proposal (*Id.*, Section 7.6.7, at p. 37).

Our review of the procurement record confirms OPWDD conducted the interviews in accordance with the RFA requirements, scored the interviews using a pre-established evaluation tool consistent with the RFA, and included such scores in the final composite score for each

applicant. Moreover, if OPWDD determined an applicant's technical score required adjustment, OPWDD could do so prior to calculating the final composite scores.

Bias in Technical Evaluation Process

Springbrook alleges that “the [OPWDD] Evaluation Team consisted of two individuals [] that would have a relationship and knowledge of CSIDD providers” like YAI, and further, YAI is certified by the START Center, who is able to provide technical assistance to the OPWDD Evaluation Team (Appeal, at pp. 5-6). Springbrook asserts YAI received “an unfair advantage in the review of the technical proposal” as a result of these relationships (*Id.*). OPWDD counters that “[w]hile [the RFA] allowed OPWDD’s evaluators to seek technical assistance from [START Center], none of them did so for this procurement” (OPWDD Answer, at p. 3).⁶ OPWDD adds that “the RFA neither required applicants to be current CSIDD providers nor prohibited current CSIDD providers from submitting applications” and “[p]rohibiting current CSIDD providers from applying would have unnecessarily limited the pool of qualified applicants” (*Id.*).

This allegation is based on the assumption that an evaluator who knows an applicant is de facto biased in favor of such applicant and will therefore not be able to objectively evaluate applications. To the contrary, the RFP and evaluation process was structured so as to provide every applicant with an equal opportunity to describe how it would meet the requirements of the RFA. All applications were scored in accordance with a predefined evaluation instrument consistent with the criteria set forth in the RFA. Springbrook provides no support for this allegation of bias, nor is there any evidence in the procurement record to suggest that evaluation of the applications involved any bias towards a particular applicant. Therefore, we find no merit to Springbrook’s claim.

Reasonableness of YAI’s Cost Proposal

Based on its understanding that YAI submitted a lower cost proposal, Springbrook asserts YAI’s cost proposal “may not have taken into account the need for additional travel and/or personnel costs, especially since the pandemic and the current staffing shortages are being experienced across Region 2” (Appeal, at p. 3). OPWDD counters that it “evaluated the reasonableness of applicants’ costs as part of the cost proposal scoring rubric” (OPWDD Answer, at p. 2). In addition, OPWDD states it “confirmed during contract negotiations that [YAI] will be providing CSIDD services in Region 2 at the costs that were in its proposal” (*Id.*).

Applicants were required to complete the cost proposal form attached to the RFA (Attachment E, Expenditure Based Budget) which detailed categories of expenses, including personal services and non-personal services, including travel, required to perform the contract. Our review of the procurement record confirms OPWDD reviewed all cost proposals according to the evaluation methodology set forth in the RFA. Here, Springbrook concludes YAI’s lower cost proposal indicates YAI lacks an understanding of Region 2, yet fails to provide support for its assumption. As stated above, OPWDD is satisfied that YAI’s cost proposal is reasonable.

⁶ Our review of the procurement record supports OPWDD’s claim that the evaluators did not seek assistance from the START Center in connection with the RFA. Accordingly, this Determination will solely address Springbrook’s allegation of unfair advantage resulting from the relationship between YAI and OPWDD’s Evaluation Team.

Without more, “a lower price does not de facto indicate inability to perform” (*see* OSC Bid Protest Determination SF-20200165, at p. 8). Based on the foregoing and our review of the procurement record, we find no reason to question OPWDD’s determination that YAI can perform the contract at the price it bid.

CONCLUSION

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