

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

In the Matter of the Bid Protest filed by Q-Matic Corporation with respect to the procurement of a Reservation and Customer Flow System conducted by the New York State Department of Motor Vehicles.

**Determination
of Bid Protest**

SF- 20210164

Contract Number – C000975

March 22, 2022

The Office of the State Comptroller has reviewed the above-referenced procurement conducted by the New York State Department of Motor Vehicles (DMV) for a fully integrated queuing, reservation and customer flow management system to support DMV’s operations throughout New York State (System). We have determined the grounds advanced by Q-Matic Corporation (Q-Matic) 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 Applus Technologies, Inc. (Applus) for the System.

BACKGROUND

Facts

On May 28, 2021, DMV issued a Request for Proposals (RFP) seeking a vendor to provide the System (*see* RFP, Section 1.1, at p. 6). The System was to include “hardware, software, applications, communications and any related services” in order to replace the current systems used at DMV’s thirty-six offices statewide (*see* RFP, Sections 1.1 and 1.2, at p. 6).

The RFP provided that proposals would indicate compliance with mandatory requirements which would be necessary for a proposal to be deemed responsive and explain in detail how a proposed solution would meet scored requirements (*see* RFP, Section 1.22, at pp. 15-16). The evaluation team reviewed proposals to ensure all mandatory requirements were met, and, if so, evaluated technical proposals using the following criteria: Experience and Expertise (10%); Overall System and Hardware Requirements (10%); Reservation Functionality, Customer Check-In and Customer Flow Requirements (20%); Security Requirements and Data Management (5%); Reporting and Data Requirements (10%); Test Requirements, Training Requirements, and Installation and Implementation (5%); Change Control Process and System Maintenance and Support Requirements (10%); Diversity Practices (5%); and, Compensation and Service Level Agreement (5%) (*see* RFP, Section 5.3, at p. 80). DMV awarded points to the technical proposals according to a pre-determined rating scale. DMV scored the cost proposals, worth 20%, by awarding the offeror submitting the lowest cost for each item the full points for that item and other offerors received a proportionate score based on their relation to the proposal offering the lowest cost for an item (*see* RFP, Section 5.4, at p. 80). Cost scores

were then added to the technical scores to produce a final composite score (*Id.*). The RFP provided that the contract would be awarded to the offeror with the highest composite score (*Id.*).

DMV received responsive proposals from multiple offerors, including Q-Matic and Applus, prior to the proposal due date of July 27, 2021. DMV awarded the contract for the System to Applus, the responsive and responsible offeror achieving the highest final score.

Q-Matic requested a debriefing which DMV provided on October 27, 2021. On November 3, 2021, Q-Matic filed a protest with this Office (Protest). On January 24, 2022, 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 the DMV with the DMV / Applus contract;
2. the correspondence between this Office and the DMV arising out of our review of the proposed DMV / Applus contract; and,
3. the following correspondence/submissions from the parties (including the attachments thereto):
 - a. Q-Matic's Protest; and,
 - b. DMV's Answer.

ANALYSIS OF THE PROTEST

Protest to this Office

In its Protest, Q-Matic challenges the procurement conducted by DMV on the following grounds:

¹ 2 NYCRR Part 24.

1. The winning offeror, Applus, scored less than 55% of available points resulting in high risk and poor value and return on investment for DMV;
2. All offerors, including Applus, received the same points for the “Information Security and Data Requirements”² category of technical criteria which indicates offerors were not provided with a clear opportunity to differentiate their proposals;
3. DMV’s determination to award Applus the same number of total points as Q-Matic for the Security Requirements and Data Management category shows DMV failed to take into account Applus’ recent, serious security incidents when scoring Applus’ proposal; and,
4. DMV acted arbitrarily and capriciously when it scored Q-Matic’s technical proposal, as evidenced by the inconsistency of the debriefing comments.

DMV Response to the Protest

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

1. The methodology used by DMV in scoring proposals is rational and has been used consistently and successfully by DMV;
2. Applus was deemed responsive and tentatively awarded the contract in accordance with the evaluation criteria developed by DMV, which did not specify a minimum number of points required to be declared winner of the technical portion of the RFP;
3. All offerors were provided with the opportunity to expand upon their offering in their scoreable technical proposal responses, and proposals were evaluated independently;
4. DMV conducted a thorough vendor responsibility review of Applus and deemed Applus to be responsible; and,
5. The debriefing comments Q-Matic lists as inconsistent originate from two unrelated sections of Q-Matic’s technical proposal.

DISCUSSION

Best Value Determination

Q-Matic alleges this procurement provides “[h]igh risk, [p]oor value and return on investment” for DMV because “[t]he winning bid scored less than 55% of the available points” (Protest, at p. 1). Q-Matic further claims this “is an extremely low performance metric to justify replacing a working solution for close to \$1.8M in costs” (*Id.*). In response, DMV asserts it “did not specify a minimum number of points that must be achieved by a bidder in order to be declared the tentative winner of the technical portion of the RFP” (Answer, at p.1). DMV further states that the “evaluation methodology . . . is not only rational but has been used consistently and successfully by DMV” and, in this case, “Applus was deemed responsive . . . and the Contract was tentatively awarded in accordance with the evaluation criteria developed” (Answer, at p. 2). DMV further points out that an average technical score would equate to 400 (out of a

² Q-Matic here refers to the “Security Requirements and Data Management” category of criteria from the RFP (*see* RFP, Section 3.11, at pp. 56-71). For purposes of this Determination, we will hereafter refer to “Security Requirements and Data Management.”

total possible 800 points), and that Applus received a technical score (451.19) in excess of that average (*Id.*).

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 offerer which optimizes quality, cost and efficiency, among responsive and responsible offerers. 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 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.”

Q-Matic is essentially claiming DMV failed to award the contract on the basis of best value. Here, the RFP sets forth in great detail the mandatory minimum requirements as well as the evaluation criteria used to review various categories of the technical proposal, and the relative scoring weight of those categories (*see* RFP, Sections 2-4 and 5.3, at pp. 17-77, 80). The RFP also provides for a separate cost proposal form requiring offerors to propose prices for separate items, worth 20% of the total combined score (*see* RFP, Section 5.4, at pg. 80). The RFP states that the contract would be awarded to the offeror achieving the highest combined score for the technical and cost proposals (*see* RFP, Section 5.3, at p. 80).

Additionally, the procurement record indicates that DMV developed its technical evaluation tool prior to the initial receipt of proposals. This technical evaluation tool matched the evaluation criteria for each category set forth in the RFP and further defined and detailed the evaluation process, establishing a scoring plan consistent with the relative weights for each category set forth in the RFP (Experience and Expertise - 100 points; Overall System and Hardware Requirements - 100 points; Reservation Functionality, Customer Check-In and Customer Flow Requirements - 200 points; Security Requirements and Data Management - 50 points; Reporting and Data Requirements - 100 points; Test Requirements, Training Requirements, and Installation and Implementation - 50 points; Change Control Process and System Maintenance and Support Requirements - 100 points; Diversity Practices - 50 points; and, Compensation and Service Level Agreement - 50 points. Notably, the RFP does not require an offeror to receive a certain number of points to be selected for contract award, nor does the SFL provide for such a requirement.

Our review of the procurement record confirms that DMV evaluated the proposals in accordance with the evaluation criteria set forth in the RFP and its technical evaluation tool. Accordingly, the RFP satisfied the requirements of the SFL, and DMV’s award of the contract to Applus, the offeror with the highest combined score, was based on a best value determination.

Evaluation of Technical Proposals

In the Protest, Q-Matic raises several issues pertaining to DMV's technical proposal evaluation. At the outset, we provide our standard of review of agency determinations and will then address each specific issue below.

This Office 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 "according to the pre-established technical proposal evaluation tool" (*see* OSC Bid Protest Determination SF-20170192, at p. 7). Nor will we question an agency's determinations regarding the specific needs and requirements for a procurement when same is in that agency's expertise. Accordingly, 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"))).

1. Security Requirements and Data Management Category

Q-Matic asserts that because all vendors received the same score for the Security Requirements and Data Management category of technical criteria, "vendors were not provided a clear opportunity to differentiate their offering" (Protest, at p.1). DMV responds that "DMV's desired features were detailed in the RFP and all bidders were provided the opportunity to expand upon their offering in the scoreable responses" (Answer, at p. 3). DMV further claims that "Qmatic's response was evaluated independently from all other bids and the scores were based solely on the responses provided in the bids" (*Id.*).

As explained more fully above, the RFP sets forth in detail the evaluation criteria used to review the categories of the technical proposal and the relative scoring weight of those categories, all in compliance with the State Finance Law (*see* RFP, Sections 2-4, at pp. 17-77, 80).

DMV, as the State agency responsible for administration and use of the procured System, possesses the expertise to determine its needs and requirements for the System, as well as select criteria corresponding to its requirements and use such criteria to score proposals submitted in response to the RFP. Despite all offerors receiving the same score for one of eight general technical categories, our review of the procurement record indicates that DMV followed its evaluation method as prescribed by the RFP, along with its pre-established technical evaluation tool to score all categories of the technical proposals. The RFP and the procurement record further demonstrate that all offerors were provided with the same opportunity to submit technical proposals responding to the RFP's requirements. Consequently, our review does not provide any basis to disturb the technical proposal scores awarded by DMV.

2. Overall System and Hardware and Experience and Expertise Categories

Q-Matic further asserts that “the inconsistency of [DMV’s debriefing] comments suggests DMV acted arbitrarily and capriciously when it scored Qmatic’s Technical Proposal” (Protest, at p. 3). Specifically, Q-Matic claims that DMV’s debriefing comments regarding the strengths and weaknesses of Q-Matic’s technical proposal for the “Overall System and Hardware” category conflict with DMV’s debriefing comments regarding the strength of Q-Matic’s demonstration provided as part of the “Experience and Expertise” category (*Id.*). In response, DMV asserts that “[w]hen preparing a debriefing document, DMV provides both strengths and weaknesses for each section of the evaluated proposal” and the comments at issue “were regarding two unrelated sections of the proposal.” (Answer, at p. 3). DMV further noted that “QMatic was encouraged to submit a FOIL request for the evaluation documents, to garner a more complete picture of how the individual evaluators scored their proposals including the justification behind each score” (*Id.*).

DMV’s comments regarding the strengths and weaknesses of Q-Matic’s responses to particular technical categories were based on the criteria unique to each category. For example, the comment on the strength of Q-Matic’s response to the “Experience and Expertise” category, in which Q-Matic ranked first, relates specifically to Q-Matic’s demonstration of its system. DMV’s debriefing also included a comment on the weakness of Q-Matic’s response to the “Experience and Expertise” category because Q-Matic’s description of its system failed to address certain minimum requirements set forth in the RFP. The comments on Q-Matic’s responses to the “Overall System and Hardware” category, in which Q-Matic ranked fourth, relate to the strength of Q-Matic’s response regarding the visual means of display and ability to integrate with current equipment and the lack of sufficient detail in Q-Matic’s responses regarding the overall system. In sum, each category has its own distinctive requirements and applicable evaluation criteria. As a result, there can be no reasonable expectation of consistency between DMV’s comments on these separate and distinct categories.

Based on a review of the procurement record, this Office finds the scores provided to Q-Matic for the “Overall System and Hardware” and the “Experience and Expertise” categories to be both reasonable and supported by the evaluators’ comments. Therefore, we again find no basis to disturb the technical proposal scores awarded by DMV.

Vendor Responsibility

Q-Matic asserts that “the winning vendor has had well reported, serious security incidents recently” and thus should not have received the same score as Q-Matic for the Security Requirements and Data Management category of the technical proposal (Protest, at p. 1). DMV responds by stating that it “has conducted a thorough vendor responsibility review of Applus which included a review of Applus’ financial and organizational capacity, legal capacity, integrity and past performance and DMV has found Applus to be responsible” (Answer, at p. 3).

Above, we addressed the appropriateness of DMV’s scoring of technical proposals; here, we will address the allegation against Applus of “serious security incidents” which bears on the responsibility of Applus. SFL § 163(4)(d) provides that “[s]ervice contracts shall be awarded on

the basis of best value to a responsive and *responsible* offerer...” (*emphasis added*). SFL § 163(9)(f) states that “[p]rior to making an award of contract, each state agency shall make a determination of responsibility of the proposed contractor” (*see also* RFP, Section 5.6, at p. 81). For purposes of SFL § 163, “responsible” means the financial ability, legal capacity, integrity, and past performance of a business entity” (SFL § 163(1)(c)).

Our review of the procurement record confirms that DMV conducted a vendor responsibility review of Applus, which consisted of review of Applus’ financial and organizational capacity, legal capacity, integrity and past performance. As documented in the procurement record, DMV determined Applus to be a responsible offeror that can successfully perform the services required under the contract. Additionally, as part of our review of the DMV / Applus contract, this Office examined and assessed the information provided in the procurement record and conducted an independent vendor responsibility review of Applus. Our review did not provide any basis to upset DMV’s responsibility determination.

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 / Applus contract for the System.