

STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

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In the Matter of the Appeal filed by Vera Institute of Justice with respect to the procurement of Case Manager Services conducted by the New York State Office of Victim Services.

**Determination  
of Appeal**

**SF-20180082**

Procurement Record – OVS01-0000007-1080200

April 20, 2018

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The Office of the State Comptroller has reviewed the above-referenced procurement conducted by the New York State Office of Victim Services (OVS) for case manager services. We have determined the grounds advanced by Vera Institute of Justice (Vera) are insufficient to merit overturning OVS' decision not to consider the grant application of Vera and, therefore, we deny the Appeal.

**BACKGROUND**

**Facts**

OVS provides services and support to crime victims in New York State and administers grants available under the Federal Victims of Crime Act. OVS issued a Request for Applications for Case Manager Services (RFA) on December 20, 2017. Case managers “oversee coordination of the care of the victim in response to a variety of challenges and needs that arise from the victimization” (RFA, Section 2.2, at pg. 5). All Child Advocacy Centers and Victim Assistance Programs that are currently funded by an OVS contract were eligible to submit applications under this grant (*see* RFA, Section 2.3, at pg. 7). After initially determining whether applications met certain minimum qualifications, OVS evaluated and scored the applications according to the criteria set forth in the RFA, and made awards on the basis of best value (*see* RFA, Section 4, at pgs. 11-13). Applicants were directed to submit their applications through the Grants Gateway, an electronic portal system used statewide, and were required to be prequalified in the Grants Gateway prior to January 26, 2018, the RFA submission deadline (*see* RFA, Section 3.1, at pg. 8; Section 8, at pg. 23). The RFA was clear -- applicants that were not prequalified could not be considered for funding (*see* RFA, Section 8, at pg. 23; Section 3.2, at pg. 8).

Vera submitted an application on January 23, 2018. However, on February 22, 2018, OVS notified Vera it could not consider Vera's application because Vera failed to obtain the required prequalification in the Grants Gateway. By letter dated March 1, 2018, Vera filed a protest with OVS challenging OVS' rejection of Vera's application. OVS denied the protest in a letter dated March 7, 2018. Vera filed an appeal of OVS' determination with this Office by letter dated March 13, 2018 (Appeal) and OVS answered the Appeal on March 23, 2018 (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 the contract approval responsibility prescribed by SFL § 112, 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.<sup>1</sup> 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 Title 2 of the Codes, Rules and Regulations of the State of New York.

In the determination of the Appeal, this Office considered:

1. the documentation contained in the procurement record forwarded to this Office by OVS with respect to the grant awards;
2. the correspondence between this Office and OVS arising out of our review of the grant awards; and
3. the following correspondence/submissions from the parties (including the attachments thereto):
  - a. Vera's Appeal dated March 13, 2018; and
  - b. OVS' Answer dated March 23, 2018.

## **ANALYSIS OF THE APPEAL**

### **Appeal to this Office**

In its Appeal, Vera challenges the decision by OVS to deny funding of its application on the following grounds:

1. OVS erred in automatically rejecting Vera's application because Vera had uploaded the necessary documents in the Grants Gateway for prequalification and, even though Vera failed to submit such documents, the documents were visible to OVS. Furthermore, after notification from OVS, Vera took immediate steps to become prequalified.

### **OVS Response to the Appeal**

In its Answer, OVS contends the Appeal should be rejected on the following grounds:

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<sup>1</sup> 2 NYCRR Part 24.

1. Vera failed to submit the uploaded documentation and complete the prequalification process. Accordingly, since prequalification was a requirement in the RFA, the Vera application was not evaluated.

## DISCUSSION

### Prequalification as a Mandatory Specification

Vera asserts it substantially met the RFA prequalification requirement and urges OVS to reconsider its rejection of Vera's application (*see* Appeal, at pgs. 1-2). Vera further claims it had no reason to suspect that its submission had not been completed and its status was in jeopardy until Vera received notice that its application had been rejected (*see* Appeal, at pg. 1). OVS, however, states that prequalification in the Grants Gateway is a two-step process consisting of uploading the necessary documents and submitting them to the Grants Gateway system (*see* Answer). OVS asserts Vera was not prequalified since it did not complete both steps and, as a result, OVS did not evaluate Vera's application (*Id.*).

By way of background, after a vendor is initially prequalified in the Grants Gateway, a vendor must periodically upload and submit current documents as needed into the vendor's Document Vault in the Grants Gateway to *maintain* its prequalified status (*see* NYS Grants Gateway System: Monitoring and Updating Your Organization's Prequalification Status). After document submission, a vendor receives a system-generated email advising the vendor that its submission was successful (*see* NYS Grants Gateway System: Monitoring and Updating Your Organization's Prequalification Status, at pg. 9). Once the submission has been reviewed and approved, the vendor will receive a subsequent system-generated email confirming it is prequalified to apply for grants (*Id.*).

A clear requirement in the RFA was for applicants to be prequalified in the Grants Gateway prior to the deadline for receipt of applications (*see* RFA, Section 8, at pg. 23; Section 3.2, at pg. 8). Moreover, the RFA expressly provides that an application that has not been prequalified in the Grants Gateway will be immediately disqualified from further review (*see* RFA, Section 4.1, at pg. 11).

Vera states it was notified on January 15, 2018 that its prequalification status had lapsed (*see* Appeal, at pg. 1). Vera claims it uploaded the necessary documentation to the Grants Gateway on January 16, 2018 but unknowingly failed to submit the documents into the system (*Id.*). Based on the system process described above, Vera should have expected to receive emails indicating that it had successfully submitted the documents in its Document Vault and, ultimately, a subsequent email confirming Vera's prequalification status. Thus, we find Vera's statement that "there was no cause for Vera to suspect that submission had not been completed and our status was in jeopardy until the rejection of our proposal over a month later" unpersuasive.<sup>2</sup>

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<sup>2</sup> We further note that the same individual at Vera submitted documentation in the system on at least 19 prior occasions and therefore, was presumably familiar with the prequalification process.

It is indisputable that OVS intended prequalification in the Grants Gateway to be a mandatory specification to be met by all applicants.<sup>3</sup> Because Vera failed to complete the prequalification process, OVS found Vera's application nonresponsive.

### **Waiver of Prequalification Requirement**

Vera also asserts it had uploaded all the necessary documents in the Grants Gateway and the documents were visible to OVS staff at the time the applications were due and furthermore, Vera took "immediate steps to have its prequalification status updated – and that status was swiftly corrected to show that Vera is indeed prequalified" (Appeal, at pgs. 1-2).<sup>4</sup> OVS responds that it cannot confirm the documents were visible to OVS at the submission deadline; however, because the Grants Gateway informed OVS that Vera was not prequalified on the date applications were due, OVS did not evaluate Vera's application (*see Answer*).

In essence, Vera is requesting OVS to disregard an RFA specification and consider Vera's application, notwithstanding a "minor technical error" (*see Appeal*, at pg. 2). While a public contracting entity can reject bids that do not precisely comply with bid specifications, the public contracting entity may also "waive a technical noncompliance with bid specifications if the defect is a mere irregularity and it is in the best interest of the municipality [or state] to do so" (*Hungerford & Terry, Inc. v. Suffolk County Water Auth.*, 12 AD3d 675, 676 [2<sup>nd</sup> Dept. 2004]; *see also Le Cesse Bros. Contr. v. Town Bd. Of Town of Williamson*, 62 AD2d 28 [4<sup>th</sup> Dept. 1978]). Conversely, a public contracting entity may not waive a material or substantial variance from the bid specifications since doing so "would impair the interests of the contracting public authority or place some of the bidders at a competitive disadvantage" (*Hungerford*, at 676). However, where the variance is not material, a public contracting entity has discretion whether to waive the variance or reject the bid (*see e.g., Hamlin Constr. Co. v. County of Ulster*, 301 AD2d 848 [3<sup>rd</sup> Dept. 2003]; *George A. Nole & Son, Inc. v. Bd. Of Education of the City School Dist. Of Norwich & Kotasek Corp.*, 129 AD2d 873 [3<sup>rd</sup> Dept. 1987]).

Although OVS reserved the right to waive or modify minor irregularities in applications, since prequalification in the Grants Gateway was a mandatory requirement, this reservation of rights did not authorize a waiver of the pre-qualification requirement (*see RFA*, Section 5.11, at pg. 18). Furthermore, we note generally state agencies are instructed not to evaluate proposals for grant opportunities from vendors that are not prequalified in the Grants Gateway.<sup>5</sup> Thus, we will not disturb OVS' decision to not evaluate Vera's proposal.

### **CONCLUSION**

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<sup>3</sup> The RFA required that a vendor have one of the following four prequalification statuses to be considered for funding: Document Vault Prequalified; Document Vault Prequalified Open; Document Vault Prequalified/in review; or Document Vault Open for PQS edits (*see RFA*, Section 8, at pg. 23).

<sup>4</sup> As of the date of this Determination, Vera has not completed the prequalification process in the Grants Gateway.

<sup>5</sup> New York State Budget Bulletin H-1032: New York State Grants Reform, <https://www.budget.ny.gov/guide/bprm/bulletins/h-1032rev.html>.

For the reasons outlined above, we have determined the issues raised in the Appeal are not of sufficient merit to overturn the determination of OVS to not consider the grant application of Vera. As a result, the Appeal is denied.