

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

In the Matter of the Bid Protest filed by CBN Secure Technologies, Inc. with respect to the procurement to produce secure New York State identity documents conducted by the New York State Department of Motor Vehicles.

**Determination of
Bid Protest**

SF-20220031

Contract Number – C000957

November 22, 2022

The Office of the State Comptroller (Office or OSC) has reviewed the above-referenced procurement conducted by the New York State Department of Motor Vehicles (DMV) to produce secure New York State identity documents. We have determined the grounds advanced by CBN Secure Technologies, Inc. (CBNSTI) in its protest to the award are of sufficient merit to overturn the contract award made by DMV and, therefore, we uphold the protest. As a result, we are today returning non-approved the DMV contract with Idemia Identity & Security USA LLC (Idemia) to produce secure New York State identity documents.

BACKGROUND

Facts

DMV is responsible for “provid[ing] motor vehicle related services to residents of New York State . . . includ[ing] the issuance of secure driver’s licenses and other identification documents” (Request for Proposals (RFP), Section 1-2, at p. 9). Accordingly, DMV issued an RFP on May 24, 2021 seeking to award “a contract for the production of secure New York State Identity Documents . . . includ[ing] all required hardware, software, design, development, customization, installation, training, production personnel, supplies and maintenance incident to production” (RFP, Section 1-1, at p. 9). The RFP required the following driver’s licenses (DL) and identification cards (ID) to be produced under the resultant contract: “NYS Standard DL/ID, REAL [] DL/ID, Enhanced DL/ID, Employee ID and multiple Occupation/Professional ID card designs” (RFP, Section 4-5, at p. 39).

The RFP indicated the contract would be awarded to one responsive and responsible offeror (RFP, Section 3-1, at p. 24; RFP, Section 3-4, at pp. 27-29). A proposal would be deemed “complete” and scored if the offeror complied with all mandatory requirements (RFP, Section 3-1, at p. 24). The technical proposal would be worth 80% of the total score and would be evaluated according to criteria specified in the RFP (RFP, Section 3-4, at pp. 27-28). The cost proposal would be worth 20% of the total score (RFP, Section 3-4, at p. 28). DMV would score cost proposals by awarding the offeror submitting the lowest cost for each item the full points for that item and awarding other offerors a proportionate score based on their relation to the proposal

offering the lowest cost for an item (RFP, Section 3-5, at p. 28). The RFP provided that DMV would award the contract to the offeror with the highest combined technical and cost score (RFP, Section 3-4, at pp. 27-28).

Prior to the proposal due date of October 15, 2021, DMV received six responsive proposals, including responses from CBNSTI and Idemia. Following DMV's evaluation of proposals, the contract was awarded to Idemia, the responsive and responsible offeror who received the highest combined score. Subsequently, CBNSTI requested a debriefing, which DMV provided in written form on or about March 7, 2022, and in real-time on March 15, 2022.

CBNSTI filed a protest with this Office on March 21, 2022 (Initial Protest), as supplemented on June 22, 2022 (Supplemental Protest; collectively, the Initial Protest and Supplemental Protest will be referred to as the "Protest"). Idemia responded to the Initial Protest on March 30, 2022 (Idemia Answer) and the Supplemental Protest on June 30, 2022 (Idemia Supplemental Answer). DMV responded to the Protest on August 8, 2022 (DMV Answer). CBNSTI filed a reply on August 30, 2022 (Reply).

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 / Idemia contract;
2. the correspondence between this Office and DMV arising out of our review of the proposed DMV / Idemia contract; and
3. the following correspondence/submissions from the parties (including the attachments thereto):
 - a. CBNSTI's Initial Protest, dated March 21, 2022;
 - b. Idemia's Answer, dated March 30, 2022;
 - c. CBNSTI's Supplemental Protest, dated June 22, 2022;
 - d. Idemia's Supplemental Answer, dated June 30, 2022;

¹ 2 NYCRR Part 24.

- e. DMV's Answer, dated August 8, 2022;
- f. CBNSTI's Reply, dated August 30, 2022;
- g. E-mail from Anthony Laulette at DMV to Zachary Nash at OSC, dated September 28, 2022 (DMV E-mail 1); and,
- h. E-mail from Anthony Laulette at DMV to Zachary Nash at OSC, dated October 21, 2022 (DMV E-mail 2).

ANALYSIS OF THE PROTEST

Initial Protest to this Office

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

1. DMV's technical evaluation methodology/tool and its application to technical proposals was arbitrary, unreasonable, and overly subjective, and thus did not result in a best value award;
2. DMV's defective technical evaluation tool incentivized evaluators to give "Average" scores which resulted in technical scores being suppressed / technical proposals being undervalued and cost proposals likewise being overvalued as compared to the 80% technical / 20% cost split disclosed in the RFP, and thus did not result in a best value award;
3. DMV's flawed technical evaluation methodology resulted in contract award to a card that is "below average" in security in a secure identification card procurement, and thus did not achieve best value;
4. DMV made the contract award to a non-responsible vendor, in contravention of State law requiring State contracts be awarded only to responsible vendors; and,
5. The contract awardee conducts business operations in Russia and therefore Governor Hochul's Executive Order No. 16 prevents the contract award from proceeding.²

Supplemental Protest to this Office

In its Supplemental Protest, CBNSTI further challenges the procurement conducted by DMV on the following additional grounds:

1. The weighting that DMV assigned to the cost components of the RFP was not reflective of the contract spend/production value, and thus did not deliver a best value award; and,

² In its Supplemental Protest, CBNSTI withdrew this allegation (*see* Supplemental Protest, at p. 1). Therefore, it will not be addressed in this Determination.

2. CBNSTI's proposal provides the best value to the State since it received the highest technical score and offered the lowest cost for the three cards that comprise more than 80% of the contract value (Standard DL/ID, Real DL/ID, and Enhanced DL/ID).

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. DMV's technical evaluation methodology is rational and all proposals received were evaluated equally and reasonably, utilizing the same criteria set forth in the RFP and evaluation tool;
2. All points were available to be awarded to offerors in the technical evaluation and, in fact, CBNSTI received many scores outside of "Average";
3. While CBNSTI outscored Idemia in Document Security and Durability, Idemia's proposal provides the best value to the State by optimizing quality, cost, and efficiency, among responsive and responsible offerors;
4. DMV conducted a vendor responsibility review of Idemia, and did not discover anything that would call into question Idemia's responsibility;
5. There is nothing in the SFL that mandates that cost evaluations be based solely on the expected volumes of the impending contract; and,
6. All anticipated contract costs must be taken into consideration when evaluating cost proposals, not just the Standard DL/ID, REAL DL/ID, and Enhanced DL/ID; however, even if only those three items were considered, Idemia still had the lowest cost.

Idemia's Response to the Protest

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

1. DMV made a reasonable best value determination in accordance with applicable law and the stated evaluation criteria;
2. Just because CBNSTI did not earn the maximum technical points available for criteria where it was the highest ranked offeror does not mean that full technical points were not available under DMV's evaluation methodology;
3. While CBNSTI received the highest score under the Document Security and Durability criterion, Idemia received the highest composite score; and the RFP clearly indicates that award would be made on a best value basis and not solely on the Document Security and Durability criterion;

4. DMV properly determined that Idemia is a responsible vendor and CBNSTI's unfounded speculation does not provide a basis to disturb that determination; and,
5. DMV's cost evaluation complied with the SFL in that the RFP disclosed the manner in which the cost evaluation would be conducted and the relative importance of cost (20%), DMV assigned relative weights to the twelve cost line items that made up the cost proposal based on DMV's experience and expertise, and DMV applied the methodology accordingly.

CBNSTI's Reply to DMV's Answer

In its Reply to DMV's Answer, CBNSTI expounds upon the grounds set forth in the Protest and further contends that had DMV developed and implemented a cost evaluation tool / methodology that bore a reasonable relationship to the actual or anticipated costs the State will incur under the Contract then the best value determination would have been made in favor of an award to CBNSTI.

DISCUSSION

Best Value Determination

State agencies are required to award service contracts based on best value (SFL § 163(10)). Best value is defined as "the basis for awarding contracts for services to the offerer which optimizes quality, cost and efficiency, among responsive and responsible offerers" (SFL § 163(1)(j)). The basis must "reflect wherever possible, objective and quantifiable analysis" (SFL § 163(1)(j)). Additionally, the solicitation issued by the procuring State agency must "prescribe the minimum specifications or requirements that must be met to be considered responsive and shall describe and disclose the general manner in which the evaluation and selection shall be conducted" (SFL § 163(9)(b)). Finally, the contracting agency must 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" (SFL § 163(7)).

It is well-established that SFL § 163 "implicitly requires [, as part of a best value determination,] that the cost evaluation methodology have a reasonable relationship to the anticipated *actual* costs to be incurred by the State under the terms of the contract" (OSC Bid Protest Determination SF-20150153, at p. 11; *see* OSC Bid Protest Determination SF-20080408, at p. 9; *see also* OSC Bid Protest Determination SF-20100156, at p. 6). Therefore, when evaluating cost, the State agency awarding the contract "must generally consider all expected costs and must weigh such costs in a manner reasonably designed to predict actual costs under the contract" (OSC Bid Protest Determination SF-20080408, at p. 9; *see* OSC Bid Protest Determination SF-20100156, at p. 6).

CBNSTI asserts that by allocating only 55% of the cost score to Standard DL/ID, Real DL/ID, and Enhanced DL/ID cards, DMV's procurement "resulted in an award that does not secure a best value for [DMV] . . . [and if DMV] had applied weighting that is reflective of the contract spend / production value (i.e., 80% for the key three card categories), CBNSTI would have had the highest Total Score" and been awarded the contract (Supplemental Protest, at pp. 2-3).

DMV responds that "[w]hile CBN's analysis is accurate that an estimated 80%³ of the contract value resides with the Standard, REAL, and Enhanced documents and that DMV assigned 55% of the available points to those three items, it does not support their position that the cost points were incorrectly allocated . . . there is nothing in State Finance Law that mandates that cost evaluations be based solely on the expected volumes of the impending contract" (DMV Answer, at p. 3).

Our review of the procurement record shows DMV developed a cost evaluation tool that assigned percentages to each of the twelve categories of items under the contract, as shown in Table One below, further dividing the 20% total cost proposal weighting.⁴ In the cost evaluation tool, DMV assigned the Standard DL/ID, Real DL/ID, and Enhanced DL/ID cards a total of 55% of the available cost points, while the remaining nine cost categories received a combined total of 45% of the cost points. In contrast, when estimating contract value, DMV assigned the Standard DL/ID, Real DL/ID, and Enhanced DL/ID cards approximately 95% of the contract value, while the remaining nine categories combined comprised approximately 5% of the value.⁵ Table One provides a side-by-side comparison of cost evaluation weighting to contract value weighting:

³ Notably, and as illustrated more fully in the following discussion and in Table One, a review of the procurement record shows that DMV estimated approximately 95% of the contract value would be attributed to the Standard, REAL, and Enhanced DL/IDs.

⁴ The cost evaluation tool provided for 200 possible points, with the available points for each of the twelve categories being equal to two times the percentage amount (e.g., 20% = 40 points). The RFP provided that "the Bidder proposing the lowest overall cost will be given the full amount of points for the Cost portion of that item, then points will be awarded proportionally to the next lowest Bidders using the following formula: (Lowest Proposal Cost/Bidder's Proposal Cost) x Points Allocated (RFP, Section 3-5, at p. 28).

⁵ The procurement record shows that DMV utilized a combination of historical purchasing data and projected card usage rates to estimate contract usage and value. As reflected in Table One, an estimated contract value was not provided for "future out of scope work."

Table One

Contract Items	Cost Evaluation Weighting (%)	Estimated Contract Value Weighting (%)⁶
Cost Per Standard DL/ID	20	16.77
Cost Per Real DL/ID	20	52.85
Cost Per Enhanced DL/ID	15	25.24
Cost Per Employee ID with Proximity Chip	5	0.10
Cost Per Employee ID without Proximity Chip	5	4.60
Cost Per Occupation/Professional ID	5	0.00 ⁷
Annual Lease Price Per Additional ICW	5	0.15
Annual Lease Price Per Additional Mobile ICW	5	0.10
Annual Lease Price Per Additional IRW	5	0.00
Annual Lease Price Per Signature Capture Devices (Quantity Equal to the Number of ICWs in Appendix J)	5	0.14
Annual Lease Price per Additional Scanner	5	0.05
Hourly Rate for Future Out of Scope Work (Change Requests)	5	N/A

When asked to justify these disparities, DMV provided that “the majority of the contract is spent on license production; consequently, DMV assigned the majority of the cost-related points to the Standard DL/IDs, REAL DL/IDs, and Enhanced DL/IDs” (DMV E-mail 1). Further, “DMV felt it prudent and reasonable to split cost points evenly between the Standard DL/ID and the REAL DL/ID, as demand for the Standard DL/ID is expected to decrease and demand for the REAL DL/ID is expected to increase . . . [and] [c]onsistent with [the prior RFP for these services], DMV determined that a 15% cost weight to the Enhanced DL/ID was reasonable in relation to the other two primary card types” (DMV E-mail 2). With respect to the remaining nine items, DMV determined that “any item in the cost evaluation tool would be assigned a minimum of 5% weight” (DMV E-mail 1). DMV then asserted that this 5% weight “was reasonable in order to properly consider the financial impact of each element where the agency may incur such costs” (DMV E-mail 2). Lastly, to justify the substantially disproportionate weighing of the remaining categories in the aggregate, DMV summarily asserted that the “cost evaluation weights of items 4 through 12, while not directly proportional to the three primary card types (items 1 through 3), still bear a reasonable relationship to them. Weighing each of the three primary card types three to four times more heavily than any one of items 4 through 12 supports this and is in line with the intent of SFL 163 . . .” (*Id.*). DMV failed to provide any support for the 40% underweighting of the first three categories cumulatively (95%/55%) compared to the 40% overweighting of the remaining nine categories cumulatively (5%/45%).

⁶ Percentages calculated by dividing the estimated extended cost per item (estimated quantity times Idemia’s bid price) by the estimated total contract value (total of all estimated extended costs per item). Numbers have been rounded to the nearest hundredth of a percent.

⁷ DMV estimated quantities and value for two cards which purportedly fit into this category: “OGS Printed Card Delivered (iClass)” and “DFI Badges.” Both cards yielded percentages less than one one-thousandth of a percent.

Contrary to DMV's assertions, the objective evidence of DMV's own procurement record demonstrates that the weights DMV chose for the cost evaluation do not bear a reasonable relationship to the estimated usage and contract values prepared by DMV; in fact, for a majority of the contract items, there is a substantial discrepancy between cost evaluation weighting and the actual significance of an item under the contract. DMV's purported justifications do not assist in establishing a reasonable relationship, but rather fail to address the objective facts presented in the procurement record. While cost evaluation and estimated usage need not be an exact match, the magnitude of the disparity in this instance, especially when viewed in aggregate, undercuts any claim that the State received best value. As such, DMV has failed to show a reasonable relationship between the weights chosen for its cost evaluation methodology (55% for the Standard, REAL, and Enhanced DL/IDs and 45% for the other nine items) and the actual anticipated costs under the contract according to its own estimates (95% for the Standard, REAL, and Enhanced DL/IDs and 5% for the other nine items).

For these reasons, the cost evaluation methodology used by DMV does not meet the statutory requirements of a best value determination. Therefore, we cannot find that the contract award by DMV was made on the basis of best value.

Evaluation and Scoring of the Technical Proposals

Notwithstanding the foregoing determination, we will separately address CBNSTI's claims regarding the technical proposal evaluation methodology and scoring.

1. Evaluation Methodology for Technical Proposals

CBNSTI asserts that DMV's technical "Evaluation Tool [and DMV's technical] evaluation process, were [not] reasonably developed or reasonably applied" (Initial Protest, at p. 5).⁸ DMV responds "[a]ll proposals received were evaluated equally and reasonably, utilizing the same criteria set forth in the RFP and the evaluation tool" (DMV Answer, at p. 1).

As stated above, State Finance Law requires that service contracts be awarded on the basis of best value which reflects "objective and quantifiable analysis" (*see* SFL §§ 163(1)(j), 163(10)).

The RFP sets forth the criteria that DMV utilized to evaluate technical proposals, as follows: Experience and Expertise (9%), Document Security and Durability (29%), Production and Quality Control (14%), Production Site and Data Security (14%), Issuing Office and Support and Maintenance Requirements (9%), and Diversity Practices (5%) (RFP, Section 3-4, at pp. 27-28). The procurement record shows, prior to the receipt of proposals, DMV developed an Evaluation Tool which included a detailed scoring rubric, as follows:

⁸ CBNSTI makes several references to DMV's 2012 procurement for secure New York State identity documents to support its contentions regarding the deficiencies in the technical evaluation methodology and its application in the instant procurement. As this Office's review is limited to review of the procurement record for the contract award related to the Protest, we will not consider information extraneous to such procurement record, including but not limited to the 2012 procurement record.

Rating	Score	Description - Based on DMV preferences or Demo items requested
OUTSTANDING	100%	The response addresses the requirement completely, exhibits outstanding knowledge, creativity, innovation or other factors to justify this rating.
ABOVE AVERAGE	75%	The response addresses the requirement completely, with value added, and in a highly effective manner.
AVERAGE	50%	The response addresses most elements of the requirement. Demonstration addresses most required minimum items requested.
BELOW AVERAGE	25%	The response meets some of the requirement.
POOR	0%	Non-responsive/lacks basic response to requirement.

The scoring rubric for the technical proposals instructed evaluators to award 50% of the available points for a criterion if a proposal “addresses most elements” of the criterion, leaving latitude to evaluators to award additional points to those proposals that exceeded their expectations. The Evaluation Tool instructed evaluators to provide written justification for any score other than “Average.” This Office has consistently recognized the appropriateness of a scoring methodology that “allow[s] evaluators a breadth of points to fully evaluate the strengths and weaknesses of a proposal” (see OSC Bid Protest Determination SF-20210086, at p. 6 (finding agency’s technical evaluation methodology to be balanced and fair where evaluators were instructed to award 50% of available points for a criterion if a proposal met the relevant requirements of the criterion, and providing the ability to award additional points if the proposal exceeded expectations for the criterion)).

Based on our review of the procurement record, we conclude that the methodology DMV used to evaluate and score technical proposals was balanced, fair, and included an objective and quantifiable analysis. Thus, we find no basis to question the evaluation methodology DMV used for the technical proposals. However, we reiterate that due to the deficiencies in the cost evaluation methodology, we cannot find that the contract award by DMV was made on the basis of best value.

2. Application of Evaluation Criteria to Technical Proposals

CBNSTI contends “the lack of clarity surrounding how the scored components of the RFP could be considered ‘Outstanding,’ and ‘Above Average,’ and the requirement that an evaluator provide additional justification for those ratings, likely had the unintended consequence of discouraging evaluators from designating the scored components of the proposal as anything other than ‘Average’ . . . as no additional justification was required for [an] ‘Average’ rating” (Initial Protest, at p. 5). CBNSTI claims that DMV’s “defective [technical] Evaluation Tool . . . prevent[ed] full points [from being awarded] on the technical requirements” while DMV’s “cost scoring tool [] utilized a formula to ensure that all 200 of the [available cost] points were awarded” and that this “circumvented the intended 80 percent technical / 20 percent cost split and resulted in an award where cost was valued significantly more than the stated 20 percent (*Id.*, at p. 9). Finally, CBNSTI contends that “the defective Evaluation Tool and its unreasonable and arbitrary

application” led to DMV’s selection of a contract awardee with a “Below Average” score for the “Document Security and Durability” technical evaluation category which was “deemed by [DMV] to be the most important evaluation category” (*Id.*, at pp. 9-10).⁹

DMV contends that CBNSTI’s allegation “that evaluators were incentivized to give components an ‘Average’ score . . . fails to consider the [144] comments that [CBNSTI] itself received for above-average responses on their proposal” (DMV Answer, at p. 2). DMV further contends “All points were available to be awarded in every section of the RFP as the possibility did exist that an offerer could achieve a rating of ‘Outstanding’ in each of the scorable requirements, thus earning 100% of the available points . . . [however] [b]eing the top ranked offerer in any of the technical categories did not entitle any bidder to receive all available points for that section” (*Id.*, at p. 3 (emphases in original)). Additionally, DMV contends that it “did not set nor specify a minimum number of points that must be attained by a bidder in order to be declared the tentative winner of the technical portion of the RFP” (*Id.*, at p. 1). Finally, DMV asserts that “[w]hile DMV recognizes that [CBNSTI] outscored [Idemia] in the Document Security and Durability category . . . DMV stands by its determination that [Idemia’s] proposal provides the best value” (*Id.*, at p. 4).

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). OSC “will generally not disturb a rationally reached determination of a duly constituted evaluation committee unless scoring is clearly and demonstratively unreasonable” (*see* OSC Bid Protest Determination SF-20210164, at p. 5 (*citing* OSC Bid Protest Determination SF-20160188, at p. 8)).

Based on our review of the procurement record, DMV evaluated technical proposals according to the clearly articulated criteria set forth in the RFP and consistent with the evaluation instructions/instrument. Our review also showed that the evaluators consistently scored across the spectrum of the scale and provided justification for their scores as required by the instructions. Contrary to CBNSTI’s assertions, offerors, including CBNSTI, did receive scores other than “Average.”¹⁰ Further, our review did not reveal any contradictions between an evaluator’s written comments and the scores assigned by such evaluator to CBNSTI’s technical proposal.

Additionally, to the extent that CBNSTI contends that the scores awarded to Idemia do not merit contract award, 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 (*see* OSC Bid Protest Determination SF-20210164, at p. 4).

⁹ CBNSTI also seems to allege that Document Security and Durability should have been weighted more heavily than the 29% that DMV afforded it since it was “deemed by [DMV] to be the most important evaluation category” (Initial Protest, at pp. 9-10). However, while DMV did afford the most weight to Document Security and Durability out of all the technical criteria, the procurement was based on best value, including multiple technical and cost factors. This Office will not disturb the weighting of technical criteria as established by DMV where, as here, the matter was within the agency’s expertise and reasonably supported by the procurement record.

¹⁰ For example, DMV asserts, and the procurement record corroborates, within CBNSTI’s technical proposal “CBN[STI] received 144 scorable requirement scores outside of ‘Average’ by the evaluation team” (DMV Answer, at p. 2).

Thus, we are satisfied evaluators scored CBNSTI's technical proposal in a manner consistent with the RFP and evaluation instrument and will not disturb the technical scores awarded by DMV. However, as set forth above, we cannot find that DMV's contract award was made on the basis of best value, and therefore the technical proposal scores are moot.

Vendor Responsibility

CBNSTI alleges that Idemia "cannot credibly be considered a responsible offerer" (Initial Protest, at p. 13). CBNSTI, relying on a report issued by Reuters, asserts "Advent International (the investment banking group which has owned Idemia since 2016 . . .) is selling its identification firm Idemia" and that "Idemia is still carrying a heavy debt load and ' . . . its key credit metrics remain weak, according to rating agency Moody's'" (*Id.*, at pp. 13-14). CBNSTI further contends "the financial statements submitted by Idemia are essentially a nullity since they give no indication of the future – who will own and operate Idemia in 2023 and beyond" (*Id.*, at p. 14).

DMV asserts that "DMV has, and will continue to, exercise its due diligence throughout the [vendor responsibility] review process . . . [and that] DMV's [vendor responsibility] review of [Idemia] has not divulged anything necessitating the vendor's exclusion from this procurement" (DMV Answer, at p. 5). DMV further notes that "since the sale of [Idemia] and the form that company might take after the sale is speculative, there are presently no grounds to identify [Idemia] as a non-responsible bidder" (*Id.*).

Idemia responds that "CBNSTI's focus on uncorroborated allegations is misguided and . . . offers no legitimate basis to upset the [DMV's] responsibility determination" (Idemia Answer, at pp. 12-13). Idemia adds that "[e]ven if a future corporate transaction was relevant to the issue of responsibility, there is no such ongoing activity taking place that would result in a change of ownership or control of [Idemia]" (*Id.*, at p. 13).

SFL provides that "[s]ervice contracts shall be awarded on the basis of best value to a responsive and responsible offer" (SFL § 163(9)(f)). "Prior to making an award of contract, each state agency shall make a determination of responsibility of the proposed contractor" (*Id.*). 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 DMV conducted a vendor responsibility review of Idemia. DMV reviewed Idemia's financial and organizational capacity, legal capacity, integrity, and past performance as statutorily required. As documented in the procurement record, and based on factual evidence rather than speculation,¹¹ DMV determined Idemia to be a responsible offeror that can successfully perform the services under the contract for the prices submitted in Idemia's cost proposal.¹² Moreover, as part of our review of the DMV / Idemia

¹¹ No evidence has been presented regarding a sale of Idemia; nor has any evidence been presented to suggest that such a sale would adversely impact Idemia's responsibility.

¹² CBNSTI asserts "that the pricing and daily rates offered by several of the offerors, including [Idemia], are not commercially sustainable" (Supplemental Protest, at p. 3). The procurement record shows that DMV confirmed with Idemia that services could be provided for the prices submitted in Idemia's cost proposal.

contract, this Office examined and assessed the information provided in the procurement record and conducted an independent vendor responsibility review of Idemia. Our review did not provide any basis to overturn DMV's responsibility determination.

Based on the foregoing, there is insufficient evidence to disturb the responsibility determination made by DMV.

CONCLUSION

For the reasons outlined above, we have determined the issues raised in the Protest are of sufficient merit to overturn the contract award by DMV to Idemia. As a result, the Protest is upheld and we will not be approving the DMV contract with Idemia for the production of secure New York State identity documents.