

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

In the Matter of the Appeal filed by Conduent State & Local Solutions, Inc. with respect to the procurement of Automated Work Zone Speed Enforcement Services conducted by the New York State Department of Transportation for the New York State Department of Transportation and the New York State Thruway Authority.

**Determination
of Appeal**

SF-20220068

August 4, 2022

Contract Numbers – DOT C038040 and Thruway C010674

The Office of the State Comptroller has reviewed the above-referenced procurement conducted by the New York State Department of Transportation (NYSDOT) for automated work zone speed enforcement services for NYSDOT and the New York State Thruway Authority (NYSTA). We have determined the grounds advanced by Conduent State & Local Solutions, Inc. (Conduent) are insufficient to merit overturning the contract awards made by NYSDOT and NYSTA¹ and, therefore, we deny the Appeal. As a result, we are today approving the NYSDOT and NYSTA contracts with American Traffic Solutions, Inc. d/b/a Verra Mobility (Verra Mobility) for automated work zone speed enforcement services.

BACKGROUND

Facts

NYSDOT issued a request for proposals (RFP) seeking proposals for a vendor to “offer all-inclusive turnkey automated photo speed enforcement services in active work zones” for NYSDOT and NYSTA (RFP, Section 1.1, at p. 1). Proposals were due no later than March 4, 2022 (*see* RFP Modification # 6, at p. 1). The RFP provided that proposals would be evaluated using best value pursuant to State Finance Law (SFL) § 163 and that “two separate contracts (one from NYSDOT and one from NYSTA)” would be awarded “to the same [responsive and responsible contractor] for the same services” (*see* RFP, Section 3.2, at p. 5).

Responsive proposals were scored on a 115-point scoring system, with the written technical proposal worth a maximum of 75 points, the field demonstration and interview portion of the technical proposal worth a maximum of 10 points, and the cost proposal worth a maximum of 30 points (*see* RFP, Sections 6.2 and 6.3, at pp. 20-21). Technical proposals were reviewed by an evaluation committee consisting of technical, program, and management personnel from both NYSDOT and NYSTA (*see* RFP, Section 6.1, at p. 19). The RFP set forth detailed criteria for evaluators to use in scoring the written technical proposals (*see* RFP, Section

¹ Although the Appeal does not explicitly challenge the NYSTA award, since the above-referenced procurement resulted in both the NYSDOT and NYSTA awards, this determination will consider and apply equally to both.

6.2, at p. 20). Following the technical and cost scoring, a “shortlist” of offerors (those who “submit[ed] a proposal with an initial average weighted best value score within 10 points of the top initial average weighted best value ranked [p]roposal”) would be required to provide a field demonstration and sit for an interview with the evaluation committee (*see* RFP, Sections 6.4 and 6.5, at pp. 21-22). Field demonstrations and interviews would be scored by the evaluation committee according to criteria set forth in the RFP (*see* RFP, Section 6.5, at p. 22). The RFP provided for the contract award to be made to the offeror with the highest final best value score ((average weighted written technical proposal score + average weighted field demonstration and interview score) + cost proposal score) (*see* RFP, Section 6.9, at p. 23).

Two offerors submitted responsive proposals by the deadline, Conduent and Verra Mobility. Both offerors were also “shortlisted” such that they provided a field demonstration and were interviewed. NYSDOT and NYSTA awarded the contracts to Verra Mobility, the offeror receiving the highest final best value score.

Following notice of award on April 8, 2022, NYSDOT and Verra Mobility executed a contract for automated work zone speed enforcement services on May 18, 2022. Likewise, NYSTA and Verra Mobility executed a contract on June 29, 2022.

Following notice of non-award on April 8, 2022, Conduent requested a debriefing which was held on April 12, 2022. Conduent submitted a protest to NYSDOT on April 22, 2022 which NYSDOT denied on May 16, 2022. Conduent submitted an appeal to NYSDOT on May 23, 2022 which NYSDOT denied on May 25, 2022. Conduent submitted an appeal to this Office on June 9, 2022 (Appeal). NYSDOT filed an answer to the Appeal on June 20, 2022 (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.² 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 NYSDOT with the NYSDOT / Verra Mobility contract;

² 2 NYCRR Part 24.

2. the documentation contained in the procurement record forwarded to this Office by NYSTA with the NYSTA / Verra Mobility contract;
3. the correspondence between this Office and NYSDOT arising out of our review of the proposed NYSDOT / Verra Mobility contract;
4. the correspondence between this Office and NYSTA arising out of our review of the proposed NYSTA / Verra Mobility contract; and,
5. the following correspondence/submissions from the parties (including the attachments thereto):
 - a. Conduent's protest to NYSDOT, dated April 22, 2022;
 - b. NYSDOT's protest determination, dated May 16, 2022 (NYSDOT Protest Determination);
 - c. Conduent's appeal to NYSDOT, dated May 23, 2022;
 - d. NYSDOT's appeal determination, dated May 25, 2022;
 - e. Conduent's Appeal, dated June 9, 2022 (Appeal); and,
 - f. NYSDOT's Answer, dated June 20, 2022 (Answer).

ANALYSIS OF THE APPEAL

Appeal to this Office

In its Appeal, Conduent challenges the procurement conducted by NYSDOT on the following grounds:

1. NYSDOT failed to score Conduent's written technical proposal in accordance with the RFP's evaluation criteria³; and,
2. The debriefing provided to Conduent by NYSDOT was insufficient as a matter of State law and procurement policy.

NYSDOT Response to the Appeal

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

1. NYSDOT scored Conduent's proposal in accordance with the RFP; and,
2. The debriefing that NYSDOT provided to Conduent entirely satisfied the requirements of SFL § 163, and, even if it were deemed inadequate, that is not a basis to disapprove a contract award.

³ In the Appeal, Conduent initially focuses on the Firm Experience category of the technical proposal. Later in the Appeal, Conduent more broadly challenges the entire scoring methodology of the written technical proposal. Accordingly, this Determination will generally address the broader grounds of whether the scoring of the written technical proposal, as a whole, comports with the RFP and is supported by the procurement record.

DISCUSSION

Evaluation and Scoring of Conduent's Written Technical Proposal

Conduent contends that the NYSDOT and NYSTA evaluation committee's "*entire* evaluation of Conduent's [written technical proposal] [was] arbitrary and inconsistent with the RFP requirements" (Appeal, at p. 22, fn. 11). NYSDOT replies that the "RFP clearly identified all factors to be considered as part of this best value procurement, and the [] evaluation process conformed with the RFP's criteria" (Answer, at p. 5).

The RFP provided for the award of the NYSDOT and NYSTA contracts on the basis of best value 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(1)(j)). 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)). Further, SFL § 163(7) provides "[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."

The RFP set forth specific criteria required to be addressed in the written technical proposal and the maximum number of points assigned to each evaluation criterion (*see* RFP, Section 6.2, at p. 20). An evaluation committee of eight individuals were provided with pre-established evaluation instruments with instructions that directed them how to evaluate and score proposals in accordance with the requirements of the RFP.

Our review of the procurement record confirms that NYSDOT and NYSTA evaluators used a pre-established evaluation instrument to score written technical proposals in accordance with the clearly articulated criteria set forth in the RFP. Thus, we are satisfied NYSDOT and NYSTA met the applicable legal requirements with respect to the evaluation of the written technical proposals.

Conduent further contends that "evaluators provided no rational basis to support why Conduent was not awarded the full number of points for certain criteria" because the evaluators did "not assign weaknesses to certain less-than-perfect Conduent scores if the score [was] at or above average for a particular evaluation criterion, thus rendering the affected scores arbitrary and unreasonable" (Appeal, at p. 2). NYSDOT asserts that "Conduent relies on the flawed assumption that it was not required to demonstrate strengths to earn award of the Contract . . . [and] confus[es] being responsive . . . with being perfect" (Answer, at p. 3). Specifically addressing Conduent's assertion that NYSDOT failed to support its less-than-perfect score of the Firm Experience criterion, NYSDOT maintains "evaluators considered the projects contained in Conduent's proposal, evaluated strengths and weaknesses, and scored the proposal in accordance with the RFP" (Answer, at p. 4).

Generally, this Office gives significant deference to a State agency in matters within that agency's expertise (*see* OSC Bid Protest Determination SF-20170192, at p. 7). It is incumbent upon the agency to assess its needs in relation to a particular program and develop an RFP and evaluation instrument that effectively meets those needs (*see* OSC Bid Protest Determination SF-201700297, at p. 6). 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).

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" and "[there were no] contradictions between an evaluator's written comments and the score assigned by such evaluator to [the technical] proposal."); *see also* OSC Bid Protest Determination SF-20200069, at p. 6).

As discussed above, evaluators scored Conduent's written technical proposal consistent with the RFP and evaluation instrument. Further, our review did not reveal any contradictions between an evaluator's written comments and the scores assigned by such evaluator to Conduent's written technical proposal. Thus, there is no basis to disturb the technical scores awarded by NYSDOT and NYSTA to Conduent's written technical proposal.

Sufficiency of Debriefing

Conduent contends that the debriefing provided by NYSDOT was insufficient as a matter of law and procurement policy because it (i) failed to provide Conduent's "relative ranking within each of the major evaluation categories," (ii) "failed to include the mandatory explanation of the qualitative and quantitative analysis underlying how and why [NYSDOT and NYSTA] evaluated and scored Conduent's proposal," and (iii) failed to provide the reasons "underlying [NYSDOT's and NYSTA's] designation of Verra Mobility as the tentative contract awardee," including the scores awarded to Verra Mobility (Appeal, at pp. 2, 13, 16). NYSDOT responds that the Appeal itself "illustrates that [NYSDOT's] RFP set forth the Contract's selection criteria, that [NYSDOT] clearly communicated how Conduent scored on each criterion, and that the debriefing explained how the evaluators applied the RFP criteria to Conduent's proposal to arrive at Conduent's evaluation scores" (Answer, at p. 2). NYSDOT further contends that "[SFL] 163 requires that an agency give the reasons for selecting the winning proposal only if the debriefing is conducted after final award" which NYSDOT interprets to occur after "a contract is executed and approved by [OSC]" and that it "was not required to provide Conduent with Verra Mobility's scores" (*Id.*). Lastly, NYSDOT offers that "even if OSC were to deem [NYSDOT's] debriefing to be inadequate, there is no basis . . . to disapprove of a contract award on that basis" (*Id.*, at p. 3).⁴

⁴ We note that this Office conducts a de novo review of the full procurement record and conducts its own analysis of the specific factual or legal allegations forming the basis on which a protesting party challenges a contract award.

SFL § 163(9)(c)(iv) sets forth the minimum information that must be provided in a debriefing: “(A) the reasons that the proposal, bid or offer submitted by the unsuccessful offerer was not selected for award; (B) the qualitative and quantitative analysis employed by the agency in assessing the relative merits of the proposals, bids or offers; (C) the application of the selection criteria to the unsuccessful offerer’s proposal; and (D) when the debriefing is held after the final award, the reasons for the selection of the winning proposal, bid or offer. The debriefing shall also provide, to the extent practicable, general advice and guidance to the unsuccessful offerer concerning potential ways that their future proposals, bids or offers could be more responsive.”

The procurement record submitted to this Office by NYSDOT contained a debriefing agenda, which was provided to Conduent in advance of/at the debriefing, that included the following topics: “best value” evaluation process, discussion of technical strengths and weaknesses of Conduent’s proposal, and competitiveness of Conduent’s cost proposal. The debriefing agenda also included a detailed breakdown of Conduent’s technical scores by criterion as well as its interview and cost scores. Based on our review of the procurement record, we conclude that the debriefing provided by NYSDOT was sufficient to satisfy SFL § 163(9)(c)(iv)(A), (B), and (C).

However, Conduent asserts that NYSDOT was required to provide Conduent’s relative technical and cost rankings, as well as the reasons why Verra Mobility’s proposal was selected for award, including technical and cost scores. Conduent claims that, as a result of its failure to provide such reasons, NYSDOT did not satisfy SFL § 163(9)(c)(iv)(D).

NYSDOT was not required to provide technical and cost rankings to Conduent during the debriefing. Rather, guidance on debriefings from the New York State Procurement Council recommends that agencies provide “information as to the relative ranking of [a] bidder’s bid/proposal in each of the major evaluation categories” (NYS Procurement Bulletin Debriefing Guidelines, effective January 30, 2019). Although information that an agency may provide, and that NYSDOT has admittedly provided in the past as its “typical practice,”⁵ relative ranking is not information legally required to be provided to an offeror during a debriefing under SFL § 163.

In its Answer, NYSDOT contends that since the reasons for selecting the winning proposal are only required to be provided during a debriefing that occurs “after final award,” it was appropriate to omit that information in this instance since OSC had not yet approved the NYSDOT / Verra Mobility contract at the time of Conduent’s debriefing (*see* Answer, at p. 2). However, in the context of SFL § 163 debriefings, “after final award” refers to the time period after the agency and selected offeror have executed the contract, but prior to OSC approval. Here, Conduent’s debriefing was held on April 12, 2022, over a month prior to the May 18, 2022 execution of the NYSDOT / Verra Mobility contract; thus the requirements of SFL § 163(9)(c)(iv)(D) were not triggered and NYSDOT was not required to disclose the reasons for selecting the winning proposal during the debriefing with Conduent. In any event, SFL § 163(9)(c)(iv) does not specifically require agencies to disclose the scores of any other offeror,

⁵ NYSDOT Protest Determination, at p. 2.

individual, consensus or otherwise, during a debriefing to explain why the winning proposal was selected (*see* OSC Bid Protest Determination SF-20200165, at p. 10; *see also* OSC Bid Protest Determination SF-20180264, at p. 8).

For the reasons set forth above, the debriefing provided by NYSDOT was sufficient to satisfy SFL § 163(9)(c)(iv).

CONCLUSION

For the reasons outlined above, we have determined the issues raised in the Appeal are not of sufficient merit to overturn the contract awards by NYSDOT and NYSTA. As a result, the Appeal is denied and we are today approving the NYSDOT / Verra Mobility contract and the NYSTA / Verra Mobility contract for automated work zone speed enforcement services.