

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 Electronic Benefits Transfer services conducted by the New York State Office of Temporary and Disability Assistance.

**Determination  
of Appeal**

**SF-20220121**

Contract Number – C022599

September 13, 2023

---

The Office of the State Comptroller has reviewed the above-referenced procurement conducted by the New York State Office of Temporary and Disability Assistance (OTDA), on behalf of the Northeast Coalition of States (NCS)<sup>1</sup> for Electronic Benefits Transfer (EBT) services. We have determined the grounds advanced by Conduent State & Local Solutions, Inc. (Conduent) are insufficient to merit overturning the contract award made by OTDA and, therefore, we deny the Appeal. As a result, we are today approving the OTDA contract with Fidelity Information Services, LLC (FIS) for EBT services.

## **BACKGROUND**

### **Facts**

On behalf of, and in cooperation with, the NCS, OTDA issued a Request for Proposals (RFP) for EBT services on September 3, 2020. The RFP sought EBT services to ensure the distribution of benefits for the Supplemental Nutrition Assistance Program (SNAP),<sup>2</sup> Women Infants and Children (WIC),<sup>3</sup> and Cash programs<sup>4</sup> (RFP, Section 1.1, at p. 13). OTDA is the New York State agency responsible for administering public assistance programs which require the issuance of electronic benefits that can be used like cash allowing recipients to make authorized purchases under each program.

The RFP provided that, following an initial screening, proposals deemed to be responsive would be evaluated for contract award on the basis of best value (RFP, Section 16, at p. 332). An

---

<sup>1</sup> The States of New York, Connecticut, New Hampshire, Rhode Island, Vermont, Maine, and the Commonwealth of Massachusetts joined to form the NCS for the purpose of procuring a cost effective regional EBT system (RFP, Section 1.1, at p. 13).

<sup>2</sup> The SNAP program provides income eligible recipients with a monthly electronic benefit that is used like cash to purchase food at authorized retail food stores.

<sup>3</sup> The WIC program is a special supplemental food program that provides income eligible recipients (pregnant or breastfeeding women, infants, and children up to age five) with electronic benefits to purchase nutritious foods, milk, juice, formula, and other items.

<sup>4</sup> Cash programs include delivering cash assistance “for a variety of Federal and State assistance programs, including but not limited to Temporary Assistance to Needy Families (TANF), the Home Energy Assistance Program (HEAP), and State general assistance programs” (RFP, Section 1.1, at p. 13).

offeror's technical proposal would constitute 75% of the total evaluation score and the cost proposal would account for 25% of the score (RFP, Section 16.1, at p. 332; RFP, Section 16.2, at p. 333). The offeror receiving the highest weighted technical score would be awarded the maximum total of 75 points, with other offerors receiving a proportionate score based on their relation to the proposal receiving the highest technical score (RFP, Section 16.1.2, at p. 333). Similarly, the offeror with the lowest cost would be awarded the maximum 25 points, with other offerors receiving a proportionate score based on their relation to the proposal offering the lowest cost (RFP, Section 16.2, at p. 333). Finally, the offeror with the highest total combined score—based on the combination of the technical and financial scores—would be awarded the contract (RFP, Section 16.3, at p. 333).

Prior to the proposal due date of May 13, 2021, OTDA received two responsive proposals, from Conduent and FIS. Following OTDA's evaluation of proposals, the contract was awarded to FIS, the responsive and responsible offeror receiving the highest combined score. Subsequently, Conduent requested a debriefing, which was held on June 28, 2022.

Conduent filed a protest with OTDA on July 15, 2022 (Protest). OTDA denied Conduent's Protest on August 26, 2022 (OTDA Determination). Conduent filed an Appeal with this Office on September 12, 2022 (Appeal).<sup>5</sup> Conduent submitted additional correspondence on February 16, 2023 (Conduent's February 16, 2023 Correspondence).<sup>6</sup> FIS filed an answer to the Appeal on April 6, 2023 (FIS Answer). OTDA responded to the Appeal on April 10, 2023 (OTDA Answer). Subsequently, Conduent, OTDA, and FIS submitted additional correspondence (Additional Correspondence from Parties).<sup>7</sup>

### **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.<sup>8</sup> This procedure governs initial protests to this Office of agency contract awards and appeals of agency protest

---

<sup>5</sup> The Appeal was characterized by Conduent as both an appeal and a direct protest to OSC. While the other parties contend that the submission of an appeal and a direct protest is arguably outside the scope of submissions permitted as of right under 2 NYCRR Part 24, it was considered in this Office's review and determination.

<sup>6</sup> While this submission was arguably outside the scope of submissions permitted as of right under 2 NYCRR Part 24, it was considered in this Office's review and determination. *See* footnote 12, *infra*.

<sup>7</sup> Conduent submitted a response to both FIS's Answer and OTDA's Answer on April 13, 2023. OTDA submitted a response to Conduent's April 13, 2023 Correspondence on May 10, 2023. Conduent submitted additional correspondence to this Office on August 2, 2023, to which FIS replied on August 11, 2023. Conduent replied to FIS's August 11, 2023 Correspondence via email on August 17, 2023. OTDA replied on August 17, 2023 to Conduent's August 2, 2023 Correspondence. Conduent replied to OTDA's August 17, 2023 Correspondence on August 24, 2023. While the Additional Correspondence from Parties was arguably outside the scope of submissions permitted as of right under 2 NYCRR Part 24, it was considered in this Office's review and determination. *See* footnote 12, *infra*.

<sup>8</sup> 2 NYCRR Part 24.

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 OTDA with the OTDA / FIS contract;
2. the correspondence between this Office and OTDA arising out of our review of the proposed OTDA / FIS contract; and
3. the following correspondence/submissions from the parties (including the attachments thereto):
  - a. Protest;
  - b. OTDA Determination;
  - c. Appeal;
  - d. Conduent's February 16, 2023 Correspondence;
  - e. FIS Answer;
  - f. OTDA Answer;
  - g. Conduent's April 13, 2023 Correspondence;
  - h. OTDA's May 10, 2023 Correspondence;
  - i. Conduent's August 2, 2023 Correspondence;
  - j. FIS's August 11, 2023 Correspondence;
  - k. Conduent's August 17, 2023 Correspondence;
  - l. OTDA's August 17, 2023 Correspondence; and,
  - m. Conduent's August 24, 2023 Correspondence.

## **ANALYSIS OF THE APPEAL**

### **Appeal to this Office**

In its Appeal and subsequent correspondence,<sup>9</sup> Conduent challenges the procurement conducted by OTDA on the following grounds:

1. OTDA's award on behalf of NCS gave too much consideration to the interests of other states and failed to achieve best value for New York State as required by State Finance Law § 163;
2. OTDA made material errors in technical proposal scoring, including improperly awarding points to FIS, not awarding points to Conduent that should have been awarded, and making mathematical tabulation errors;
3. OTDA failed to disclose in the RFP how various cost components would be weighted in violation of New York State law;

---

<sup>9</sup> Specifically, Conduent's February 16, 2023, April 13, 2023, August 2, 2023, August 17, 2023 and August 24, 2023 Correspondence.

4. OTDA may have improperly established the cost evaluation methodology after the RFP was released;
5. OTDA improperly established weighting for its cost evaluation methodology because Conduent, who provided the lowest cost for the core services which comprise the largest portion of contract expenditures for NCS, did not receive the highest cost score;
6. OTDA failed to meet the minimum statutory standards in State Finance Law § 163 with respect to the debriefing it provided to Conduent;
7. OTDA failed to comply with New York's Freedom of Information Law (FOIL) by not producing documents in response to Conduent's request;<sup>10</sup>
8. The evaluators for the procurement may have conflicts of interest that compromise their objectivity; and,
9. Public policy developments in card technology since the issuance of the RFP in 2020 compel OTDA to abandon the contract award to FIS and issue a new competitive procurement requiring the use of chip cards to protect the interests of the State in preventing fraud.

### **OTDA Response to the Appeal**

In its Answer and subsequent correspondence,<sup>11</sup> OTDA contends the Appeal should be rejected and the award upheld on the following grounds:

1. Conduent may not raise grounds for protest with OSC that it did not timely / properly raise initially pursuant to OTDA's protest procedure;<sup>12</sup>
2. The multi-state RFP resulted in a best value award to FIS for both New York and the NCS;
3. Any mathematical errors that occurred in the evaluation and scoring of technical proposals did not change the outcome of the procurement process;
4. OTDA complied with State Finance Law § 163(9)(b) requirements regarding disclosures in the RFP, specifically disclosing the weight afforded to an offeror's cost proposal;
5. OTDA complied with State Finance Law § 163(7) requirements by finalizing the evaluation criteria prior to the receipt of proposals;
6. OTDA properly established a cost evaluation methodology which used historical and/or anticipated volumes to determine projected costs for EBT services;
7. OTDA conducted Conduent's debriefing in compliance with the minimum statutory requirements set forth in State Finance Law § 163(9)(c);

---

<sup>10</sup> Consistent with the longstanding policy of this Office enunciated in prior bid protest determinations, issues related to the procuring agency's action or inaction on a FOIL request do not impact our review of the contract award and are not considered as part of our review of appeals. Furthermore, in making this Determination, we have reviewed the entire procurement record, which includes any documentation related to the procurement that would have been within the scope of Conduent's FOIL request. Accordingly, the Determination will not address this allegation.

<sup>11</sup> Specifically, OTDA's May 10, 2023 and August 17, 2023 Correspondence.

<sup>12</sup> OTDA also asserts OSC is not required to waive deadlines or consider additional materials submitted by Conduent beyond those specifically provided for in the OSC Protest Procedure. As this Office's review is governed by the OSC Protest Procedure established under this Office's own regulations, we are not constrained by the limitations of an agency's procedures or an agency's interpretation of the OSC Protest Procedure. Pursuant to the OSC Protest Procedure, OSC has discretion to waive deadlines, accept additional filings, and obtain additional information relevant to the procurement. Therefore, we will review the grounds for appeal raised by Conduent as identified herein.

8. OTDA has disclosed records in response to Conduent's FOIL request pursuant to Public Officers Law;<sup>13</sup>
9. OTDA required evaluators to attest that they did not have any conflicts of interest and OTDA is not aware of any conflicts of interest; and,
10. It is not in the best interests of the State to reissue the procurement with revised requirements as OTDA does not possess the resources or expertise to develop a new chip enabled EBT system and federal guidance regarding the use of EBT chip cards or development of a chip enabled EBT system has not been issued.

### **FIS Response to the Appeal**

In its Answer and subsequent correspondence,<sup>14</sup> FIS contends the Appeal should be rejected and the award upheld on the following grounds:

1. Conduent may not raise grounds for protest with OSC that it did not timely / properly raise initially pursuant to OTDA's protest procedure;<sup>15</sup>
2. OSC is not required to waive deadlines or consider additional materials submitted by Conduent beyond those specifically provided for in the OSC Protest Procedure;<sup>16</sup>
3. OTDA, on behalf of NCS, properly applied the best value standard as required by New York State law;
4. Any tabulation or scoring errors made by OTDA in the evaluation would not have changed the result of the award and FIS would still be determined the offeror providing best value;
5. OTDA's disclosures about the cost evaluation methodology prior to the receipt of proposals were sufficient and complied with State Finance Law;
6. The items in the cost proposal were not weighted and, as a result, Conduent having the lowest cost on one component of pricing does not mean they had the lowest overall pricing or provided the best value;
7. Conduent concedes that it received all FOIL documentation from OTDA regarding FIS' proposal rendering Conduent's ground for appeal moot;<sup>17</sup>
8. Conduent's allegations that there may be a potential conflict of interest amongst the evaluators is unsubstantiated; and,
10. Conduent's request to amend the procurement to account for chip technology is meritless as EBT cards are procured outside of the EBT contract, the RFP contemplates the use of chip technology should New York opt to procure card services under the EBT contract, and FIS is fully qualified to assist the State with implementation of chip cards.

---

<sup>13</sup> See footnote 10, *supra*.

<sup>14</sup> Specifically, FIS's August 11, 2023 Correspondence.

<sup>15</sup> See footnote 12, *supra*.

<sup>16</sup> See footnote 12, *supra*.

<sup>17</sup> See footnote 10, *supra*.

## DISCUSSION

### Best Value Determination

#### 1. Best Value in a Multi-State Procurement

Conduent contends “OTDA violated its duty, both under the RFP and New York State Finance Law § 163, to select a contractor that would offer ‘best value’ to the State of New York” (Conduent’s April 13, 2023 Correspondence, at p. 5). Conduent further asserts “[t]he RFP, the protest process, the OSC approval process, and any resulting contract, should serve New Yorkers – not the NCS as a whole, and not the other states that have joined the NCS” (Appeal, at p. 4).

OTDA responds “the [m]ulti-[s]tate RFP award to [FIS] was a best value award for both New York and the NCS” (OTDA Answer, at p. 3). OTDA contends not only did New York staff serve as lead agency on behalf of the NCS for this procurement, but New York staff also prepared the RFP and “included all required New York specific information and forms” (*Id.*). OTDA further asserts that, while the other NCS states do benefit from the procurement, “New York also benefits from the aggregation of pricing” (*Id.*, at p. 4). FIS points out that the RFP “expressly states that evaluators would award the contracts to the provider with the ‘best value,’ which is in accordance with New York law” (FIS Answer, at p. 4). FIS further states “New York law does not prohibit ‘best value’ from accounting for services in a regional system that New York is a part of” (*Id.*, at p. 6).

The RFP provided that OTDA would award the contract for EBT services 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)).

The RFP clearly outlined how the technical evaluation would be conducted and set forth specific criteria to be scored. An offeror’s technical proposal would constitute 75% of the total evaluation score (RFP, Section 16.1, at p. 332). Each technical proposal consisted of an evaluation of six criteria with an associated weight percentage of the total technical score: (1) Evaluation of the Executive Summary – 5%; (2) Key Personnel Experience – 10%; (3) Offeror Experience – 25%; (4) Quality of EBT Solution – 38%; (5) Diversity Practices – 10%; and (6) WIC [EBT Requirements] – 12% (RFP, Section 16.1.1, at pp. 332–333). The evaluation tool/instructions provided that all evaluators would evaluate the technical proposals according to the six criteria set forth in the RFP and then the scores for all evaluators per NCS state for each of the six criteria would be averaged and then weighted according to the aforementioned weight percentages to produce a final score by criterion. An overall final score for each NCS state was calculated by adding the weighted scores for each criterion. The overall final score for each NCS state was then multiplied by its respective state multiplier (50% for New York, 15% for Massachusetts, and 7% each for Connecticut, New Hampshire, Rhode Island, Vermont, and Maine) to produce a final total score for each offeror’s technical proposal. The offeror receiving the highest weighted technical score would be awarded the maximum total of 75 points, with other offerors receiving a

proportionate score based on their relation to the proposal receiving the highest technical score (RFP, Section 16.1.2, at p. 333). The procurement record shows that all evaluators were provided with a detailed evaluation tool and instructions, which were finalized prior to receipt of proposals and followed the evaluation tool/instructions which OTDA crafted in accordance with State Finance Law.

The RFP further clearly outlined how the cost evaluation would be conducted, as explained more fully in the *Cost Proposal Evaluation Methodology* section below.

Based on our review of the procurement record, regardless of the fact that the procurement was issued on behalf of multiple states, the methodology OTDA used to evaluate and score proposals was balanced, fair, and included an objective and quantifiable analysis, in accordance with State Finance Law requirements.<sup>18</sup> Thus, we find no basis to question the evaluation methodology used by OTDA.

## 2. Technical Proposal Evaluation Methodology - NCS State Weighting

Conduent asserts “OTDA allowed evaluators to depart from the ‘best value’ to New York requirement of the RFP and the State Finance Law” by assigning “arbitrary” weights to the evaluators’ scores (Conduent’s April 13, 2023 Correspondence, at pp. 2, 5). Specifically, Conduent alleges “[i]nstead of using the states’ ‘respective historical volumes’ to weight the evaluators’ [ ] scores, OTDA recalibrated them on a ‘curve,’ benefiting the small states (with the lowest volumes) . . . skew[ing] the scoring weights away from New York’s interests” (Conduent’s April 13, 2023 Correspondence, at p. 2). Conduent asserts it was “outcome determinative” that “OTDA randomly picked ‘50%’ as the weight to apply to the New York evaluators’ scores, even though, according to the RFP, New York’s caseload consumes at least two thirds of the population (Conduent’s April 13, 2023 Correspondence, at pp. 2, 5 (emphasis omitted)).

OTDA replies “[OSC’s] 2013 Decision [in OSC Bid Protest Determination SF-20130334] did not mandate weighting technical proposal scores based upon each coalition state’s caseload percentage” (OTDA’s May 10, 2023 Correspondence, at p. 2).<sup>19</sup> OTDA explains “[t]o fairly allocate participation among the coalition states in the technical evaluation process, weights based on case volume amounts were not utilized . . . [i]nstead, the coalition agreed that the EBT program for each coalition state had equivalent importance regardless of state size . . . [a]s a result, it was determined that smaller states should have a higher level of participation than their case volume allocated amounts to afford them with a reasonable level of participation in the technical evaluation process” (*Id.*). OTDA asserts “New York’s 50% technical evaluation allocation amount was reasonable in that it was equivalent to the total of the other coalition states . . . mean[ing] that New York evaluators would have decisive influence on the outcome of the technical evaluation” (*Id.*). OTDA further contends “the 50 evaluators assigned across the seven coalition states evaluated each technical proposal response in the same manner . . . regardless of an evaluator’s physical

---

<sup>18</sup> With harmless errors, as discussed in more detail herein.

<sup>19</sup> NCS’ previous procurement of EBT services in 2012 and resulting contract award in 2013 by OTDA to Xerox Corporation (in 2017, Conduent separated from Xerox and became the provider of EBT services under the contract) was the subject of an appeal. This Office determined in SF-20130334 that the appeal grounds were insufficient to merit overturning OTDA’s contract award.

location, each evaluator was directed to evaluate and score each technical proposal response pursuant to pre-established evaluation instructions” (*Id.*).

State Finance Law requires that proposals be evaluated according to “a balanced and fair method, established in advance of the receipt of offers” and, as long as the agency determination is rational and supported by the procurement record, this Office will generally defer to the expertise of the agency in establishing an evaluation methodology that meets its own needs.

As stated above, after the initial scoring and weighting of technical proposals according to the technical evaluation criteria, overall final technical scores were multiplied by a preestablished respective state multiplier applied to technical evaluators’ scores by NCS state to calculate a weighted score for each state before being combined to produce a final total score for each offeror’s technical proposal. OTDA determined to weight evaluators by states taking into consideration both historical volumes and the importance of a state’s participation in the EBT program regardless of the volumes. While the weighting afforded does not exactly match the historical volumes by state, contrary to Conduent’s claim, it was not required to, and is nonetheless balanced and fair. OTDA made a rational determination to weight states with less volume on a curve to afford them meaningful representation. Even so, New York retained the greatest amount of influence compared to the other member states (50%). Accordingly, there is no basis to question the technical proposal evaluation methodology.<sup>20</sup>

Moreover, the application of a respective state multiplier to technical evaluators scores by NCS state did not impact how the evaluation of technical criteria was performed, as it was performed the same by all evaluators, regardless of state affiliation. As set forth above, all evaluators were required to use the same scoring tool and follow the same evaluation instructions developed pursuant to State Finance Law.

Furthermore, our review of the procurement record shows that, despite Conduent’s assertions otherwise, the respective state multiplier applied to technical evaluators’ scores by NCS member state was not outcome determinative—there would have been no impact on the procurement result had OTDA not applied to the respective state multiplier to the technical evaluators’ scores.

### **Scoring of Technical Proposals**

Conduent contends “[g]iven that Conduent has already identified math errors that OTDA committed . . . it is reasonable to assume that other math errors occurred when OTDA was finalizing its evaluations [of technical proposals] for the RFP award” and “even a minor calculation error on a key variable could have made a difference in changing the final award determination” (Appeal, at p. 6; *see also* Conduent’s February 16, 2023 Correspondence, at p. 4). Conduent

---

<sup>20</sup> This Office’s Determination in SF-20130334 is not inconsistent with this conclusion. The 2013 Determination found that OTDA was not required to distribute the number of technical evaluators scoring the procurement proportionally across the participating states, nor was OTDA required to weight the evaluators by NCS state membership (OSC Bid Protest Determination SF-20130334, at p. 11 (“While the composition of the evaluation teams was not proportional or weighted (by NCS member state), this was not required”). The 2013 Determination did not address the applicable requirements should the agency decide to weight evaluators by NCS state, as OTDA has done in the instant procurement by applying a respective state multiplier to technical evaluators’ scores by NCS state.



further contends that it was “deprived of 17 points that it should have received” in the technical proposal where “the evaluation criteria were described in detail and allowed for no subjectivity” and “the evaluators simply did not follow the criteria provided in OTDA’s evaluation tool” (Appeal, at p. 12; Appeal, Exhibit 6, at p. 1). In addition, Conduent alleges “multiple evaluators committed calculation errors on objective scoring measures” that “resulted in FIS being improperly awarded 50 points on Diversity Practices, which in turn affected FIS’s overall technical score” (Conduent’s February 16, 2023 Correspondence, at pp. 2, 3 (emphasis omitted); *see* Conduent’s February 16, 2023 Correspondence, Exhibit A).

OTDA responds “the mathematical calculations employed for purposes of evaluating [technical] proposals are sound” and review of the procurement record “revealed no mathematical errors [ ] resulting in a change to the evaluation result” (OTDA Answer, at p. 6). OTDA further responds that the examples of scoring errors provided by Conduent [in its Appeal, Exhibit 6] “failed to take into consideration the actual RFP provisions in question which may be much more descriptive than the Scoring Sheet summaries [referenced by Conduent]” and “[e]xamination of the procurement record for the RFP confirms that the evaluators scored the proposals in a manner consistent with the RFP, the Evaluation Criteria, the Evaluation Instrument, the Evaluation Instructions, and the Scoring Sheets” (OTDA Answer, at pp. 13, 15). With respect to Conduent’s claim related to the scoring of Diversity Practices, OTDA asserts Conduent’s “claim is flawed as evaluator subjectivity may be applied to the [Diversity Practices Questionnaire] Questions” as, OSC has previously recognized “that evaluators bring their own subjective views to the evaluation process and may interpret information in proposals differently” (OTDA Answer, at pp. 17, 19). Lastly, OTDA asserts “[e]ven if OSC were to determine that [all of the] alleged errors were in fact flaws in the evaluation of the technical proposals – such errors if corrected in the manner desired by Conduent would not change the outcome of the award to FIS” and are, therefore, “harmless” (OTDA Answer, at p. 20).

This Office is generally 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). 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” 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).

The procurement record includes a technical evaluation tool that was established prior to receipt of proposals and shared with technical evaluators. Based on our review of the procurement record, NCS evaluators, with immaterial exceptions as discussed below, evaluated technical proposals according to the clearly articulated criteria set forth in the RFP and consistent with the evaluation instructions/technical evaluation tool. Thus, we are satisfied that, with the limited exceptions noted below, the NCS evaluators scored the technical proposals in a manner consistent with the RFP and technical evaluation tool.

Notwithstanding the foregoing, we reviewed the procurement record and the alleged scoring errors identified by Conduent in the Appeal (Exhibit 6) and Conduent's February 16, 2023 Correspondence (Exhibit A). While it is possible that Conduent should have been awarded additional points for meeting certain objective criteria, this Office has long recognized the doctrine of excusable, harmless error in the procurement process. That is, while there may have been an error in the procurement process, the correction of the error would not change the outcome (i.e., the award) and, therefore, the error is harmless. Our review of the procurement record shows that NCS evaluators scored a majority of the technical proposals according to the clearly articulated criteria set forth in the RFP and used the scoring rubric that was crafted prior to receipt of proposals, as set forth in the technical evaluation tool. Furthermore, our review of the record did not identify any additional scoring errors in either the FIS or Conduent technical proposals that, if not corrected, would have disadvantaged Conduent or advantaged FIS. Likewise, our review of the record did not identify any mathematical errors in the calculation of scores for the award.<sup>21</sup> Moreover, if Conduent's technical proposal were to receive all points available for the objective criteria that were allegedly scored in error, the ranking would not have changed, and FIS still would have been awarded the contract. Therefore, we will not disturb the technical scores awarded by the NCS evaluators.

Based on the foregoing, to the extent certain NCS evaluators scored certain portions of technical proposals inconsistently with the RFP and technical evaluation tool, such error was harmless.

## **Evaluation of Cost Proposals**

### **1. Establishment and Disclosure of Cost Proposal Evaluation Methodology**

Conduent alleges "OTDA ultimately weighted various price components in a manner that was never disclosed in the RFP, and may not have even been set when the RFP was released" (Appeal, at p. 7). OTDA responds "[i]n accordance with [the] statutory standard, the evaluation criteria must be finalized prior to the receipt of bid proposals as opposed to the date the RFP was issued [and] the evaluation instrument and evaluator scoring tools were in fact completed and finalized prior to the date bid proposals were received by OTDA" (OTDA Answer, at p. 8). OTDA further responds, "the RFP [ ] satisfies the statutory standard [for disclosure] because the RFP set forth the weighted amount of a bidder's financial proposal (25%) comprising the total score" (*Id.*, at p. 9).

SFL § 163(7) provides that "[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" (emphasis added). SFL § 163(9)(b) provides that the "solicitation shall prescribe the minimum specifications or requirements that must be met in order

---

<sup>21</sup> Conduent makes several allegations regarding calculation errors and speculates that "it is reasonable to assume that other math errors occurred when OTDA was finalizing its evaluations for the RFP award" (Appeal, at p. 6). This speculation is not supported by the procurement record.

to be considered responsive and shall describe and disclose the *general manner* in which the evaluation and selection shall be conducted. Where appropriate, the solicitation shall identify the *relative importance and/or weight of cost* and the overall technical criterion to be considered by a state agency in its determination of best value” (emphases added).

The RFP clearly outlined how the cost evaluation would be conducted, including identifying the objective formula used to evaluate cost and the relative weight of cost to be used in the best value determination (25%) (*see* RFP, Section 16.2, at p. 333). Contrary to Conduent’s assertions, further specifics regarding the cost weighting utilized by OTDA were not required to be disclosed in the RFP (*see* OSC Bid Protest Determination, SF-20170111, at pp. 5-6). Further, our review of the procurement record confirms the methodology used to evaluate cost proposals and the corresponding scoring tool were finalized before the initial receipt of offers as required by law in accordance with applicable statutory requirements.

## 2. Cost Proposal Evaluation Methodology

Conduent contends OTDA’s cost evaluation was “improper” because it is “implausible” that “Conduent could have lost on pricing” when Conduent “provided the lowest price for Core Benefits, which represents the largest financial cost to the NCS” (Appeal, at p. 7). Conduent further contends “some components of the [cost evaluation] favoring the awardee (e.g., ‘Optional Services’) should have been weighted as ‘zero’ given that NCS has not used such services in the past” (Appeal, at p. 8).

OTDA responds “Conduent’s lower bid for SNAP [the RFP’s largest financial cost component] was not enough to overcome its higher pricing in almost all other financial categories” (OTDA Answer, at p. 10). OTDA asserts “the financial categories of a bidder’s financial proposal were in fact not weighted” since “there was no compelling reason to weigh the ‘Optional Services’ or any other financial category to zero . . . [r]ather, [ ] the use of historical and/or anticipated volumes for each financial category (and sub criteria therein) [is] a sound methodology to determine projected costs for the EBT engagement” (*Id.*, at pp. 8-10). Similarly, FIS contends that, since the cost proposal evaluation criteria were not weighted, “the record does not support [Conduent’s] claim that having the lowest cost for one individual component is determinative to win on lowest overall pricing” (FIS Answer, at p. 5).

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)). Moreover, it is well-established that SFL § 163 implicitly requires, as part of the 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. Therefore, when evaluating the cost, the State agency awarding the contract must generally consider all expected costs and evaluate such costs in a manner reasonably designed to predict actual costs under the contract.

The RFP sets forth the criteria that OTDA utilized to evaluate cost proposals, advising that the offeror with the lowest cost would be awarded the maximum 25 points, with other offerors

receiving a proportionate score based on their relation to the proposal offering the lowest cost, according to the following formula: (Low Bid Price Offer divided by Proposal being evaluated Bid Price Offer) \* 25 Points (RFP, Section 16.2, at p. 333). The RFP also sets forth the required pricing components, including core, optional, and state-specific products and services (RFP, Section 13, at pp. 299-322; RFP, Appendix P, Pricing Schedule). Offerors were advised that all pricing submitted in Appendix P, Pricing Schedule, would be factored into their cost proposal score.<sup>22</sup> Our review of the procurement reflects that OTDA developed a cost evaluation tool that calculated cost components by multiplying the prices bid in Appendix P by volumes of usage that were either based on historic volumes or expected usage. In evaluating the optional services,<sup>23</sup> the procurement record reflects OTDA developed the anticipated volumes after lengthy discussions with the NCS States and OTDA's own past usage history to correspond to future anticipated needs. As a result, the data used to evaluate the cost of optional services bore a reasonable relationship to the costs anticipated to be incurred by the State under the terms of the awarded contract for optional services expected to be utilized.

As determined above, the methodology OTDA used to evaluate and score cost proposals complied with applicable New York State law requirements. Thus, we find no basis to question the evaluation methodology OTDA used for the cost proposals.

### **Sufficiency of Conduent's Debriefing**

Conduent asserts that OTDA did not comply "with minimum statutory standards for the debriefing with respect to the disclosures it provided on the scoring of the financial proposal" (Appeal, at pp. 8-9). Conduent further alleges OTDA failed to provide "any insight into how far apart its technical score was in comparison to FIS's score because the disclosure of competing bidder's pricing is not, according to OTDA, explicitly required under [SFL] § 163(9)(c)" (Appeal, at p. 9). Finally, Conduent alleges "[w]ithout the ability to compare tangible numbers between its own proposal and FIS's proposal, Conduent's debriefing did not comport with the purpose of the debriefing as stated in [SFL] § 163(9)(c)" (Appeal, at p. 9).

OTDA counters "OTDA was not required to provide the scoring of a competitor's bid proposal during the debriefing" (OTDA Answer, at p. 10). OTDA alleges they "complied with the minimum statutory standards set" and that "OTDA informed Conduent of its score and ranking for the technical criteria and financial components in accordance with debriefing standards" (*Id.*, at pp. 10, 12).

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 offeror was not selected for award;
- (B) the qualitative and quantitative analysis employed by the agency in assessing the

---

<sup>22</sup> See RFP Questions and Answers, No. 177.

<sup>23</sup> The RFP provides that "Optional Services" are "[s]ervices which may be considered for purchase under the procurement by any member State or group of member State(s), at any time during contract negotiation or during the Contract Period" (RFP, Section 1.4.3, at p. 16).

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 reflects OTDA provided Conduent with a debriefing agenda that set forth the parameters of the debriefing consistent with SFL § 163(9)(c)(iv). As documented in the procurement record, the debriefing agenda provided Conduent with its relative ranking and total score for the cost proposal. However, SFL § 163(9)(c)(iv) does not require agencies to disclose the scores of any other offeror during a debriefing to explain why the winning proposal was selected (*see* OSC Bid Protest Determination SF-20220068, at pp. 6-7). Based on our review of the procurement, the OTDA's debriefing satisfied the statutory standard and we find no merit to Conduent's allegations regarding the sufficiency of the debriefing.

### **Potential Conflicts of Interest**

Conduent suggests the evaluators may have had conflicts of interest that compromised their ability to fairly and objectively evaluate proposals (Appeal, at p. 13). Specifically, Conduent alleges “[s]ince OTDA redacted the names of the evaluators from the few documents that it produced in connection with its FOIL disclosure to Conduent, Conduent is concerned that as an interested party, it has no ability to determine whether [the evaluators] may have sought employment with, or have business or other relationships with any bidder entities that could compromise their objectivity” (*Id.*).

OTDA replies there is “no known conflict of interest” as “[p]rior to receiving sections of a bid proposal to review, each evaluator was required to complete a disclosure form attesting that serving in such role did not present a conflict of interest” (OTDA Answer, at p. 17).

Based on our review of the procurement record, each evaluator submitted a disclosure form to OTDA, prior to reviewing proposals, certifying that they “neither know nor [are] involved in any potential conflict of interest situation” and agreeing “to promptly notify the New York State OTDA management of any potentially conflicting situation of which I become aware.” Moreover, Conduent failed to provide any information to substantiate its allegation. Thus, we find no merit to this allegation.

### **RFP EBT Card Specifications**

Conduent asserts that since the RFP, which “contemplated the use of cards limited to ‘magstripe technology’” was issued almost three years ago, “there have been public policy developments that have made it clear that magstripe-only cards need to be replaced by EMV chip cards in New York” (Conduent's August 2, 2023 Correspondence, at p. 1 (emphasis omitted)). Conduent contends that “[s]igning a new State EBT contract to continue using these magstripe-only cards would . . . be inconsistent with efforts to reduce EBT fraud losses” and recommends

OTDA abandon the contract award to FIS and issue a new competitive procurement for EMV chip cards (*Id.*, at pp. 2, 5 (emphasis omitted)).

OTDA contends that “[t]he process to develop and change over to a new chip enabled EBT system . . . will be complex, extensive, and multifaceted requiring wide-ranging resources (both human and financial) [and] will take significant time to develop and implement” (OTDA’s August 17, 2023 Correspondence, at p. 1). OTDA further contends that “[t]he Food and Nutrition Service of the U.S. Department of Agriculture (FNS), which oversees and provides funding towards a state EBT program, has *not* issued guidance to states regarding the use of EBT chip cards or a timetable to develop and implement a chip enabled EBT system” (*Id.*, at p. 1 (emphasis in original)). Lastly, OTDA asserts that “overturning the results of the 2020 RFP by disapproving the FIS contract would result in an inappropriate, lengthy single source contract with Conduent [the incumbent] for EBT magstripe services which is not in the best interest of New York” (*Id.*, at p. 3).

This Office generally defers to agency determinations where they are properly within the agency’s expertise and supported by the procurement record. OTDA, as the State agency responsible for administering public assistance programs which require the issuance of electronic benefits, possesses the requisite expertise to determine the specific needs and requirements for EBT services, including appropriate EBT card specifications. Our review of the procurement record provides no basis to question OTDA’s expertise and judgment regarding this matter. Accordingly, we defer to OTDA in its required EBT card specifications and find no reason to overturn the contract award to FIS on this basis.

## **CONCLUSION**

For the reasons outlined above, we have determined the issues raised in the Appeal are not of sufficient merit to overturn the contract award by OTDA. As a result, the Appeal is denied and we are today approving the OTDA / FIS contract for EBT services.