

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

In the Matter of the Appeal filed by the Village of Southampton with respect to the grant awards for Water Quality Improvement Projects conducted by the New York State Department of Environmental Conservation.

**Determination
of Appeal**

SF-20220175

Procurement Record – DEC01-0000164-3350000

June 30, 2023

The Office of the State Comptroller has reviewed the above-referenced grant awards made by the New York State Department of Environmental Conservation (DEC) for Water Quality Improvement Projects (WQIP). We have determined the grounds advanced by the Village of Southampton (Southampton) are insufficient to merit overturning the grant awards made by DEC and, therefore, we deny the Appeal.

BACKGROUND

Facts

DEC issued a request for applications (RFA) seeking applications statewide from local governments and not-for-profit corporations for the WQIP program (RFA, at p. 2). The RFA requested applications that would “implement projects¹ that directly improve water quality or aquatic habitat or protect a drinking water source” (*Id.*).

The RFA specified requirements applicable to all applicants as well as those based on project type (*Id.*). Additionally, the RFA specified that “[a]pplications are ineligible that . . . [d]o not meet the requirements for that project type” (RFA, at p. 6).

The procurement record reflects that Southampton applied for a Wastewater Treatment Improvement project grant. The RFA specified each applicant applying for a Wastewater Treatment Improvement project grant must submit an engineering report, a map identifying the project area, a floodplain map (if applicable), a WQIP budget, and a Sexual Harassment Prevention Certification form (RFA, at p. 8).

Prior to the, July 29, 2022, submission deadline, DEC received WQIP applications, including from Southampton. On October 3, 2022, DEC notified Southampton its application was ineligible for WQIP funding. In response, on October 6, 2022, Southampton filed a protest with DEC (Protest). DEC denied the Protest via electronic mail on November 15, 2022 (DEC

¹ The RFA specified various project types that may be funded through WQIP, including: wastewater treatment improvement, non-agricultural nonpoint source abatement and control, land acquisition for source water protection, salt storage, aquatic connectivity restoration, and marine district habitat restoration (RFA, at pp. 3–4).

Determination). Southampton filed an Appeal of the DEC Determination with this Office on December 1, 2022 (Appeal), to which DEC filed an answer on February 9, 2023 (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 this Appeal, this Office considered:

1. the documentation contained in the procurement record forwarded to this Office by DEC with respect to the DEC WQIP grant awards;
2. the correspondence between this Office and DEC arising out of our review of the proposed DEC WQIP grant awards; and
3. the following correspondence/submissions from the parties (including the attachments thereto):
 - a. Protest;
 - b. DEC Determination;
 - c. Appeal; and
 - d. Answer.

ANALYSIS OF THE APPEAL

Appeal to this Office

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

1. DEC should not have deemed Southampton's application non-responsive because Southampton's engineering report was submitted and signed by a NYS-registered professional engineer, the stamped cover page was submitted thereafter, and the initial absence of the stamped seal was an inconsequential oversight.

² 2 NYCRR Part 24.

DEC Response to the Appeal

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

1. DEC properly determined Southampton's application was non-responsive for Southampton's failure to timely submit a stamped engineering report with its application as required by the RFA.

DISCUSSION

Non-Responsive Determination

Southampton seeks relief from DEC's determination that its application was non-responsive, contending that "the only item submitted after the deadline of the application was the [engineer's] seal" (Appeal, at p. 2). Southampton asserts that "since the [engineering] report had been in fact submitted and signed by a registered NYS [professional engineer] the absence of the [professional engineer] stamped seal can be considered to be a 'non-substantive' or 'inconsequential' oversight that has no impact on the findings/recommendations presented in the Village's submittal" (*Id.*).

DEC responds that "[t]he engineering report that was submitted with [Southampton's] application . . . did not contain the required stamp of the engineer," a requirement that was based on New York State Education Law § 7209 (Answer, at p. 1). DEC contends that "[w]hile a revised engineering report with a certification letter stamped by the engineer was transmitted to [DEC after the submission deadline], [DEC] cannot accept submissions of missing or incomplete documents after the application submission deadline" (*Id.*). Moreover, DEC states that "[t]o allow the submission of a required document after the submission deadline would provide an unfair advantage to [Southampton]" (*Id.*).

The RFA clearly specified that the required attachments for Water Treatment Improvement applications must include the submission of an "[e]ngineering report **prepared, stamped, signed, and dated** by a NYS-registered professional engineer" (RFA, at p. 8 (emphasis in original)). Additionally, the RFA stated "**[a]pplications that do not attach an engineering report or other required attachments**" are deemed ineligible (RFA, at p. 12 (emphasis in original)). Further, New York State Education Law (EL) § 7209(1) requires a report prepared by a professional engineer to be stamped with that engineer's seal and provides that "[n]o official of this state, or of any city, county, town or village therein, charged with the enforcement of laws, ordinances or regulations shall accept or approve any plans, specifications, or geologic drawings or reports that are not stamped" with such seal.

The procurement record reflects Southampton failed to submit an engineering report in compliance with the RFA and New York State law. Southampton itself concedes that it failed to submit an engineering report that was stamped prior to the application deadline (Appeal, at p. 2). The RFA requirements were clear that applicants would be ineligible for award under the RFA if an engineering report prepared, *stamped*, signed, and dated by a NYS-registered professional

engineer was not submitted. Furthermore, EL §7209 prohibits DEC from accepting or approving an unstamped report.

Our review of the procurement record confirms that DEC consistently interpreted and applied this mandatory requirement in accordance with the RFA; in fact, DEC deemed other applicant's ineligible for failing to include engineering reports compliant with the RFA. Additionally, contrary to Southampton's contentions, there is nothing in the RFA or applicable law requiring DEC provide Southampton an opportunity to correct a non-compliant submission after DEC's ineligibility determination. Accordingly, we find DEC properly determined Southampton's proposal was non-responsive for failing to submit a stamped engineering report prior to the application deadline.

CONCLUSION

For the reasons outlined above, we have determined the issues raised in the Appeal are not of sufficient merit to overturn the grant awards by DEC. As a result, the Appeal is denied.