

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

In the Matter of the Bid Protest filed by Catholic Charities Community Services, Archdiocese of New York with respect to the grant awards for the Hunger Prevention and Nutrition Assistance Program conducted by the New York State Department of Health.

**Determination
of Bid Protest**

SF-20230051

Procurement Record – DOH01-0000729-3450000

June 20, 2023

The Office of the State Comptroller has reviewed the above-referenced grant awards made by the New York State Department of Health (DOH) for the Hunger Prevention and Nutrition Assistance Program (HPNAP). We have determined the grounds advanced by Catholic Charities Community Services, Archdiocese of New York (CCCS) are insufficient to merit overturning the grant awards made by DOH and, therefore, we deny the Protest.

BACKGROUND

Facts

DOH issued a request for applications (RFA) on September 22, 2022, seeking applications from not-for-profit organizations to provide emergency food and nutrition support services to food insecure populations in New York State (RFA, Section I, at p. 3; RFA, Section II, at p. 6). Funding would be available for five components¹ in eight geographic regions² (RFA, Section I, at p. 3; RFA, Section I.C, at p. 4). DOH expected to award up to 55 grant contracts for a five-year term, allocated among the regions and components as set forth in the RFA (RFA, Section I.C, at p. 5).

The RFA set forth minimum eligibility requirements applicants must meet to be considered for award (RFA, Section II, at p. 6; RFA, Section V.C, at p. 36). An evaluation team of DOH staff would evaluate each eligible application based on a “100 point system”³ focusing on the “following factors: responsiveness to RFA; expertise of Contractor and staff; project organization and administration; nutrition standards and effectiveness and cost efficiency in meeting the nutritional needs of food insecure, low-income populations; and the completeness, clarity, accuracy and feasibility of the proposal” (RFA, Section V.C, at p. 37). The RFA provided that an

¹ Component A – Food Bank Projects; Component B – Food Pantry and/or Soup Kitchen Projects; Component C – Special Nutrition Initiatives; Component D – Food Recovery Projects; and, Component E – Resource/Grant Distribution Projects (RFA, Section I, at p. 3).

² Albany, Buffalo, Elmira, Long Island, New York City, Rochester, Syracuse, and Westchester (RFA, Section I.C, at p. 4).

³ The RFA further specified available points as follows: Program Summary (Maximum Score: 10 points); Statement of Need (Maximum Score: 15 points); Applicant Organization (Maximum Score: 10 points); Program Activities (Maximum Score: 35 points); Project Evaluation (Maximum Score: 10 points); and, Budget (Maximum Score: 20 points) (RFA, Section V.A, at pp. 26-34).

applicant “must score a minimum of 65 [points] on their proposal to be considered for funding” (RFA, Section V.C, at p. 37). For applications receiving scores of 65 or above, proposed budgets would be evaluated for “effectiveness, cost efficiency, and feasibility of proposal” (*Id.*).

The RFA provided that the “application with the highest score in each component [] will receive an award” and other awards “will be recommended based on high score in each region regardless of the Component Type” (RFA, Section I.C, at p. 6). Awards would be made “until funding for that Region has been exhausted” (*Id.*).

Applicants were required to submit applications online through the New York State Grants Gateway (RFA, Section IV.E, at pp. 17-18). DOH made 44 grant awards, exhausting the HPNAP funding for all regions/components. On April 17, 2023, DOH notified CCCS of non-award. On May 4, 2023, DOH provided CCCS with a debriefing.

Thereafter, on May 11, 2023, CCCS submitted a protest to this Office (Protest). DOH submitted an answer on May 22, 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 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.⁴ 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 DOH with the DOH HPNAP grant awards;
2. the correspondence between this Office and DOH arising out of our review of the procurement record in connection with the proposed DOH HPNAP grant awards; and
3. the following correspondence/submissions from the parties (including the attachments thereto):
 - a. Protest; and,
 - b. Answer.

ANALYSIS OF THE PROTEST

⁴ 2 NYCRR Part 24.

Protest to this Office

In its Protest, CCCS challenges the decision by DOH to deny funding of its application on the following grounds:

1. DOH failed to exercise its rights reserved under the RFA, including seeking clarifications of CCCS' proposals or correcting minor application errors, which would have resulted in CCCS scoring the minimum of 65 to be considered for an award;
2. CCCS should have received 20 points, the maximum number of points available for the budget sections of the proposal because CCCS submitted a budget that met all of the RFA requirements; and,
3. DOH was required under SFL § 163(9)(c)(iii) to provide CCCS with an in-person debriefing.

DOH Response to the Protest

In its Answer, DOH contends the Protest should be rejected on the following grounds:

1. CCCS met the minimum of 65 to be considered for funding but did not achieve a sufficient score relative to other applicants in the New York City Region (the region in which CCCS applied) to receive funding;
2. The RFA clearly stated the budget sections of the proposal would be scored as part of the competitive process; and,
3. DOH sent a debriefing letter to CCCS describing the strengths and weaknesses of CCCS' application. DOH offered a video conferencing debrief to those unsuccessful applicants that had additional questions or requested clarification of the debriefing letter, which CCCS did not.

DISCUSSION

Scoring of Proposals

1. Minimum Score to be Considered for Award

CCCS asserts DOH “did not avail itself of rights under the RFA that would have resulted in a higher score [for CCCS]” of at least 65 which would have allowed CCCS' proposal to be considered for funding (Protest, at p. 2). DOH responds that CCCS did, in fact, receive the minimum 65 points to be considered for funding as set forth in the RFA, but CCCS did not score high enough, in relation to other applicants for Component E in the New York City Region, for an award (Answer, at p. 3).⁵ Specifically, CCCS scored lower than sixteen funded applications and eight unfunded applications in the New York City Region (*Id.*).

⁵ The Answer is not paginated. For purposes of this Determination, this Office includes page numbers as they would have appeared, if included.

The procurement record clearly shows CCCS met the minimum number of points to be considered for funding, and CCCS was considered for funding. Accordingly, CCCS' contention lacks merit. The RFA provided "the application with the highest score in each component...will receive an award. Awards will be recommended based on high score in each region regardless of the Component Type [and a]wards will be made until the funding for that Region has been exhausted" (RFA, Section I, at p. 6). However, although considered for funding, based on our review of the procurement record, CCCS' total score was not sufficient for it to be susceptible for award.

2. Scoring Methodology for Budget

CCCS contends that by submitting a "compliant" budget that met all of the requirements of the RFA without any "non-compliant," or ineligible items, DOH should have awarded CCCS the full 20 points available for the budget evaluation category (*see* Protest, at p. 3). To explain its position, CCCS expounds "[b]ecause Budget forms are established in the RFA document, and funding amounts are pre-determined, a compliant submission of a budget should arguably be one that meets all of the RFA instructions and, in turn, receives the entirety of the available points [and] only in the case of a non-compliant [budget] submission...an Applicant would see any significant point reductions in this category" (*Id.*). DOH asserts "[i]t was abundantly clear in [the RFA] that [the budget] section was scored as part of a competitive review process" and further, CCCS' position "would not be consistent with the pre-established and scored program specific budget questions stated in the [RFA]" (Answer, at p. 4).

The RFA established various criteria relating to an applicant's budget to be evaluated and scored by DOH (*see* RFA, Section V.A.6, at pp. 34-35). Applicants were required to "[p]rovide a narrative justification for each budget item to fully explain the intent of the funding for the budget category as well as how the amount was computed" (RFA, Section V.A.6, at p. 34). Furthermore, the RFA specified that "[s]coring will be based on the budget's clarity, completeness and feasibility" (RFA, Section V.A.6, at p. 35). Contrary to CCCS' position that a "compliant" budget should receive the maximum score of 20 points, DOH was required to follow the scoring methodology set forth in the RFA. Our review of the procurement record shows DOH evaluated and scored the budget section of CCCS application in accordance with the criteria set forth in the RFA. Accordingly, CCCS' contention lacks merit.

Debriefing

CCCS alleges that, although DOH did provide CCCS with a debriefing letter summarizing the strengths and weaknesses of CCCS' proposal, DOH violated State Finance Law (SFL) § 163 by failing to provide "the statutorily mandated debrief meeting [which has] adversely affected CCCS' ability to ask pointed questions of the evaluation committee and have access to publicly available information" (Protest, at p. 4).

DOH states "CCCS did not request additional information in response to the written debrief" and therefore was not "invited to a video conferencing debrief where the written document was reviewed" (Answer, at p. 5). To refute CCCS' allegation that it was adversely affected by DOH's failure to offer an in-person debriefing, DOH contends "the written debrief provided was

inclusive of the information that is required to be provided in a debriefing [pursuant to SFL § 163]” (*Id.*).

As an initial matter, we note that SFL § 163 does not apply to the instant grant awards.⁶ Accordingly, there is no statutory debriefing requirement that applies in this case. The RFA provided for an applicant to request a debrief of its application no later than 15 calendar days from the date of award or non-award (RFA, Section V.C, at p. 38). Notably, the RFA did not state the debriefing would be held in-person. As stated above, the debriefing requirements in SFL § 163 do not apply here and, while DOH was not required to offer a debriefing, it did so and complied with the applicable terms of the RFA.

CONCLUSION

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

⁶ This Office has previously explained SFL § 163’s inapplicability to the award of grant contracts to not-for-profit organizations:

SFL § 163 generally applies to contracts for goods and services for the State. SFL § 160(7) defines “services” as “. . . the performance of a task or tasks and may include a material good or a quantity of material goods, and which is subject of any purchase or other exchange.” SFL §160(7) states that the definition of “services” in that section of the law is not applicable to “. . . contracts approved in accordance with article eleven-B” This procurement relates to the award of grant contracts to not-for-profit organizations subject to provisions of Article 11-B of the SFL. Therefore, it is not a procurement for the award of a “service,” and, as a result, it is not subject to the provisions of SFL §163 or the Procurement Guidelines. While the resulting contracts are subject to Article 11-B of the SFL, that article is generally concerned with ensuring that contracts, renewals, and payments thereunder, are processed in a prompt manner; it does not generally impose procedural requirements with respect to the selection of grant recipients.

(OSC Bid Protest Determination SF-20110219, at p. 2).