

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

In the Matter of the Bid Protest filed by Iris House:
A Center for Women Living with HIV 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-20230062

Procurement Record – DOH01-0000726-3450000

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 Iris House: A Center for Women Living with HIV (Iris House) 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 Iris House of non-award. On May 4, 2023, DOH provided Iris House with a debriefing.

Thereafter, on May 26, 2023, Iris House submitted a protest to this Office (Protest).⁴ DOH submitted an answer on June 7, 2023 (Answer).⁵

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.⁶ 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

⁴ The AIDS Healthcare Foundation, Member and Manager of Iris House, initially submitted a protest on Iris House’s behalf on May 11, 2023. This submission, albeit timely under OSC’s Protest Procedures, did not comply with Protest Procedure requirements to “contain specifically enumerated factual and/or legal allegations, setting forth the basis on which the protesting party challenges the contract award by the public contracting entity.” Therefore, this Office did not consider this initial submission in this Determination.

⁵ DOH submitted an answer to the May 11, 2023, protest, dated May 22, 2023, which, for the reasons enumerated above in fn. 4, we will not consider in this Determination.

⁶ 2 NYCRR Part 24.

3. the following correspondence/submissions from the parties (including the attachments thereto):
 - a. Protest; and,
 - b. Answer.

ANALYSIS OF THE PROTEST

Protest to this Office

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

1. DOH failed to properly review and evaluate all materials submitted by Iris House which caused DOH to erroneously conclude Iris House's proposal was deficient and adversely score its proposal;
2. DOH's denial of Iris House's proposal was arbitrary; and,⁷
3. DOH's evaluation of Iris House's proposal was not made in accordance with the RFA, there were errors in calculation, the RFA was vague and ambiguous, DOH improperly considered matters outside the RFA and there were conflicts of interest.⁸

DOH Response to the Protest

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

1. DOH reviewed Iris House's proposal, as submitted to DOH, in its entirety and scored the proposal appropriately.

DISCUSSION

DOH's Evaluation/Scoring of Iris House's Proposal

Iris House asserts it "provided the entirety of information responsive to the RFA via the New York State Grants Gateway portal [but] **key responsive information was overlooked or excluded [by DOH] as a result of a computer glitch or other anomaly in Grants Gateway**" (Protest, at pp. 1-2 (emphasis in original)). Specifically, Iris House makes this assertion in connection with the budget sections of its proposal which DOH, in the debriefing letter provided to Iris House, stated lacked detail (*Id.*, at p. 2). Iris House contends that an error in the Grants Gateway caused information, including key budget information, to be omitted from its proposal and, consequently, DOH's "failure to effectively access and review this important information

⁷ Iris House does not elaborate on this Protest ground. The procurement record shows DOH evaluated Iris House's proposal in accordance with the RFA, and the evaluation tool and instructions DOH established in advance of submission of applications. Therefore, there is no merit to this general allegation.

⁸ The Protest does not contain specifically enumerated factual or legal allegations that set forth the basis for these challenges. Accordingly, this Determination will not further address these challenges (*see* 2 NYCRR § 24.4(h)).

resulted in an atypically low score on the ‘Budget’ section of Iris House’s application and, ultimately, [DOH’s denial of funding]” (*Id.*, at p. 3).

DOH states “there is no evidence in either the protest record or the possession of [DOH] that a computer or Grant[s] Gateway ‘glitch’ occurred that could have resulted in critical information being ‘omitted from the application’” (Answer, at p. 3).⁹ DOH claims “Iris House was responsible for reviewing their application for completeness and accuracy in advance of the submission deadline, review which in [DOH’s] view was not adequately performed” (*Id.*). DOH notes various narrative sections of Iris House’s application submitted in the Grants Gateway (Personal Services – Salary, Travel, Utilities, Operating Expenses, and Other) were blank and that cost information was not provided in certain sections as required by the RFA (Answer, at p. 4). DOH further contends Iris House included participant incentives as expenses that were not allowable under the RFA for Component B (*Id.*). DOH asserts its “[r]eviewers reviewed [Iris House’s] application in its entirety” and that “the application defects described above validate the scoring of the Iris House application” (Answer, at pp. 3-4).

Nothing in our review of the procurement record leads us to question DOH’s claim that it reviewed the entire application as submitted by Iris House and scored that application in accordance with the evaluation tool and instructions DOH established in advance of submission of applications. Further, Iris House’s assertion that omission of information in its application was caused by a glitch in the Grants Gateway is unsupported. Thus, there is no basis to disturb the scores DOH awarded to Iris House.

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.

⁹ The Answer is not paginated. For purposes of this Determination, this Office includes page numbers as they would have appeared, if included.