

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

In the Matter of the Appeal filed by Syracuse Parking Services, LLC with respect to the procurement of Parking Management Services conducted by the New York State Department of Agriculture and Markets.

**Determination
of Appeal**

SF-20180033

Contract Number – AGM01-C300451-3000216

March 20, 2018

The Office of the State Comptroller has reviewed the above-referenced procurement conducted by the New York State Department of Agriculture and Markets (AGM) for parking management services for the New York State Fair (Fair). We have determined the grounds advanced by Syracuse Parking Services, LLC (SPS) are insufficient to merit overturning the contract award made by AGM and, therefore, we deny the Appeal. As a result, we have approved the AGM contract with Mass Park, Inc. d/b/a Valet Park of America (Valet) for such parking management services.

BACKGROUND

Facts

AGM operates the Fair, an annual multi-day event held in Syracuse, New York. AGM issued Invitation for Bids #0159 for Parking Management Services for the New York State Fair (IFB) on November 7, 2017, seeking a contractor to manage Fair parking at several lots and, among other things, to undertake pre-Fair staffing, scheduling, interviewing and training of parking employees, supervise those employees during the Fair, and complete post-Fair reports (*see* IFB, Section 2.2.1, at pgs. 6-9).

A bidder was required to meet the minimum qualifications before AGM would consider such bidder's proposal (*see* IFB, Sections 3.3 and 4.1, at pgs. 12-14). A proposal consisted of two items: (i) a flat fixed management fee per manager for parking management services during the Fair worth up to 60 points, and (ii) a total fixed flat management fee for pre- and post-Fair services worth up to 40 points (*see* IFB, Section 3.5, at pgs. 13-14).¹ For each item, the proposal

¹ State Finance Law provides that contracts for services shall be awarded on the basis of "best value" to a responsive and responsible offeror (*see* SFL § 163[4][d]). AGM concluded that an award based on best value equated to lowest price for this procurement and used an invitation to bid instead of a request for proposals, the typical method used to procure services (*see* SFL § 163[7]; NYS Procurement Guidelines, May 2014, Section V[B][11], at pg. 30). Applying the rationale in *Transactive Corporation v. New York State Department of Social Services* (236 AD2d 48, 53 [1997]; *aff'd on other grnds.*, 92 NY2d 579 [1998]) and consistent with the NYS Procurement Guidelines, this Office has upheld awards of service contracts based on cost alone where the services were routine in nature and the solicitation sufficiently defined the qualitative requirements, so that there is little room for technical variances which will have any meaningful value to the procuring agency (*see e.g.* Comptroller Bid Protest Decision SF20160139).

offering the lowest fee would receive full points while the other proposals received a proportionate score based on its relation to the lowest fee for that item (*see* IFB, Section 4.2, at pgs. 14-15). AGM then combined the scores for the two items for each bidder and awarded the contract to Valet, the bidder receiving the highest aggregate score.

AGM provided SPS a debriefing on January 8, 2018. By letter dated January 19, 2018, SPS filed a protest with AGM challenging its award of the contract to Valet. AGM denied SPS's protest by letter dated January 26, 2018. SPS filed an appeal of AGM's protest decision with this Office by letter dated February 8, 2018 (Appeal) and AGM responded to the Appeal by letter dated February 22, 2018 (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 the contract approval responsibility prescribed by SFL § 112, 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 Title 2 of the Codes, Rules and Regulations of the State of New York.

In the determination of the Appeal, this Office considered:

1. the documentation contained in the procurement record forwarded to this Office by AGM with the AGM/Valet contract;
2. the correspondence between this Office and AGM arising out of our review of the proposed AGM/Valet contract; and
3. the following correspondence/submissions from the parties (including the attachments thereto):
 - a. SPS's Appeal dated February 8, 2018; and
 - b. AGM's Answer dated February 22, 2018.

Here, we are satisfied that an award based on lowest price effectively represented the cost-benefit analysis requisite in a best value procurement. Furthermore, we disagree with SPS' characterization of the contract as a revenue contract since AGM is not sharing in any profit collected by the vendor, and AGM will pay for the parking management services provided under the contract. Accordingly, SFL § 163 applies to this procurement.

² 2 NYCRR Part 24.

Applicable Statutes

The requirements applicable to this procurement are set forth in SFL Article 11, which provides that contracts for services shall be awarded on the basis of “best value” to a responsive and responsible offerer.³ A “responsive” offerer is an “offerer meeting the minimum specifications or requirements described in a solicitation for commodities or services by a state agency.”⁴

SFL § 163(9)(b) provides that the “solicitation shall prescribe the minimum specifications or requirements that must be met in order to be considered responsive and shall describe and disclose the general manner in which the evaluation and selection shall be conducted.”

ANALYSIS OF THE APPEAL

Appeal to this Office

In its Appeal, SPS challenges the procurement conducted by AGM on the following grounds:

1. Valet did not meet the minimum qualifications set forth in the IFB and therefore AGM violated the terms of the IFB by awarding the contract to Valet.

AGM Response to the Appeal

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

1. Valet met the minimum qualifications under the IFB and AGM properly awarded the contract to Valet as the lowest responsive and responsible bidder.

DISCUSSION

SPS asserts Valet did not meet the minimum qualifications to be considered under the IFB (*see* Appeal, at pgs. 3-4). SPS alleges Valet failed to provide the names of three events “that [Valet] has provided parking management services *for* within the last eighteen (18) months preceding submission of this bid which may include but is not limited to, a festival, fair, sporting event, race, concert or other event that parked at least 1,500 cars per event using multiple lots” (IFB, Section 3.3[2], at pg. 13 [emphasis added]). By considering Valet’s proposal, SPS claims AGM violated the terms of the IFB (*see* Appeal, at pg. 5). AGM maintains “Valet met the minimum qualifications set forth in Section 3.3 of the IFB and Valet is qualified to provide the parking management services contemplated in the IFB” (*see* Answer, at pg. 3).

³ SFL § 163(4)(d), (10). *See* n 1, *supra*.

⁴ SFL § 163(1)(d).

SPS interprets the above specification that a bidder provide services “for” an event as requiring the bidder to have a contractual relationship directly with the event (*see* Appeal, at pg. 4). SPS claims that, for one of the three references listed, Valet only provided parking services *near* the event (Event), but had no contract with the Event itself which is insufficient to satisfy the criterion that it provided services “for” such event (*Id.*). SPS posits AGM has ratified this interpretation of the specification since the IFB requires bidders to submit the name and phone number of the event promoter or event operator and, thus, “clearly means that the proposer must have a direct relationship with the promoter and with the event itself” (*Id.*).

SPS also questions whether Valet satisfied the requirement that the parking services provided at the Event involved the parking of 1,500 cars using multiple lots (*see* Appeal, at pg. 6; IFB, Section 3.3[2], at pg. 13).

AGM disagrees with SPS’ narrow interpretation of the specification at issue, asserting that the IFB does not require a contractual relationship between Valet and the Event (*see* Answer, at pg. 3). AGM states it confirmed Valet contracted with a private lot *near* the Event to provide parking services *for* the Event (*Id.*). AGM confirmed that Valet parked approximately 9,350 cars for the private lot owner for the Event over the course of 17 days in four lots (*see* Answer, Exhibit 1). As a result, AGM determined Valet met the minimum qualifications.

Generally, this Office defers to an agency’s interpretation of the specifications contained in its own solicitation documents if reasonable and supported by the procurement record. We find AGM’s interpretation of the specification to be consistent with the presumed purpose of this requirement, i.e., that the proposer demonstrate its experience providing similar parking management services. The presence or absence of a contractual relationship between the proposer and the event promoter does not appear to have any relevance to an assessment of the proposer’s parking management experience.

Furthermore, our review of the procurement record supports AGM’s determination that Valet met the minimum qualifications of the IFB and, therefore, we have no basis to disturb AGM’s award of the contract to Valet.

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 AGM. As a result, the Appeal is denied and therefore we have approved the AGM/Valet contract for parking management services at the New York State Fair.