

DEPARTMENT OF ADMINISTRATION
STATE FINANCIAL SERVICES DIVISION
STATE PROCUREMENT BUREAU

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HELENA, MONTANA 59620-0135

September 13, 2017

Ms. Julie Foster
Ravalli County Economic Development Authority
274 Old Corvallis Rd. Suite A
Hamilton, MT 59840

Re: Response to Protest

Dear Ms. Foster,

On August 14, 2017, Ravalli County Economic Development Authority (RCEDA) filed a protest of Montana's Request for Proposal for Food and Agriculture Development Center, AGR-RFP-2017-0004N. The protest alleges anticompetitive practices, violation of the Montana Procurement Act, and the State of Montana not supporting its program purpose.

I. INTRODUCTION

Under Montana law, the Department of Administration (Department) is responsible for responding in writing to RCEDA's protest within 30 days after receipt of the protest and explaining the reasons for the Department's actions. § 18-4-242(3), MCA. Under § 18-4-242(6)(a), MCA, if, after an award, the Department determines that a solicitation or proposed award of a contract is in violation of the law and the person awarded the contract has not acted fraudulently or in bad faith, the contract may be: (i) ratified and affirmed, provided it is determined that doing so is in the best interests of the State; or (ii) terminated, and the person awarded the contract must be compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit, before the termination. Under § 18-4-242(6)(b), MCA, if after an award it is determined that a solicitation or award of a contract is in violation of law and the person awarded the contract has acted fraudulently or in bad faith, the contract may be: (i) declared void; or (ii) ratified and affirmed if that action is in the best interests of the State, without prejudice to the State's rights to appropriate damages. The State is not required to delay, halt, or modify the procurement process pending the result of a protest, contested case proceeding, or judicial review. § 18-4-242(8), MCA.

II. STANDARD OF REVIEW

The Department's role in reviewing a protest is to determine if the requirements of the Montana Procurement Act (Act) and the Act's applicable rules have been followed. Regarding Request for Proposals (RFPs), an award must be made to the responsible and responsive offeror whose proposal best meets the evaluation criteria set forth in the RFP. Other criteria may not be used in the evaluation. § 18-4-304(5), MCA; ARM 2.5.602(12) An evaluation "shall be based on the evaluation criteria set forth in the request for proposals." A responsible offeror is one "... who has the capability in all respects to fully perform the

contract requirements and the integrity and reliability that will ensure good faith performance." *ARM 2.5.201(33)*. A responsive offeror is one who has submitted an offer conforming in all material respects to the request for proposals. *Id.* at (34).

III. ANALYSIS

RCEDA's allegations are addressed below followed by the State's response.

Allegation #1: *Lake County Community Development Center (LCCDC) violated MCA 18-4-314. RCEDA is reporting anti-competitive practices. RCEDA had been in contact with Jenn Kreiner of Sanders County Community Development Corporation and had she agreed to be a subcontractor for coordination of technical assistance services for RCEDA's service area for the proposed Food and Agriculture Development Center. She later withdrew support for the proposal and told John Schneeberger, RCEDA's Economic Development Specialist, that she was pressured by Gypsy Ray and Jan Tusick from LCCDC to withdraw or they would not continue to extend services to Sanders County as part of their Certified Regional Development Corporation.*

Response to Allegation #1: The allegation has been referred to the Montana Attorney General's office for review and response.

Allegation #2: *RCEDA asserts that Mission Food Enterprise Center (MMFEC) had an unfair advantage in the RFP because it benefited from work done by the Montana Food and Agriculture Center Program. This wasn't in the evaluation criteria. The rules for competitive sealed proposals states: "If an award is made, it must be made to the responsible and responsive offeror whose proposal best meets the evaluation criteria. Other criteria may not be used in the evaluation" (MCA 18-4-304). MMFEC used outreach plans developed by the MFAC program and by another MFAC Center, Headwaters RC&D. This constitutes other criterial (sic) because incumbency and access to State funded resources was (sic) not listed as an evaluation criteria.*

Response to Allegation #2: RCEDA fails to identify any evidence in the Evaluation Committee spreadsheet or in any other documents supporting its claim that other criteria--such as incumbency and MMFEC benefiting from work or funding of other parties--were used in the evaluation in violation of 18-4-304, MCA. Based on the spreadsheet, it appears the Evaluation Committee reviewed each offeror's response against the RFP criteria to determine the current capacity of that offeror to provide the services described in 80-11-901, MCA. I cannot overturn an RFP decision based on an allegation lacking evidentiary support.

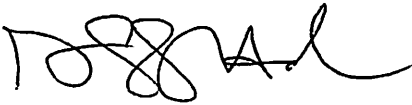
Allegation #3: *The State of Montana is not supporting its program purpose. In the Scope of Services Section of the RFP (AGR-RFP-2017-0004N) it states the Program Purpose is to "support development of the infrastructure needed to increase the capacity of Montana's farmers..." Providing incumbent Centers evaluation points based on capacity previously paid for by the State, is not encouraging the development of technical assistance infrastructure outside of the limited service areas of the existing incumbent MFA Centers.*

Response to Allegation #3: Again, RCEDA fails to support its allegation that MMEFC received evaluation points based on capacity previously paid for by the State. Further, there is nothing in the evaluation spreadsheet indicating that the committee added points for such capacity. Based on the spreadsheet, each organization that applied was evaluated based on its current capacity to provide the services described in the scope of services.

IV. CONCLUSION

For the foregoing reasons, I find no violations of the Montana Procurement Act or the applicable rules. The RCEDA's protest is therefore respectfully denied at this time. I will await the Attorney General's response to determine if my decision should be modified. RCEDA has 14 days from the date of this decision to request a contested case hearing under the Montana Administrative Procedure Act.

Sincerely,



Meghan Holmlund
Chief Procurement Officer

enclosures

cc Mike Manion, Department of Administration
Department of Agriculture