BEFORE THE MARYLAND STATE BOARD OF CONTRACT APPEALS

In the Appeal of	*	
Infojini, Inc.	*	
Under DGS RFP No. BPM043644		**Docket No. MSBCA 3304**
	*	
Appearance for Appellant		**Robert Fulton Dashiell, Esq.**
	*	**Law Offices of Robert Fulton Dashiell, Esq.**
		Woodlawn, Maryland 21207
	*	
Appearance for Respondent		**Jason R. Potter, Esq.**
	*	**Assistant Attorney General**
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	*	**Contract Litigation Unit**
		Baltimore, Maryland 21202
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OPINION AND ORDER BY MEMBER STEWART

The Maryland State Board of Contract Appeals ("Board") held a merits hearing in this Appeal on July 17, 2025. After Appellant Infojini, Inc. ("Infojini") rested its case, Respondent Maryland Department of General Services ("DGS") moved for judgment pursuant to COMAR 21.10.05.06E. The Board unanimously granted Respondent's motion and stated that a written decision would follow. This Opinion and Order sets forth the bases for the Board's decision.

PROCEDURAL HISTORY AND FINDINGS OF FACT

On May 10, 2024, DGS issued Request for Proposals Statewide Agile Resources and Teams 2024 RFP No. BPM043644 ("RFP") to obtain Agile resources and/or teams with the technical skills to support the State of Maryland's technology modernization activities and staffing service needs. The purpose of the procurement was to create a pool of qualified contractors that would be engaged through a rotational Work Order process to provide services on an on-going, as-needed basis. The RFP solicited proposals for three functional areas: Functional Area 1: Software Engineering Resources; Functional Area 2: Software Engineering Teams Bundle; and

Functional Area 3: IT Management Consulting Services. Offerors were only allowed to submit a proposal for one Functional Area.

DGS intended to award up to 40 contracts in the three Functional Areas - no more than 15 awards in Functional Area 1; no more than 20 awards in Functional Area 2; and no more than 5 awards in Functional Area 3. For purposes of this Appeal, only the RFP's solicitation for offers for Functional Area 1 is relevant.

The procurement method was Competitive Sealed Proposals per COMAR 21.05.03. Offerors were required to submit a Technical Proposal and a Financial Proposal. Proposals submitted by offerors were to be evaluated by an Evaluation Committee. Technical Proposals were required to be evaluated for technical merit and then ranked. Financial Proposals were to be evaluated separately from Technical Proposals, and upon completion of the evaluations, each offeror was to be assigned an overall ranking for Functional Area 1. Section 6.5.3 of the RFP required the Procurement Officer ("PO"), in making the determination and recommendation of award, to give greater weight to technical factors over financial factors. Section 6.2 of the RFP sets forth the Technical Proposal Evaluation Criteria. One evaluation criterion was found in Section: 6.2.3 of the RFP - Economic Benefit to State of Maryland. Section of the RFP 6.2.3 referred offerors to Section 5.3.2.O, which gave instructions regarding the submission of information on how their performance of the Contract would benefit Maryland's economy:

> **O. Economic Benefits Factors (Submit under TAB N) (Page Limit: 1 page, including tables & figures)**
>
> 1) Offeror shall submit with its Proposal a narrative describing benefits that will accrue to the Maryland economy as a direct or indirect result of its performance of the Contract. Proposals will be evaluated to assess the benefit to Maryland's economy specifically offered. The economic benefit offered should be consistent with the Offeror's Total Proposal Price from **Attachment B**, the Financial Proposal Form. See COMAR 21.05.03.03A (3). (emphasis in original).

2) Proposals that identify **specific benefits** as being **contractually enforceable commitments** will be rated more favorably than Proposals that do not identify specific benefits as contractual commitments, all other factors being equal.(emphasis added).

3) Offerors shall identify any performance guarantees that will be enforceable by the State if the full level of promised benefit is not achieved during the Contract term.

* * *

5) In responding to this section, the following do not generally constitute economic benefits to be derived from the Contract:

    a) generic statements that the State will benefit from the Offeror's superior performance under the Contract;

    b) descriptions of the number of Offeror employees located in Maryland other than those that will be performing work under the Contract; or

    c) tax revenues from Maryland-based employees or locations, other than those that will be performing, or used to perform, work under the Contract.

6) Discussion of Maryland-based employees or locations may be appropriate if the Offeror makes some projection or guarantee of increased or retained presence based upon being awarded the Contract.

7) Examples of economic benefits to be derived from a contract may include any of the following. For each factor identified below, identify the specific benefit and contractual commitments and provide a breakdown of expenditures in that category:

    a) The Contract dollars to be recycled into Maryland's economy in support of the Contract, through the use of Maryland subcontractors, suppliers and joint venture partners...

    b) The number and types of jobs for Maryland residents resulting from the Contract...

    c) Tax revenues to be generated for Maryland and its political subdivisions as a result of the Contract. Indicate tax category (sales taxes, payroll taxes, inventory taxes and estimated personal

income taxes for new employees). Provide a forecast of the total tax revenues resulting from the Contract;

d) Subcontract dollars committed to Maryland small businesses and MBEs; and

e) Other benefits to the Maryland economy which the Offeror promises will result from awarding the Contract to the Offeror, including contractual commitments. Describe the benefit, its value to the Maryland economy, and how it will result from, or because of the Contract award. Offerors may commit to benefits that are not directly attributable to the Contract, but for which the Contract award may serve as a catalyst or impetus.

The Key Information Summary Sheet for the RFP informed offerors that a virtual pre-proposal teleconference would be held on Friday, May 17, 2024, at 11:00 a.m., and that they had until May 22, 2024 at 2:00 p.m. to submit questions regarding the solicitation.

Infojini submitted a Technical Proposal and Financial Proposal for Functional Area 1 by the due date for submission of proposals. Of the 72 proposals submitted, 59 proposals, including Appellant's, were deemed susceptible for award. Infojini's proposal was ranked 30th in technical merit, 38th financially, and 30th overall. Infojini received a non-award notification on December 23, 2024. A debriefing was held on December 31, 2024. Infojini filed a protest on January 6, 2025 ("Protest"). The PO denied the Infojini's Protest on February 4, 2025 ("Final Decision"). Infojini filed a Notice of Appeal to the Board on February 10, 2025.

Although Infojini's Protest set forth several grounds, the only grounds raised in its Notice of Appeal that were included in its Protest involved DGS' evaluation of Infojini's Technical Proposal that "highlighted a weakness in our Economic Benefits narrative, stating that our proposal lacked measurable projections, enforceable commitments, and sufficient clarity." Infojini's Protest also asserted that "the RFP did not provide guidance on what would constitute a 'legally binding commitment' beyond our obligation to be bound if the State accepted our offer."

Finally, Infojini's Protest claimed that, despite the lack of guidance in the RFP regarding what would constitute "enforceable commitments," its narrative[1] describing the economic benefits to the State submitted as a part of its Technical Proposal included "concrete plans" that Infojini would:

- Hire additional personnel in Maryland, specifically five new employees dedicated to this Contract.
- Partner with Maryland-based MBEs[2] to fulfill the 25% subcontracting requirement, which was clearly stated as binding in our proposal.
- Generate additional economic impacts, such as payroll contributions, tax revenues, and local business support.

Denying the Protest, the PO's Final Decision responded that "Infojini had the opportunity to ask clarifying questions at the pre-proposal conference" to the extent it asserts that the RFP lacked clarity as to what constituted a contractually enforceable commitment. Additionally, disagreeing that Infojini's narrative describing the economic benefits to the State was "concrete," the PO stated:

> Infojini's proposal did not adequately demonstrate how the State would benefit if the contract was awarded to Infojini. While Infojini made commitments regarding hiring and subcontracting, the proposal offered generic statements without specific, enforceable commitments, which are necessary to demonstrate tangible benefits to the State.

DGS filed a Motion to Dismiss and Amended Motion to Dismiss Infojini's Appeal ("Motions to Dismiss") on March 3, 2025 asserting that none of the bases for appeal raised in Infojini's Notice of Appeal were raised before the PO in its Protest, and therefore Infojini failed to

[1] Despite Section 5.3.2.O of the RFP mandating that offerors submit a *narrative* including table and figures describing benefits that will accrue to the Maryland economy as a direct or indirect result of its performance of the Contract, Infojini provided a table with figures only.

[2] Minority Business Enterprises.

exhaust its administrative remedies per STATE FIN. & PROC. § 15-211(a)[3] and COMAR 21.10.02.10A.[4] Infojini filed its Response to the Motions to Dismiss on March 11, 2025, and DGS filed its Reply on March 17, 2025. On May 21, 2025, the Board held a hearing on the Motions to Dismiss and granted them Motions in part, and denied them in part. The Board determined that Infojini had only exhausted administrative remedies regarding enforceable commitments and limited the merits hearing to that issue. Witnesses called to testify at the merits hearing were Infojini's President, Sandeep Harjani, and PO Emmanuel G. Smith.

STANDARD OF REVIEW

A procurement officer's decision will be overturned only if it is shown by a preponderance of the evidence that the agency's action was biased, arbitrary, capricious, unreasonable, or in violation of law. *See Hunt Reporting*, MSBCA 2783 at 6 (2012).

DECISION

Infojini's appeal raises two issues: 1) whether the RFP lacked clarity on what qualifies as "contractually enforceable commitments" under Section 5.3.2.O, and 2) whether the evaluation of its Technical Proposal's description of economic benefits to the State was arbitrary, capricious unreasonable, or unlawful.

INFOJINI'S COMPLAINT OF LACK OF CLARITY IN THE RFP REGARDING "CONTRACTUALLY ENFORCEABLE COMMITMENTS"

The Key Information Summary Sheet for the RFP informed offerors of a virtual pre-proposal teleconference on Friday, May 17, 2024, at 11:00 a.m., and that they had until May 22, 2024 at 2:00 p.m. to submit questions regarding the solicitation. During his testimony, Mr. Harjani

[3] "The Appeals Board shall have jurisdiction to hear and decide all appeals arising from the final action of a unit: (1) on a protest relating to the formation of a procurement contract..."

[4] "Protesters are required to seek resolution of their complaints initially with the procurement agency."

admitted that he knew he had the opportunity to seek clarification regarding what would constitute "contractually enforceable commitments" by asking questions before submitting a proposal, but did not do so. Merits Hr'g Tr., 24:2-26:11. COMAR 21.10.02.03A mandates that "[a] protest based upon alleged improprieties in a solicitation that are apparent before bid opening or the closing date for receipt of initial proposals shall be filed before bid opening or the closing date for receipt of initial proposals." Infojini failed to file a protest regarding any alleged lack of clarity regarding what would constitute "contractually enforceable commitments" before submitting its Technical and Financial Proposals.

INFOJINI'S COMPLAINT REGARDING THE EVALUATION OF ITS TECHNICAL PROPOSAL PER RFP SECTION 6.3.2 ECONOMIC BENEFITS TO THE STATE OF MARYLAND

The Board can only review whether the determinations of procurement officials regarding the evaluation of the technical merits of proposals are arbitrary, capricious, unreasonable, or in violation of law. Procurement officials' determinations concerning the relative technical merits of proposals are discretionary and entitled to great weight. *Eisner Communications, Inc.*, MSBCA 2438, 2442 & 2445 at 18-19 (2005). The evaluation of proposals in a competitive negotiation procurement is a matter left to the procurement officer's sole discretion after receiving the advice of an evaluation panel if one is used. *Id.*

Therefore, a party who disagrees with the evaluation of proposals or seeks to disturb the recommended award has the burden of showing that the procuring agency's decision was unreasonable. *Clifton Gunderson, LLP*, MSBCA 2502 at 13 (2006). Further, a party's "mere disagreement with the judgment of the evaluators assigned to the evaluation panel for the procurement is insufficient to show that the evaluation of proposals is unreasonable." *Hunt Reporting Co.*, MSBCA 2783 at 6 (quoting *AGS Genasys Corp.*, MSBCA 1325 (1987)).

In this Appeal, Infojini challenges Respondent's evaluation of its Technical Proposal under Section 6.2.3 of the RFP which required offerors to demonstrate the economic benefits to the State of Maryland. Appellant argues that DGS was wrong to assign a weakness[5] to its Technical Proposal for not providing specific, contractually enforceable commitments.

At the merits hearing, the PO was questioned in detail about Tab N of Infojini's Technical Proposal and explained that Infojini's description of each proposed economic benefit was either generic, non-specific, an assumption, hypothetical, or lacking an enforceable commitment. Merits Hr'g Tr., 86:15-96-17. The PO identified the weaknesses in the following examples:

- Infojini claimed that it "currently employed" personnel in several categories required to perform the Contract, but that award of the Contract "will enable" Infojini to hire up to six additional "resources" or people to perform key roles in connection with performance of it.[6] The PO explained that the language of Infojini's claim that it would hire additional persons for these key contract roles was "not concrete" and "would not be easily enforceable." Merits Hr'g Tr., 91:12-93:8.
- Infojini claimed that most of its employees to respond to work orders under the Contract would be Maryland residents, and that "if we assume at least 10% of the employees were unemployed" that this "will reduce the expense [the Maryland Department of Labor] has to pay for unemployment expenses." The PO explained that Infojini's claim was "not concrete," but "an assumption" and that Infojini was "not giving a definite guarantee" to

[5]Evaluators 1 and 2 both assessed "no commitments" as a weakness when evaluating Infojini's Technical Proposal against the requirements of Section 6.33.3 of the RFP. *See* R. Ex. 4, p. 266; R. Ex. 5, p. 283.

[6] In its Protest Infojini claimed that if it were awarded the Contract that it would hire five additional personnel dedicated to it in Maryland.

hire any unemployed individuals in Maryland to perform work on the Contract. Merits Hr'g Tr., 93:24-94:14.

- Infojini also claimed that awarding it a Contract would generate or produce other positive economic impacts to the State such as increased payroll taxes, sales taxes (for example, on automobile purchases), toll revenues and increased business support. The PO explained that such claims were "speculative and hypothetical" and did not constitute enforceable commitments. Merits Hr'g Tr., 94:15-96:17.
- Infojini claimed that it partnered with a Maryland-based subcontractor to meet the 25% MBE goal and the 5% Veteran-Owned Small Business Enterprise ("VSBE") goal. The PO explained that all offerors were mandated to commit to the 25% MBE and 5% VSBE goals to be qualified as reasonably susceptible for award and have their Technical Proposals evaluated. Merits Hr'g Tr., 105:2-107:7.

Based on the evidence presented, the Board finds that Infojini failed to meet its burden of proof to establish that Respondent acted arbitrarily, capriciously, unreasonably or unlawfully in concluding that Infojini's Technical Proposal lacked specific, enforceable commitments on economic benefits to the State. Rather, Infojini's objection is simply a disagreement with the PO's and Evaluation Committee's assessment of its Technical Proposal under Section 6.2.3 of the RFP.

CONCLUSION

For the foregoing reasons, the Board concludes that Appellant failed to prove that any action of DGS was biased, arbitrary, capricious, unreasonable, or in violation of law.

ORDER

Based on the foregoing, it is this 6th day of August 2025, hereby:

ORDERED that Respondent Maryland Department of General Services' Motions for Judgment is GRANTED, and it is further

ORDERED that Appellant Infojini's Appeal is DENIED.

/s/
Michael J. Stewart Jr., Esq., Member

I concur:

/s/
Sonia Cho, Esq., Chairwoman

/s/
Jill P. Carter, Esq., Member

Certification

COMAR 21.10.01.02 **Judicial Review.**

A decision of the Appeals Board is subject to judicial review in accordance with the provisions of the Administrative Procedure Act governing contested cases.

MD Rule 7-203 **Time for Filing Action.**

(a) Generally. Except as otherwise provided in this Rule or by statute, a petition for judicial review shall be filed within 30 days after the latest of:

(1) the date of the order or action of which review is sought;

(2) the date the administrative agency sent notice of the order or action to the petitioner, if notice was required by law to be sent to the petitioner; or

(3) the date the petitioner received notice of the agency's order or action, if notice was required by law to be received by the petitioner.

(b) Petition by Other Party. If one party files a timely petition, any other person may file a petition within 10 days after the date the agency mailed notice of the filing of the first petition, or within the period set forth in section (a), whichever is later.

* * *

I certify that the foregoing is a true copy of the Maryland State Board of Contract Appeals Opinion and Order in Docket No. MSBCA 3304, The Appeal of Infojini, Inc. under Maryland Department of General Services Request for Proposal BPM043644.

Date: August 6, 2025

_____/s/_____
Ruth W. Foy
Clerk