

THOMAS P. DiNAPOLI
STATE COMPTROLLER



110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

April 7, 2009

Ms. Cynthia L. Itzo
Assistant Director, Fiscal Management
Department of Agriculture and Markets
10B Airline Drive
Albany, New York 12235

Re: C011089 Triangle Talent, Inc.

Dear Ms. Itzo:

This is in response to your recent correspondence dated March 27, 2009, whereby you requested additional information regarding our Office's decision to non-approve the above referenced agreement.

As noted in my previous correspondence dated March 2, 2009, the proposal submitted by Triangle Talent Inc. (Triangle) and the terms and conditions contained in the proposed agreement with Triangle are not in conformance with the requirements set forth in the Request for Proposal (RFP) issued by your Department. The specifics are set forth below:

- The RFP requested proposers to submit cost proposals based upon a fixed amount per ticket sold for admission to an event at the Grandstand. The cost proposal submitted by Triangle was not structured in this manner. Triangle presented its cost proposal based upon a fixed cost per event at the Grandstand and a fixed cost per day for events held at Chevy Court. When previously asked of your Office how Triangle's proposal was determined to be responsive, you responded stating "there was nothing to preclude a proposal based on a cost per event". This response does not support that Triangle's proposal was responsive nor does it sufficiently address what effect allowing this change to the cost structure would have had on other potential proposers.
- The RFP stated that the charge per ticket would only be paid contingent upon the sale of a minimum of five thousand tickets for each entertainment event presented at the Grandstand. The RFP stated "if ticket sales for any entertainment event at the Grandstand do not exceed five thousand tickets, you will not be entitled to, nor will you be paid your charge per ticket for that event"... The proposed agreement with Triangle provides for Triangle to receive 75 percent of the booking fee for both the Grandstand and Chevy Court upon the Fair's execution

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of each agreement for such entertainment events at the Grandstand and Chevy Court with the balance to be paid upon conclusion of the last event booked for each venue. This payment provision allows Triangle to receive monies in advance of any knowledge of the number of tickets sold; thus giving Triangle a significant advantage over other potential proposers in formulating their cost proposals.

In summary, the alternative cost structure submitted by Triangle and the terms and conditions provided for in the proposed agreement not only conflict with the requirements of the RFP, but the allowance of such is contrary to the principles outlined in the Procurement Guidelines and the State Finance Law (SFL). The Procurement Guidelines, Section VI state in part "The terms and conditions of a contract that is entered into pursuant to an RFP must be in accordance with the requirements and specifications of the RFP. Deviations may be considered if the changes do no alter the requirements and specifications so as to prejudice other competitors" The deviations cited above clearly can be viewed as prejudicial to competitors and potential proposers. Section 163.9a of the SFL states "the procurement process shall include a fair and equal opportunity for offerors to submit responsive offers." The RFP clearly did not indicate to the bidding community that alternate proposals would be accepted; thus failing to provide an equal opportunity for offerors to submit proposals.

Based upon the above our Office is returning without approval the above referenced agreement. Our Office understands the importance of these services and will consider a one year single source agreement with Triangle to provide booking services for the 2009 State Fair. Therefore, we ask that the Fair document in the procurement record justification supporting contracting with Triangle on a single source basis. The current agreement will need to be modified deleting any reference to the RFP and accurately reflecting all agreed upon terms and conditions. In the interim, the Fair shall review both the RFP and the evaluation instrument utilized for this procurement and make the necessary changes to ensure that the reprourement process will result in a fair competitive process.

Please contact our Office with any questions regarding the above.

Sincerely,

Cathy Smith

Contract Management Specialist II

Enc: Contract C011089

cc: Dan Ryan