

H. CARL McCALL
STATE COMPTROLLER



A.E. SMITH STATE OFFICE BUILDING
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

December 2, 1999

Joel M. Howard, III, Esq.
540 Broadway
P.O. Box 22222
Albany, NY 12201-2222

Re: State University of New York College at Potsdam 19990078
Procurement of Solid Waste Service Our File #SF-1990078

Dear Mr. Howard:

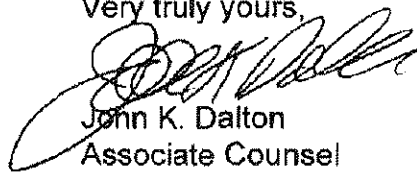
On June 11, 1999, you had written to William Fisher at the State University of New York College at Potsdam on behalf of your client Gibson and Son protesting an award of a contract to Waste Stream Management, Inc. You copied this Office on this protest to the State University which was based upon the failure of Waste Stream Management to include a non-collusive bidding certificate together with its bid and the fact that the State University allowed Waste Stream Management to provide the certificate after submission but prior to its award.

On October 15, 1999, Joel Pierre-Louis, Associate Counsel provided SUNY's response to your letter and denied your protest. Mr. Pierre-Louis' letter stated in effect that: (i) by including exhibit A in its bid, Waste Stream effectively submitted a non-collusive bidding certificate and (ii) Waste Stream prior to the contract execution signed the non-collusive bidding certificate contained in Exhibit A-1.

We believe the conclusion reached by the State University with respect to this protest is correct. We would only add that it is clear under the case law that public entities generally can waive the failure to submit a non-collusive bidding certificate with the original bid where such certificate is subsequently provided prior to contract execution (see, A.J. Beaudette Construction Co. v City of Syracuse, 62 Misc2d 564, 309 NYS2d 517 (Sup Ct. Onondaga County, 1970), affd 34 AD2d 734, 313 NYS2d 356 [AD 4th, 1970]; Consolidated Sheet Metal Works, Inc. v Board of Education, 62 Misc2d 445, 308 NYS2d 773 [Sup Ct. Jefferson County, 1970]; Bailey v Colonna, 73 Misc2d 299, 341 NYS2d 359 [Sup Ct. Clinton County, 1972]; 1986 Opns St Comp No. 86-62, p. 97).

Therefore, the contract with Waste Stream Management has been approved.

Very truly yours,

A handwritten signature in black ink, appearing to read "John K. Dalton", is written over the typed name and title.

John K. Dalton
Associate Counsel

cc: William Fisher, SUNY Potsdam
Joel Pierre-Louis, Esq., SUNY Central
William Hughes