



STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

January 29, 2002

Daniel S. Cohen
Cohen & Cohen LLP
258 Genesee Street – Suite 205
Utica, New York 13502

Michael J. Bintz
Superintendent
Gouverneur Correctional Facility
PO Box 370
Scotch Settlement Road
Gouverneur, New York 13642
Attn: Nancy K. Martin

Re: Garbage and Refuse Removal Services
Gouverneur Correctional Facility
Our File #SF-20010305

Dear Mr. Cohen, Mr. Bintz and Ms. Martin:

We are in receipt of a bid protest filed by the representative of Waste Stream, Inc. ("WSI") in relation to the attempt by Gouverneur Correctional Facility ("Gouverneur") to award a contract for garbage and refuse removal services to LaValle Transportation, Inc. ("LaValle"). WSI was an unsuccessful bidder on this procurement. WSI alleges:

- LaValle does not possess the "sanitation-type trucks" required by the Invitation for Bids ("IFB") to be able to perform the contract
- LaValle does not possess the experience required by the IFB to be able to perform the contract
- LaValle did not correctly complete its bid sheet, and if it had provided correct information, LaValle would not be the low bidder.

Gouverneur's initial response was:

- LaValle is aware of the equipment it must provide. If, at the commencement of the contract, LaValle fails to provide requisite equipment, the contract will be terminated.
- The experience that WSI alleges was required by the IFB was not so required. WSI has misread the IFB.

- LaValle is, in fact, the low bidder. LaValle and WSI had different interpretations of the bid sheet. LaValle's interpretation was, in fact, correct.

Gouverneur subsequently, at the request of this Office, submitted proof that LaValle does, in fact, have the requisite equipment. WSI responded that while LaValle may have acquired such equipment after winning the bid, their bid was non-responsive because they should have had the requisite equipment at the time of submitting the bid.

Taking the protest issues in reverse order, we determine the following:

- We are satisfied that LaValle is the low bidder. Gouverneur found that LaValle correctly interpreted and completed the bid sheet. We have no information that would lead to our overturning this determination.
- We agree with Gouverneur that the IFB did not require that the successful bidder have experience in operating similar garbage and refuse removal systems. The IFB language on this point was permissive. Gouverneur was, by the wording of the IFB, within its rights to award the contract to a bidder who did not have such experience.
- Pursuant to State Finance Law, Section 163(4)(d), a service contract such as that at issue here must be awarded on the basis of best value to a responsive and responsible bidder. Therefore, every time a procurement contract is awarded, the State Agency is required to determine that the awardee is both a responsive and a responsible bidder. Included in the concept of "responsible," as well as "responsive," is the notion that the awardee has the capability to perform the contract in accordance with the specifications in the IFB.
- Prior to WSI coming forward with an allegation that LaValle may not be capable of performing the contract, Gouverneur could reasonably have relied on LaValle's representations (whether express or implied) that it could and would comply with all of the specifications. We believe, however, that once WSI came forward with its information/allegation, Gouverneur was on "inquiry notice" that there may be an issue concerning LaValle's bid. At that point, Gouverneur was obliged to take steps, reasonable under the circumstances, to determine whether LaValle could perform the contract in accordance with the specifications in the IFB and therefore could be considered a responsive and responsible bidder. Gouverneur did, subsequently, take the appropriate steps to determine whether LaValle could perform the contract in accord with the specifications in the IFB. Gouverneur obtained from LaValle a detailed description, accompanied by photographs, indicating that LaValle had the requisite equipment. We disagree with WSI's assertion that such equipment needed to be in the possession of LaValle at the time of the bid. Rather, it is sufficient that LaValle have (and be able to document that it would have) such equipment in time for the commencement of the contract, following award.

We are therefore denying the protest and our Contracts Bureau will be approving the contract between Gouverneur and LaValle.

Very truly yours,

A handwritten signature in cursive script that reads "Helen M. Fanshawe". The signature is fluid and elegant, with a prominent initial 'H'.

Helen M. Fanshawe
Deputy Counsel