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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

December 29, 2006

Mr. Michael F. Morin
Consumers Petroleum
204 Spring Hill Road
Trumbull, CT 06611

Dear Mr. Morin:

RE: RFP 5C036 NYS Thruway Authority
SF20060243

This is in reply to your letter of September 13, 2006, requesting that all bids on the above-referenced procurement be rejected, that the contracts with existing suppliers be extended beyond their stated expiration date of September 30, 2006, and that the procurement be re-bid. We are treating your letter as a protest of the September 1, 2006 determination by the New York State Thruway Authority (the "Authority") denying your protest.

We have deferred issuing this determination on your protest as a result of pending litigation relating to this procurement. In September 2006, Lehigh Gas Corporation commenced an Article 78 proceeding in the Supreme Court, Albany County, against the Authority, Sunoco, Inc., and this Office.¹ Lehigh obtained a temporary restraining order enjoining this Office from taking certain actions with respect to this procurement. In our view, the order could have been interpreted in such a way as to restrain our ability to act upon your protest. In order to resolve any doubt on this point, we sought and recently received clarification from the Court as to the scope of the activities enjoined by the order, and we are now in a position to issue this determination.

¹ In this litigation, Lehigh challenges OSC's determination that the bid protest filed by Sunoco in connection with this procurement should be upheld. The Authority awarded the contract to Lehigh, which was the second ranked proposer, after failing to reach an agreement with Sunoco (the first-ranked proposer). Sunoco filed a protest, contending that the Authority had acted arbitrarily and capriciously in abruptly terminating contract negotiations with Sunoco and in proceeding to award the contract to Lehigh. OSC upheld the protest, and returned the Lehigh contract to the Authority unapproved.

Your protest to this Office is premised upon your representation that the Authority did not timely comply with your request for copies of ten day fuel reconciliation reports. You contend that your inability to obtain these reports prevented you from obtaining necessary information from your insurance brokers before the due date for submission of proposals and, as a result, you were unable to submit a proposal on this procurement. Your protest also alleges (but without providing any great detail) that the unavailability of the reports would have precluded any proposer from submitting a bid that would have been in compliance with New York environmental conservation laws.

We note at the outset that Consumers Petroleum failed to meet certain deadlines imposed by this Office for raising objection to the procedures employed by the Authority in connection with this procurement. Specifically, we point out that Consumers Petroleum did not timely file a protest with the Authority, as directed in our correspondence to you of August 8, 2006. Nor did your company file with this Office an appeal of the Authority's September 1, 2006 decision on your protest within the time period prescribed in our letter to you of August 1, 2006.

We further note that, after having submitted your letter of January 25, 2006 to the Authority, advising that your company had decided not to submit a proposal on this procurement, you waited six months, or until July 25, 2006, to advise this Office that you were protesting the Authority's bidding process. Your protest is, therefore, untimely.

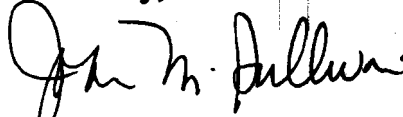
Nevertheless, this Office did undertake an investigation and review of the merits of the issues raised in your protest, in connection with our review of the contracts submitted to us for approval by the Authority as a result of this procurement. Our investigation and review have led us to conclude that:

1. No prospective proposer was treated more favorably than any other prospective proposer with respect to the availability of the fuel reconciliation reports;
2. The reports were not critical to a proposer's ability to obtain insurance as required by the RFP and compliant with New York environmental conservation laws; and
3. There was no irregularity in the procurement procedure employed by the Authority which would justify the relief you have requested.

We, therefore, have determined that your arguments do not provide a sufficient basis for us to direct that this procurement be re-bid.

If you have any questions, please direct them to me in writing.

Sincerely,

A handwritten signature in black ink, appearing to read "Joan M. Sullivan". The signature is fluid and cursive, with a large initial "J" and "S".

Joan M. Sullivan
Assistant Comptroller

vmk

c: Mr. Fred Rudin
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