

THOMAS P. DINAPOLI  
STATE COMPTROLLER



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STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

September 16, 2008

Mr. Olaf Olsen  
United Brotherhood of Carpenters and Joiners of America  
395 Hudson Street  
New York, New York 10014

Dear Mr. Olsen:

This is in response to your letter dated March 18, 2008, regarding the Office of Parks, Recreation and Historic Preservation's (Parks) vendor selection for the East Boat Basin Restoration Project at Robert Moses State Park (contract #D003745). In your letter you raise concerns as to how the apparent low bidder, Chesterfield Associates (Chesterfield), could have submitted a bid that was significantly lower than the other bidders. Further, you speculate that Chesterfield may "cut corners . . . like they did in Islip Township" or "violate the State Prevailing Wage Law, as they have done on other projects." Therefore, you appear to be raising issues as to whether Chesterfield is a responsible bidder.

Our Office has completed its review of the above referenced contract. As part of our review, we examined the concerns cited in your correspondence, the responses of Chesterfield and Parks to your letter and the procurement record compiled by Parks.

First, we note that the Chesterfield bid was within \$75,000 of Park's engineering consultant's pre-bid estimate of \$3,246,000 for this project. Therefore, there is no basis to conclude that the bid, on its face, is unreasonably low.

With respect to the responsibility issues you raise, we first note that both the Islip Township project and the prevailing wage violation were disclosed in Chesterfield's vendor responsibility questionnaire. Furthermore, our understanding is that Chesterfield promptly corrected the problem concerning the Islip Township project in a timely manner at its own expense. The willful violation of the prevailing wage law occurred on five public works projects over ten years ago, between 1994 and 1997, and appears to have involved a challenge by Chesterfield to the Department of Labor's annualization regulation and its application to Chesterfield's contributions for pension benefits that resulted in an underpayment of supplements.<sup>1</sup> The 1997

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<sup>1</sup> While the violation occurred during the 1994-97 period, the actual determination by DOL concerning this

violation was treated by DOL as a single violation and therefore did not result in a debarment under section 220-b (3)(b) of the Labor Law, and, it does not appear that Chesterfield has had any other willful violations of the prevailing wage laws since then — although there was also a single finding by DOL of a non-willful violation in 2006.<sup>2</sup>

We do not believe that the issues concerning the Islip project or the willful prevailing wage violation on public works projects over 10 years ago, or the single non-willful violation in 2006, either individually or collectively, provide a basis for us to conclude that Chesterfield is not now a responsible bidder or that Chesterfield will not provide the services bid for this project or that they will not pay prevailing wage.

Accordingly, this Office is satisfied that Park's determination resulted in an award to the lowest responsive and responsible vendor and this Office has approved the contract.

Sincerely,



Charlotte Breeyear  
Director, Bureau of Contracts

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violation was made in 2002.

<sup>2</sup> A finding of a non-willful violation would appear to mean that DOL had determined that there was not a sufficient basis to determine that the company knew or should have known that it was violating the statute (see, e.g. Matter of Sarco Industries v Angello, 23 AD 3d 715 [2005]).