

THOMAS P. DINAPOLI  
STATE COMPTROLLER



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STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

September 22, 2008

Mr. Junior Ash  
Vice President  
Ash Contracting Corporation  
1434 East 89<sup>th</sup> Street  
Brooklyn, New York 11236-5124

Dear Mr. Ash:

Re: Anti-Ligature Lever Latch Locksets  
Kingsboro Psychiatric Center – PO-0800197

We received your letter dated July 21, 2008 protesting the above-mentioned procurement effort conducted by the New York State Office of Mental Health's Kingsboro Psychiatric Center (OMH). Your protest contends that because the only authorized distributor of Securitech locks is Stanley, this specification resulted in an "unfair practice".

First, State Finance Law does not forbid an agency from advertising for a specific product, and secondly, it does not appear that this specification for Securitech locks was so restrictive that it violated the spirit of the competitive process.

While the Securitech locks were specifically named in the Contract Reporter and the Invitation for Bid, such specification was not overly restrictive because OMH gave the bidders an opportunity to provide an equivalent product. The listing in the Contract Reporter stated that "other manufacturers would be reviewed." The IFB stated in Exhibit A, 2.1A that "The manufacturer specified has been chosen for quality and specific design function and appearance. In judging proposed 'equal' substitutes, the Architect will consider all characteristics." Further, the Questions & Answers clarify that OMH will "except (sic.) proposals of other manufacturers for review for equivalent anti ligature performance." Accordingly, it is clear that the bidders had an opportunity to provide an equivalent product and, therefore, were not forced to buy the named product from a bidder competing in the same procurement.

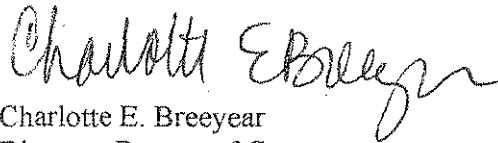
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It should be also noted that bids were broken down by two criteria: the price of the locks and the cost of labor. These criterion were combined to arrive at the total bid price which was the basis for award. Accordingly, it could have been possible for a bidder to have a higher bid for the parts, because it bought the locks from a competitor, but have a lower bid because of a lower price for labor resulting in the lowest total bid price.<sup>1</sup>

Ash Contracting Corp.'s (Ash) bid for the locks was \$10,266 more than Stanley's. However, Ash's bid for labor was highest of all four bidders. It appears that the non-selection of Ash was based more on its high price for labor, rather than any alleged price manipulation on the part of Stanley.

In conclusion, while Securitech locks were specified as the desired product, bidders were provided the opportunity to provide an "equal" product. Accordingly, it does not appear any bidder was placed at a competitive disadvantage that would be considered an unfair practice; therefore we have approved the award.

Sincerely,



Charlotte E. Breyear  
Director, Bureau of Contracts

CEB:mea

cc: Donna Cosgrove  
Bill Hughes

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<sup>1</sup> Additionally, while Stanley's bid, as distributor of the locks, was obviously the lowest for the specified locks, it was not so low as to indicate that Stanley was deliberately selling the locks to the other bidders at an inflated price to insure their award of the contract.