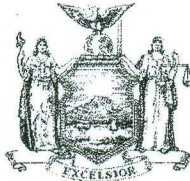


THOMAS P. DINAPOLI  
STATE COMPTROLLER



110 STATE STREET  
ALBANY, NEW YORK 12236

STATE OF NEW YORK  
**OFFICE OF THE STATE COMPTROLLER**

April 9, 2009

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Malcolm G. McLaren, P.E.  
President and Chief Executive Officer  
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New York State Department of Transportation  
Attn: Suzanne H. Charles, Esq.  
Director, Engineering Division  
50 Wolf Road  
Albany, NY 12232

Thomas J. Collins  
Collins Engineering  
123 North Wacker Dr., Suite 300  
Chicago, IL 60606

Dear Mr. Pope, Mr. McLaren, Ms Charles and Mr. Collins:

Re: Bid Protest of Bridge Diving  
Inspection/ Fathometer Survey  
Contract D030584, awarded by the  
NYS Department of Transportation to  
Collins Engineers, P.C.

On October 27, 2008 the State of New York Office of the State Comptroller, Bureau of Contracts, received a protest from M. G. McLaren P.C. ("McLaren") protesting the above-referenced contract.<sup>1</sup>

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<sup>1</sup> We also note that in its correspondence to this Office, McLaren has filed protests with respect to two other contract awards made by the New York State Department of Transportation ("DOT") for similar diving inspection/fathometer survey services (Contract Nos. D030585 and D030586). On April 1, 2009, this Office received Contract D030586 with Boswell Engineering & Land Surveyor, P.C. and we have begun our review of the contract and the protest. Upon receipt of Contract D030585 with A. DiCesare Associates, P.C. we will conduct our review of that contract and the protest.

On March 19, 2009 this contract was received by this Office for review and approval. We have completed our review of the contract and the protest related thereto.

In its protest, McLaren asserts that the system used by the New York State Department of Transportation ("DOT") in "these types of contracts is 'broken' (or at least in need of improvement) as offerors may enjoy virtual license to exaggerate, misstate and falsify information" on its DOT Form 255 allowing an offeror to overstate its experience. McLaren argues that an evaluation process based upon such an unverified honor system is flawed. Additionally, McLaren asserts, upon information and belief, that it is the most experienced and best-qualified offeror.

In its response to the protest, DOT asserts that the award to Collins should be confirmed in that: (i) McLaren did not follow the administrative procedure to challenge representations by other bidders; (ii) the protest does not set forth any factual allegations as to any misstatements, inaccuracies, omissions and/or misrepresentations by Collins; and (iii) McLaren raises issues of law that have been decided by the Courts.

Collins' response to the protest, consistent with DOT's second assertion above, states that McLaren's protest should be dismissed as it contains no factual or legal allegations of wrongdoing by Collins.

The Contract Award Protest Procedure for Contract Awards Subject to the Comptroller's Approval established by this Office provide that "[t]he protest to the OSC Bureau of Contracts must be in writing and must contain specific factual and/or legal allegations setting forth the basis on which the protesting party challenges the contract award by the contracting agency." (Section 3[b] of the Procedures) We have determined that McLaren's protest does not contain specific factual or legal allegations with respect to the award to Collins.<sup>2</sup> Additionally, we are satisfied that the evaluation process conducted by DOT resulting in the award to Collins was proper. As a result, the protest is denied and we are approving the DOT/Collins contract today.

Sincerely,



Charlotte E. Breeyear  
Director, Bureau of Contracts

CEB:mea

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<sup>2</sup> In contrast, McLaren does make specific factual and legal allegations concerning the awards to Boswell Engineering & Land Surveyor, P.C. and A. DiCesare Associates, P.C. We will consider those allegations as part of our review of the protests with respect to such awards.