

THOMAS P. DINAPOLI
STATE COMPTROLLER



110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

April 9, 2009

William M. Windsor
[REDACTED]

Dear Mr. Windsor:

RE: NYS Office of Parks Service Agreement with Maid of the Mist Corporation
Contract #C000457/X000457

We are in receipt of your protest of the contract between the NYS Office of Parks, Recreation & Historic Preservation (hereinafter "Parks and Recreation") and Maid of the Mist Corporation for certain boat services. As we indicated in our telephone conversation with you, the aforementioned contract is principally a revenue contract, which was approved by this Office on February 2, 2003.

Under §112 of the State Finance Law (hereinafter "SFL"), before any contract, which exceeds certain dollar thresholds in amount, made for or by a state agency, becomes effective, it must be approved by the Comptroller. In carrying out the aforementioned responsibilities proscribed by SFL §112, this Office has issued Contract Award Protest Procedures (hereinafter "Procedures") that govern the process to be used when an interested party challenges a contract award by a State agency.¹

This Office reviews protests in the context of its review and approval of the underlying contract, and then acts on the contract in a manner consistent with its determination of the protest. With certain limited exceptions (none of which are applicable to this situation), once this Office has approved a contract, we cannot rescind such approval.² Therefore,

¹ Comptroller's G-Bulletin G-232.

² In your correspondence you appear to assume that we could void our approval because, you assert, the contract was improperly awarded as sole source, in violation of the competitive bidding requirements of the State Finance Law. We note, however, that the contract in question is not an expenditure contract (subject to the competitive bidding requirements of section 163 of the State Finance Law), but is rather a revenue contract. While, in practice, this Office generally requires, as a condition of its approval, that agencies undertake a competitive process for revenue contracts (or justify the award on a sole source, single source or emergency basis), there is no statute that requires competitive bidding with respect to revenue contracts (See SF19980084, SF19990045, and SF20020062). Therefore, even if we were to assume that Maid of the Mist Corporation is not a sole source provider for this contract, it would not follow that the contract was awarded in violation of a bidding statute.

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since the contract in question was approved by this Office in 2003, we will not consider a protest concerning this contract.

We do appreciate your use of our Procedures, and regret that we could not be of further assistance to you.

Very truly yours,

A handwritten signature in cursive script that reads "Charlotte E. Breeyear".

Charlotte E. Breeyear
Director, Bureau of Contracts

CEB:mea

cc: Marc W. Brown, Esq.
Glen T. Bruening, Esq.
John Dalton, Esq.