

THOMAS P. DINAPOLI
STATE COMPTROLLER



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ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

March 1, 2010

Robert M. Harding, Esq.
Greenberg Traurig LLP
54 State Street, 6th Floor
Albany, NY 12207

Dear Mr. Harding:

Re: Dominion Voting Systems Corporation
SF 20100066

This is in response to your correspondence dated February 16, 2010 to Larry Appel and Charlotte Breeyear on behalf of your client, Dominion Voting Systems Corporation ("Dominion"), questioning an "award" by the City of New York to Election Systems & Software, Inc. ("ESS") with respect to Help America Vote Act-compliant voting systems. You indicate that you intend that your letter constitute an initial bid protest to OSC pursuant to OSC Contract Award Protest Procedures (OSC Bulletin No. G-232).

OSC's Contract Award Protest Procedures apply to all contract awards subject to the approval of OSC pursuant to Section 112 of the State Finance Law ("SFL"), or otherwise submitted to OSC for its approval. In this case, in 2008 the New York State Office of General Services ("OGS"), after conducting a procurement under State Finance Law §163, submitted to OSC for approval pursuant to State Finance Law §112, two contracts for provision of voting systems: one with your client, and the other with ESS. OSC approved both of those contracts on February 20, 2008, and the time within which your client might have protested the award to ESS under our contract award protest procedures has expired.¹

The Dominion and ESS contracts are "multiple award contracts", which are authorized under SFL § 163(10)(c). Furthermore, contrary to your assertion, such contracts are not backdrop contracts, and do not provide for or require that purchasers engage in any mini-bid process that will result in a separate contract between the user and the contractor. Rather, the contracts awarded by OGS to

¹ We note that OSC's approval of these contracts pre-dated the issuance of OSC Bulletin G-232. However, your protest would also have been deemed untimely under the procedures in place prior to issuance of the Bulletin.

Robert M. Harding, Esq.
March 1, 2010
Page 2

your client and ESS permit authorized users to access such contracts through purchase orders on such contracts, without any mini-bid process or the need for a separate contract. Therefore, there is no new or separate contract between the State or the City of New York and ESS, and, as a result, there is no new contract award.² Since there is no new contract award, there is no basis for us to consider your protest under our contract award protest procedures, and your protest is dismissed.

Sincerely,



Charlotte E. Breeyear
Director, Bureau of Contracts

CEB:mea

cc: Todd D. Valentine, Executive Director, New York State Board of Elections
Robert A. Brehm, Executive Director, New York State Board of Elections
Carla Chiaro, Director of Procurement Services Group, New York State
Office of General Services
George Gonzalez, Acting Executive Director, New York City Board of
Elections
Aldo Tesi, President, Election Systems & Software, Inc.
Joan M. Sullivan, Executive Deputy Comptroller, OSC Office of Operations
Margaret N. Becker, Deputy Comptroller, OSC Office of Contracts and
Expenditures

² Where a State agency selects a vendor after a required mini-bid off an OGS backdrop contract, resulting in a new separate contract between that State agency and the vendor, such new contract is (subject to the thresholds established under section 112 of the SFL) a contract subject to the Comptroller's approval; and the award of such contract is the proper subject of a protest to this Office under our contract award protest procedures. Here, however, there is no mini-bid and no new separate contract.