



STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

June 27, 2011

Mr. Robert Grossman
S&O Construction
11 Charles Street
P.O. Box 1379
Pleasant Valley, NY 12569

Re: Appeal of the Protest Made to PARKS Regarding the Award of
Project D-004082 for HVAC Replacement at Phillipse Manor Hall

Dear Mr. Grossman:

I am writing with respect to the appeal you filed challenging the protest determination made by the New York State Office of Parks and Recreation ("PARKS") to sustain the contract award made to U.A.P. in the above-referenced procurement. In the appeal, your sole assertion is that because U.A.P. failed to obtain an electrical license from the County of Westchester pursuant to Section 277.702 of the Laws of Westchester County, U.A.P. is not responsive and therefore must be disqualified.

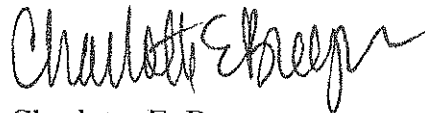
Preliminarily, we note that the bid specifications do require that the contractor have "all permits and licenses legally required" Therefore, to the extent that a license is required under Section 277.702 of the Laws of Westchester County, U.A.P. would be non-responsive to the specifications. However, it is the position of PARKS, based upon principles of sovereign immunity, that the Westchester County licensing requirements are not applicable to PARKS or its contractors. Paragraph (1) of Section 277.702 states:

"[n]o person shall perform, engage in or conduct business as a master electrician within the County of Westchester unless licensed pursuant to this article or unless supervised by and working under the direction of a master electrician licensed pursuant to this article."

In connection with your appeal, on June 23, 2011, staff from our Legal Division spoke with the contact for the Westchester County Electrical Licensing Board, Director of Trades Licensing. Based upon that conversation, it is our understanding that, consistent with an opinion from the County Attorney's Office, Westchester County does not apply its licensing requirements to the State, or contractors working on State projects. In light of the position of Westchester County, we have no basis to find that U.A.P. is not responsive based upon its failure to obtain an electrical license.¹

Based on the foregoing, we are hereby denying your appeal and are today approving the PARKS/U.A.P. contract.

Sincerely yours,



Charlotte E. Breeyear
Director, Bureau of Contracts

cc: Elaine Bartley – PARKS
John Mallon U.A.P

¹Additionally, we note that Section 6 of the New York State Public Buildings Law provides that “[n]o municipality of the state shall have power to modify or change plans or specifications for the . . . improvement of state buildings, or the construction, plumbing, heating, lighting . . . nor to require that any person, firm or corporation employed on any such work shall . . . obtain any other or additional authority or permit from such municipality...” Section 6 could be viewed as a statutory embodiment of the principle of sovereign immunity. Furthermore, to the extent that Section 6 is applicable to this project, Section 6 would expressly preclude the application of any county licensing requirement. While, it is not clear whether Section 6 is applicable to this project, in light of the position of the County discussed above, we need not address this issue.