

THOMAS P. DINAPOLI
STATE COMPTROLLER



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ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

March 19, 2012

Michael Kenney
Vice President of Sales and Marketing
CertifiedBackground.com
1845 Sir Tyler Drive
Wilmington, NC 28405

RE: Pre-Employment Criminal Background
Search Services – Bid Proposal # 11/12-129MC
SF-20110331

Dear Mr. Kenney:

This letter of determination is in response to the protest (hereinafter "Protest") filed by you on December 15, 2011 on behalf of CertifiedBackground.com (hereinafter "Certified"). In the Protest, you challenge the award made by the State University of New York at Stony Brook (hereinafter "SUNY Stony Brook") to CARCO Group, Inc., (hereinafter "Carco") in the above referenced procurement.

The Office of the State Comptroller (hereinafter "this Office") has considered the Protest as well as the procurement record submitted to this Office by SUNY Stony Brook with the contract. As detailed below, we have determined that the issues raised in the Protest are not of sufficient merit to overturn SUNY Stony Brook's award to Carco.

In the Protest you assert that the cost evaluation methodology undertaken by SUNY Stony Brook is flawed in that it failed to consider additional costs that the vendors would be required to pay in conducting their searches that would in turn increase the costs they charge to the State. Specifically, you reference the \$65 New York State repository fee required to be paid by vendors with respect to each New York Statewide Criminal search conducted. You assert the bid submitted by Certified included the repository fee in its cost, whereas Carco's bid did not include such fees; and that if the amount of such mandatory fees were subtracted from Certified's bid, Certified would have been the lowest bidder.

The IFB issued by SUNY Stony Brook provided that award would be made to the lowest responsible, qualified bidder meeting all qualifications and specifications (IFB Page 7). Bidders were clearly advised that the repository rates should not be included in their cost proposals. Specifically, Category IV - "Pricing" on Page 13 of the bid specifications clearly states:

For Criminal History, Social Security Traces, AKA's and searches for Locations where subjects have lived, worked or attended school, price quotes are to be exclusive of Government imposed fee(s). . . Any such fees will be reimbursed to the successful contractor by [SUNY Stony Brook] on a dollar for dollar bases [sic] based on the CURRENT state/county government repository fee price list.

Additionally, prior to bid submission, SUNY Stony Brook held a Mandatory Bidders Conference where prospective bidders had the opportunity to ask questions pertaining to the procurement. One of the questions submitted asked:

For this bid, should we provide only the Non Flat rate prices?"
SUNY Stony Brook provided the following response in Bid Amendment I: "For Criminal History Records, you are to provide your company's rate (not including the repository rate) to perform this search. In addition to this rate, the University will pay to the successful bidder, the repository rate on a dollar for dollar basis (emphasis added).

Clearly, therefore, Certified was on notice that its bid should not have included any repository rates that it might incur under the contract. Likewise, SUNY Stony Brook in reviewing the bids and awarding the contract was entitled to assume that the bids reflected the proposed prices without the repository fees. Indeed, since the respective cost for each category of search was listed as a total cost (and not segregated into the components of such cost), SUNY Stony Brook would not have known that Certified's proposed cost included the repository rate. Finally, even if SUNY Stony Brook suspected that Certified's cost included the repository rate, SUNY Stony Brook was not legally required to seek clarification from Certified. Indeed, it is unclear whether SUNY Stony Brook could have sought clarification from Certified concerning the amount of its bid.¹ Accordingly, SUNY Stony Brook properly determined that Certified did not submit the lowest total cost bid and was, therefore, properly not awarded the contract.

¹ While section 163(9) of the State Finance Law permits agencies, where provided in the solicitation, to seek "clarification from offerers for purposes of assuring a full understanding of responsiveness to the solicitation requirements", the actual amount being bid does not relate to the responsiveness of the bid to the specifications.

Based on the above, we have determined that the issues raised in the Protest are not of sufficient merit to overturn the award of the contract. Therefore, the Protest is hereby denied and this Office will be approving the SUNY Stony Brook/Carco contract.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Charlotte Breeyear", with a stylized flourish at the end.

Charlotte Breeyear
Director, Bureau of Contracts

CEB:arr

cc: Laura Beck – Stony Brook
Jerry Castoral - CARCO Group
Donna Cosgrove - OSC
Mary LaCorte – Stony Brook