

THOMAS P. DiNAPOLI
STATE COMPTROLLER



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ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

March 29, 2016

Paul Tozzi, President
Arris Contracting Company, Inc.
189 Smith Street
Poughkeepsie, NY 12601

Dear Mr. Tozzi:

Re: SF20150288
Award of Contract D004695 to Marpat
Construction

This Office is in receipt of your letter dated September 21, 2015, protesting the contract award made by the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) to Marpat Construction Corporation (Marpat). In your letter, you assert that Marpat is not a responsible vendor as defined under the State Finance Law (SFL) §163. You base this assertion upon your receipt of a grand jury subpoena from the New York County District Attorney's Office (NY County DA). The subpoena references a criminal investigation and requests that you provide the NY County DA with certain records relating to Marpat.

SFL § 163(4)(d) requires that “[s]ervice contracts shall be awarded on the basis of best value to a responsive and **responsible** offerer” (emphasis added). Further, SFL § 163(9)(f) provides that “[p]rior to making an award of contract, each state agency shall make a determination of responsibility of the proposed contractor ...” SFL § 163(1)(c) defines “responsible” as possessing “the financial ability, legal capacity, integrity, and past performance of a business entity....”

As required by SFL § 163(9)(f), prior to making a contract award to Marpat, OPRHP made a determination that Marpat was a responsible contractor. Further, as a part of our review of the OPRHP/Marpat contract, this Office carefully examined the information provided in the procurement record, your protest letter, and additional information provided by OPRHP supporting its responsibility determination regarding Marpat. The review by this Office included the issuance of audit questions to OPRHP which, among other things, requested that OPRHP specifically address the investigation that is the subject of the grand jury subpoena. OPRHP responded that Marpat has advised it has no knowledge, or details, regarding the substance or status of the

investigation. OPRHP further concluded that the subpoena does not indicate any wrongdoing on the part of Marpat and, therefore, OPRHP found no reason to alter its responsibility determination.

Additionally, this Office contacted the NY County DA to determine the status of the subject investigation and was advised that the investigation is ongoing and no final determinations have been made. Given the information before us, this Office does not find a sufficient basis to overturn OPRHP's vendor responsibility determination.

Sincerely,



Charlotte E. Breeyear
Director of Contracts

vmk

cc: Vee Jincoo, Marpat
Stanislaw Bizio, Marpat
Larry Palaski, OPRHP