

THOMAS P. DINAPOLI
STATE COMPTROLLER



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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

September 30, 2008

Melissa Morganti
Finger Lakes Industrial Contracting Corp.
3195 East Bayard Street Ext.
Seneca Falls, NY 13148

Rick Ferrara
Hudson River-Black River Regulating District
350 Northern Boulevard Street Ext.
Albany, NY 12204

Mark Judd
Bidco Marine Group, Inc.
151 Industrial Drive
Grand Island, NY 14072

Dear Madam and Sirs:

Re: Conklingville Dam Intake Repair Construction
Project No. D042008

This is in response to Finger Lakes Industrial Contracting Corp.'s ("Finger Lakes") protest letter dated July 24, 2008 regarding the above-referenced procurement which resulted in an award by the Hudson River-Black River Regulating District (the "District") to Bidco Marine Group, Inc. ("Bidco"). In its letter, Finger Lakes protested the award since it was the low bidder on the project and the bid submitted by Bidco (the 4th lowest bidder) was approximately \$26,000 more than the two lowest bids.

Our Office has completed its review of the above-referenced procurement and the District's contract award to Bidco. As part of our review, we examined the procurement record compiled by the District, as well as the issues cited in Finger Lakes protest and reply; Senator Michael F. Nozzolio's letter of September 2, 2008; and the responses of the District and Bidco to the protest.

The invitation for bid ("IFB") issued by the District provided that the contract would be awarded to the low bidder who has the necessary experience to responsibly and reliably complete the work. The IFB required that a bidder "have a minimum of ten (10) years direct experience. . ." While it is clear that Finger Lakes submitted the low bid in response to the IFB, it is also clear that Finger Lakes did not meet the ten years experience requirement set forth in the IFB.

While Finger Lakes acknowledges that it has only been in business for three years, in support of its assertion that it is qualified to undertake the project, it states that: (i) it employs a superintendent who has been in the construction business for nearly 20 years; (ii) it has successfully completed similar projects; (iii) it obtained a bond for the job; (iv) it utilizes the same labor pool as any other union contractor.

Therefore, the primary issue presented by this protest is whether the ten years experience requirement was appropriate. This Office asked the District to provide its justification for this requirement. The District stated that the ten years experience requirement would assure the District that the selected bidder would be capable of successfully completing the project and would demonstrate that the bidder, as a functioning business entity, has the relevant corporate experience to successfully manage the project. The District noted that while Finger Lakes demonstrated that it had completed similar work, it had limited experience in the type of construction activities that are anticipated for the intake repair project. The position of the District was outlined to Finger Lakes in an email from Rick Ferrara dated July 23, 2008 and the District's September 10, 2008 correspondence to Ms. Morganti. Additionally, this was outlined in the District's memorandum recommending Bidco for conditional award.

The appropriateness of the 10-year requirement is a matter within the District's area of expertise and we are satisfied with the justification provided by the District. We further note that the District received a reasonable number of bids (six) from bidders that met the 10-year requirement. Therefore, this Office will defer to the District's determination of the appropriateness of this requirement.

I note that the bids submitted by the second and third low bidders were also deemed non-responsive to the requirements of the IFB since these bids (which did meet the 10-year requirement) did not comply with the explicit 10% limitation on the mobilization and demobilization bid price. Item 1.1 of the Invitation for Bids stated "[t]he amount bid for Mobilization and Demobilization shall not exceed ten percent (10%) of the total Contract Bid Price **excluding** the bid price for Mobilization and Demobilization. (Emphasis in original)

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With respect to the amount of the bid submitted by Bidco, we reviewed the District's engineer's pre-bid estimate for the completion of the repair which estimated the cost at \$280,000. Therefore, the amount of the bid submitted by Bidco is in line with this figure.

In light of the foregoing, this Office has no basis to withhold its approval of this contract; and, therefore denies the protest and has approved this contract.

Yours truly,

A handwritten signature in cursive script, appearing to read "Charlotte E. Breeyear".

Charlotte E. Breeyear
Director, Bureau of Contracts

CEB:mea