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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

February 4, 2010

Mr. Michael McCarthy
Director, Office of Contract Management
NYS Department of Transportation
50 Wolf Road
Albany, NY 12232

Dear Mr. McCarthy:

Re: Contract D260992 – Steed General
Contractors

The Office of the State Comptroller (OSC) is requesting that, in the best interest of the State of New York, Department of Transportation (DOT) take steps to terminate contract D260992 with Steed General Contractors (Steed). Contractors and affiliates of contractors who do not pay prevailing wages have an unfair advantage over other honest contractors and we see no compelling reason to allow this vendor, debarred by the Department of Labor (DOL), to provide services to the State of New York.

On May 1, 2009, OSC approved DOT's contract D260992 with Steed for bridge painting at various locations in Suffolk County. The contract period was to begin May 1, 2009 and end on June 19, 2010. Work on that contract has yet to begin.

Subsequent to that approval, OSC learned that Steed was under investigation by DOL due to Steed's affiliation with Delphi Painting and Decorating (Delphi). Delphi had been debarred by DOL for prevailing wage violations for the period October 2007 through October 2012. DOL suspected that Delphi exerted considerable control or influence over Steed due to the familial relationship with its owners. OSC non-approved a subsequent DOT federal stimulus contract with Steed (D261141) in August 2009, as a result of this unresolved investigation.

In January of this year, OSC learned that DOL had concluded its investigation and debarred Steed, as a "substantially owned-affiliated entity and/or successor" of Delphi. The debarment period coincides with that of Delphi, (October 9, 2007 through October 9, 2012). According to New York State Labor Law, Steed is ineligible to submit a bid on, or be awarded,

any public work or public building service contract/sub-contract with the State, any municipal corporation or public body during the debarment period.

Since the debarment period pre-dates the begin date of the contract, questions remain as to how the debarment should affect contract D260992. While DOT believes, and we agree, that the debarment cannot be applied retroactively and that, therefore, the contract is not void, we note that the prevailing wage violation by Delphi that precipitated Delphi's debarment, and the affiliation between Delphi and Steed that precipitated Steed's debarment, both clearly occurred prior to the award of the contract. Indeed, if the existing affiliation between Delphi and Steed had been determined by DOL prior to the inception of the contract, the contract could not have been awarded to Steed.

DOT has indicated that it has been a long standing policy not to terminate existing contracts even where a contractor is debarred for future work. This may be in the best interest of the State where work has substantially progressed on a contract. In this instance, however, no work has begun. Article 11 of this contract states ". . . at any time during the prosecution of the work the Commissioner of Transportation ... for the best interest of the State ... may cancel the contract and ... readvertise and relet as provided in §38 of the Highway Law ..." Consequently, since DOL has determined that Delphi violated prevailing wage provisions dating back to 2007 and that Steed is a substantially owned-affiliated entity of Delphi, OSC is requesting that, in the best interest of the State of New York, DOT take steps to terminate contract D260992.

It is my understanding that Steed is scheduled to start work in the spring. If it is critical that this work begin this spring, DOT should still have ample time to do a re-procurement. OSC will work with DOT to expedite approval of a new award to another responsive and responsible vendor in the best interest of the State.

Your swift attention to this matter is greatly appreciated.

Sincerely,

Charlotte E. Breeyear
Director, Bureau of Contracts

emm

cc: Joan Sullivan
Margaret Becker
William Howe, DOT