

OFFICE OF THE STATE COMPTROLLER

VENDOR RESPONSIBILITY DETERMINATION

Worth Construction Corporation

November 8, 2005

On October 19, 2005, representatives of the Office of the State Comptroller (“OSC”)¹ conducted a meeting with representatives of Worth Construction (“Worth”)², for the purpose of determining whether Worth has the requisite responsibility to perform a contract recently awarded it by the New York State Thruway Authority (“Thruway”). For the reasons indicated below, we have determined that Worth be deemed non-responsible for such award and that the contract be returned to Thruway unapproved.

Background

On November 24, 2004, Thruway opened bids that it had requested for construction of the rehabilitation of Exit 17, Interchanges I-84 and I-87 including related facilities. Six bids were received, including one from Worth. The Worth bid was deemed the lowest bid. Prior to awarding the contract to Worth, Thruway conducted a review of Worth’s responsibility.³ Included in this review were (i) an investigation into and analysis of numerous documents and accounts of Worth’s and Mr. Pontoriero’s alleged organized crime connections; (ii) Worth’s withdrawal from a Port Authority project rather than hiring a monitor and agreeing to the requirement that Mr. Pontoriero separate himself from the company; (iii) an FBI agent’s affidavit alleging Mr. Pontoriero’s bribery of the Mayor of Waterbury, Connecticut; and (iv) a bribery guilty plea of a contractor allegedly associated with Mr. Pontoriero in an open federal investigation of corruption in Waterbury.

Based on its investigation into and analysis of the above, and following a January 6, 2005 meeting between Thruway and Worth, Thruway found that “Worth is not a responsible contractor for the purposes of this contract.”⁴ Thruway gave Worth a “final opportunity to respond to this conclusion in writing.”

By letter dated April 22, 2005, Worth responded to Thruway, offering to retain Thacher Associates (“Thacher”) as an independent monitor, challenging Thruway’s bases for its non-responsibility determination and threatening a lawsuit if that determination was finalized.

¹ OSC was represented by members of the Contracts Bureau, the State Services Division, the Vendor Responsibility Unit, the Investigations Division, and the Legal Services Division

² Worth was represented by its President and principal shareholder, Joseph Pontoriero (“Mr. Pontoriero”), its Senior Vice President and minority shareholder, W. Sam Dizenzo (“Mr. Dizenzo”), two attorneys, and a number of accountants.

³ See discussion, below, of Thruway’s authority and mandate to award only to responsible vendors.

⁴ Letter of April 18, 2005 from Thruway attorney Charles T. Randall to Worth attorney Jack Arseneault.

On May 18, 2005, Thruway issued a final determination⁵ regarding Worth's responsibility to perform the contract. Although Thruway acknowledged that: 1) there are numerous allegations of Worth's business associations with subcontractors connected to organized crime; and 2) the FBI agent's affidavits related to bribery were subsequently supported by subsequent trial testimony of the former Mayor of Waterbury; and 3) there is an open federal investigation of municipal corruption involving Worth and Mr. Pontoriero in Connecticut; Thruway also found that: a) Worth continues to be eligible to bid and has bid on public contracts in both New Jersey and Connecticut; and b) no law enforcement agency in Connecticut, New York, or New Jersey has brought any charges against Worth, its owner, or officers. Based on the above, Thruway found Worth to be a responsible contractor and awarded the contract to Worth, conditioned upon Worth engaging the services of a private sector monitor.⁶

On June 8, 2005, Thruway forwarded the proposed contract, along with the procurement record, to OSC for approval of the award.

OSC Authority to Review Thruway Contracts

State Finance Law Section 112, which gives OSC the authority to approve contracts by and for state agencies, does not usually apply to public authorities. However, in 1950, the year that the Thruway Authority was created, its Board passed a Resolution requesting OSC to "audit the funds of the Authority in the same manner as funds of a regular State agency are audited." This audit includes pre-auditing of contracts. Therefore, the Resolution requires the Comptroller's approval of Thruway Authority contracts to the same extent that such approval is required for contracts by state agencies pursuant to State Finance Law Section 112. As a result, the Comptroller's approval is required by binding Board Resolution for all Thruway Authority contracts above the statutory thresholds.

Furthermore, in recognition of the above-referenced Resolution, "Appendix A, Standard Clauses for New York State Thruway Authority and New York State Canal Corporation Construction Contracts and Federally-Funded Procurement Contracts" states as follows:

COMPTROLLER APPROVAL. Unless otherwise provided by resolution of the Authority or Corporation Board, if this contract involves the expenditure of funds for goods or services in excess of \$25,000, or the expenditure of funds for any other purpose in excess of \$15,000, or if, by this contract, the Authority/Corporation agrees to give something other than money when the value or reasonably estimated value of such

⁵ Memo from Thruway attorney Charles Randall to Thruway Chief Engineer & Deputy Executive Director John Brizzell dated May 18, 2005.

⁶ The Thruway determination stated that Thruway's contract award be "conditioned on its commitment to and payment for an acceptable monitoring agreement with an independent private sector inspector general (IPSIG), approved by the Authority, with incidental, on-call and periodic reporting to the Authority during the course of the project. Among other provisions the monitoring agreement provides for vetting of subcontractors by the IPSIG prior to approval or disapproval of any subcontractors by the Authority. The IPSIG provides that subcontractors with organized crime connections will not be approved. The monitoring agreement contains contractor and subcontractor disclosure records keeping and right-to-audit requirements among other tools available to the IPSIG." Prior to the Thruway determination, Worth hired Thacher "to develop an integrity program to ensure compliance by its officers, employees, and subcontractors with all relevant contract requirements, laws and regulations."

consideration exceeds \$10,000, this contract shall not be valid, effective or binding upon the Authority/Corporation until it has been approved by the State Comptroller and filed in his office.

OSC Authority to Reject Contracts Based on Responsibility Considerations

The seminal case with regard to the Comptroller's discretion to reject a contract based on responsibility considerations is Konski Engineers, P.C. v. Levitt.⁷ In Konski, the State agency submitted a contract for the Comptroller's approval. After the submission of the contract, OSC learned that the vendor was the subject of a grand jury investigation. Based upon this fact, OSC refused to approve the contract, and the Court agreed that OSC's determination to reject the contract was not arbitrary or capricious.

In reviewing the Comptroller's action the Court stated:

In view of the knowledge that Konski was under Grand Jury investigation at the time Contract II was submitted to the Comptroller for his approval, we conclude that there was a rational basis for his refusal to approve the contract... [W]e reject Konski's contention that the Comptroller's discretion under section 112 is limited to determining whether the contract is fair, reasonable, properly executed and there are appropriated funds for the payments required thereby. The statute contains no such limitations, and we find no reason for their imposition.⁸

The Court's decision in Konski established two basic principles: (i) the Comptroller's discretion to approve a contract under Section 112 is wide-ranging (it is not limited to determining whether the contract is fair, reasonable, properly executed and funded), and (ii) the Comptroller's decision to approve or disapprove a contract will be upheld if the Comptroller has a rational basis for his or her actions.

⁷ 69 A.D.2d 940 (3rd Dep't 1979), aff'd 49 N.Y.2d 850. The decision in Konski arose in the context of a procurement undertaken by the Department of Environmental Conservation ("En Con") in December of 1975 in connection with the rehabilitation, improvement and related channel work on the Warner Dam in Jamestown, New York. In reviewing the Comptroller's decision not to approve "Contract II", the Court noted that the record before it revealed that:

- on June 21, 1976 the Comptroller was served with a subpoena duces tecum to produce before the Grand Jury of New York County all records and documents concerning Konski;
- on March 28, 1977, the Comptroller was requested to provide information to the Special State Prosecutor for Onondaga County who was investigating allegations of political corruption in the award of public contracts; and
- on April 7, 1977, the day before En Con submitted Contract II to the Comptroller for approval, the Special State Prosecutor requested information from the Comptroller with respect to Konski.

⁸ 69 A.D.2d at 942.

Thruway May Only Award Contracts to Responsible Bidders

Thruway contracts may only be awarded to responsible bidders. As the Court stated in Franbilt Inc. v. N.Y. State Thruway Auth.⁹:

...the Authority is statutorily required to award contracts for work under its auspices to the lowest responsible bidder and may reject bids in the best interest of the Authority (*see*, Public Authorities Law § 359). It is also charged with determining the responsibility of bidding contractors and subcontractors in accordance with guidelines established by Executive Order (*see*, Executive Order [Cuomo] No. 170.1 [9 NYCRR 4.170])...

Public Authorities Law Section 359 states “All such work [for Thruway construction, reconstruction or improvement] shall be done pursuant to a contract or contracts which shall be let to the lowest responsible bidder.” Executive Order 170.1 (issued by Governor Cuomo and still in effect)¹⁰ establishes “Uniform Guidelines for Determining the Responsibility of Bidders,” which are minimum guidelines that must be followed by the Thruway and other members of the “Council of Contracting Agencies.”

The OSC Process

Following a review of the procurement record, including a review of the responsibility process and proceedings conducted by Thruway, OSC conducted its own extensive and independent review of Worth’s responsibility. OSC not only reviewed material supplied by Thruway; it also researched documents relating to Worth’s finances and organized crime connections, and conducted interviews with other agency contracting officers, Inspectors General and officials in other government jurisdictions (including law enforcement personnel) that either had direct knowledge of Worth and its principals history and/or has dealt directly with and questioned or attempted to question Mr. Pontoriero.

After doing extensive research and verification of the information provided by the Thruway Authority, OSC still had significant concerns regarding the responsibility and integrity of Worth, and had identified new concerns not previously addressed by the Thruway Authority that only served to heighten those concerns. In an effort to afford Worth, its principals and its representatives an opportunity to address these concerns, we wrote to Worth to invite them in to meet with us. In this letter we also included specific questions regarding their financial statements that required further information. On October 19, 2005 staff from OSC met with Worth representatives at OSC headquarters in Albany, New York to provide them with an opportunity to be heard. On November 1, 2005, Worth submitted a number of documents for OSC review.¹¹

⁹ 290 A.D.2d 705, 707 (3rd Dep’t 2002).

¹⁰ See 9 NYCRR 4.170.

¹¹ These documents, submitted by cover letter from Worth attorney Steven Sanders and received at OSC on November 2, 2005, consisted of 1) a Mortgage Note between Joseph and Catherine Lorentz and Bear Brook Village L.L.C. dated January 26, 1999; 2) a Loan Agreement between Worth Construction and Bear Brook Village L.L.C. dated January 26, 1999; 3) a Mortgage Note between Worth Construction and Bear Brook Village L.L.C. dated January 26, 1999; 4) a Mortgage between Worth Construction and Bear Brook Village L.L.C. dated January 26,

The Connecticut Federal Investigation

One of our most significant and ongoing concerns relates to the fact that there is an acknowledged (both by Worth and the United States Attorney for the District of Connecticut) active federal investigation in Connecticut into allegations of bribery and municipal corruption involving Pontoriero and the former Mayor of Waterbury, Phil Giordano.

- In that portion of the Thruway Authority's Responsibility Determination Memorandum dealing with this subject, Thruway found that although Worth maintained that the FBI investigation of Giordano was initiated as a result of allegations that Giordano allegedly committed sex-related offenses, testimony obtained by Thruway showed that the initial federal eavesdropping warrant authorizing interception of criminal conversations between and amongst Worth, Giordano and others was granted upon the presentation of a sworn affidavit by an FBI agent which provided probable cause to believe that Pontoriero and Giordano were engaged in acts of municipal corruption in violation of federal law. Pontoriero was a specific target of that investigation at that time. This is in direct contradiction to assertions initially made by Worth to the Thruway authority, suggesting that the focus of the federal investigation in Connecticut was related to allegations of sexual misconduct by Giordano. While Worth and its representatives may argue that when confronted with the actual facts they conceded that Pontoriero was named in the original warrant, their failure to disclose this information to Thruway in the first instance speaks significantly to Worth's integrity and honesty;
- During our October 19, 2005 meeting, in response to questions posed, Mr. Pontoriero conceded that he is aware that the federal investigation is still ongoing, and that in fact he, his partner and the Worth Corporation have been compelled by federal grand jury subpoena to deliver documents on more than one occasion to the United States Attorney.
- In a conversation between Deputy Comptroller for Investigations Robert Brackman and an Assistant United States Attorney for the Office of the United States Attorney in Connecticut, while the AUSA was understandably constrained in what he could

1999; 5) a Spreadsheet detailing interest calculations on certain loans between Worth Construction and Bear Brook Village L.L.C.; 6) a Grid Note (and attached spreadsheet) between Bear Brook Development Co. and Worth Construction dated November 4, 1999; 7) a Grid Note (and attached spreadsheet) between Bear Brook Associates and Worth Construction dated December 23, 1999; 8) an Excerpted Agreement for the Purchase and Sale of the Golf Course and Golf Course operations at Bear Brook Golf Village Community between Bear Brook Village L.L.C. and Gale & Kitson, Bear Brook L.L.C.; 9) a Letter of Understanding between Gale & Kitson, Fredon Real Estate LLC and Bear Brook Village L.L.C. dated December 4, 2003; and 10) a Promissory Note between Worth Construction and Michael Pontoriero dated August 20, 2002. Worth forwarded documents 1-9, apparently in response to our questioning about Worth's or Mr. Pontoriero's ownership interests in a variety of entities not listed on the Uniform Contracting Questionnaire. Documents 1-9 have no impact on our conclusion that Worth is not a responsible vendor for this procurement; document 10 only serves to heighten the seriousness of Worth's failure to report the existence of a corporate officer (see discussion of Worth's material omissions from its Vendor Responsibility questionnaire, below).

say about the ongoing investigation, he did confirm that the federal investigation into allegations of municipal corruption against Pontoriero and others was still active. The fact that the investigation is ongoing also appears to be confirmed by press accounts as recently as March of 2005 in the New York Times. In an article entitled "Waterbury Corruption Case is Moving Forward Again", the newspaper reports several recent guilty pleas from companies and individuals involved in the investigation, including a former Waterbury city official.

- At Giordano's federal trial, an FBI agent testified during Giordano's trial that Giordano had admitted to him that Pontoriero had given him cash, trips, suits and tickets to the Super Bowl. Subsequent to his arrest, Bureau agents accompanied Giordano to his house where they retrieved \$5,250 in cash and two suits, identified by Giordano as "gifts" from Mr. Pontoriero.
- As further corroboration of the original FBI affidavit that provided probable cause for the issuance of a federal Title III eavesdropping warrant, Giordano also testified at his own trial that Pontoriero had given him cash, trips, suits and tickets, and also testified that Pontoriero gave him money while he was cooperating with the FBI and under surveillance.

Although this investigation was begun as a corruption case in 2001, it was interrupted by the discovery of the sex crimes allegations against Giordano. Connecticut and Federal officials have confirmed that this is an open investigation. As recently as July 2005, contractors and city officials have either admitted to or been charged with crimes related to the investigation.

When questioned extensively at our October 19th meeting about his role leading up to the Connecticut investigation, Mr. Pontoriero's answers were vague, sometimes non-responsive, and indeed at one point his counsel (understandably, given concerns that he might be forced to allow his client to give incriminating responses) requested that we drop that line of inquiry. We did. However, Mr. Pontoriero did admit to us that he gave suits to Mayor Giordano, saying that when they were out shopping together, Giordano asked him if he could take a suit and he would pay Pontoriero later. Pontoriero also admitted that he was never repaid, and that he thought the value of the suits was about \$6,000. These admissions by Mr. Pontoriero confirm at least one part of the allegations against him.

Given this admission, recent press accounts as noted above, and information obtained from the Office of the United States Attorney, we cannot rule out the fact that Pontoriero, Worth, his partner in Worth, Mr. Dizenzo, or all three will be implicated at a future date. Indeed, given the substantial weight of evidence uncovered, it would appear more likely than not that one or all three of these parties/entities faces a significant risk of indictment on charges that go to the heart of the integrity of the municipal contracting process.

Even if formal charges were never to be filed, our burden of determining whether or not Worth and its principals has the requisite integrity and responsibility to be awarded a contract that will cost New York State taxpayers \$46,000,000 is substantially less and different from the burden of proving the allegations of municipal corruption in a criminal prosecution.

While there is no requirement that the subject of an ongoing criminal investigation must be deemed non-responsible, the law is clear that such ongoing criminal investigation can result in such a finding. Schiavone Constr. Co. v. Larocca¹², states:

A criminal investigation or an indictment against the contractor can provide a rational basis for a finding that the contractor is not a "responsible bidder" (Matter of Konski Engrs. v Levitt, 69 AD2d 940, 942, *affd* 49 NY2d 850, *cert denied* 449 U.S. 840; Matter of Zara Contr. Co. v Cohen, 23 AD2d 718, 719)."

We believe the magnitude of the potential offense and its relationship to public contracting should be considered in making the responsibility determination. Here, the investigation involves bribery and corruption in the public contracting process. We can imagine no more relevant alleged offense. Therefore, even without considering the following issues, we believe that Worth lacks the requisite responsibility to be awarded the Thruway contract. However, we continue our analysis to demonstrate the breadth of Worth's non-responsibility.

Worth's and Mr. Pontoriero's Connections with Organized Crime

According to law enforcement officials and public records, there are numerous instances of Worth and Pontoriero's connection to organized crime.

- As reflected in a 1987 transcript of an intercepted conversation between Pontoriero and Anthony Salerno, a known member of the Genovese Crime Family, Salerno and Pontoriero are overheard discussing, in fairly graphic detail, the pitfalls of having their conversations and those of their colleagues overheard by the FBI. Pontoriero later was named as an unindicted co-conspirator in the 1987 "concrete club" indictment and prosecution of Salerno and others in New York City.
- When questioned during our October 19th meeting about this conversation, Pontoriero said that he had spoken to Salerno at the Palma Boys Club on occasion when he visited a subcontractor who owned a tile company next door. Although Pontoriero admitted to speaking to Salerno, he said that they only talked about the weather. At this point, the transcript of the intercepted conversation between Salerno and Pontoriero was read for Mr. Pontoriero's benefit, and clearly demonstrates that not only was the weather never mentioned, but that Salerno and Pontoriero specifically discuss law enforcement surveillance of the activities of their colleagues and the risks attendant to having their conversations overheard. After hearing the actual transcript of the conversation, Mr. Pontoriero could not explain the conversation or its meaning.
- On April 24, 2001, the NYC School Construction Authority sent a letter to the New Jersey Attorney General outlining Worth and Pontoriero's relationships to subcontractors connected to organized crime. The New Jersey Attorney General relied upon much of that information in an interview with Pontoriero and Dizenzo

¹² 117 A.D.2d 440, 444 (3rd Dep't 1986)

where they acknowledged many of the relationships, although in the main denying any knowledge that the parties asked about had links to organized crime.

- Pontoriero was a partner in Equities of 47th St, along with three other individuals, Gerald Fiorino, Vincent Vigliotti and Tommy Milo. Fiorino and Vigliotti were subsequently indicted by the NY County District Attorney for Enterprise Corruption, and Tommy Milo has been identified as a known member of organized crime and is also a convicted felon.
- Thomas Petrizzo was the majority owner of AJ Ross Logistics, a company that manufactured steel bars used in construction. He was a subcontractor used by Worth. Petrizzo was identified by informants as a captain in the Colombo crime family. After his indictment on racketeering charges in 1993, Pontoriero wrote a letter to a federal judge on behalf of Thomas Petrizzo in support of a reduction in bail. The letter stated in part, "...whom I have personally known for a minimum of eighteen years, both personally and professionally..." And "My friendship with him will always be held in reverence under any circumstance."
- Worth/Enviro Joint Venture was a business created between Worth Construction and Enviro Recycling, which was a division of Enviro Express, a Connecticut waste hauling company. One of the partners in Enviro Express is Tommy Milo, the known member of organized crime and convicted felon noted above.

During our meeting with Worth on October 19th, Pontoriero said that he did know people who had been identified as associated with organized crime, but that he was not involved in any current business relationships with them. This was directly contradicted by the letter that was supplied to us by Worth at that meeting, which outlined steps that Thacher had taken as part of its development of an integrity program at Worth. Thacher identified three firms that are currently on Worth's subcontractor and vendor lists that have connections to organized crime through their officers. Worth advised Thacher that those individuals are not affiliated with the companies and that they were selected based on price. This raises serious concerns with the possibility that issues are already being identified by Thacher, and that Worth is choosing to disregard the information.

Worth's Pattern of Avoiding Inquiry into its Connections with Organized Crime

We have researched several instances where Worth has withdrawn from a potential contract to avoid inquiries into connections with organized crime.

- **NYC School Construction Authority**

During construction of PS 43 in Queens, several issues arose concerning contract performance by Worth and the allegation that some of the subcontractors hired by Worth were connected to organized crime. As a result of the disputes between Worth and SCA, Worth agreed to a voluntary suspension for three years from bidding on SCA contracts. SCA then began a responsibility review of Worth to determine its

prequalification status. Worth initially met with SCA, but refused to answer questions about organized crime, provide information about an ongoing investigation in New Jersey, or submit an updated contracting questionnaire. When asked about the SCA suspension, by not only Connecticut Authorities and the Port Authority for New York and New Jersey, as well as the Thruway Authority in the instant case, Worth, through Pontoriero and his representatives repeatedly and disingenuously characterize their “dispute” with the SCA as based upon “petty contractual issues” and consistently avoided responding with the kind of honesty and transparency demanded of a responsible contractor.

In fact, Worth affirmatively refused to answer the SCA Inspector General’s questions relating to Pontoriero’s organized crime affiliations, and the organized crime affiliations of the sub contractors he typically relied upon. Unfortunately, it would appear that the Thruway Authority took Worth’s statement that it just didn’t “want to do anymore business” with the SCA as a sufficient explanation for its suspension from SCA. The record is very clear that Worth was suspended by the SCA in 1998, and remains in suspension status to date, until and if it chooses to appear and answer the Inspector General’s questions directly.

- **NY/NJ Port Authority**

The Office of the Inspector General for the Port Authority of New Jersey and New York, after a series of negotiations during a responsibility review pursuant to the award to Worth of a Port Authority contract in 2004, determined that only through the imposition of an outside monitor **and** an agreement from Pontoriero to resign from and sever all financial ties with Worth, would the Port Authority consider deeming Worth a responsible bidder. These negotiations collapsed, and Worth withdrew its bid after ‘repricing’ the bid and deciding that it was not financially feasible. Once again, Worth demonstrated that as a corporation it engages in a pattern of “walking up to the brink” of entering contracts, but when the integrity issues become too onerous to overcome, it withdraws its bid. Again, in our view these actions are not the hallmarks of a responsible vendor who should receive the benefit of a \$46,000,000 state contract.

- **Connecticut Department of Public Works**

On November 22, 2004, after Worth was awarded a contract by the Connecticut DPW, Worth and Pontoriero were asked to attend a hearing conducted by the Connecticut Attorney General on responsibility issues that were raised as a result of the investigation in New Jersey and the suspension by the SCA. Attorneys for Worth attended the hearing, but there was no representation for Pontoriero because its counsel asserted that the questions were outside of the purview set by the state statute. The attorney for Worth Construction stated that he was representing the company in an ongoing investigation by the US Attorney’s Office in an ongoing criminal case. Worth declined to submit any information and the hearing was adjourned. Worth submitted a letter to DPW the same day, withdrawing its bid.

In September 2005, Worth was the low bidder on two CT DPW contracts for a total of \$80 million. The company was scheduled to attend a meeting on responsibility issues. After initially agreeing to meet, Worth submitted a letter to withdraw from both bids. At our October 19th meeting, Worth and its representatives indicated that at least one of the reasons for their withdrawal was a reluctance to answer questions regarding Worth's relationship with organized crime.

Worth's Material Omissions from its Vendor Responsibility Questionnaire

Worth failed to disclose several issues on the Uniform Contracting Questionnaire (UCQ). This information was not discovered by the Thruway Authority and was not considered during its responsibility review.

- In the letter from Thacher supplied by Worth, Thacher identified Michael Pontoriero as the vice president in charge of construction. He was not identified as an officer of the corporation in Worth's UCQ. This also has the potential for a financial impact, since financial information provided to us by Worth in its submission of November 1, 2005 also disclosed that there was a \$2.2 million loan at only 1% interest per year from Worth to Michael Pontoriero.¹³
- Question 7 on the UCQ states "Identify any other firms in which now, or in the past five years, the individuals listed in Question 6 above, either owned or owns 5.0% or more of the shares of, or was or is one of the five largest shareholder or as a director, officer, partner or proprietor of said other firm:" Worth indicated N/A for this answer. In our responsibility review, we identified numerous other companies that were either affiliated with or owned by Worth or Mr. Pontoriero and Mr. Dizenzo. Active companies included:
 - Bear Brook Development Co. Inc.
 - Bear Brook Associates LLC.
 - Bear Brook Village LLC.
 - Bear Brook Golf Club LLC
 - 24 Taylor LLC
 - 7120 Main LLC
 - Kings LLC
 - LCD LLC
- In response to our inquiries as to why they did not list them, they replied that they should have, but it may have been an oversight. Mr. Dizenzo stated that he completed the questionnaire himself without advice of legal counsel and that he thought it only pertained to other construction company interests. As quoted above,

¹³ In documents on file with the States of Massachusetts and Virginia, Worth lists Michael Pontoriero as an officer, in addition (in the Virginia document) to Gregory Vogt and Edward Harsche. None of these three men are identified as officers on the UCQ.

Question 7 is quite clear, and Worth's stated claim of ignorance and/or mistake is not sufficient to excuse this material omission.

Financial Statement Evaluation

We are troubled by the way Worth presents itself in its financial statements. We have not conducted a full audit of Worth, and do not believe that our concerns could, on their own, result in a finding that Worth is non-responsible. However, in light of our other concerns, we would be remiss in not bringing this issue forward.

Our review of the financial statements and associated footnotes for Worth Construction for both the 2003 and 2004 fiscal years raised concerns about our ability to confirm the accuracy of Worth's description of its financial capacity. It also raised concern about Worth's billing practices. Based upon this review, we posed a number of questions to Worth's accounting staff at the October 19, 2005 meeting. Worth's answers did little to clarify its representations or to give us comfort.

Worth included liabilities for contracts of \$16.8 million in the 2004 Balance Sheet. During the October 19th meeting, Worth's accountant indicated that these liabilities were recorded because the actual expenditures did not match the estimated expenditures. This resulted in an overstatement of revenue for the period. Most of the overstatement related to public projects and was recorded as 'billings in excess of costs and estimated earnings'. This overstatement appears to be high in relation to total revenue (36.8%) and resulted in an inflated Earned Revenue amount in the Statement of Operations and an inflated Current Liabilities amount in the Balance Sheet. Worth's accounting staff confirmed that the company's clients have been billed for work not yet completed. This accounting practice is not acceptable on New York State contracts; especially in circumstances where the public agency client has already paid there is great risk of overpayment if the work is never accomplished or if a dispute arises regarding the quality of the work.

Various cash transactions involving numerous companies and entities through which cash is moved do not appear to yield any tax or accounting benefits. As the accountants for Worth stated, most cash transactions do not involve interest payments or other tax advantage items and relate to entities owned or controlled by Mr. Pontoriero. Therefore, it is unclear why these large circular movements of cash are taking place among the various entities controlled by Mr. Pontoriero. When asked to explain one such transaction (involving a loan from Mr. Pontoriero to Worth), Worth's staff said it was required by the bonding company, but did not provide any support for this assertion.¹⁴ This inability to explain cash transactions to our satisfaction gives us discomfort regarding the presentation of cash position in Worth's financial statements.

¹⁴ Worth indicated at the October 19, 2005 meeting that it would forward proof of this, however no such proof was forthcoming in Worth's November 1, 2005 submission. The materials in the November 1, 2005 Worth submission do not relate to the above-discussed cash transactions between Mr. Pontoriero and the companies he controls, although the previously discussed \$2.2 million loan to Michael Pontoriero at 1% interest is similar to the transactions we discuss (i.e., it is a cash transaction that yields no discernible benefit to Worth)

The Outside Monitor

Thruway and Worth both rely on the fact that Worth has agreed to retain the services of Thacher as an outside monitor to ensure that it conducts itself with the requisite honesty and integrity in the performance of this contract. We believe that outside monitors can serve as an effective tool for government oversight in cases where "bad conduct" is clearly over and the contractor has separated itself from associations that led to scrutiny. Here, however, there is credible evidence that suggests that the "bad conduct" may not be over. Worth and Pontoriero are still the subject of a federal investigation. Neither the company nor its principal owner have admitted wrongdoing or inappropriate actions in the past and promised to refrain from such conduct in the future. The monitoring agreement forwarded by Worth calls upon an outside entity "to develop an integrity program to ensure compliance by [Worth's] officers, employees and subcontractors with all relevant contract requirements, laws and regulations." Neither the monitoring agreement nor the Thruway proposed contract ensure that Mr. Pontoriero will leave the company if he is indicted and convicted of wrongdoing in the Connecticut investigation. In fact, Mr. Pontoriero explicitly stated in the October 19, 2005 meeting that he would not separate himself from the company. Nor does the monitoring agreement or the Thruway proposed contract ensure that if Worth is deemed non-responsible upon indictment/conviction that the company will pay the costs (or post a letter of credit covering such costs) of re-procuring a new contractor to complete the work. Therefore, we find the monitoring agreement to be a wholly inadequate vehicle in these circumstances.

Conclusion

In light of the ongoing federal investigation into municipal corruption in Connecticut, wherein Mr. Pontoriero has been repeatedly and personally implicated; in light of this vendor's pattern of refusing to answer fully and truthfully the history of his association with organized crime and known members of organized crime; in light of the significant failure of the entity to disclose to the Thruway Authority in its Uniform Contracting Questionnaire the existence of other corporate officers and at least eight other companies that Mr. Pontoriero either owns, controls or wherein he serves as an officer, and in light of the significant financial concerns raised by our own independent review of the corporation's financial statements (coupled with the even more troubling responses to our concerns provided at the October 19th meeting), we have no choice but to disagree with the Thruway Authority's determination of Responsibility and to find that Worth Construction is not a responsible bidder.

OFFICE OF THE STATE COMPTROLLER