

**FINAL AGENCY DECISION**Via Email and Regular First Class Mail

March 29, 2016

Mr. Michael B. Dassatti
President
Brockwell & Carrington Contractors, Inc.
1 Como Court
Towaco, New Jersey 07082

**Re: West New York – Harry L. Bain PS#6
NJSDA Contract No. HU-0026-C01
Bid Protest By Brockwell & Carrington Contractors, Inc.**

Dear Mr. Dassatti:

The New Jersey Schools Development Authority (“NJSDA”) is in receipt of your March 14, 2016 formal bid protest letter on behalf of Brockwell & Carrington Contractors, Inc. (“B&C”), relating to the above-referenced lump-sum procurement for renovation services for the Harry L. Bain PS#6 Elementary School in West New York, New Jersey (the “Procurement”). In your March 14, 2016 letter, you stated that you were reserving the right to address any issues encountered during your review of the submissions of other bidders produced in response to your request under the New Jersey Open Public Records Act (“OPRA”). The NJSDA’s response to your OPRA request was mailed to you on March 11, 2016. Since that time, we have not received any submissions from you seeking to supplement the grounds for your bid protest. Accordingly, this letter is the NJSDA’s formal response and final agency decision on B&C’s bid protest.

In evaluating B&C’s bid protest, the NJSDA has reviewed and considered the following: your March 14, 2016 protest letter; the December 29, 2015 advertisement for bids (hereinafter, the “Advertisement”); the information package made available through a controlled-access website by the NJSDA to all bidders, including without limitation the project plans and specifications, as well as Instructions to Bidders (“ITB”); the February 2, 2016 and February 16, 2016 Requests for Information (“RFI”) submitted by B&C to the NJSDA; Addendum No. 1 to the Procurement process, dated February 23, 2016; the NJSDA’s March 11, 2016 letters to B&C and Niram, Inc. (“Niram”) rejecting their respective bids; and all Price Proposals submitted in connection with the Procurement.

Brief Overview of the Procurement Process

The Procurement was advertised on December 29, 2015. Prospective bidders were advised that a mandatory pre-bid conference and site visit would occur on January 26, 2016. Subsequent thereto, interested bidders submitted Project Rating Proposals and were assigned Project Rating Limits based thereon. Addendum No. 1 was subsequently issued on February 23, 2016. Bidders later submitted sealed Price Proposals in accordance with the requirements of the Advertisement.

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Price Proposals were received from six (6) bidders, and were publically opened on March 8, 2016. At that time, Niram was identified as the bidder who had submitted the lowest bid, Paul Otto Building, Co., Inc. ("Otto"), the second lowest, and B&C, the third lowest. Following a review of the submitted Price Proposals, however, the NJSDA found that both Niram and B&C had failed to identify a plumbing subcontractor, as required by the terms of the Advertisement. By letters dated March 11, 2016, the NJSDA advised both Niram and B&C that their respective bids were rejected for failing to identify a required subcontractor and for failing to provide an Uncompleted Contracts form for the plumbing subcontractor required to be named in the Price Proposal. Accordingly, Otto is the presumptive awardee.

Brockwell & Carrington's Bid Protest

In its protest, B&C concedes, as it must, that it did not name a plumbing subcontractor in its Price Proposal. B&C attempts to excuse its omission by contending that there was no Scope of Work for a plumber for the project at issue; that the NJSDA did not issue any Plumbing Specifications or Drawings; and that its Price Proposal was in compliance with the Public School Contracts Law, citing specifically to N.J.S.A. 18A-18A-18. B&C requests that the NJSDA reconsider its determination with regard to the rejection of B&C's Price Proposal, but requests no further relief.

Analysis of B&C's Bid Protest

As a preliminary matter, it appears that B&C's bid protest is effectively moot. In its protest, B&C simply requests that the NJSDA reconsider its rejection of B&C's bid. However, even if the NJSDA were to so reconsider, and do so in B&C's favor, B&C would still not be the lowest responsive bidder.

First, Niram, the lowest bidder, was rejected for the identical rationale as B&C. Accordingly, even if we were to agree with B&C's arguments, the NJSDA would be required to reinstate both Niram's and B&C's bids. In such a case, B&C would remain the third ranked firm. Second, B&C has not identified any additional deficiencies in the Price Proposals submitted by either Niram or Otto, the first and second ranked firms. As noted above, B&C has apparently waived any further challenges to the Procurement by failing to supplement its initial bid protest. As such, it is unclear what practical purpose is served by B&C's bid protest.

The foregoing notwithstanding, for purposes of completeness, the NJSDA has nevertheless considered the arguments raised by B&C in its bid protest. In doing so, we first refer to the Advertisement, which provides in pertinent part:

Bid proposals for the above work will be received from bidders registered with the Division of Revenue and Department of Labor, and classified by the Department of Treasury, Division of Property Management and Construction and the NJSDA in the following trade(s):

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General Contractor with a DPMC Classification of C006 or C008 or C009 who will be required to also have the following DPMC Specialty Trade(s) or required to engage a subcontractor classified in the following DPMC Specialty Trade(s) if not possessed by the General Contractor:

Structural Steel: C029
Plumbing: C030
HVACR: C032
Electrical: C047
Asbestos Removal/Treatment: C092

Bid proposals must list the names of the firms who meet the above classification(s). (Emphasis added).

Section 4.1(C) of the Instructions to Bidders provides that “the Bidder shall include as part of its Price Proposal, all **subcontractors required to be named as per the advertisement...**” (Emphasis added).¹ Furthermore, Section C.1 on page 2 of the Price Proposal form submitted by B&C, expressly states that “the Bidder **MUST** name all subcontractors that will be performing work in any of the trades listed in the Bid Advertisement or required by statute.” (Emphasis in original).²

Accordingly, the documents provided to all bidders, including the Price Proposal form that was completed and submitted by B&C, unmistakably required all bidders to identify proposed subcontractors for the trades identified in the Advertisement, which includes the identification of a plumbing subcontractor. Again, B&C acknowledges that it did not identify a plumbing subcontractor in its Price Proposal.

Pursuant to Section 2.3 of the ITB, provided to all bidders, “if the Bidder has any questions or finds any perceived error or omission in the Contract Documents or any conflict or discrepancy within the Contract Documents or between the Contract Documents and any applicable provision of law, the Bidder shall submit a written request to the Authority for interpretation or clarification.” Pursuant to this provision, ten (10) bidder questions were received by the NJSDA; nine (9) of those being questions from B&C. However, none of the bidders, including B&C, raised any questions as to the Advertisement’s requirement to name a plumbing subcontractor. Furthermore, we note that of the six (6) Price Proposals received by the NJSDA for this Procurement, four (4) identified a plumbing subcontractor, in accordance with the requirements of the Advertisement.

Accordingly, to the extent that there was a conflict between the Advertisement’s requirement for the bidders to identify a plumbing subcontractor and the purported absence of any scope of work in the

¹ We would also note that Section 4.1(A) requires that “All Bidders **must** submit a copy of the Uncompleted Contracts Form for themselves and for any subcontractor required to be named, as described in Section 4.1 C...” (Emphasis in original).

² Section C.4 of the Price Proposal form requires that “All Bidders **MUST** submit a copy of the Uncompleted Contracts Form for any subcontractor required to be named in accordance with Sections C.1 and C.2 above.” (Emphasis in original.)

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bid documents for that trade, the bidders had ample opportunity to request clarification from the NJSDA. None of the bidders, however, elected to do so.

Permitting B&C to ignore the requirements of the Advertisement to identify a plumbing subcontractor, particularly when other bidders complied with the published requirement, would afford B&C an unfair competitive advantage over other bidders. Additionally, allowing B&C to ignore the published requirements would favor B&C (and Niram) and create an inequality in the bidding process in derogation of the interests of prospective and actual bidders who might have been deterred from bidding by their inability or unwillingness to identify a subcontractor in the required trade or, in fact, actually identified a plumbing subcontractor. All of these factors militate towards a denial of B&C's bid protest.

Finally, we note that B&C's reliance upon the Public Schools Contracts Law is misplaced.³ Quite simply, this Act is not applicable to the NJSDA or its school facilities construction projects. Assuming *arguendo* that the section cited by B&C (or one comparable to it) applied, and that B&C's analysis thereof was accurate, it would not obviate the specific requirements of the Advertisement for prospective bidders to identify a plumbing subcontractor.

Conclusion

As discussed in greater detail above, B&C's bid protest is effectively moot. The foregoing notwithstanding, having considered the arguments raised by B&C, B&C's bid was materially defective and non-responsive. Accordingly, B&C's bid protest is rejected.

This is a Final Agency Decision.

Sincerely,



Donald R. Guarriello
Vice President and Chief Financial Officer

³ The NJSDA takes no position as to B&C's analysis of the statutory provision cited in its bid protest, N.J.S.A. 18A:18A-18, or the alleged requirements thereof.

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cc: Charles B. McKenna, NJSDA Chief Executive Officer
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