
FINAL AGENCY DECISION

June 11, 2026

Via Email and Regular First Class Mail

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Re: Passaic High School #12 - Demolition - Early Site Preparation
NJSDA Contract No. NT-0054-N01
Protest by APS Contracting, Inc.
Protest by Terminal Construction Corporation

Dear Mr. Collins and Mr. Zaita:

The New Jersey Schools Development Authority (“NJSDA”) is in receipt of Mr. Collins’ May 12, 2026 protest letter on behalf of APS Contracting, Inc. (“APS”) relating to the above-referenced procurement for services related to the Demolition & Early Site Preparation for the Passaic High School #12 project in Passaic, New Jersey (the “Procurement”). APS’s protest challenges the responsiveness of the bid of the presumptive successful bidder, USA Environmental Management, Inc. (“USAEM”). This letter is the NJSDA’s formal response and final agency decision on APS’s bid protest.

The NJSDA is also in receipt of the May 13, 2026 protest letter from Donald N. Dinallo, President of Terminal Construction Corporation (“Terminal”) challenging the responsiveness of both USAEM’s and APS’s bids.¹ This letter is also the NJSDA’s formal response and final agency decision on Terminal’s bid protest.

In evaluating the bid protests, the NJSDA has reviewed and considered all submissions and relevant information and documentation, including the following: Mr. Collins’ May 12, 2026 correspondence, with attachments; Mr. Collins’ supplemental May 13, 2026 correspondence, with attachments; Mr. Dinallo’s May 13, 2026 correspondence; May 13, 2026 electronic correspondence from Sean Murphy, NJSDA Managing Director of Procurement, establishing a schedule for submissions in connection with the bid protests; May 18, 2026 correspondence from Mr. Collins, with attachments; May 18, 2026 correspondence from Timothy Ryan, Esquire, on behalf of USAEM, with attachments; May 20, 2026 correspondence from Mr. Collins; May 20, 2026 correspondence from Mr. Zaita on behalf of Terminal; May 21, 2026 correspondence from Mr. Ryan;

¹ While Terminal’s initial protest letter was submitted by Mr. Dinallo, subsequent correspondence on behalf of Terminal in connection with the instant protest was submitted by Mr. Zaita.

Mr. Murphy's June 3, 2026 electronic correspondence responding to May 21, 2026 request for permission to make additional submissions; Mr. Ryan's June 5, 2026 correspondence, with attachments; June 8, 2026 correspondence from Mr. Collins, with attachments; June 8, 2026 correspondence from Mr. Zaita; the March 3, 2026 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: Instructions to Bidders ("IB"), the applicable Project Labor Agreement ("PLA"), and the project plans and Specifications; Addendum No. 1 to the Procurement, dated April 10, 2026; Addendum No. 2 to the Procurement, dated April 24, 2026; and the Project Rating Proposals (and NJSDA Project Rating Proposal Evaluation Worksheets), Price Proposals and accompanying documentation submitted by all bidders in connection with the Procurement.

Brief Overview of the Procurement Process

The Procurement was advertised on March 3, 2026. Under the terms of the Advertisement, any firm wishing to submit a proposal was required to submit a Project Rating Proposal ("PRP") form no later than 2:00 p.m. on March 16, 2026. Furthermore, all interested bidders were required to attend a mandatory pre-bid site visit on March 19, 2026. Two (2) addenda were issued thereafter on April 10, 2026 and April 24, 2026, respectively. On or before 2:00 p.m. on May 6, 2026, interested bidders submitted electronic Price Proposals through the BidExpress platform, and other documentation in accordance with the requirements of the Advertisement and the Information Package, as modified by the addenda.

A total of six (6) Price Proposals were received electronically through BidExpress and were publicly opened on May 6, 2026. At that time, USAEM was identified as the bidder that had submitted the lowest bid (\$14,922,328) and received a final ranking of 1, while APS received a final ranking of 2, with its bid of \$17,468,000, and Terminal received a final ranking of 3, with its bid of \$18,325,000.

APS's Bid Protest

APS contends that the bid submitted by USAEM must be rejected as non-responsive because USAEM would exceed its Aggregate Rating Limit if awarded a contract for the project. Specifically, APS notes that USAEM was classified by the New Jersey Department of the Treasury, Division of Property Management and Construction ("DPMC") and was prequalified by the NJSDA with an Aggregate Rating Limit ("ARL") of \$15 million. As of the time of bid, therefore, the outstanding dollar value of all contracts, public and private, that USAEM was permitted to perform at any given time could not exceed \$15 million. In connection with the Procurement, USAEM submitted a bid of \$14,922,328 to the NJSDA.

APS further maintains that USAEM was apparently awarded a demolition Contract by the Camden County Improvement Authority ("CCIA") in the amount of \$2,732,327 on or about February 26, 2026, and that the work thereunder is not complete. Accordingly, APS challenges the accuracy of USAEM's Uncompleted Contracts Certification submitted in connection with the Procurement, which averred that, as of the time of submission of its bid proposal, USAEM's uncompleted construction work had a value of \$68,600. With the foregoing in mind, APS contends that USAEM has exceeded its ARL (and Project Rating Limit), and therefore, its bid should be rejected.

APS also contends that the Uncompleted Contracts Certification submitted by USAEM for its named plumbing subcontractor is unsigned and “therefore of no effect,” thereby rendering USAEM’s bid subject to rejection as non-conforming.

Terminal’s Bid Protest

Generally, Terminal raises substantively similar concerns to those raised by APS with respect to USAEM and its potential exceedance of its ARL. Terminal does not provide any proofs that USAEM has done so, but states that it “has reason to believe” that USAEM’s actual amount of uncompleted contract obligations would cause it to exceed its ARL. Terminal asserts that the NJSDA has the “right and the obligation to verify [USAEM’s] aggregate position before making an award.”

Terminal further contends that APS’s bid should also be rejected. Terminal correctly notes that compliance with the NJSDA Project Labor Agreement is a material condition of the contract for this Procurement. Accordingly, the successful bidder is required to execute and deliver a Letter of Assent, binding itself and each named subcontractor to perform in full accordance with the terms of the PLA, including union labor requirements, hiring hall obligations and applicable work rules.

With the foregoing in mind, Terminal states that it has “reason to believe” that APS “is not a signatory to any union collective bargaining agreement, has no established relationship with any union labor organization, and has not historically performed work under union labor conditions.” Terminal further argues that, if APS is not a union contractor, it had no mechanism to supply the union labor required for self-performed work. As such, Terminal contends that APS is not a responsible bidder, and that its bid should be rejected. Terminal further requests that the NJSDA “investigate” APS’s union labor capacity and history of PLA compliance before making any award.

USAEM’s Response to APS’s and Terminal’s Bid Protests

In response to the contentions set forth by APS and Terminal seeking to have USAEM’s bid rejected, USAEM avers that portions of the CCIA project it was awarded have been “indefinitely suspended.” As such, USAEM contends that the value of contract work that has been suspended should not be considered as part of the value of its uncompleted contracts.

With the above assumption in mind, USAEM further states that the remaining authorized work on the CCIA project (in the amount of \$424,124.00) is being performed entirely by subcontractors. USAEM contends that it is entitled to calculate the value of the awarded contract by deducting eighty-five percent (85%) of the actual subcontract price of the work to be performed by principal trade(s) from the actual price of the contract awarded to it. In applying this calculation, USAEM avers that the total value of the uncompleted work for the CCIA project is \$63,618.00.² Additionally, USAEM notes that, at the time bids were due, it also had an

² For clarification of the record, in its submissions, USAEM advises that \$63,618.00 of this value relates to the CCIA project, and \$5,000.00 of this value relates to a separate NJSDA project, yielding a total amount of \$68,618.00, rather than the \$68,600.00 set forth in its Uncompleted Contracts Certification. For purposes of this Agency Decision, the NJSDA uses the amount set forth in USAEM’s Protest submissions (i.e. \$63,618.00).

uncompleted contract balance on another NJSDA project as \$5,000.00.³ Thus, USAEM states that its total amount of uncompleted work at the time bids were due for the Procurement is \$68,618.00, which when added to the amount of its bid for the Procurement, is less than its \$15,000,000 ARL.

USAEM further argues that, if its bid were to be rejected based on circumstances “entirely outside of USAEM’s control,” that “punishing” a contractor for an owner-directed suspension creates an “inequitable result that artificially restricts competition” on public bids.

Without exposition, USAEM further states that the Uncompleted Contracts Certification submitted with its bid for its named plumbing subcontractor was properly submitted and contains both the signature of the company’s president and the corporate seal.

APS’s Response to Terminal’s Bid Protest

In its response, APS states that Terminal’s protest identifies no deficiency in APS’s bid submission, no failure to conform to the bid specifications, and no absence of the experience or performance capacity required for the Project that is the subject of the Procurement. APS argues that Terminal’s sole contention is that, because APS is not a signatory to any collective bargaining agreement, its ability to perform a PLA-governed project is somehow compromised, and that no contractor lacking formal union affiliations can be deemed responsible for purposes of this award. Furthermore, APS notes that neither APS nor any other project bidder is required to be affiliated with a union, and a determination of the lowest responsible bidder must be made without reference to union affiliation status.

Analysis of APS’s and Terminal’s Bid Protests as to USAEM

1. Uncompleted Contracts

As a general matter, the NJSDA disagrees with Terminal to the extent that it suggests that the NJSDA has an “obligation” to independently verify a presumptive winning bidder’s aggregate position before making an award. Rather, the NJSDA contends that it should be able to rely upon such a bidder’s certification without further inquiry into its accuracy or veracity. This does not mean, however, that other bidders or the NJSDA should be or are permitted to disregard facts and evidence presented that call the accuracy of the certification into question.

The NJSDA has an obligation to assure the integrity of the public procurement process that requires it to make a reasonable inquiry when, as in the case of the APS protest, the accuracy of a contractor’s certification is reasonably challenged. In fulfilling its obligation to ensure the integrity of the procurement process, the NJSDA has the right to disqualify a bidder that “makes, or causes to be made, a false, deceptive or fraudulent statement in its bid.” N.J.A.C. 19:38-3.2. Thus, under Section 5 of the IB, “Prior to determination of the successful Bidder, the NJSDA may request . . . [a]ny additional documentation that may be deemed necessary to proceed with award.”

³ The NJSDA has independently verified the validity of the \$5,000.00 outstanding balance as of the date of bid for the separate NJSDA project.

In the instant matter, Terminal has provided no proofs in support of its contention that USAEM's Uncompleted Contracts Certification was inaccurate and/or invalid. APS, however, did proffer certain documentation that raised legitimate questions as to the accuracy or completeness of the certified amount of USAEM's uncompleted construction contract work. Accordingly, the NJSDA considers the arguments raised by APS, and the position of USAEM, as set forth below.

a. Applicable Legal Framework

Pursuant to the Educational Facilities Construction and Financing Act (N.J.S.A. 18A:7G-1, *et seq.*, referred to hereinafter as the "Act"), "a prequalified contractor seeking to bid school facilities projects, and **any subcontractors required to be named** under [the Act] shall, as a condition of bidding, submit a sworn contractor certification regarding qualifications and credentials." N.J.S.A. 18A:7G-37(a) (emphasis added). N.J.S.A. 18A:7G-37(c) provides that "the contractor certification form shall further require that a principal owner or officer of the company certify that, **at the time that the firm is bidding a project**, the amount of its **bid proposal** and the value of all of its outstanding incomplete contracts does not exceed the firm's existing aggregate rating limit." N.J.S.A. 18A:7G-37(c) (emphasis added). These statutory requirements are also reflected in the NJSDA's bidding regulations. N.J.A.C. 19:38-3.8.

Under the NJSDA's regulations, "Aggregate Rating" means:

the limit of the outstanding dollar value of all contracts, public and private, which a firm may perform at a given time as assigned by the Authority's Notice of Prequalification ***in effect at the time of the contractor's bid***, which shall be identical to that which is assigned by the New Jersey Department of Treasury, Division of Property Management and Construction. Should the Division of Property Management and Construction modify a firm's aggregate rating after the Authority has issued a Notice of Prequalification, ***the Aggregate Rating issued by the Authority is considered modified to be identical to that of the Division of Property Management and Construction.***

N.J.A.C. 19:38-1.2. (emphasis added)

Section 4.1C of the IB requires all bidders to include with its Price Proposal a Total Amount of Uncompleted Contracts Certification for itself and for each subcontractor required to be named under Section 4.1 B of the IB. In this case, USAEM was therefore required to submit an Uncompleted Contracts Certification for itself, and for each subcontractor required to be named by the Advertisement, and any subcontractor with whom the bidder will directly subcontract for the furnishing of any of the work and materials specified in the plans and specifications for the following branches: (1) the plumbing and gas fitting and all work and materials kindred thereto ("Plumbing Branch"); (2) the steam and hot water heating and ventilating apparatus, steam power plants and all work and materials kindred thereto ("HVACR Branch"); (3) the electrical work ("Electrical Branch"); and (4) structural steel and miscellaneous iron work and materials ("Structural Steel Branch").

With respect to the Uncompleted Contracts Certification requirement, Section 4.1C provides that "[t]he amount set forth in the Uncompleted Contracts Form ***must reflect the amount of uncompleted work as of the date of the bid submission.***" (Emphasis provided). Section 4.2(12) further provides that by submitting a Price

Proposal, *the bidder certifies* to the best of its knowledge and belief and under penalty of perjury under the laws of the United States and the State of New Jersey *that the amount of the Price Proposal and the value of the Bidder's outstanding uncompleted work does not exceed the Bidder's Aggregate Rating*. Finally, Section 4.5 of the IB advises that “[t]he NJSDA, in determining the successful bidder, will evaluate the Price Proposals for responsiveness, including but not limited to verifying”, in pertinent part, that the “award of the contract in addition to the Bidder's uncompleted work will not exceed the Aggregate Rating of the Bidder.” (Emphasis provided).

b. Discussion

It is undisputed that on May 6, 2026, the date bid proposals on this Procurement were due, USAEM's Aggregate Rating Limit was \$15 million. It is further undisputed that, with its bid, USAEM supplied an Uncompleted Contracts Certification, dated May 4, 2026, in which USAEM's President, on behalf of USAEM certified:

I certify that the firm's total amount of uncompleted construction work (defined as the total contract value of unbilled work – including public and private) *as of the bid due date* is \$68,600.

* * * *

I further certify that *the amount of this bid proposal*, including the amount listed above does not exceed my New Jersey Schools Development Authority, Aggregate Rating Limit.

(emphasis added).

Based on the submissions received by the NJSDA from USAEM, USAEM confirms that it was awarded a separate demolition project by the CCIA in the amount of \$2.73 million. However, USAEM further advises that a “significant portion” of the contracted work was “indefinitely suspended” by the CCIA before the May 6, 2026 bid due date for this Procurement. Accordingly, USAEM contends that it is not required to include the value of the suspended work in the amount of its uncompleted contracts set forth in its Uncompleted Contracts Certification. USAEM effectively concedes, however, that if the value of the suspended work were to be included in the tabulation of the total value of its uncompleted contracts, its bid on this Procurement would cause it to exceed its ARL.⁴

Notwithstanding USAEM's contention that the suspended work under the CCIA contract should be excluded from its tabulation of the value of its uncompleted construction work, USAEM remains contractually bound to perform the work if and when the suspension is lifted. Said a different way, the suspended work under the CCIA contract continues to be within the contractual scope of work. A suspension does not serve to descope the suspended work, to terminate the contract, or otherwise to relieve USAEM from performance. Thus, the suspended portion of the contracted work is uncompleted, and should have been included in the valuation of

⁴ In its June 5, 2026 submission, USAEM advises that the total value of its suspended work on the CCIA project is \$1,450,162, which includes \$338,300.00 in allowances. As previously noted, USAEM's bid for the Procurement is \$14,922,328.00, and its ARL is \$15,000,000.00.

USAEM's uncompleted construction work for purposes of the Uncompleted Contracts Certification submitted for this Procurement.

New Jersey courts have consistently and clearly articulated the legislative and regulatory intent behind the Uncompleted Contracts Certification. Most recently, the Appellate Division confirmed that the Uncompleted Contracts Certification is "manifestly designed to inform the procurement agency at the time of bid opening that the bidder and its subcontractors are not over-committed to other work that may make it infeasible to perform the subject contract." ML, Inc. v. Edison Township Board of Education, 482 N.J. Super. 534, 552 (App. Div. 2025)

As held by our courts, the financial capacity of a bidder is "a material and substantial consideration in connection with the award of contracts for public work." P & A Const., Inc. v. Township of Woodbridge, 365 N.J. Super. 164, 172 (App. Div. 2004), citing Township of Hillside v. Sternin, 25 N.J. 317, 323 (1957). Consistent with this principle, failure to properly submit the uncompleted contracts form—or submitting a stale or incomplete form—constitutes a material deviation from the bid specifications, rendering the bid non-responsive and subject to rejection. See generally ML, Inc., *supra*.

To allow USAEM to exclude the suspended portion of the CCIA contract work from its calculation of the total amount of uncompleted construction work at the time of bid would deprive the NJSDA of the assurance of USAEM's capacity to perform the necessary demolition work for the Project. Specifically, the "indefinite" nature of the suspension of the CCIA project is particularly problematic in that the suspension could be lifted at any time during the course of the NJSDA project, even potentially as early as immediately following the last submission made in connection with the instant protest.

By extension, adoption of a paradigm for procurements generally that permits bidders to exclude "suspended" work from uncompleted contracts totals raises the specter of bidders intentionally over-extending themselves by staging, delaying or reaching agreements with owners to delay work under existing contracts. The NJSDA expressly declines to invite such a potential circumvention of the protections afforded by ARLs.

The NJSDA rejects USAEM's contention that requiring USAEM to include the indefinitely suspended work in its total value of uncompleted contracts is based on a circumstance that "is entirely outside of USAEM's control" and thereby "creates an inequitable result." Advancement of this equitable argument ignores the clear legal basis for including the indefinitely suspended work in USAEM's total value of uncompleted contracts under applicable statutes, regulations and New Jersey case law. As USAEM concedes in its May 21, 2026 submission, "[t]he intention of the NJSDA's uncompleted work rule is to accurately measure a contractor's capacity to safely and effectively perform concurrent projects." As previously discussed, permitting USAEM to exclude the indefinitely suspended work flouts this intent.

Additionally, the NJSDA observes that USAEM was not compelled to bid on the CCIA project, but made a business decision to do so. Now it finds itself in an admittedly unfortunate position, but that is not the fault of the NJSDA, and it should not impose an obligation on the NJSDA to attempt to ameliorate a voluntary position within which USAEM placed itself. Additionally, while the indefinite suspension of work by CCIA may have been outside of USAEM's control, USAEM was not without recourse. None of its submissions sets forth any effort by USAEM to have its contractual scope of work reduced, eliminated or in any way

amended. Rather, USAEM appears to have sat on its hands and elected to accept the (to date) two-month suspension and made the affirmative decision to pursue additional public work while declining to alter its other contractual obligation. USAEM cannot “have its cake and eat it too”; particularly, given the potentially deleterious effect of over-extending itself under two (2) public contracts.

Accordingly, for the foregoing reasons, the NJSDA determines that APS’s and Terminal’s arguments in connection with this issue are valid, thereby compelling the NJSDA sustain the protests and to reject USAEM’s bid as non-responsive.

While the NJSDA has determined that USAEM’s bid must be rejected, for the sake of completeness, we address the remainder of APS’s and Terminal’s contentions with respect to USAEM’s bid below.

2. *USAEM’s Use of 85% in Calculating Amount of Uncompleted Work*

In determining the total value of its uncompleted contracts for purposes of the instant Procurement, USAEM excluded the value of “indefinitely suspended” work. Under this rubric (which the NJSDA has rejected, as discussed above), USAEM then advises that the total value of uncompleted work that has not been suspended on the CCIA project equals \$424,124.00. It is undisputed that, when this value is added to the \$5,000.00 balance on a previous NJSDA project plus the amount of its bid for the Procurement, the total results in an exceedance of USAEM’s ARL (i.e. \$15,531,452.00, as opposed to its \$15 million ARL).

The foregoing notwithstanding, USAEM contends that the value of uncompleted work on the unsuspended portion of the work will be performed entirely by subcontractors. As such, USAEM argues that it is entitled to calculate the contract value by deducting eight-five percent (85%) of the actual subcontract price of the work to be performed by “principal trade(s)” from the actual price of the contract awarded to USAEM. Thus, after subtracting 85% of \$424,124.00 (\$360,506.00) from that amount results in a claimed value of uncompleted contracts on the unsuspended portion of the CCIA project of \$63,618.00. When this value is added to the \$5,000.00 balance on a previous NJSDA project plus the amount of its bid for the Procurement, the total is within USAEM’s \$15 million ARL (i.e. \$14,990,928).⁵

a. *Applicable Legal Framework*

N.J.A.C. 19:38-3.8(b) of the NJSDA’s regulations relating to procedures for low-bid procurement of construction contracts for school facilities projects provides that “[a] firm shall not submit a Price Proposal which causes the total outstanding amount of all of its existing contracts, ***as defined in the Authority backlog form [i.e. the NJSDA’s Uncompleted Contracts Certification]***, both public and private, to exceed its Aggregate Rating.” (Emphasis provided).

⁵ The NJSDA notes that these values differ from the actual mathematical values, due to apparent rounding employed by USAEM. As these differences are *de minimis*, for purposes of this discussion, the NJSDA is using the values provided by USAEM in its submissions.

The NJSDA's Uncompleted Contracts Certification provides in pertinent part:

“On any project where the firm was awarded a single prime contract which encompasses work to be performed by a subcontractor in a *principal trade defined as plumbing and gas fitting; steam and hot water heating and ventilation; electrical; or structural steel and ornamental iron work*, the firm may calculate the value of the awarded contract by deducting eighty-five percent (85%) of the actual subcontract price of the work to be performed by principal trade(s) from the actual price of the contract awarded to it. The firm will have the burden of proving that the work is encompassed by the *principal trades* and the value of the amount of work performed by those principal trades.” (Emphasis provided).

b. Discussion

USAEM advises that its subcontractor on the CCIA project, Winzinger, Inc. (“Winzinger”), is performing “utility work, demolition and site restoration work.” See USAEM’s June 8, 2026 submission, p. 2. None of these trades are included in the principal trades that are eligible for the 85% discount pursuant to the NJSDA’s regulations. Indeed, Winzinger is neither DPMC classified nor NJSDA prequalified to even perform any of those principal trades. See APS’s June 8, 2026 submission, Exhibit “A”. Accordingly, pursuant to the applicable regulations governing the Procurement, USAEM is not entitled to apply the 85% deduction for its subcontractor on the CCIA project.

USAEM contends that DPMC’s regulations allow bidders to take the 85% deduction with respect to subcontractor’s work in the four (4) trades that are referenced in the NJSDA’s Uncompleted Contracts Certification, as well as for any work performed for “general construction,” which USAEM argues includes “all other work and materials required for completion of the project.” citing N.J.A.C. 17:19-2.13(e) and N.J.S.A. 52:32-2.⁶ USAEM further contends that the NJSDA and DPMC “Aggregate Ratings and backlog methodologies must be identical.” The NJSDA disagrees.

USAEM is correct in noting that the NJSDA’s regulations require that the NJSDA’s ARL be “identical to” the ARL assigned by DPMC. See N.J.A.C. 17:38-1.2. However, conspicuous by its omission is any citation by USAEM to a regulation or other legal precept that requires the NJSDA to utilize the identical methodology as DPMC in terms of a bidder calculating the total amount of uncompleted contracts.

Accordingly, for the foregoing reasons, NJSDA determines that USAEM was not entitled to use the 85% deduction for the work to be performed by its subcontractor on the unsuspended portion of the CCIA project in determining the amount included in the Uncompleted Contracts Certification for the instant Procurement. As such, when the full value of uncompleted work on the unsuspended portion of the CCIA project is utilized (i.e. \$424,124.00), USAEM exceeds its ARL, thereby requiring rejection of USAEM’s bid for the Procurement.

Moreover, given the NJSDA’s determination that USAEM was required to include the value of the CCIA suspended work in its Uncompleted Contracts Certification for the Procurement (as discussed above), even if

⁶ For purposes of this Agency Decision, the NJSDA takes no position with respect to USAEM’s interpretation of another Agency’s regulations.

USAEM were permitted to take the 85% deduction and (for the sake of argument) was able to apply the 85% deduction to the total value of the suspended work, USAEM would far exceed its ARL.

Accordingly, for the foregoing reasons, the NJSDA determines that APS's and Terminal's arguments in connection with this issue are meritorious, thereby compelling the NJSDA to sustain the protests and to reject USAEM's bid as non-responsive.

3. Signature on USAEM's Subcontractor's Uncompleted Contracts Certification

Finally, APS contends that USAEM's bid must be rejected because the Uncompleted Contracts Certification submitted for its named plumbing/HVACR subcontractor is not signed, rendering the form invalid. In response, USAEM simply contends that the document is signed.

Black's Law Dictionary (12 ed. 2024) defines "signature" as "a person's name or mark written by that person or at the person's direction." Here, the NJSDA notes that the president's name was affirmatively typed into the form in the space provided by the appropriate company representative. Thus, it appears conclusive that the typing the president's name into the form, constitutes a signature, particularly in this increasingly electronic age. Indeed, under the New Jersey Uniform Electronic Transactions Act, "[a] record or signature may not be denied legal effect or enforceability solely because it is in electronic form." N.J.S.A. 12A:12-7(a).

APS provides no legal basis for its contention to the contrary in this context. Moreover, the affixation of the subcontractor's corporate seal to the submitted Uncompleted Contracts Certification provides further indicia of the validity of the document through the corporation's effective ratification of the content of the document and the president's signature.

For the foregoing reasons, the NJSDA is not persuaded that the subcontractor's Uncompleted Contracts Certification is invalid or that USAEM's bid should be rejected on these grounds. Therefore, this aspect of APS's bid protest is denied.

Analysis of Terminal's Bid Protests as to APS

Terminal's protest asserts that APS does not have a history of working on projects governed by a project labor agreement, and is not a signatory to any collective bargaining agreement with a labor union. Based on these assertions, Terminal argues that APS does not have the ability to legitimately comply with the terms of the PLA, and therefore APS cannot be considered a "responsible bidder" because it has no mechanism to supply the necessary labor for work on the Project that has been identified as "self-performed."

However, Terminal's argument is based on an erroneous premise. There is no requirement that a bidder have an established labor union relationship in order to bid on a PLA-governed project. The 2002 state statute authorizing PLAs anticipates that a PLA may include "provisions that the successful bidder and any subcontractor of the bidder need not be a party to a labor agreement with the labor organizations other than for the public works project covered by the project labor agreement." N.J.S.A. 52:38-4. The PLA for the Project, negotiated by the predecessor to the NJSDA and the New Jersey Building and Construction Trades

Council, AFL-CIO, includes such a provision at Article 2, Section 7 of the PLA, expressly extending the applicability of the PLA to both union and non-union contractors:

The Unions agree that this Agreement will be made available to, and will fully apply to any successful bidder for Project work who becomes signatory thereto, without regard to whether that successful bidder performs work at other sites on either a union or non-union basis.

Moreover, as Terminal acknowledges in its May 20, 2026 response letter, the New Jersey Supreme Court in George Harms Const. Co., Inc. v. New Jersey Turnpike Authority, 137 N.J. 8 (1994) affirmed that a contractor's past use of non-union labor was irrelevant to the question of whether the contractor was a "responsible bidder":

In Wittie Electric Co. v. State, 139 N.J. Super. 529, 532, 354 A.2d 659 (App. Div. 1976), the court held that a contractor's **employment of nonunion labor was not an appropriate factor to consider** when assessing the responsibility of that contractor, who had submitted the lowest bid for a public contract. [Harms, 137 N.J. at 38, emphasis supplied.]

By Terminal's logic, no non-union contractor would ever be able to bid on a PLA project -- a result that would be in direct contravention of the intent of the PLA, the express language of Article 2, Section 7 of the PLA, and existing New Jersey case law.

Further, Terminal's argument that there is no mechanism for APS to access appropriate labor for the Project, is false. The PLA provides a clear mechanism for the supply of labor for the Project. While the PLA permits a contractor to retain its existing employees representing up to 12% of the workforce in any craft, the PLA requires that the primary labor source for the Project is through the union hiring hall referral system. Under Article 4, Section 2 of the PLA, a Contractor under the PLA agrees to "hire Project craft employees covered by this Agreement through the job referral systems and hiring halls . . . established in the Local Unions' area collective bargaining agreements." In exchange, the Unions agree to supply a stream of qualified labor to the Contractor, pledging in Article 4, Section 5 to "exert their utmost efforts to recruit sufficient numbers of skilled and qualified craft employees to fulfill the requirements of the Contractor." Accordingly, the PLA itself provides the mechanism and the means to adequately staff the Project. Should there be a failure of either the Contractor or the Unions to follow this system, the PLA provides remedies, notably a grievance procedure and arbitration.

Finally, Terminal argues that NJSDA should reject APS's bid because it asserts that APS cannot fulfill the requirements of the PLA, based on APS's alleged lack of experience with PLA projects, while Terminal simultaneously asserts, solely on information and belief, that APS has a history of labor discord on other PLA projects. In response to Terminal's unverified assertions, APS has submitted, in an equally unverified manner, a listing of projects that it asserts were successfully completed while governed by a PLA.

Instead of engaging with these unverified assertions, NJSDA relies upon the DPMC classification and NJSDA prequalification and moral integrity process to reveal problematic circumstances warranting rejection or revocation of a contractor's application for or renewal of NJSDA prequalification. NJSDA also utilizes a performance evaluation process for its own projects, which is incorporated as a modifying factor in the project

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rating limit process employed as a first step in bidding NJSDA projects. APS remains prequalified, and its existing NJSDA performance evaluations are deemed satisfactory, resulting in no negative modification based on prior NJSDA performance evaluations.

NJSDA rejects Terminal's invitation to further investigate or anticipatorily reject APS based on nothing more than conclusory allegations about past history and supposition about future capacity to perform. In bidding the job, APS has acknowledged and represented that it can and will comply with PLA terms and that it is committed to the use union labor referral systems as required under the PLA. NJSDA assumes that the Union partners in the PLA will appropriately provide the necessary labor for the Project in response to APS's participation in the PLA, and in the event of any future concerns or disputes on the Project, the dispute resolution provisions of the NJSDA PLA will apply.

Accordingly, for the foregoing reasons, Terminal's protest as to APS is denied.

Conclusion

For the foregoing reasons, the NJSDA finds that the protests by APS and Terminal of the responsiveness of USAEM's bid are meritorious, in part, and are therefore sustained. The NJSDA further finds that Terminal's protest of the responsiveness of APS's bid is denied. Accordingly, USAEM's bid is rejected as non-responsive, thereby rendering APS as the prospective winning bidder for the Procurement.

This is a Final Agency Decision.

Sincerely,

Laurette J. Pitts
Vice President and Chief Financial Officer

cc: Manuel M. Da Silva, NJSDA Chief Executive Officer
Ramy Kamel, NJSDA Vice President – Program and Construction Operations
Janice Venables, NJSDA Vice President, Corporate Governance
Sean Murphy, NJSDA Managing Director of Procurement
Joseph Lucarelli, NJSDA Program Director
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