FINAL AGENCY DECISION

October 21, 2025

Via Email and Regular First Class Mail

Mr. Mark D. Hall, President
Hall Construction Co., Inc.
1720 Route 34
P.O. Box 1448
Wall, New Jersey 07719

Re: Bridgeton High School Additions and Renovations – Design Build
NJSDA Contract No. ST-0047-B01
Protest By Hall Construction Co., Inc.

Dear Mr. Hall:

The New Jersey Schools Development Authority ("NJSDA") is in receipt of your September 15, 2025 protest letter on behalf of Hall Construction Co., Inc, ("Hall") relating to the above-referenced procurement for Design-Build services for the High School Additions and Renovation project in Bridgeton, New Jersey (the "Procurement"). Generally, Hall's protest challenges an award to the presumptive successful bidder, Ernest Bock & Sons, Inc. ("Bock") and further seeks the rejection of bids submitted by Epic Management, Inc. ("Epic"), Rycon Construction, Inc. ("Rycon") and Daniel J. Keating Company ("Keating"). This letter is the NJSDA's formal response and final agency decision on Hall's bid protest.

In evaluating Hall's bid protest, the NJSDA has reviewed and considered the following: your September 15, 2025 correspondence, with attachments; September 23, 2025 correspondence from Nikolay O. Assenov of Epic; September 23, 2025 correspondence, with attachments, from John F, Palladino, Esq. on behalf of Bock; September 25, 2025 correspondence, with attachment, from Mr. Palladino; September 29, 2025 correspondence, with attachments, from Robert T. Lawless, Esq. on behalf of Hall; September 29, 2025 electronic correspondence from Mr. Palladino; October 3, 2025 correspondence from Mr. Lawless; October 6, 2025 correspondence from Mr. Palladino, with attachment, and separate electronic correspondence of even date; subsequent October 6, 2025 electronic correspondence from Mr. Lawless; October 9, 2025 electronic correspondence, with attachments, from Mr. Palladino; October 14, 2025 correspondence, with attachment, from Mr. Lawless; two successive October 14, 2025 emails from Mr. Palladino; electronic correspondence to Hall, Bock, Epic, Rycon, and Keating from Sean Murphy, SDA Managing Director of Procurement, relating to the instant bid protest, dated September 16, 2025, September 18, 2025, September 24, 2025, October 6, 2025 and October 7, 2025; the May 16, 2025 advertisement for bids (hereinafter, the "Advertisement"); the Request for Proposals, last revised May 16, 2025 ("RFP"); Addenda Nos. 1 through 4 to the RFP, dated July 8, 2025, July 17, 2025, July 31, 2025, and August 8, 2025, respectively; the Information Package made available through a controlled-access website by the NJSDA to all bidders, including without limitation the project plans and Specifications; and the Project Rating Proposals (and NJSDA Project Rating Proposal Evaluation Worksheets), Technical

Proposals, Price Proposals and accompanying documentation submitted by all bidders in connection with the Procurement.

No submissions in response to Hall's protest were received from Rycon or Keating.

Brief Overview of the Procurement Process

The Procurement was advertised on May 16, 2025. 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 June 2, 2025. Furthermore, all interested bidders were required to attend a mandatory pre-bid site visit on June 5, 2025. Four (4) addenda were issued thereafter. On or before August 26, 2025, interested bidders submitted Technical Proposals, electronic Price Proposals through the BidExpress platform, and other documentation in accordance with the requirements of the Advertisement and RFP, as modified by addenda.

The Procurement was structured such that Technical Proposals consisted of two separate portions – a portion addressing Experience Criteria and a portion addressing Project Approach Criteria. Experience Criteria were evaluated by a panel of Standing Evaluation Committee members to determine whether each interested bidder had demonstrated sufficient experience in each of the Experience Criteria categories to be considered for an award of the Design-Build Services Contract. All bidders submitting Technical Proposals were determined to have demonstrated such experience.

Project Approach Criteria were evaluated and scored by a Procurement-specific Selection Committee consisting of six (6) members (including one (1) Bridgeton School District representative) through the evaluation of responsive Technical Proposals addressing the Project Approach Criteria and interviews conducted on September 8, 2025 for the purpose of clarifying the information contained in the Technical Proposals.

Raw scores of each of the Selection Committee members in each of the Project Approach Criteria categories were multiplied by an assigned weighting factor, then aggregated and averaged to arrive at a final non-price score for each Technical Proposal. Under this Procurement, price is assigned a weighting factor of 60% and non-price or "other" factors are assigned a combined weight of 40%.

The final non-price scores of the bidders from highest to lowest were as follows: Bock (top ranked); Rycon (second ranked); Epic (third ranked); Hall (fourth ranked); Dobco, Inc. (fifth ranked); and Keating (sixth ranked).

A total of six (6) Price Proposals were received. The Price Proposals were publicly opened on September 10, 2025. The final price scores of the bidders from highest to lowest were as follows: Bock, with a bid of $72,500,000.00 (first ranked); Epic, with a bid of $74,332,928.00 (second ranked); Hall, with a bid of $80,975,000.00 (third ranked); Keating, with a bid of $81,415,000.00 (fourth ranked); Dobco, Inc., with a bid of $82,645,000.00 (fifth ranked); and Rycon, with a bid of $83,550,000.00 (sixth ranked).

Price and non-price scores for each bidder were then weighted and tabulated to arrive at a final ranking of the bidders. Bock received a final rank of 1; Epic received a final rank of 2; Rycon received a final rank of 3; Hall received a final rank of 4; Keating received a final rank of 5; and Dobco received a final rank of 6.

Hall's Bid Protest

Generally, Hall contends that the bids submitted by Bock, Epic, Rycon and Keating should be rejected because the electrical subcontractor named by those firms (Lee-Way Electrical, LLC (hereinafter "Lee-Way")) will purportedly exceed its Aggregate Rating. The various contentions set forth by Hall in its Protest, and the rebuttals thereto from Bock and Epic are summarized below.

As part of its Price Proposal, Bock submitted an Uncompleted Contracts form for Lee-Way, in which Lee-Way stated that the amount of its uncompleted contracts was $8,792,602.72. As part of this form, Lee-Way certified that, "the amount of [its] bid proposal, including the amount listed above does not exceed [its] New Jersey Schools Development Authority, Aggregate Rating limit." At the time of Bock's bid submission, Lee-Way's DPMC and NJSDA Aggregate Rating limit was $15,000,000.00. Thus, the maximum amount of any subcontract to Lee-Way in connection with the Procurement would have to be $6,207,397.28 or less.

Hall contends that if Bock (or for that matter, Epic, Rycon or Keating) were to be awarded the contract for this Procurement, Lee-Way will impermissibly exceed its Aggregate Rating limit, thereby requiring the rejection of the bids from those firms that named Lee-Way as its electrical subcontractor. Hall's contention is based on it too having received a proposal from Lee-Way to serve as Hall's named electrical subcontractor for the Procurement. Hall states that it received a written quote dated August 25, 2025 (a copy of which is attached to Hall's September 15, 2025 initial protest letter), in which Lee-Way quoted an amount of $10,300,000.00. It is not disputed that this amount when added to the value of uncompleted contracts set forth in Lee-Way's Uncompleted Contracts form would exceed Lee-Way's Aggregate Rating limit. Hall indicates that upon receiving the written quote from Lee-Way, it pointed out the Aggregate Rating limit exceedance to Leeway. Mr. Hall states that Lee-Way responded "[w]e'll find a way to make it work." In any event, Hall elected to name a different electrical subcontractor in its bid for the Procurement.

In its submissions, Bock concedes that it also received a written estimate from Lee-Way in the amount of $10,600,000.00 (in contrast with the $10,300,000 quote submitted by Lee-Way to Hall). <u>See</u> Certification of Anthony DePascale, Exhibit A, submitted with the September 25, 2025 submission by Mr. Palladino (hereinafter "DePascale Cert."). Bock further represents that, upon receipt of the Lee-Way estimate, it was aware that the quote exceeded Lee-Way's Aggregate Rating limit. DePascale Cert., ¶4. However, based on a prior SDA Final Agency Decision, affirmed by the Appellate Division in an unpublished decision[1], Bock reached out to Lee-Way prior to submitting Bock's bid. DePascale Cert., ¶¶10-11. At an unspecified time thereafter, Mr. DePascale states that Bock and Lee-Way reached agreement that Bock would "buy out the materials and equipment" and that by doing so, Bock could keep Lee-Way "well within" its Aggregate Rating limit. DePascale Cert., ¶12. Mr. DePascale further certified that "subject to an award from the SDA, Bock and Leeway [sic.] have agreed to a contract price of $6,150,000.00, which eliminates any issue with Leeway's [sic.] aggregate." DePascale Cert, ¶13. Bock did not provide any revised pre-

[1] <u>Epic Management v. New Jersey Schools Development Authority, et al.</u>, A3818-16T3, 2018 WL 3446735 (App. Div. July 18, 2018).

bid opening estimate reflecting the $6,150,000 amount, but did submit an executed Purchase Order between Bock and Lee-Way for this amount, dated October 3, 2025 (i.e. post bid opening and subsequent to the initiation of the instant Bid Protest).

On October 7, 2025, the NJSDA sought clarification of certain of the factual averments in Mr. DePascale's Certification, including the following:

> [T]he NJSDA requests that Bock provide in its resubmitted Certification by Mr. DePascale and, if required, in any additional affidavits or certifications in lieu of oath by such other person or persons who have personal and direct knowledge, further information regarding the details and timing of the matters set forth in Paragraphs 4 and 11 through 13 of the [DePascale Cert.]. Specifically, the NJSDA seeks clarifying information regarding (1) the nature and content of the communications that led to the agreements described (including whether they were oral or in writing), (2) the representatives of Bock and Leeway Electrical LLC who engaged in such communications, and (3) the timing of such communications (including, but not limited to, whether any such communications and/or agreements reached occurred before or after Bock's submission of its Technical Proposals and Price Proposal).

In response, on October 9, 2025, Bock provided a revised Certification from Mr. DePascale and additional Certifications from Heather Cahill, Vice President of Estimating for Bock, and Wayne Owsley, the owner of Lee-Way. None of these submissions clarified whether the agreement between Bock and Lee-Way that Bock would purchase materials and equipment required to perform the electrical work and thereby keep Lee-Way within its Aggregate Rating limit occurred before the submission of Bock's bid. Similarly, none of the submissions clarified whether the understanding between Bock and Lee-Way that the subcontract amount would be $6,150,000 was reached before the submission of Bock's bid.

In its response to Hall's protest, Epic states that Hall's contention that Lee-Way will exceed its Aggregate Rating limit is speculative and based only on the estimate Hall received from Lee-Way. Epic further states that the proposal it received from Lee-Way is "incorrect" and that it can "readily confirm" that Lee-Way's bid to Epic for Electrical Work does not cause Lee-Way to exceed their available DPMC limit. Despite the NJSDA's request for such confirmatory information, however, no further submissions or documentation were received from Epic.[2]

<u>Analysis of Hall's Bid Protest</u>

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). Furthermore, N.J.S.A. 18A:7G-37(c) provides that "[t]he 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

[2] Neither Rycon nor Keating tendered any written submissions in connection with this protest.

does not exceed the firm's existing aggregate rating limit." These statutory requirements are also reflected in the NJSDA's bidding regulations. See 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.

Section 2.2C of the RFP for this Procurement also sets forth these requirements:

> A Design-Builder shall not submit a Price Proposal that, excluding amounts for design, exceeds its Project Rating Limit. A Design-Builder shall not submit a Price Proposal that, when added to the amount listed on its Uncompleted Contracts Form, exceeds its Aggregate Limit, excluding amounts for design services. A Design-Builder shall not submit a Price Proposal that causes any one of the Subcontractors required to be named under Section 2.1D, Subcontractors Required by Identification in Advertisement and Statutorily-Named Subcontractor Requirements herein, to exceed that Subcontractor's Aggregate Limit.

Hall's bid protest calls into question the accuracy of the Uncompleted Contracts certification provided by Lee-Way and included with the bid submissions of Bock and three other bidders. While Hall's September 15, 2025 protest letter exclusively relied upon submissions made to Hall by Lee-Way, it nonetheless raised legitimate concerns that, on the day that bids were due, Lee-Way estimated that its provision of the materials, equipment and work required to complete the electrical component of the project had a value of $10,300,000. Since, based upon its Uncompleted Contracts certification provided to Hall, Bock, Epic, Rycon and Keating, Lee-Way's subcontract to perform electrical work could not exceed $6,207,397.28, the NJSDA appropriately sought clarification from the various bidders to determine the responsiveness and validity of their bids. Pursuant to Section 7 of the RFP, "prior to determination of the successful Design-Builder, the NJSDA may request . . . [a]ny clarifying documentation that may be deemed necessary to proceed with award."[3]

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[3] In Matter of Protest of the Award of the On-Line Games Production and Operation Services Contract, Bid. No. 95-X-20175, 279 N.J. Super. 566, 597 (App. Div. 1995), the Appellate Division held that when "clarifying or elaborating on a proposal, a bidder explains or amplifies what is already there. In supplementing, changing or correcting a proposal, the bidder alters what is there." Under the circumstances presented under this protest, the NJSDA solicited submissions from Bock, Epic, Rycon and Keating to clarify their bid submissions in light of Hall's argument that their bids are materially defective. As such, submissions received from these bidders are appropriately considered to the extent that they clarify and elaborate upon the content already contained in their bid submissions.

With its submissions in response to Hall's protest, Bock provided an August 25, 2025 written quote that it received from Lee-Way on August 26, 2025 -- the date bids were required to be submitted for the Procurement. This quote valued the materials, equipment and work required to complete the electrical component of the project at $10,600,000. Bock contends that, notwithstanding this written quote, it subsequently reached an understanding with Lee-Way that Lee-Way's prospective subcontract with Bock would exclude the costs to provide materials and equipment and thereby not cause an exceedance of Lee-Way's Aggregate Rating limit.

Both Bock and Hall have cited to the Appellate Division's unreported decision in Epic Management, Inc. v. New Jersey Schools Development Authority, A3818-16T3, 2018 WL 3446735 (App. Div. July 18, 2018) which affirmed the NJSDA's Final Agency Decision in connection with the Millville High School Design-Build procurement. In Epic Management, the Appellate Division found that a subcontract for electrical work need not include in its scope the provision of and associated costs associated with the provision of materials and equipment required to perform the electrical work. Epic Management, 2018 WL 3446735, at *2-4. Unlike the facts presented in the present protest by Hall, in Epic Management, a written quote by the electrical subcontractor documenting the exclusion of materials and equipment from the electrical subcontractor's bid was submitted to and received by the successful Design-Build bidder prior to the submission of its bid to the NJSDA. Epic Management, 2018 WL 3446735, at *1. See also NJSDA Final Agency Decision, dated April 27, 2017, at page 4, annexed to Bock's September 23, 2025 and September 25, 2025 submissions.

Bock contends that there is no statutory or other legal requirement that it obtain a pre-bid price quote from its subcontractors. Leaving aside for the moment that Bock did receive a pre-bid price quote from Lee-Way, Bock cites to the following dicta in the Epic Management decision:

> That said, N.J.S.A. 18A:18A-18(b) does not require the submission of a pre-bid quote from a subcontractor before awarding a contract to a contractor. While there is no obligation to submit such a quote, a contactor may not execute a contract with a public entity that will place it over that limit, and a public entity is not authorized to execute that contract. Brockwell & Carrington [Contractors, Inc. v. Kearny Board of Education], 420 N.J. Super [273], at 282 [App. Div 2022]. Thus, if [the electrical subcontractor's] quote put it over its $15 million limit, it would be a material breach of the bid specifications.

Epic Management, 2018 WL 3446735, at *4. See also Clyde N. Lattimer & Son Construction Co. v. Township of Monroe Utilities Authority, 370 N.J. Super, 130, 137 (App. Div. 2004)(similar commentary with respect to N.J.S.A. 40A:11-16); T.N. Ward, Inc. v. South Jersey Transportation Authority, A3900-09T4, 2010 WL 5376321, at *8-9 (App. Div. October 26, 2010)(similar commentary regarding N.J.S.A. 52:32-20).

The operative statute governing this procurement is N.J.S.A. 52:18A-243 (not N.J.S.A. 18A:18A-18(b) as stated in the Epic Management dicta). Like, N.J.S.A. 18A:18A-18(b), however, N.J.S.A. 52:18A-243 requires only "that there shall be set forth in the bid the name or names of all subcontractors to whom the bidder will subcontract for the furnishing of any of the work and materials specified in [the] branches [of plumbing, HVAC, structural steel and electrical work]." The statute does not require the provision of pre-bid written price quotes from the named subcontractors.

While the case law relied upon by Bock stands for the proposition that a pre-bid price quote from a named subcontractor is not required, it also recognizes that when a pre-bid price quote is received from a named subcontractor and the amount of that quote would cause the subcontractor to exceed its Aggregate Rating limit, the bid of the bidder naming such a subcontractor must be rejected. See Epic Management, 2018 WL 3446735, at *3 ("[s]ignificantly, it is a material, non-waivable defect of a bid for a contractor to name a subcontractor who is not qualified by reason of failure to comply with its aggregate rating limit.").

Lee-Way did, in fact, provide a $10.6 million pre-bid quote to Bock. In the absence of competent evidence to the contrary as to the amount of Lee-Way's bid, the written price quote would control on the issue of the amount of Lee-Way's bid. What Bock has undertaken to show through its submissions is that, through subsequent communications with Lee-Way, the amount of Lee-Way's bid was reduced to an amount that was $6,207,397.28 or less.

In this respect, the NJSDA does not require that Bock show that the amount of Lee-Way's adjusted bid has been set forth in a formal written quote or that the precise amount of the prospective subcontract must have been finally ascertained. The NJSDA does find, however, that there must have been an understanding reached prior to the submission of the Design-Build bidder's bid that the amount of Lee-Way's bid added to the value of Lee-Way's uncompleted contracts at the time of bid would not cause Lee-Way to exceed its Aggregate Rating limit. Despite having been asked to do so, Bock has failed to provide evidence that such an understanding was reached with Lee-Way prior to the submission of Bock's bid on the Procurement.

N.J.S.A. 18A:7G-37(c) requires "that a principal owner or officer of the [subcontractor] 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). At a minimum, this statute anticipates that the amount of Lee-Way's bid proposal must have been ascertained by the time of the submission of the Design-Build bidder's bid.

Bock's submissions indicate only that Bock identified that Lee-Way's quote would cause an exceedance of its Aggregate Rating and that outreach was made to Lee-Way prior to the submission of Lee-Way's bid. DePascale Cert., ¶¶10. Despite NJSDA's requests for clarification, the several Certifications provided by Bock omit any averments that agreements were reached between Lee-Way and Bock prior to the submission of Bock's bid on the Procurement (1) "that Bock would buy out the materials and equipment and that by doing so, we could keep Leeway [sic.] within it's [sic.] aggregate" or (2) that the subcontract price would be $6,150,000. DePascale Cert., ¶¶11-13 and Certifications of Anthony DePascale, Heather Cahill and Wayne Owsley submitted on October 9, 2025.

In its September 29, 2025 submission, Bock argues that "[b]idders don't need to so much as talk to named subcontractors until after an award is made." The NJSDA respectfully disagrees. For the certification required under N.J.S.A. 18A:7G-37(c) to have any meaning, there must be some understanding between the bidder and its named subcontractor as to the amount of the prospective subcontractor's bid. Absent such an understanding, the subcontractor's pre-bid certification that "the amount of [its] bid proposal, including the amount [of its uncompleted contracts] does not exceed [its] New Jersey Schools Development Authority, Aggregate Rating limit" would be without meaning and, in effect, a legal nullity.

In Seacoast Builders Corp. v. Jackson Township Board of Education, 363 N.J. Super 373 (App Div 2003), the Appellate Division, interpreting the requirements of N.J.A.C. 17:19-2.13 -- DPMC's regulation requiring Uncompleted Contracts certifications, held "[w]e are satisfied, therefore, that the plain intent of the regulation was to insure the bidder's financial responsibility to undertake the work by requiring aggregate-rating compliance both when the bid is submitted and when the contract is awarded." Seacoast Builders, 363 N.J. Super. at 378. See also Dobco, Inc. v. Brockwell & Carrington Contractors, Inc., 441 N.J. Super.148, 163-64 (L. Div. 2015)(subcontractor must be under its Aggregate Rating limit as of the bid due date); Barrick v. State of New Jersey, 218 N.J. 247, 261-62 (App. Div. 2014)("the moment that bids are opened is decisive for determining whether bids are responsive").

On October 6, 2025, Bock submitted a Purchase Order, dated October 3, 2025, between Bock and Lee-Way purporting to document their agreement that Bock would purchase required materials and equipment and that Lee-Way would provide all electrical work for the project at an anticipated subcontract amount of $6,150,000. Bock submits that this document provides the NJSDA with the assurance that the ultimate subcontract amount will not cause Lee-Way to exceed its Aggregate Rating limit.

Bock's submission of the post-bid, post-protest October 3, 2025 Purchase Order does nothing to clarify whether there was a pre-bid adjustment to the amount of Lee-Way's bid from the quoted $10.6 million figure to a bid amount that was $6,207,397.28 or less. At best, the Purchase Order serves to document a post-bid, post protest understanding regarding the prospective subcontract amount. At worst, the Purchase Order could be viewed as a post-bid effort to supplement Bock's bid proposal. Such supplementation is not permissible. See On-Line Games, 279 N.J. Super. at 597 (post-bid supplementation of, changes to or corrections of a bid proposal are not allowed); see also Brockwell & Carrington, 420 N.J. Super. at 282 ("'permitting a post-bid cure under these circumstances would afford [the bidder] an unfair advantage'")(quoting the trial court decision).

Under the facts presented on this protest, Bock has failed to provide proofs to clarify that Lee-Way's $10.6 million written quote to Bock was modified prior to Bock's bid submission to an amount that would not cause an exceedance of Lee-Way's Aggregate Rating limit. Submitted evidence of post-bid agreements to lock-in a subcontract price that did not cause an exceedance cannot be accepted to cure or correct a pre-bid deficiency. To allow such a cure or correction would give Bock an unfair advantage over other bidders.

With respect to the remaining bidders that named Lee-Way as the electrical subcontractor in their proposals, despite each firm having been given the same opportunity to provide meaningful clarification that the Lee-Way bid received by them for performance of the electrical component of the project would not cause Lee-Way to exceed its Aggregate Rating limit, Epic, Rycon and Keating have failed to do so.

For the foregoing reasons, the NJSDA finds that Hall's challenge to the validity and responsiveness of the bids submitted by Bock, Epic, Rycon and Keating has merit and is sustainable. Accordingly, for the reasons hereinafter articulated, the NJSDA has determined, in its discretion and in the public interest, to cancel the Procurement and to rebid the project.

NJSDA's Determination to Cancel the Procurement in the Public Interest

Pursuant to N.J.A.C. 19:38B-2.3(b), the NJSDA has the right to cancel the Procurement. Specifically,

> The Authority may reject any proposal for any reason, in accordance with law, when it is otherwise deemed to be in the interest of the State or the public interest to do so. The Authority may reject all proposals for excessive cost, insufficient competition, or any other reason, in accordance with law, that it determines to be in the interest of the State or the public interest.

Similarly, the RFP provides that

> The NJSDA has no obligation to make an award and reserves the right to waive any non-material defects, reject any or all proposals for any reason in accordance with law, and/or terminate the selection process at any time.

The NJSDA has broad discretion to cancel a procurement and rebid, provided that its decision to do so is in the public interest. See, e.g. Commercial Cleaning Corp. v. Sullivan, 47 N.J. 539, 549 (1966)(public agency has authority to reject any or all bids if this is in the public interest); George Harms Construction Co., Inc. v. Borough of Lincoln Park, 161 N.J. Super. 367, 379-80 (L. Div. 1978)(municipality has discretion to reject all bids and not award to the next responsive bidder at an additional $200,000 expenditure of public monies); and Meadowbrook Carting Co., Inc v. Borough of Island Heights, 138 N.J. 307, 325 (1994)(holding that all bids are to be rejected and the contract readvertised and noting that the next responsive bidder's bid was more than $100,000 higher than the challenged bid).

The NJSDA has determined that its is in the public interest for the Procurement to be canceled and for the Design-Build contract to be re-bid for the following reasons:

1. Hall is the third lowest price bidder, with a bid that is $8,475,000 and nearly twelve percent (12%) higher than Bock's bid.

2. Hall ranked fourth among six bidders in the scoring of its technical proposal on its approach to delivery of the project.

3. In rejecting the bids of 4 out of 6 of the bidders and awarding to Hall, the NJSDA would be denied the benefit of a robust and competitive bidding process, thereby undermining the overall integrity of the Procurement and the NJSDA's ability to obtain the most advantageous contract in terms of both price and other factors.

4. Were the NJSDA to reject Bock's bid, together with those of Epic, Rycon and Keating, and then award to Hall, there is the likelihood of a lengthy appeal process that could impair and delay the NJSDA's ability to deliver the school facilities project by a full year or more.

5. Re-bidding will ensure fair and transparent competition, safeguard public funds, and serve to maintain the integrity of the procurement process.

Hall's Request for a Hearing

Hall has requested that the NJSDA afford it the benefit of a plenary hearing at which it could "question both Bock and Lee-Way and demand that they bring to such a hearing all documentary proof supporting the position Bock now espouses."

The decision on whether an informal hearing will be held is in the sole discretion of the NJSDA. "Informal hearings are for fact-finding purposes for the benefit of the Authority and the Authority shall have the sole discretion as to whether to hold an informal hearing." N.J.A.C. 19:36-7.3 and 19:38B-9.3.

Because the NJSDA already has received sufficient information and documentation to render a decision in this matter and because it has found that Hall's position regarding the deficiencies in the bids of Bock and the other challenged bidders is sustainable, the NJSDA finds, in its discretion, that a hearing is neither needed nor required.

Conclusion

For the foregoing reasons, the NJSDA finds that Hall's challenges to the bids of Bock, Epic, Rycon and Keating as materially defective are sustainable. Accordingly, as detailed hereinabove, the NJSDA has determined, in its discretion, in accordance with the terms of the RFP, its regulations and other applicable law, and in the public interest, to cancel the Procurement and to re-bid the Design-Build contract for the Bridgeton High School Additions and Renovations project.

This is a Final Agency Decision.

Sincerely,

Laurette J. Pitts

Laurette J. Pitts
Vice President and Chief Financial Officer

cc: Robert T. Lawless, Esquire (Counsel for Hall Construction Co., Inc.)(via email and First Class Mail)
John F. Palladino, Esquire (Counsel for Ernest Bock & Sons, Inc.)(via email and First Class Mail)
Nikolay O. Assenov, Chief Estimator & Purchasing Director (Epic Management, Inc.) (via email and First Class Mail)
Pierce Keating Jr., President (Daniel J. Keating Company) (via email and First Class Mail)
Matt Pentz, Executive Vice President (Rycon Construction, Inc.) (via email and First Class Mail)
Manuel M. Da Silva, NJSDA Chief Executive Officer (via email only)
Ramy Kamel, NJSDA Vice President – Program and Construction Operations (via email only)
Janice Venables, NJSDA Vice President, Corporate Governance (via email only)
Sean Murphy, NJSDA Managing Director of Procurement (via email only)

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