

FOGARTY & HARA  
COUNSELLORS AT LAW

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JANE GALLINA MECCA  
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STACEY THERESE CHERRY  
AMY E. CANNING  
GEOFFREY M. SWEENEY  
NICHOLAS A. SOTO  
STEVEN R. NEVOLIS

21-00 ROUTE 208 SOUTH  
FAIR LAWN, NEW JERSEY 07410

(201) 791-3340  
TELECOPIER (201) 791-3432

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April 24, 2012

**Via E-Mail**

Ms. Steffi-Jo DeCasas  
Board Secretary/School Business Administrator  
Readington Township Board of Education  
Hollandbrook School  
52 Readington Road  
P.O. Box 807  
Whitehouse Station, New Jersey 08889

Re: Roof Replacement at Three Bridges, Whitehouse and  
Readington Middle Schools  
Our File No. 152

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Dear Ms. DeCasas:

Pursuant to your request, we reviewed the three (3) lowest bids the Board received in connection with the above-referenced project. For the reasons expressed below, it is our opinion that the bid submitted by the putative low bidder, Arch Concept Construction, Inc. (hereinafter referred to as "Arch"), is materially defective. As such, the lowest responsible bid for this Project was submitted by Northeast Roof Maintenance, Inc. (hereinafter referred to as "Northeast").

We understand that the bids were opened on April 15, 2014. At that time, Arch submitted with its bid, on behalf of its electrical subcontractor, an expired Notice of Classification issued by the New Jersey Department of the Treasury, Division of Property Management and Construction (hereinafter referred to as "NJDPMC") and an expired Notice of Prequalification issued by the New Jersey Schools Development Authority (hereinafter referred to as "SDA"). As a general rule, the bidder and all

subcontractors required to be named in the specifications must be properly qualified at the time the bid is submitted. N.J.A.C. 17:19-2(a). Nevertheless, when the DPMC renews an application, it is typically renewed retroactively to the expiration date. However, you were advised by the DPMC that the subcontractor's information was deficient and that the effective date of its prequalification will be the date it cures all deficiencies. Therefore, it is our opinion, that the subcontractor was not properly prequalified on the date of the bid opening and, therefore, the bid is deficient.

In determining whether the defect is material and nonwaivable under the analysis set forth in  Tp. of River Vale v. R.J. Longo Construction Co., 127 N.J. Super. 207 (Law Div. 1974) and its progeny, we conclude that the defect is material as it would prevent the Board from entering into a contract in accordance with the specifications. We have been involved in litigation involving similar issues, where we successfully argued that the failure of a bidder to list and provide documentation for the requisite subcontractors is not a waivable infirmity, but goes to the bidder's very "ability to perform the work required [which] is of the very essence of any contract for public work."  Bill Jim v. Manchester Twp. Bd. of Ed., 236 N.J. Super. 603, 605 (Law Div., 1989) (holding that "pre-qualification serves to protect a vital and valid public interest" and that "contract specifications requiring prequalification of bidders are designed to assure that only those bidders who have the ability to perform the work may be awarded the contract").

Based upon the foregoing, it is our opinion that the bid submitted by Arch is materially defective, in that it does not comply with the requirement to name a properly prequalified subcontractor in the electrical trade, as the subcontractor proposed by Arch was not prequalified on the date of the bid opening. This requirement is mandated by applicable law. Therefore, we recommend the rejection of the bid submitted by Arch and the award of the bids to the second low bidder, Northeast Roof Maintenance, Inc., with a base bid for the Overall Contract (OV-1) in the amount of \$908,000, together with Alternate Bid 1 in the amount of \$95,000, for a total contract sum of \$1,003,000, which bid is the lowest responsible bid for the Project. For your convenience, we have prepared the enclosed

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resolution consistent with this opinion. Assuming the resolution is adopted by the Board, kindly provide us with a conformed copy in order for us to prepare the contract. Since the Project is being funded in part by a ROD grant, it is our understanding that the contract cannot be awarded until the Board receives a fully executed grant agreement from the New Jersey Schools Development Authority. However, you should confer with the SDA grant analyst to determine whether an award is feasible at this time.

If you have any questions, of course, do not hesitate to contact us.

With kind regards, we are

Very truly yours,

FOGARTY & HARA

By: Jane Gallina Mecca/lr/  
Jane Gallina Mecca

JGM:lr

Enclosure

cc: Dr. Barbara Sargent (via e-mail)  
Superintendent of Schools  
Scott E. Mihalick, AIA, LEED AP (via e-mail)  
SSP Architectural Group, Inc.