

SUSPENSION

ZDARSKY, SAWICKI & AGOSTINELLI LLP

ATTORNEYS AT LAW

1600 MAIN PLACE TOWER

350 MAIN STREET

BUFFALO, NEW YORK 14202

716-855-3200

JOSEPH E. ZDARSKY
GUY J. AGOSTINELLI
GERALD T. WALSH
MARK J. SCHLANT
PATRICK A. DUDLEY
THOMAS P. FITCH
DAVID E. GUTOWSKI
DANIEL J. BOBBETT

OF COUNSEL
K. MICHAEL SAWICKI

FAX: 716-855-3101
(NOT FOR SERVICE OF PAPERS)

June 22, 2016

VIA HAND DELIVERY

TO: Hon. Barbara Miller-Williams
Hon. Betty Jean Grant
Hon. Peter J. Savage, III
Hon. Kevin R. Hardwick
Hon. Thomas A. Loughran
Hon. Edward A. Rath, III
Hon. Patrick B. Burke
Hon. Ted B. Morton
Hon. Lynne M. Dixon
Hon. Joseph C. Lorigo
Hon. John J. Mills

Edward A. Rath Building
95 Franklin Street
Buffalo, New York 14202

Re: Project Name: Erie Community College Science Technology Engineering and
Math (STEM) Building

Project Number: ECDPW Project No. EG-14-19

Disqualification of Bid of Scrufari Construction Company, Inc.

Dear Hon. Members of the Erie County Legislature:

This firm represents LPCiminelli, Inc. ("LPCiminelli").

We understand that that you are voting on Thursday, June 23, 2016, with respect to the award of a contract to Scrufari Construction Company, Inc. ("Scrufari") with respect to the above project as the apparent low bidder.

Please be advised that LPCiminelli has formally objected to the award of a contract to Scrufari. Scrufari's bid should have been disqualified because it failed to submit a properly executed Minority/Women Business Enterprise Utilization Report with its bid proposal at the time of the bid. In fact, Scrufari completely ignored this important and material requirement.

Comm. 12M-6

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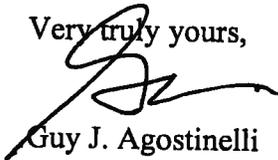
Hon. Barbara Miller-Williams et al
June 22, 2016
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We are enclosing a copy of our letter dated June 15, 2016 to John C. Loffredo, P.E., as Commissioner of Public Works which sets forth the basis for the disqualification of Scrufari's bid.

The contract for the above-referenced project should be awarded to LPCiminelli based upon its second low bid at the bid opening taking into account the alternates selected by the County. LPCiminelli fully complied with the bid specifications in submitting its bid including submission of an executed Minority/Women Business Enterprise Utilization Report with its bid proposal.

Thank you for your attention to this urgent matter.

Very truly yours,



Guy J. Agostinelli

GJA/wk
Enclosures

cc: Clerk, Erie County Legislature
John C. Loffredo, P. E., Commissioner of Public Works
Stefan I. Mychajliw, Erie County Comptroller
Michael A. Siragusa, Esq., Erie County Attorney
(each via hand delivery; with copies of enclosures)

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OF COUNSEL
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FAX: 716-855-3101
(NOT FOR SERVICE OF PAPERS)

June 15, 2016

VIA HAND DELIVERY

John C. Loffredo, P. E.
Commissioner of Public Works
Erie County Department of Public Works
95 Franklin Street, 14th Floor
Buffalo, New York 14202

Re: Project Name: Erie Community College Science Technology Engineering and
Math (STEM) Building

Project Number: ECDPW Project No. EG-14-19

Dear Mr. Loffredo:

This firm represents LPCiminelli, Inc. ("LPCiminelli").

Please be advised that LPCiminelli formally objects to what appear to have been improper and irregular proceedings in connection with the opening and reading of the sealed bids submitted for the above-referenced project. The bid opening was on June 7, 2016. For the reasons set forth below, LPCiminelli hereby formally demands that the bid of Scrufari Construction Company, Inc. ("Scrufari") be disqualified and that the contract for the above-referenced project be awarded to LPCiminelli based upon its second low bid at the bid opening taking into account the alternates selected by the County.

When Scrufari's bid was opened, it was immediately seen and discussed with those present at the bid opening that Scrufari had not complied with the requirements of the bid by submitting a properly executed Minority/Women Business Enterprise Utilization Report Part A with its bid proposal at the time of the bid. By failing to do so, Scrufari failed to comply with the requirements of Section 8.06 A.11 as modified by the Supplementary General Conditions for the Project. Copies of the pertinent section and the modification are enclosed. Based on that, Scrufari's bid was non-responsive and should have been rejected.

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John C. Loffredo, P. E.
Commissioner of Public Works
Erie County Department of Public Works
June 15, 2016
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In contrast, LPCiminelli fully complied with the bid specifications and submitted the required Part A. A copy of that submission is also enclosed. Examination of the LPCiminelli Part A indicates that significant work is required on a pre-bid basis to identify both minority and women owned enterprises that are to be utilized. A bidder who fails or chooses not to comply with this requirement has a distinct material advantage over other bidders. Among other things, a non-complying bidder does not have to plan for or take into account the bids of minority and women owned enterprises that submit bids as prospective subcontractors to the bidding contractors. A non-complying bidder can simply examine the bids of other bidders and their completed Part A and contact minority and business owned enterprises desirous of performing subcontract work for the project. The non-complying bidder has the ability to pick and choose among all such prospective minority and women owned enterprises on an "after the fact" basis with knowledge that it is the apparent low bidder and with the ability to negotiate a better bid from such minority and women owned enterprises.

The failure of a bidder to fully complete and submit Part A as indicated above is no mere irregularity that can be properly waived by the County. This was a material requirement. All bidders need to be treated equally and fairly or the integrity of the bidding process is compromised. Completion of Part A was deemed essential by the County. This was required at the time of the bid so that all bidders would be on equal footing. Scrufari cannot be permitted to supply this information at a later time. Any waiver or purported waiver of this requirement would show favoritism to Scrufari.

Based upon the foregoing, LPCiminelli hereby demands that Scrufari's bid be disqualified and the contract for the above project awarded to LPCiminelli as the second low bidder and who submitted a bid in full compliance with the bid requirements.

Please be advised that we have been instructed by LPCiminelli to enforce the law and the public's interest in the competitive bidding process, including, if necessary commencing any necessary legal action.

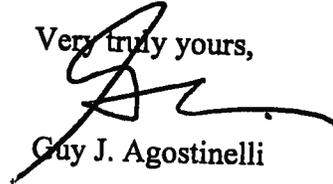
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ZDARSKY, SAWICKI & AGOSTINELLI LLP

John C. Loffredo, P. E.
Commissioner of Public Works
Erie County Department of Public Works
June 15, 2016
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Thank you for your attention to this urgent matter. We look forward to hearing from you promptly.

Very truly yours,

A handwritten signature in black ink, appearing to be 'G. Agostinelli', written over the typed name.

Guy J. Agostinelli

GJA/wk
Enclosures

cc: Stefan I. Mychajliw, Erie County Comptroller
Michael A. Siragusa, Esq., Erie County Attorney
(each via hand delivery; with copies of enclosures)

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COUNTY OF ERIE DEPARTMENT OF PUBLIC WORKS
OFFICE OF THE COMMISSIONER
PROJECT NO. DPW EG-14-19

- c. Owns or leases a warehouse, yard, building or other facility which is necessary and customary to carry out the purported function of the business; and
 - d. Distributes, delivers and services the supplies and/or materials with its' own staff.
8. Where an MBE or WBE performs a sales function, which is customarily performed as a distinct and necessary part of the supply process, a credit of twenty-five percent (25%) of the dollar value of the subcontract between the MBE or WBE, the Contractor will be awarded toward the fulfillment of the appropriate goal.
 9. Where the MBE or WBE performs a function or service which is commercially unnecessary, such as acting as a passive conduit in the supply process of duplicating a service provided by others in the same chain of supply from manufacturer to purchaser, no credit will be granted toward the appropriate goal.
 10. The qualifications set forth in subsections, above of this Action shall be certified by the Erie County Equal Employment Opportunity Office.
 - 11. The low bidder shall submit a properly executed Minority/Women Business Enterprise Utilization Report (Part A - Part D) within twenty-four (24) hours of the opening of bid proposals. *
 12. In the event of a joint venture participating in this MBE/WBE Program, the Joint Venture Disclosure Affidavit must be submitted with the Minority/Women Business Enterprise Utilization - Prime Contractor Affidavit. Only to the extent that a minority and/or women's business enterprise contributes to and is paid for its participation in a Joint Venture will that dollar amount be credited towards the 10% and/or 2% respectively goal of minority/women's participation in the County of Erie MBE/WBE Program.
 13. MBE's and WBE's must be certified before their participation may be credited toward the respective 10% and 2% goal. Where the proposed MBE and/or WBE are not certified by Erie County or the Erie County/City of Buffalo Joint Certification Committee, the appropriate Certification Disclosure Affidavit must be filed with the appropriate Erie County/City of Buffalo Department. Forms and lists of certified MBE's/WBE's may be obtained by calling 858-7542.
 14. Should a bidder conclude that they would be unable to satisfy the MBE/WBE goal, the bidder shall submit a properly executed Minority/Women Business Enterprise Utilization - Waiver Request Form with their bid proposal. Waivers shall be granted only where the availability of MBE's and/or WBE's in the market area of the project is less than the respective 10% and 2% goal.
 15. Sufficient information must be provided on the Minority and/or Women's Business Enterprise Utilization Waiver Request to ascertain whether a waiver should be approved, conditionally approved or rejected by the Department of Public Works on the advice of the MBE/WBE Office.
 16. A waiver approval limits the contractor's obligation to solicit MBE's and/or WBE's for a particular project only. It does not relieve the contractor of MBE/WBE utilization for any other County of Erie project on which he submits a bid.
 17. Conditional approval of the waiver request makes it necessary for the contractor to continue soliciting MBE's/WBE's for contracting purposes, after he has been declared the low bidder.
 18. A MBE/WBE Utilization Waiver Request will be rejected if the contractor:

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COUNTY OF ERIE DEPARTMENT OF PUBLIC WORKS
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SUPPLEMENTARY GENERAL CONDITIONS

The following supplements modify the "GENERAL CONDITIONS OF THE CONTRACT". Where a portion of the General Conditions is modified or deleted by these Supplementary General Conditions, the unaltered portions of the General Conditions shall remain in effect.

Item -1: SECTION 3 – RELATIONS AMONG OWNERS, CONTRACTOR AND ARCHITECT/ENGINEER

3.14 Delete and replace with the following: "3.14 OWNER'S RIGHT TO TERMINATE CONTRACT AND COMPLETE THE WORK

A. The County, upon ten (10) days notice to the Contractor, may terminate this Agreement in whole or in part when the County deems it to be in its best interest. In such event, the Contractor shall be compensated and the County shall be liable only for payment for services already rendered under this Agreement prior to the effective date of termination at the values established under the approved Schedule of Values. Upon receipt of notice that the County is terminating this Agreement in its best interests, the Contractor shall stop work immediately and incur no further costs in furtherance of this Agreement without the express approval of the Commissioner of Public Works, and the Contractor shall direct any approved sub contractor to do the same.

In the event of a dispute as to the value of the Work rendered by the Contractor prior to the date of termination, it is understood and agreed that the Commissioner shall determine the value of such work rendered by the contractor. The Contractor shall accept such reasonable and good faith determination as final.

B. In the event the County determines that there has been a material breach by the Contractor of any of the terms of the Agreement and such breach remains uncured for forty-eight (48) hours after service on the Contractor of written notice thereof, the County, in addition to any other right or remedy it might have, may terminate this Agreement and the County shall have the right, power and authority to complete the Work provided for in this Agreement, or contract for its completion, and any additional expense or cost of such completion shall be charged to and paid by the Contractor. Without limiting the foregoing, upon written notice to the Contractor, repeated breaches by the Contractor of duties or obligations under this Agreement shall be deemed a material breach of this Agreement justifying termination for cause hereunder without requirement for further opportunity to cure."

Item-2: SECTION 8 – WAGES AND LABOR CONDITIONS

→ **8.06. A. 11. Delete and replace with the following: "11. All bidders shall submit a properly executed Minority/Women Business Enterprise Utilization Report Part A with their bid proposal at the time of bid."**

Item-3: SECTION 8 – WAGES AND LABOR CONDITIONS

8.05. C. 1. Delete and replace with the following: "1. The U.S. Department of Labor – Office of Federal Contract Compliance has established a 6.9% goal for women in the area of construction. The goal for minority manpower utilization for the project is 13.2%"

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COUNTY OF ERIE DEPARTMENT OF PUBLIC WORKS
OFFICE OF THE COMMISSIONER
PROJECT NO. DPW EG-14-19

BID DATE: 6/1/2016
TODAY'S DATE: 6/1/2016

ERIE COUNTY MINORITY/WOMEN BUSINESS ENTERPRISE UTILIZATION REPORT - PART A

COMPANY: LPCiminelli, Inc.
 AUTHORIZED REPRESENTATIVE: Frank L. Ciminelli II
 ADDRESS: 2421 Main Street, Buffalo, NY 14214
 TELEPHONE NUMBER: 716-855-1200
 PROJECT NAME: ECC STEM Building - General Construction Bid Package (BP) 01
 PROJECT NUMBER: DPW EG-14-19

I. List actions taken to identify, solicit, and contact Minority Business Enterprise (MBE) & Women Business Enterprise (WBE) to bid on subcontracts for this project.

1. Sent out invites via ISqft
2. Posted job to the local Construction Exchange
3. Attended the MBE/WBE Outreach Event on 2/17/2016 at ECC hosted by Turner
4. Attended the Pre-Bid on 5/18/2016 and contacted relevant MWBE's to BP 01 after the meeting
5. _____
6. _____

II. List all bona-fide Minority/ Women Business Enterprise, sub-contractors, suppliers, professional personnel, solicited, contracted, or presently negotiating a contract in accordance with the minority business utilization goal set forth by the County of Erie.

MBE/WBE OWNED FIRMS		SUPPLY/ SERVICE	AMOUNT OF PROPOSAL	PRIOR CERTIFICATION	CONTRACT EXECUTED	REASON IF CONTRACT NOT AWARDED
NAME	<u>Upstate Steel, Inc.</u>	<u>Reinforcing Material</u>	<u>\$80,000</u>	<u>WBE</u>	<u>YES</u> _____	<u>Prime Contract Not Awarded</u>
ADDRESS	<u>1800 Dale Road</u>					
CITY, STATE	<u>Cheektowaga, NY 14225</u>					
TELEPHONE	<u>716-892-8434</u>				<u>NO</u> <u>X</u> _____	
IRS #	_____					

MBE/WBE OWNED FIRMS		SUPPLY/ SERVICE	AMOUNT OF PROPOSAL	PRIOR CERTIFICATION	CONTRACT EXECUTED	REASON IF CONTRACT NOT AWARDED
NAME	<u>G&J Contracting</u>	<u>Reinforcing Installation</u>	<u>\$40,000</u>	<u>MBE</u>	<u>YES</u> _____	<u>Prime Contract Not Awarded</u>
ADDRESS	<u>5140 Walmore Road</u>					
CITY, STATE	<u>Senborn, NY 14132</u>					
TELEPHONE	<u>716-297-0389</u>				<u>NO</u> <u>X</u> _____	
IRS #	_____					

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MBE/WBE OWNED FIRMS	SUPPLY/ SERVICE	AMOUNT OF PROPOSAL	PRIOR CERTIFICATION	CONTRACT EXECUTED	REASON IF CONTRACT NOT AWARDED
NAME <u>Iroquois Bar Corp</u>	Concrete Material	\$194,000	MBE	YES _____	Prime Contract Not Awarded
ADDRESS <u>155 Commerce Drive</u>					
CITY, STATE <u>Lackawanna, NY 14218</u>					
TELEPHONE <u>716-270-0433</u>					
IRS # _____					
				NO <input checked="" type="checkbox"/>	

MBE/WBE OWNED FIRMS	SUPPLY/ SERVICE	AMOUNT OF PROPOSAL	PRIOR CERTIFICATION	CONTRACT EXECUTED	REASON IF CONTRACT NOT AWARDED
NAME <u>FSR Contracting, Inc.</u>	Waterproofin g, joint sealing	\$30,000	WBE	YES _____	Prime Contract Not Awarded
ADDRESS <u>3737 Lakeshore Road</u>					
CITY, STATE <u>Bleedell, NY 14218</u>					
TELEPHONE <u>716-822-1200</u>					
IRS # _____					
				NO <input checked="" type="checkbox"/>	

MBE/WBE OWNED FIRMS	SUPPLY/ SERVICE	AMOUNT OF PROPOSAL	PRIOR CERTIFICATION	CONTRACT EXECUTED	REASON IF CONTRACT NOT AWARDED
NAME <u>G.P. Land & Carpet Corp</u>	Flooring	\$250,000	WBE	YES _____	Prime Contract Not Awarded
ADDRESS <u>5906 Lake Road South</u>					
CITY, STATE <u>Brockport, NY 14420</u>					
TELEPHONE <u>585-837-2828</u>					
IRS # _____					
				NO <input checked="" type="checkbox"/>	

III. Assistance offered by contractor to MBE's/WBE's as to bonding, union requirements obtaining work capital, etc.

SEE LAST PAGE

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MBE/WBE OWNED FIRMS	SUPPLY/ SERVICE	AMOUNT OF PROPOSAL	PRIOR CERTIFICATION	CONTRACT EXECUTED	REASON IF CONTRACT NOT AWARDED
NAME <u>Mark Cerrone Inc.</u>				YES _____	Prime Contract Not Awarded
ADDRESS <u>2368 Maryland Ave</u>					
CITY, STATE <u>Niagara Falls, NY 14308</u>	Sitework		WBE		
TELEPHONE <u>716-282-5244</u>				NO <input checked="" type="checkbox"/>	
IRS # _____					

MBE/WBE OWNED FIRMS	SUPPLY/ SERVICE	AMOUNT OF PROPOSAL	PRIOR CERTIFICATION	CONTRACT EXECUTED	REASON IF CONTRACT NOT AWARDED
NAME <u>Scott Lawn Yard Inc.</u>				YES _____	Prime Contract Not Awarded
ADDRESS <u>5552 Townline Road</u>					
CITY, STATE <u>Seneca, NY 14132</u>	Landscaping	\$150,000	WBE		
TELEPHONE <u>716-731-6415</u>				NO <input checked="" type="checkbox"/>	
IRS # _____					

MBE/WBE OWNED FIRMS	SUPPLY/ SERVICE	AMOUNT OF PROPOSAL	PRIOR CERTIFICATION	CONTRACT EXECUTED	REASON IF CONTRACT NOT AWARDED
NAME <u>B Pariso Transport Inc.</u>	Trucking and stone material			YES _____	Prime Contract Not Awarded
ADDRESS <u>2647 Whitehaven Road</u>					
CITY, STATE <u>Grand Island, NY 14072</u>		\$125,000	WBE		
TELEPHONE <u>716-731-6415</u>				NO <input checked="" type="checkbox"/>	
IRS # _____					

III. Assistance offered by contractor to MBE's/WBE's as to bonding, union requirements obtaining work capital, etc.

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MBE/WBE OWNED FIRMS		SUPPLY/ SERVICE	AMOUNT OF PROPOSAL	PRIOR CERTIFICATION	CONTRACT EXECUTED	REASON IF CONTRACT NOT AWARDED
NAME	<u>Buffalo Xerographix Inc.</u>				YES _____	Prime Contract Not Awarded
ADDRESS	<u>33 Pauquet Parkway</u>					
CITY, STATE	<u>Tonawanda, NY 14150</u>	Printer rental	\$5,000	MBE		
TELEPHONE	<u>716-893-0343</u>				NO <input checked="" type="checkbox"/>	
IRS #	_____					

MBE/WBE OWNED FIRMS		SUPPLY/ SERVICE	AMOUNT OF PROPOSAL	PRIOR CERTIFICATION	CONTRACT EXECUTED	REASON IF CONTRACT NOT AWARDED
NAME	<u>Rodriguez Construction Group</u>	Dumpster rental			YES _____	Prime Contract Not Awarded
ADDRESS	<u>522 Taunton Place</u>					
CITY, STATE	<u>Buffalo, NY 14218</u>		\$50,000	MBE		
TELEPHONE	<u>716-464-3267</u>				NO <input checked="" type="checkbox"/>	
IRS #	_____					

MBE/WBE OWNED FIRMS		SUPPLY/ SERVICE	AMOUNT OF PROPOSAL	PRIOR CERTIFICATION	CONTRACT EXECUTED	REASON IF CONTRACT NOT AWARDED
NAME	<u>Frandina Engineering</u>	Surveying services			YES _____	Prime Contract Not Awarded
ADDRESS	<u>1701 Herial Ave</u>					
CITY, STATE	<u>Buffalo, NY 14218</u>		\$15,000	WBE		
TELEPHONE	<u>716-883-1288</u>				NO <input checked="" type="checkbox"/>	
IRS #	_____					

III. Assistance offered by contractor to MBE's/WBE's as to bonding, union requirements obtaining work capital, etc.

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MBEWBE OWNED FIRMS		SUPPLY/ SERVICE	AMOUNT OF PROPOSAL	PRIOR CERTIFICATION	CONTRACT EXECUTED	REASON IF CONTRACT NOT AWARDED
NAME	<u>Sianna Environmental</u>	IAQ Testing and Reporting	\$10,000	MBE and WBE	YES _____	Prime Contract Not Awarded
ADDRESS	<u>350 Elmwood Ave</u>					
CITY, STATE	<u>Buffalo, NY 14222</u>					
TELEPHONE	<u>718-362-0848</u>				NO <u>X</u> _____	
IRS #	_____					

MBEWBE OWNED FIRMS		SUPPLY/ SERVICE	AMOUNT OF PROPOSAL	PRIOR CERTIFICATION	CONTRACT EXECUTED	REASON IF CONTRACT NOT AWARDED
NAME	<u>Modern Custodial Services</u>	Cleaning Services	\$20,000	MBE	YES _____	Prime Contract Not Awarded
ADDRESS	<u>701 Seneca Street Bu 730</u>					
CITY, STATE	<u>Buffalo, NY 14210</u>					
TELEPHONE	<u>716-683-0707</u>				NO <u>X</u> _____	
IRS #	_____					

MBEWBE OWNED FIRMS		SUPPLY/ SERVICE	AMOUNT OF PROPOSAL	PRIOR CERTIFICATION	CONTRACT EXECUTED	REASON IF CONTRACT NOT AWARDED
NAME	<u>Commercial Material Services</u>	Lumber Material	\$25,000	WBE	YES _____	Prime Contract Not Awarded
ADDRESS	<u>3024 Niagara Falls Blvd Bx 111</u>					
CITY, STATE	<u>North Tonawanda, NY 14120</u>					
TELEPHONE	<u>716-213-0383</u>				NO <u>X</u> _____	
IRS #	_____					

III. Assistance offered by contractor to MBE's/WBE's as to bonding, union requirements obtaining work capital, etc.

1. Technical, administrative and reporting assistance offered through our office
2. Contractor offered subguard program eliminating need for bonding
3. _____
4. _____
5. _____
6. _____

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IV. Total Dollar Amount to be subcontracted to:
Minority Business Enterprise(s) \$ _____
Women Business Enterprise(s). (if applicable) \$ _____

V. Total Amount of Bid: \$ _____

VI. MBE Percent (%) of project bid: 18 %
WBE Percent (%) of project bid: 14 %

VII. YOU MUST ATTACH COPIES OF RELEVANT CORRESPONDENCE AND DOCUMENTS, INCLUDING RETURN RECEIPTS.

Frank [Signature]

SIGNATURE OF AUTHORIZED REPRESENTATIVE

6/1/2016

DATE

VIII. CONTRACTOR'S DESIGNATED EQUAL OPPORTUNITY OFFICER (EEO)

Stephanie Pennington

NAME

6/1/2016

DATE