



# COUNTY OF ERIE

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June 23, 2016

**VIA E-MAIL AND HAND DELIVERY**

Hon. John J. Mills, Chairman  
Erie County Legislature  
Old Erie County Hall  
92 Franklin Street, 4th Floor  
Buffalo, NY 14202

Re: Project Name - Erie Community College Science Technology Engineering  
and Math (STEM) Building  
Project Number: ECDPW Project No. EG-14-19

Dear Chairman Mills:

Bids for the above noted project were opened on June 7, 2016. With Alternates, Scrufari Construction's ("Scrufari") bid was \$23,700 lower than the next lowest bidder, LP Ciminelli ("Ciminelli"). Accordingly, the Erie County Department of Public Works ("DPW") awarded the bid to Scrufari.

Scrufari, along with several other bidders, did not submit a completed Erie County Minority/Women Business Enterprise Utilization Form ("Part A") with their original bids. DPW allowed those bidders an additional twenty four (24) hours to submit the completed Part A.

It is common and appropriate for municipalities to waive technical non-compliance with bid requirements where the defect is a mere irregularity. See Diamond "D" Construction Corp., v. County of Erie, 209 A.D.2d 922 (4th Dept.1994). Moreover, pursuant to the Information for Bidders provided to bidders by DPW, DPW specifically reserved the right to waive any informality (See attached at Section 6A).

Inasmuch as a completed Part A would not alter the final bid price nor provide any advantage over any other bidder, DPW acted well within its discretion in waiving the technical non-compliance and giving Scrufari (and other bidders) additional time to submit their completed Part A. See Diamond "D" Construction, supra. In a case with strikingly similar facts, LeCesse Bros. Contracting, Inc. v. Town Board of Williamson, 62 AD2d 28 (4th Dept. 1978), the court rejected the argument that the low bidders failure to list its manufacturers gave it a

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competitive advantage. Here, the low bidder's failure to list the MWBEs did not give it a competitive advantage. Scrufari provided a fully completed Part A within twenty four (24) hours of the bid opening. Nothing contained within Part A altered the final bid price nor provided any substantial advantage to any other bidder. Therefore, the award of the bid to Scrufari was a proper exercise of DPW's discretion.

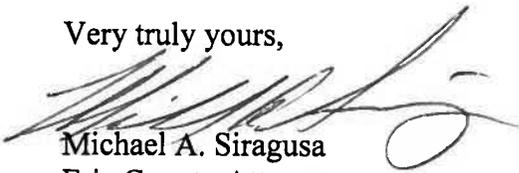
We are in receipt of correspondence dated June 15, 2016 wherein Guy Agostinelli, Esquire, objects, on behalf of his client, LP Ciminelli, to the award of the bid to Scrufari based upon Scrufari's failure to "fully complete and submit Part A" (the Erie County Minority/Women Business Enterprise Utilization Form) with its original bid.

Ciminelli's assertions and objections are curious in light of the fact that Ciminelli failed to submit a "fully complete" Part A. Sections IV and V of Part A are blank. See attachment to Agostinelli letter. Those sections set forth the total dollar amount to be subcontracted to Minority and Women Business Enterprises ("MWBEs"). This fact undercuts Ciminelli's argument on two fronts. First, the failure to include any dollar figures as to what amount of the project would be subcontracted to MWBEs, belies any argument that any other bidder would have an advantage negotiating with MWBEs. Second, if failing to submit a "fully complete" Part A with the original bid is not an informality subject to waiver by DPW, then Ciminelli's bid should also have been rejected based upon the submission of a form which failed to include the total dollar amount to be subcontracted to MWBEs.

DPW has acted in accordance with New York State Competitive Bidding Laws and relevant case law. In fact, a failure to award the contract to Scrufari, the lowest bidder, would not have been in the best interests of the County and would have exposed the County to litigation by Scrufari.

Please do not hesitate to contact me to discuss this issue further. Thank you.

Very truly yours,



Michael A. Siragusa  
Erie County Attorney

Enc.

**ERIE COUNTY DEPARTMENT OF PUBLIC WORKS  
OFFICE OF THE COMMISSIONER**

**INFORMATION FOR BIDDERS**

**1. THE PROJECT CONSISTS OF:**

- A. ERIE COMMUNITY COLLEGE (ECC) SCIENCE, TECHNOLOGY, ENGINEERING AND MATH BUILDING (STEM) located at 6205 Main St. Williamsville, NY 14221
- B. The ECC STEM project is a new building on Erie Community College's Amherst (North) campus which is designed to house new programs for Science, Technology, Engineering and Math studies. The 57,000 square foot building will house new specialized class lab spaces for science related programs such as Anatomy and Physiology, Biology, Chemistry, Engineering Science and Physics. The two story building construction will be steel framed with an exterior balanced between a masonry veneer, store fronts, curtain wall and aluminum panels. The project is designed to obtain a LEED Silver Certification. The project site is located between Gleasner Hall and the Spring Student Center along Youngs Rd. in Williamsville, NY The project will tentatively start August 2016 and be complete December 2017.
- C. A list of preliminary trade packages for the project is as follows. If there are any changes to this trade package list, these will be identified in a future Bid Notice.

<b>BP#</b>	<b>Description</b>	<b>Also included</b>
1	<b>GENERAL CONSTRUCTION</b>	General requirements, site work, utilities & retention, excavations, foundations & slab on deck, structural steel, misc. metals, roofing, special wall finishes & flooring, carpet, VCT, elevator, casework, fume hoods
2	<b>MASONRY</b>	All masonry veneer for project. Base bid is manufactured limestone product.
3	<b>EXTERIOR WALL</b>	Exterior wall backup with moisture barrier, curtain wall/store fronts, louvers, sunshades, windows, glazing
4	<b>INTERIOR WALL ASSEMBLIES</b>	Ceilings, specialties, toilet partitions, signage, shades
5	<b>PLUMBING &amp; FIRE PROTECTION</b>	All plumbing systems complete including water supply, DWV and equipment. All Fire protection work including sprinklers, mains and piping.
6	<b>HVAC &amp; HVAC CONTROLS</b>	All HVAC piping, duct and equipment including air handling equipment, pumps and terminal units. All DDC Controls including.
7	<b>ELECTRICAL &amp; FIRE ALARMS</b>	Site electrical, temporary power, Tel-com, security, A/V. All building power and communications including fire alarm system complete.

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**2. RECEIPT AND OPENING OF PROPOSALS**

Sealed bids for the project will be received by the Office of the Commissioner of Public Works, 14th Floor, Rath County Office Building, 95 Franklin Street, Buffalo NY 14202 until 2:00PM local time on Wednesday June 1, 2016, at which time they will be publicly opened and read aloud.

**3. ARCHITECT/ENGINEER**

A. For the purpose of this contract, the Architect as defined in the General Conditions, shall be:

1) Kideney Architects

B. The other Team Members will consist of:

1) Turner Construction – Construction Manager

2) IBC Engineering – Electrical & Mechanical

3) Watts – Plumbing, Fire Protection & Civil

4) Siracuse – Structural

5) JMZ Architects – Architectural

6) CJ Brown Energy – Commissioning Agent

C. Direct all inquiries concerning these documents to:

Name: Alan Waziak / Tim Magee (Turner Construction)

Address: 50 Lakefront Blvd Suite 200, Buffalo, NY 14202

Phone: (716) 853-1900

**4. SITE VISITATION / PRE-BID CONFERENCE**

A. A Pre-Bid Conference will be held at 4:00 PM on 5/18/16 at the ECC North Campus Spring Student Center Cafeteria to review the scope of the project and respond to any questions from bidders.

B. Prospective Bidders shall assemble promptly on the date indicated at the ECC North Campus Spring Student Center Cafeteria.

**5. PREPARATION OF PROPOSALS**

A. Submit proposal on enclosed form or typewritten facsimile. Enclose in sealed envelope bearing the title of the work and the name of the Bidder.

B. In case of a difference between the stipulated amount of the proposal written in words and the stipulated amount written in figures, the stipulated amount stated in written words shall govern.

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- C. Proposals shall not contain any recapitulations of the work to be done. Alternate proposals will not be considered unless called for. Oral proposals or modifications will not be considered.
- D. Any Bidder may withdraw his proposal, either personally or by fax or written request, at any time prior to the scheduled closing time for receipt of proposals.
- E. All proposal forms submitted by a bidder requiring a bidder's signature must bear an original signature signed in ink. Proposals submitted without original signatures will be rejected.

**6. AWARD OR REJECTION**

- A. The Contract for each phase of the work will be awarded to the lowest qualified responsible Bidder. ~~The Owner reserves the right to reject any or all proposals or to waive any informality.~~ All proposals shall be good for 90 days from date of opening.
- B. For the purpose of determining the lowest responsible bidder the County shall compare all base bids plus any add or any deduct Alternate Bid items. Unit prices set forth in the proposal shall not be considered in determining the lowest responsible bidder.
- C. The County reserves the right to accept or reject any and all Alternate Bid Items in any order

**7. INTERPRETATION OF DOCUMENTS**

- A. If any person contemplating submitting a proposal is in doubt as to the true meaning of any part of the Drawings, Specifications or other Contract Documents, or finds discrepancies in or omissions from the Drawings or Specifications, he may submit to the Architect - Engineer a written request for an interpretation or correction thereof. The person submitting the request will be responsible for its prompt delivery. Any interpretation or correction of the documents will be made only by Addendum duly issued and a copy of the Addendum will be forwarded to each person receiving a set of the Contract Documents. Neither the Owner nor the Architect - Engineer will be responsible for any other explanations or interpretations of the Contract Documents.
- B. A final addendum will be issued no later than Friday, May 27, 2016. Requests for interpretation or correction (RFI) shall be submitted to the Architect no later than 5:00 PM on Friday, May 20, 2016.

**8. ADDENDA**

- A. Any Addenda issued during the time of bidding, or forming a part of the Contract Documents loaned to the Bidder for the preparation of his proposal, shall be covered in the proposal, and shall be made a part of the Contract. Receipt of each Addendum shall be acknowledged in the proposal.

**9. BID BOND**

- A. Each proposal must be accompanied by a Bid Bond in form similar to American Institute of Architects Document No. A-310 or Consulting Engineers Council Contract Document 1.5 in an amount not less than five percent (5%) of the base bid.

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- B. Should the Bidder, if awarded the Contract, fail to execute the Agreement within five (5) days in accordance with the proposal and other Contract Documents the Bid Bond amount shall be forfeited to the Owner as liquidated damages caused by such failures.

**10. PERFORMANCE AND LABOR AND MATERIAL PAYMENT BOND**

- A. The bidder or bidders whose proposal is accepted shall furnish a Performance and Labor and Materials Payment Bond to the County of Erie in the penal amount of 100% of the contract price, if the contract is based upon a time and material price, or 100% of the estimated cost if the contract is based upon a unit price, such bond to be duly executed by the bidder as principal and by a duly incorporated company authorized to guarantee the performance of contracts and to do business in the State of New York, as surety. The Bond shall be on a form approved by the County Attorney, a copy of which is included herein.

**11. QUALIFICATIONS OF BIDDERS**

- A. The Bidder shall submit with the Bid Proposal, a fully executed Erie County Department of Public Works – Office of the Commissioner, Experience Questionnaire, pages EQ-1 through EQ-6 included herein.
- B. All prospective bidders are hereby notified that they must be able to prove to the satisfaction of the Owner that they are a responsible bidder and have the skill and experience, as well as the necessary facilities, ample financial resources, organization and general reliability to do the work to be performed under the provisions of the contract in a satisfactory manner and within the time specified.
- C. Within forty-eight hours (48) after the opening of the proposals, the lowest three bidders, if requested, must submit, in duplicate, to the Owner a current financial statement certified to be true and correct by a certified public accountant or an officer or principal of the bidder.
- D. Each bidder must be prepared to show to the satisfaction of the Owner that he has sufficient liquid assets available for the project upon which he is bidding. The Owner does not regard credit, borrowed money, equity in real estate, life insurance, reserves representing pre-payment of taxes and life insurance, and other expenses, deposits held as security for other contracts, capital of proposed sub-contractors, capital stock of the contractor, and similar items, as liquid assets available for the work to be performed under the contract.
- E. A bidder must also be prepared to prove to the satisfaction of the Owner that he has successfully completed a contract of similar work in an amount of not less than 50 percent of the amount of the proposed contract.
- F. Each bidder must comply promptly with all requests by the Owner for information and must actively cooperate with the Owner in its efforts to determine whether the bidder is qualified.
- G. The award of the contract shall not be construed as a guarantee by the Owner that the plant, equipment and the general scheme of operations and other data submitted by the bidder with or after his proposal is either adequate or suitable for the satisfactory performance of the work.

**12. ACKNOWLEDGEMENTS**

- A. All acknowledgements of Contractor and Owner, Principal and Surety shall be subject to the approval of the Erie County Attorney, State of New York.

**13. EQUIVALENT MATERIAL OR EQUIPMENT**

- A. Whenever a specific material or equipment item is named in the plans or specifications, the Contractor shall furnish the material or equipment thus named, unless: (1) in his Bid he names another item which he proposes as the full equivalent of the named item, and in executing the Contract the Owner accepts such substitution; or (2) the Owner subsequently approves a substitution during the course of project construction by Change Order.

**14. LIST OF PROPOSED SUBCONTRACTORS**

- A. The low bidder, or three low bidders if requested, shall submit a complete list of sub-contractors he proposes to use not later than 48 hours after receipt of proposals.
- B. Sub-contractor list shall be delivered to the Architect with a copy for the Owner.
- C. Execution of the Contract by the Owner without objection to any name on said list shall constitute an acceptance of the same. Should the Owner request that a different sub-contractor be proposed for any phase of the work, the bidder shall comply with such requests until a sub-contractor acceptable to the Owner is proposed. No sub-contractor approved by the Owner may be replaced unless replacement is approved by the Owner.

**15. NON-COLLUSIVE BIDDING CERTIFICATE**

- A. Attention of all bidders is called to provisions of State Law requiring the bid itself to contain a certificate that there has been no collusion in the preparation or submittal of such bid. (See pertinent portion of Proposal Form.)

**16. SALES TAX EXEMPTION**

- A. The Owner is an exempt organization under the Tax Law and is exempt from payment of Sales and Compensating Use Taxes of the State of New York and cities and counties of the State on all materials sold to the Owner pursuant to the provisions of the Contract. These taxes are not to be included in bids.
  - 1. Section 115 (a) (15) of the Tax Law provides that tangible personal property sold to a Contractor for use in erecting a structure or building for an exempt organization is exempt from the Sales and Compensating Use Tax of the State of New York and of cities and counties of the State provided such tangible personal property is to become an integral component part of such structure, building, or real property.
  - 2. There is no exemption from the Sales or Use Tax on sales or charges to a Contractor or sub-contractor for the purchase or lease of supplies, machinery, equipment, tools, services, etc., used or consumed by him in the completion of the Contract. The Contractor and his sub-contractors shall be responsible for and pay any and all applicable taxes including Sales and Compensating Use Taxes on such items.

**17. BIDDING DOCUMENTS**

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- A. Drawings, Specifications and other Bidding Documents will be placed on file and may be examined during normal office hours at the Office of the Commissioner, 14<sup>th</sup> Floor, 95 Franklin Street, Buffalo, N.Y. 14202, the Architect's Office and at other locations as indicated in the Notice to Bidders.
- B. Bidding Documents may be obtained at the office of the Architect unless stated otherwise in the Notice to Bidders.
- C. A CD ROM disc containing pdf files of the Bid Documents will be available for each Prime Contract Bidder for purposes of preparing a bona fide Proposal. These Documents may be purchased for the amount indicated in the Notice to Bidders for each CD ROM disc. The CD ROM disc purchase is not refundable.

**18. EXISTING CONDITIONS**

- A. It shall be the responsibility of each and every bidder to thoroughly investigate all existing conditions and he shall acquaint himself with existing conditions, insofar as it may affect his work and/or bidding.
- B. The Bidder, before entering his proposal, shall satisfy himself fully as to the work called for on the Contract Documents, and to the working conditions and condition of the site, including the existence of other facilities and/or structures on, over or under the site which may interfere with, or make more difficult, the performance of the Contract.
- C. The signature of the Bidder upon his proposal form shall constitute a certification to the Owner that such Bidder is fully informed regarding all the conditions affecting the work to be done, that such information was secured by personal investigation and that such Bidder accepts full responsibility for his bid.
- D. If a Bidder should encounter any condition not provided for in the Contract Documents that will affect his bid or the performance of his contract obligations, should he be the successful bidder, he shall notify the Architect, in writing, at least five (5) days prior to opening of bids.

**19. WAGE RATES**

- A. It is hereby agreed by the parties to this contract that all laborers, workmen and mechanics employed on the work done in performance of said contract shall be paid not less than the rate of wages listed on the current prevailing rate schedule issued by the Industrial Commissioner of the State of New York for the trade or occupation of such laborer, workmen, or mechanics, and any supplements thereto.
- B. The wage rates and supplemental benefits to be paid such laborer, workmen or mechanics shall always be those prevailing at the time the work is being performed.
- C. A copy of the current "Prevailing Rate Schedule" is attached hereto for convenience. The wage rates and supplemental benefits listed thereon are subject to change and may be superseded by any schedule hereafter issued by the Industrial Commissioner of the State of New York. Any such revised schedules shall be attached hereto and become a part of this contract, but this will in no way alter the contract amount or any provisions of said contract.
- D. It is the responsibility of the Contractor to remain familiar with the currently applicable schedule.

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- E. Should the Contractor employ laborers, workmen or mechanics engaged in any trade for which a wage rate is not stipulated in the attached schedule, or any supplements thereto, he shall obtain the appropriate wage rate from the Industrial Commissioner of the State of New York before employing the laborer, workman or mechanic.
- F. Section 220-a of the New York State Labor Law requires the Contractor and each of his sub-contractors to place on file with the Owner, certificates relating to the final payment of wages and supplements for Labors on this Project. Samples of the required certificates immediately follow this section and are designated as PICC-1 (Sub-contractor Certification) and PICC-2 (Prime Contractor Certification, pages 1 & 2). The Contractor and each of his sub-contractors acknowledge that no final payment can be made to the Contractor unless the necessary certifications, properly executed, accompany the final payment request.
- G. If a Contractor or sub-contractor has had one final determination by the New York State Department of Labor that it willfully failed to pay or provide the prevailing rate of wages or supplements to its employees, the contractor or sub-contractor will be ineligible to tender a bid.

**20. DRUG & ALCOHOL TESTING PROGRAM COMPLIANCE**

- A. Due to the safety-sensitive nature of the work that your Commercial Driver Licensed (CDL) employees may perform on this project, the low bidder is required to submit acknowledgment of Drug and Alcohol Testing Compliance Form DA-1 within three (3) days after receipt of proposals. A sample of the required form is included in the specifications for your use.

**END OF SECTION**