

Exhibit 14

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FAX TRANSMITTAL

DATE: April 21, 2015

PLEASE DELIVER TO: Richard M. Roberts

201-684-7685
 (Fax number)

Ramapo College of New Jersey
 (Company)

FROM: Stephen P. Winkles, Esq.

MESSAGE:

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April 21, 2015

Richard M. Roberts
Ramapo College of New Jersey
505 Ramapo Valley Road
Mahwah, New Jersey 07430-1623

**Re: Bid Protest - Brahma Construction Corp.
Project: Ramapo College of New Jersey - H- Wing 2nd Floor -
Les Paul Studio
Owner: Ramapo College**

Dear Mr. Roberts:

This firm has been retained to represent the bidder Brahma Construction Corp. ("Brahma") with regard to the above referenced matter. By way of this letter, Brahma formally protests any award of a contract for the above referenced project to the apparent low bidder, Slate Construction, LLC ("Slate"). Slate's bid was materially non-responsive and should not be considered by Ramapo College of New Jersey (the "College"). Brahma objects to the award to Slate because it failed to provide an acknowledgement of Addendum #1 and because Slate failed to include the "Disclosure of Investments in Iran" form required by the bidding specifications

The Invitation to Bid included in the bidding specifications specifically requires that bids be submitted with the required documents. Failure to submit any of the items required on the checklist constitutes cause for the bid to be rejected. The bidding specifications make it clear that the bidders must provide all requested documents and all documents required by law. The failure to provide documents required by the bid specifications is a material, non-waivable defect and must result in the rejection of the bid.

A review of Slate's bid revealed that it failed to provide the both the full Addendum #1 and the Disclosure of Investments in Iran form. Even though these certifications

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were specifically required by the bidding specifications, Slate nevertheless did not include them in its bid package, in direct contravention of the bidding requirements.

When determining to whom a bid is to be awarded, the College must take into account *"that the contract must be awarded not simply to the lowest bidder, but rather to the lowest bidder that complies with the substantive and procedural requirements in the bid advertisements and specifications."* Gaglioti Contracting, Inc. v. City of Hoboken, 307 N.J. Super. 421, 431 (App. Div. 1997) (citing from Meadowbrook Carting Co. v. Island Heights Borough, 138 N.J. 307, 313, (1994)). Responsibility involves experience, financial ability, moral integrity, and the availability of facilities necessary to perform the contract. D. Stamato & Co., Inc. v. Vernon Tp., 131 N.J. Super. 151 (App. Div. 1974). Slate's failure to provide all items with its bid proposal is a material defect because *"it is of such a nature that waiver [by the College] would adversely affect competitive bidding by placing a bidder in a position of advantage over the other bidders,"* and by *"undermining the necessary common standard of competition."* Tp. of River Vale v. R.J. Longo Construction Co., 127 N.J. Super 207 (1974).

The effect of any waiver by the College of Slate's bid defect will deprive the public entity of its assurance that Slate is able to enter into and perform the contract in accordance with the bid specifications. See River Vale, *supra* at 216. It would also result in unfair competition between the bidders, placing Slate at a competitive advantage.

There is little doubt that Slate's failure to provide the required Certification was not a minor irregularity which could be waived, *see* Tp. of River Vale v. R.J. Long Const. Co., 127 N.J. Super. 207 (Law Div. 1974); Young v. West Orange Redv. Agency, 125 N.J. Super. 440 (App. Div. 1973); but rather was a substantial departure which could not be overlooked, *see* Hillside Tp. v. Sternin, 25 N.J. 317, 324 (1957); Case v. Trenton, 76 N.J.L. 696, 699-700 (E&A 1909). The distinction between material and non-material conditions has been set forth in Terminal Const. Corp. v. Atlantic Cty. Sewerage Auth., *supra*: "Essentially this distinction between conditions that may or may not be waived stems from a recognition that there are certain requirements often incorporated in bidding specifications which by their nature may be relinquished without there being any possible frustration of the policies underlying competitive bidding." Terminal Const. Corp. v. Atlantic Cty. Sewerage Auth., 67 N.J. 403, 410 (1975); cited by L. Pucillo & Sons, Inc. v. New Milford, 73 N.J. 349, 356 (N.J. 1977) Such "requirements must be distinguished from conditions whose waiver is capable of becoming a vehicle for corruption or favoritism, or capable of encouraging improvidence or extravagance, or likely to affect the amount of any bid or to influence any potential bidder to refrain from bidding, or which are capable of affecting the ability of the contracting unit to make bid comparisons . . ." Terminal Construction Corp. v. Atlantic Cty. Sewerage Auth., 67 N.J. at 412 (emphasis supplied). The latter

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category of conditions "are the kind . . . which may not under any circumstances be waived." *Id.*

The sole purpose of the Iran certification is to ensure that there is disclosure of investments. This information is not publicly accessible and cannot be easily remedied by simply submitting it after the bid date. Permitting such a remedy deprives the College of the assurance that work can and will be performed by the contractor, and places the bidders on unequal footing. Additionally, the inclusion of addendums and acknowledgements of addendums are material because a bidder may, after it submits its bid, attempt to withdraw the bid with the excuse that it did not receive or acknowledge the addendum. Slate's failure to provide either of the documents, can be nothing other than a material deviation.

We have also reviewed the objections made by Catcord Construction (Catcord) to Brahma's bid and find them to be without merit. Catcord objects to Brahma's bid because it had "white out" on it, which Catcord says "is not allowed to be used to correct entries on a legal document." We are not entirely sure what Catcord's theory is based upon, but to agree with them would upend a practice used since the invention of white-out, and would void tens of millions of bid, contracts and other legal documents. The argument is not credible. The other objection is that Brahma's bid form did not have a "specific dollar value stated for the 10% bid bond as required on the form and response of I-1 of addendum #1." Brahma's bid bond is in the form and amount required by the College and the law, and therefore no defect exists with its bid.

Given the requirements contained in the bidding specifications, as well as the State College Contracts Law, N.J.S.A. 18A:64-52, et seq., we respectfully request that the College reject the bid of Slate as non-responsive and award the full contract to Brahma.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,



Stephen Winkles

Enc.

Cc: Client (via email)

Catcord Construction (via facsimile - 201-767-2203)

Slate Construction (via facsimile - 973-832-4241)