

THE NUTLEY PUBLIC SCHOOLS
Administrative Office
315 Franklin Avenue
Nutley, New Jersey 07110

Joseph Zarra
Superintendent of Schools

Phone: 973-661-8798
Fax: 973-320-8476

August 12, 2008

State of New Jersey
Department of Education
Fiscal Accountability and Compliance
PO Box 500
Trenton, NJ 08625

Re: Potential Public School Contract Law Violations

State Projects: 3750-100-07-1000	Washington Elementary School – Nutley
3750-070-07-1000	Lincoln Elementary School - Nutley
3750-090-07-1000	Spring Garden Elementary School - Nutley

To Whom It May Concern:

The Nutley Board of Education has become aware of facts and circumstances that raise questions regarding the propriety of bidding practices conducted with respect to the above projects. In particular, we are concerned with the manner in which the HVAC portions of the work have been awarded at Washington and Lincoln Elementary Schools and with practices conducted in connection with the rejected bid at Spring Garden Elementary School.

The Board submitted Cost Estimates for the above State Projects to the DOE in the fall of 2006. The detailed cost estimates included heating system elements for New Boilers and Unit vents converted to a hot water system, and cooling system elements to air condition the auditoriums. The projects were approved by the State in November 2006 and the voters passed a bond resolution for these and other projects December 12, 2006.

The project cost estimates for the HVAC and air conditioning work at each of the three schools were as follows:

<u>School</u>	<u>HVAC</u>	<u>Air Conditioning</u>	<u>Total Budget</u>
Washington	1,159,671.14	134,400.00	1,294,071.14
Lincoln	1,352,208.00	119,826.00	1,472,034.00
Spring Garden	<u>1,156,806.65</u>	<u>103,236.00</u>	<u>1,260,042.65</u>
Total	3,668,685.79	357,462.00	4,026,147.79

Sometime after the bond resolution was adopted the design approach for the district's new HVAC systems changed from independent hot water heating and air conditioning systems to a geothermal heat pump system that would heat the entire building and air condition the auditorium with the potential to alternatively air condition the classrooms.

- **New cost estimates were not developed or adopted for comparison of reasonable costs to the bids submitted for the redesigned systems.**

In January 2008 initial bids were received for the combined HVAC and Air Conditioning projects as follows:

<u>Contractor</u>	<u>Washington School</u> Bid Date: 1/18/08	<u>Lincoln School</u> Bid Date: 1/25/08
Bill Leary HVAC	2,390,000.00	2,790,000.00
GDS Mechanical Inc.	2,394,000.00	
H&S Const & Mechanical Inc.	2,600,000.00	2,850,000.00
Nicosta & Sons Construction	2,764,223.00	3,154,000.00
T.M. Brennen Contractors, Inc.	2,764.223.00	2,997,000.00
Bender Contracting	3,124,100.00	
Jacobs Construction	3,240,000.00	
Ex Air Inc.	3,450,000.00	
Low Bid	2,390,000.00	2,790,000.00
Referendum Cost Est. (HVAC + AC)	<u>1,294,071.14</u>	<u>1,472,034.00</u>
Amount Over Cost Estimate	1,095,928.86	1,317,966.00

The bids were rejected at the Board Meeting of January 28, 2008 as substantially exceeding the cost estimates for goods and services.

The projects were submitted for rebid February 15, 2008. The contract documents were revised for the rebid to include a base bid and alternates for extracted portions of the work. The alternates were as follows:

<u>Alternate</u>	<u>Washington</u>	<u>Lincoln</u>
Add UV lights and DDC control system serving all classroom fan coil units.	Alternate 1	Alternate 1
Install 15 additional geothermal wells. Base bid shall include 15 wells only.	Alternate 2	Alternate 2
Construct mechanical room in lieu of weatherproof enclosure specified in the base bid.	Alternate 3	
Demolition and patching of steam piping in areas indicated. Base bid is to abandon all steam piping in place.	Alternate 4	Alternate 3

Rebids were received February 15, 2008 as follows:

Washington Elementary School

<u>Contractor</u>	<u>Base Bid</u>	<u>Alternate 1</u> Controls	<u>Alternate 2</u> Wells	<u>Alternate 3</u> Mech Room	<u>Alternate 4</u> Demolition
Bill Leary	1,794,000	190,000	160,000	75,000	40,000
H&S	2,049,000	94,000	124,000	2,000	14,200
TM Brennan	1,960,000	195,000	124,000	(80,000)	8,500
Low Bid	1,794,000.00	94,000	124,000	(80,000)	8,500
Total Cost Est.	<u>1,294,071.14</u> (includes alternates)				
Amt Over Estimate	499,928.86				

Lincoln Elementary School

<u>Contractor</u>	<u>Base Bid</u>	<u>Alternate 1</u> Controls	<u>Alternate 2</u> Wells	<u>Alternate 3</u> Demolition
Bill Leary	1,973,000	210,000	160,000	40,000
H&S	2,398,000	110,000	124,000	42,000
TM Brennan	2,540,000	227,000	125,000	8,500
Nicosia	2,665,000	247,000	115,000	16,500
Low Bid	1,973,000.00	110,000	124,000	8,500
Total Cost Est.	<u>1,472,034.00</u> (includes alternates)			
Amt Over Estimate	500,966.00			

- **Cost estimates were not developed or adopted for comparison of reasonable costs to the base bids or any of the alternate rebids submitted.**

The base bids for Washington and Lincoln Schools were awarded at the Board Meeting of February 25, 2008 to Bill Leary as the lowest responsible bidder on the recommendation of the architect/engineer. The Board of Education specifically rejected all alternate bids.

- **The rebids were accepted on the recommendation of the architect/engineer even though the base bids substantially exceeded the latest cost estimates in place for all work, including alternates, at each school by approximately \$500,000 each.**
- **No effort was made to negotiate prices as permitted by NJSA 18A:18A-5(c) when two bids exceed the cost estimates.**

On February 25, 2008 The Board of Education awarded contracts for the HVAC Renovations at Washington and Lincoln School for the base bid amounts, yet, the Business Administrator executed contracts for these projects with Bill Leary, HVAC dated February 25, 2008 in the name of the Nutley School District that exceeded the awards as follows:

	<u>Washington</u>	<u>Lincoln</u>
Base Bid Award	1,794,000.00	1,973,000.00
Contract Amount	<u>1,870,904.00</u>	<u>2,058,000.00</u>
Amount Above Award	76,904.00	85,000.00

- **No resolution was adopted by the Board to award contracts in these amounts.**
- **The Business Administrator did not have Board Authority to execute these contracts.**

The executed contracts for each school refer to the incorporation of Add Alternate 1 as modified by a design change (DCB 1) from a water-to-water geothermal heat pump skid system with no DDC control system to a water-to-refrigerant geothermal heat pump skid system with DDC controls. Article 4.2 of each contract states the design change reduces the amount of the "Add Alternate" from the bid amount to \$76,904 for Washington School and \$85,000 for Lincoln School, respectively.

- **The contracts as executed by the Business Administrator included Add Alternate No. 1 for each school without further Board review despite the specific rejection of all alternates by the Board on February 25, 2008.**

The executed HVAC contracts were based upon a redesign of the project submitted by the architect/engineer as DCB 1. DCB 1 was presented to Bill Leary. A proposal was provided by Bill Leary dated March 14, 2008 to incorporate DCB 1 into the project as follows:

Description	<u>Washington</u>	<u>Lincoln</u>
Deduct		
Schedule 40 Piping	82,143	92,400
EMI Fan Coils	210,379	236,647
Epsilon Skid (water-to-water)	294,500	310,000
Branch Circuit Wiring	<u>165,682</u>	<u>186,370</u>
Total Deduct	752,704	825,417
Add		
Refrigerant Piping	74,487	83,788
DAIKIN Fan Coils	187,369	210,764
Epsilon Skid (water-to-refrigerant)	427,850	460,000
Branch Circuit Wiring	<u>62,888</u>	<u>70,865</u>
Total Add	752,704	825,514
Net Change in Cost	-0-	-0-
Add		
DDC Controls and UV Lights	76,904	85,000
[not included in proposal]		
[Original Award Amount]	1,973,000	1,794,000
[Percent Change in Scope from Project Award]	42%	42%

- **No consideration was given as to whether DCB 1 was a material design change requiring the project to be resubmitted for a new bid.**
- **No cost estimates were prepared or approved to compare a reasonable credit for the deductions and the reasonable cost of the additions to the actual credits and costs proposed by Leary.**
- **No Change Order was presented to the Board for consideration of the design change.**

The drawings issued for the rebid are dated January 30, 2008. No electrical drawings were included in the bid package presented to the prospective bidders. Drawings issued to Leary as part of DCB 1 included the following electrical drawings.

Washington Elementary School

Dwg. No.	Title	Issued	Revised	Dwg. Notation
E1.0	Gen'l Det'ls/Schedule – Elec.	11/27/07	1/30/08	Re-Bid Set
E1.1	Sub-Bsmt Power – Elect. Plan	11/27/07	1/30/08	Re-Bid Set
E1.2	Bsmt Power – Elect. Plan	11/27/07	1/30/08	Re-Bid Set
E1.3	First Fl Power – Elect. Plan	11/27/07	1/30/08	Re-Bid Set
E1.4	Second Fl Power – Elect. Plan	11/27/07	1/30/08	Re-Bid Set

Lincoln Elementary School

Dwg. No.	Title	Issued	Revised	Dwg. Notation
E1.0	Gen'l Det'ls/Schedule – Elec.	12/7/07	3/4/08	DCB 1 Conformed
E1.1	Sub-Bsmt Level Power – Elect. Plan	12/7/07	3/4/08	DCB 1 Conformed
E1.2	Bsmt Level Power – Elect. Plan	12/7/07	3/4/08	DCB 1 Conformed
E1.3	First Floor Power – Elect. Plan	12/7/07	3/4/08	DCB 1 Conformed
E1.4	Second Floor Power – Elect. Plan	12/7/07	3/4/08	DCB 1 Conformed

- **Even though Electric drawings were issued in 2007, no explanation is given as to the reason electrical drawings were not included in the rebid set provided to prospective bidders.**
- **Even though Washington School Electric drawings are last revised 1/30/08 as the re-bid set, no explanation is given as to the reason they reflect the electric revisions known as DCB 1 on January 30, 2008 before the re-bids have even been received.**

The District has submitted the plans and specifications for review to two independent engineering/commissioning companies. Each has advised that the HVAC project documents contain proprietary specifications. Even though some of the proprietary items listed in the rebid set differ from the proprietary items in the DCB 1 redesign, one common fact is that the equipment distributor is Tri-State HVAC Equipment LLC in Philadelphia, Pa.

- No resolution was presented to or adopted by the Nutley Board of Education designating the use of proprietary specifications for this project as required by NJSA 18A: 18A-15(d) before a proprietary specification can be used.
- No special need has been identified with respect to the products specified, as further required by NJSA 18A: 18A-15(d).
- The redesign, DCB 1, specifies the use of DAIKIN Fan coil units, a foreign product manufactured in Thailand.

The HVAC projects are currently under construction.

In May 15, 2008 bids were received for the project advertised as "Facility Upgrades to Spring Garden Elementary School." The project included the HVAC heating and air conditioning upgrades based upon a geothermal system as modified from the original design. The concerns expressed regarding the programming change for Washington and Lincoln Elementary Schools exist with respect to the Spring Garden Elementary School Upgrades.

The specifications called upon the bidder to identify a mechanical subcontractor for the project. The low bidder, Chanree Construction Co., included a letter in its bid package from Bill Leary A/C and Heating, aka WHL, which provided as follows:

5/14/08

HVAC PROPOSAL
SPRING GARDEN SCHOOL _ NUTLEY
Due 5/15/08 3:00 PM

Dear General Contractor,

Attached please find our bid certifications. Please list us as your HVAC subcontractor on the Spring Gardens bid which is due on Thursday. We completed a 3.5 million dollar project for the Nutley BOE last year. We also have contracts for and are currently completing 2 IDENTICAL projects for the Nutley BOE at 2 other schools (each appx 2 million dollars). *We have an excellent relationship with the Nutley Board of Education and the Designing Architect/Engineer, DCM.* Either tomorrow or early Thursday you will receive our price. Please call us after receiving it to discuss it if needed. We want to do what is necessary to work with you and have you list our firm on your bid as your HVAC contractor. Thank you for your assistance.

The next day, the District received bids for the Spring Garden Upgrades. Three of four lowest bidders listed Bill Leary as its mechanical subcontractor. The only bidders not to include Leary as the mechanical subcontractor performed the mechanical work in-house. The second low bidder, Vanas Construction, "whited" out the name of its initial mechanical subcontractor and hand wrote in the name of Bill Leary, HVAC, thereby voiding its bid.

The District is concerned with possible bid improprieties as follows:

1. The absence of bona-fide cost estimates to reflect the reasonable cost of the revised scope of the HVAC work as it affected the District's decisions to reject the original bids on the Lincoln and Washington HVAC projects.
2. The acceptance of the rebid on the Washington and Lincoln School HVAC projects in the absence of reasonably comparable cost estimates.
3. The award of a contract to Leary on the rebid for the Washington and Lincoln School HVAC projects, without negotiation, even though the low bid exceeded the cost estimates in hand on two successive bids.
4. The absence of a bona-fide cost estimate for the HVAC as redesigned by DCB 1 to reflect the reasonable cost of the HVAC work for comparison with the March 14, 2008 proposal submitted by Leary.
5. The execution of contracts with Leary for the Washington and Lincoln HVAC projects without Board authorization.
6. The execution of contracts for the Washington and Lincoln HVAC projects for a design that was modified 42% from the design submitted for bid without change order and without approval from the DOE.
7. The existence of electrical plans for the HVAC issued in 2007 that were not provided to bidders for the rebid conducted in February 2008.
8. The inclusion of proprietary specifications in the specifications for the rebid project and DCB 1 without resolution by the Nutley Board of Education and without a showing of special need.
9. The solicitation by Leary, as mechanical subcontractor, to bidders on the Spring Garden Facility Upgrade Project, identifying an excellent relationship with the NBOE and the Designing Architect/Engineer.

The District lacks the resources to investigate the above concerns and requests that the DOE address them in order to uphold the integrity of the public bidding system prescribed by the Public Schools Contract Law.

Respectfully,

Joseph Zarra
Superintendent of Schools