

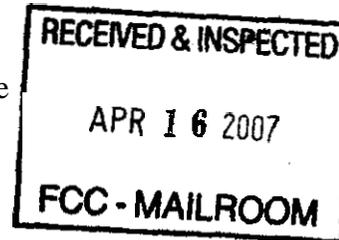
April 12, 2007

DOCKET FILE COPY ORIGINAL

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
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Capitol Heights, MD 20743

The Thomas Group
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Request for Review
Of Denial of Funding by Schools and Libraries Division of the
Universal Service Administrative Company for
New Jersey Schools Construction Corporation
Billed Entity Number 15218925



CC Docket No. 96-45 and No. 02-6

To Whom It May Concern:

On behalf of the New Jersey School Construction Corporation (NJSCC) Thomas Communications & Technologies, LLC (TCT) hereby appeals the funding denial of the following NJSCC Funding Request Numbers (FRNs):

NJSCC Project Number	District	471 #	FRN
ES-0029-E01	East Orange	521214	1435072
ES-0001-E01	Irvington	516899	1425026
JE-0035-E01	Jersey City	516476	1421226
ET-0079-E01	Neptune	519420	1429085
NE-0043-E01	Newark	521259	1435462
PA-0025-E01	Paterson	518830	1427497
ET-0081-E01	Plainfield	518722	1427215
WT-0018-E01 RB1	Trenton	521140	1434888
HU-0022-E01	Union City	517916	1425155
HU-0021-E01	West New York	518056	1425468

Each of these FRNs was denied for the same reason in an Administrator's Decision on Appeal dated February 12, 2007: "USAC has determined that, at the time you submitted your Form 471 application, you did not have a signed and dated contract for services in place with your service provider." (See Appendix 1)

The FRNs in question were resubmitted in Funding Year 2006 because the FY 2005 Funding Commitment Decision Letters and the NJSCC construction schedules for many of the projects were delayed. The Schools & Libraries Division (SLD) subsequently denied funding for these FRNs for FY2005. The SLD denied our FY2005 appeal, and we are awaiting a ruling from the Federal Communications Commission (FCC) on the FY2005 funding decision. Please note t_e

SLD's denial was not based on a competitive bidding violation.

The original FY2005 Form 470 and signed contracts, all based on an open and fair FY2005 competitive bidding process, and all based on the original scope of work (no changes, no "extensions"), were the basis for the FY 2006 submissions.

The SLD's position that "No contract was in place when the Form 471 certification ~~was~~ filed" for FY2006 is not based on actual NJSCC contract realities; both the NJSCC and their Service Providers are currently operating within the parameters of these valid contracts. **Rather, the SLD's** position on this contract issue seems to be based on technicalities related to the "contract end date" required on the FY2005 Form 471 in combination with Item 13 on **the** FY2005 Form 470 which was **left** blank.

Addressing Item 13 on the FY2005 Form 470 first, it reads **as** follows:

'13. If you intend to enter into a multi-year contract **based** on this posting or a contract featuring an option for voluntary extensions you may provide that information below. If you have plans to purchase additional services in future **years**, or expect to seek new contracts for existing services, summarize below (including the likely timeframes)."

The NJSCC is an agency created by the state in order to manage the renovation or construction of new schools within **31** special needs districts. In the fall of 2004, the NJSCC began a bidding process for almost 2 dozen of these school districts. These particular projects were chosen because the NJSCC construction schedule at the time called for E-rate eligible work to be completed within the FY2005 service delivery window. As part of **the** bidding process, the NJSCC issued a detailed Request for Proposal (RFP) (See Appendix **2**) and an FCC Form 470 for each district. The resulting Internal Connections contracts obligate the Service Provider to provide and install specific Internal Connections equipment and cable plant materials **per** a project schedule that was dependent on a much broader school construction schedule. **Thus**, these contracts do not indicate a particular timeframe for service at which point they automatically expire like many Priority 1 recurring service contracts stipulate. These contracts are not "multi-year" contracts; they call **for a** specific, non-recurring scope of work to be completed **per** the construction schedule, not within a contractually defined term. **The** Service Provider fulfills their contractual obligations when the scope of work is completed and Final Acceptance is granted. The NJSCC had no intention to "enter into a multi-year contract." **These** NJSCC contracts did not feature "an option for voluntary extensions." The NJSCC did not "have plans to purchase additional services in future years." Thus, Item 13 on the FY2005 Form 470 was **left** blank.

The SLD's position that "The cited 470 was not the basis for the establishment of the voluntary contract extension, and does not meet the 28 day competitive bidding requirement." is, of course, credible only if you posit, as the SLD did, that there was no longer **a** contract in place.

Relative to contract end dates, we argue further that the SLD's use of this date field on the NJSCC's Form 471s, to justify and conclude that the contract had expired, or was in some way no

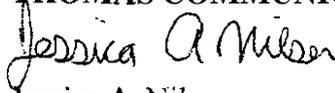
longer valid, is inconsistent with the SLD's policies which allow for service delivery extensions and Form 500 contract end date changes.

Imagine two identical Internal Connections projects, both competitively bid for the FY2005 funding cycle, one of which was funded and the other not funded. Both construction schedules were delayed such that the actual project work was to be completed during the FY2006 service delivery window. The SLD allows for extensions for the funded FRN, recognizing the need for flexibility in construction schedules, but in the case of the denied FRN the SLD shows no such procedural flexibility with a resubmission in FY2006. Despite the fact that both projects would be completed during FY2006, and both reference the original bidding process **and** the original contract, E-rate funding would **only** be granted **for** the FRN originally funded in FY2005. We find this inconsistency to be unfair and punitive for the applicant.

In summary, the original RFP clearly identified the scope of work involved with each of these contracts. All potential bidders were aware that the resulting contracts were for the purchase and installation of the requested equipment. The contracts between the NJSCC **and** the awarded Service Providers *were/will* be valid until the installation of the equipment is complete, and they were valid when the FY2006 FRNs were submitted. Furthermore, the reasons for denying the FY2005 submissions were addressed and corrected in the FY2006 resubmissions. We therefore request a reversal **of** the funding decision for the NJSCC FRNs in question.

Please contact me with any questions.

Sincerely,
THOMAS COMMUNICATIONS & TECHNOLOGIES, LLC



Jessica A. Nilsen
E-rate Production Manager

Appendix 1
Sample Administrator's Decision on Appeal

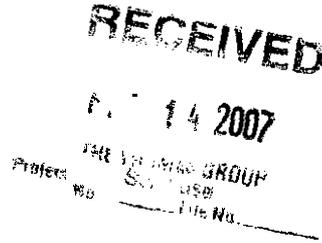


Administrator's Decision on Appeal - Funding Year 2006-2007

February 12, 2007

Jessica A. Nilsen
Thomas Communications & Technologies, LLC

217 Montgomery Street
Syracuse, NY 13202



Re: Applicant Name: NJ SCHOOLS CONSTRUCTION CORPORATION
Billed Entity Number: 15218925
Form 471 Application Number: 521214
Funding Request Number(s): 1435072
Your Correspondence Dated: November 27, 2006

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) **has** made its decision in regard to your appeal of USAC's Funding Year 2006 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1435072
Decision on Appeal: Denied
Explanation:

- During the Appeal Review, USAC thoroughly assessed the facts presented **in** the appeal letter, the relevant documentation on file, and the FCC Rules and Procedures before making its determination on your appeal. During the review, you were faxed the Selective Review Information Request (SRIR) on April 19, 2006. In response to the initial SRIR fax, you submitted a description of the procurement process, the RFP, and copies of the Notice-to-Proceed letters. On August 9, 2006, the Reviewer sent a follow **up** fax asking whether you posted a current year Form 470 for the services requested on the Form 471. The Reviewer's request also asked you to explain why the Transnet contract's ending date from the previous Funding Year changed from September 30, 2006 to September 30, 2007. Your response on August 24, 2006 stated that the services

obtained from the Funding Year 2005 Form 470 were still in progress, and the same contract and Form 470 posting were referenced for Funding Year 2006. The Contract Guidance section of the USAC website states, "If an applicant has a contract with voluntary extensions for which it has filed a Form 470, it cannot extend the contract beyond its original expiration date without posting a new Form 470 and considering all bids received, unless voluntary extensions were indicated in Item 13 of Form 470 or in the RFP." The RFP and Form 470 did not include language describing the intent to seek an agreement with voluntary extensions. The contracts you submitted during the Selective Review failed to include contractual terms which clearly define the start and ending dates of the agreement. Therefore, USAC was not able to determine if you had a signed contract in place with the service provider at the time of the filing of the Form 471. You have failed to provide evidence that USAC erred in its original decision; consequently, the appeal is denied.

- USAC has determined that, at the time you submitted your Form 471 application, you did not have a signed and dated contract for services in place with your service provider(s) for services other than tariffed **or** month-to-month services. FCC Rules require that applicants submit a completed FCC Form 471 "upon signing a contract for eligible services." 47 C.F.R. sec. 54.504(c). The FCC Rules further require that both beneficiaries and service providers must **retain** executed contracts, signed and dated by both parties. See Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15808, 15824-26, FCC 04-190 para. 48 (rel. Aug. 13, 2004). The FCC has consistently upheld USAC's denial of funding when there is no contract **in** place for the funding request. See Request for Review by Waldwick School District, Schools and Libraries Universal Service Support Mechanism, File No. SLD-256981, CC Docket No. 02-6, Order, 18 FCC Rcd. 22994, DA 03-3526 (rel. Nov. 5, 2003). The FCC Form 471 instructions under Block 5 clearly state that you **MUST** sign a contract for all services that you order on your Form 471 except tariffed services and month-to-month services. See Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) at page 23.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions **to** either USAC **or** the FCC. For appeals that have been denied in full, partially approved, dismissed, **or** canceled, you may file an appeal with the FCC. You should **refer** to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received **or** postmarked within **60** days **of** the date **on** this letter. Failure to meet this requirement will result in automatic dismissal of your **appeal**. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

**Schools and Libraries Division
Universal Service Administrative Company**

cc: Jessica A. Nilsen

Appendix 2
Sample Request for Proposal
(Sample Corresponds to Form 471 Application 521214)



STATE OF NEW JERSEY
RICHARD CODEY ACTING GOVERNOR
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY



PROJECT MANUAL

VOLUME 1

CABLING, TELEPHONE SYSTEM, NETWORK ELECTRONICS AND SERVERS FOR:

CONTRACT NUMBER: ES-0029-EO1

at the
East Orange School District

CABLING, TELEPHONE SYSTEM, NETWORK ELECTRONICS AND SERVERS

for
East Orange School District
East Orange, New Jersey

Prepared for:
NEW JERSEY SCHOOL CONSTRUCTION CORPORATION
P.O. Box 991
Trenton, NJ 08625

Project Management Firm:
Don Todd Associates, Inc.
60 Evergreen Place, Suite 501
East Orange, New Jersey 07018

Design Consultant:
Thomas Associates Architects & Engineers
Princeton Forrestal Village, 103 Main Street / Princeton, NJ 08540

December 9, 2004

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PRICE PROPOSAL CHECKLIST

The following documents shall be attached to the Price Proposal:

FOR PRIME CONTRACTOR

- Completed Statement of Joint Venture, if applicable, (on form provided by NJSCC);
- Copy of current valid certificate of registration issued pursuant to "The Public Works Contractor Registration Act," P.L. 1999, c. 238;
- Copy of current valid **Business** Registration Certificate for **State Agency and Casino Service** Contractors issued by the Department of **Treasury**, Division of Revenue;
- Copies of valid Contractor or Trade Licenses and Permits (Plumbing, **Electrical**, etc.) where applicable;
- NJSCC **Total** Amount of **Uncompleted Work** Form (on form provided by NJSCC) ; and
- Bid Bond.

FOR ALL SUBCONTRACTORS LISTED IN THE BID ADVERTISEMENT

- Copy of DPMC Classification Notice issued by the Department of Treasury, DPMC;
- Copy of NJSCC Prequalification Notice;
- Copy of current valid certificate of registration issued pursuant to "The Public Works Contractor Registration Act," P.L. 1999, c. 238;
- Copy of current valid Business Registration Certificate for **State Agency and Casino Service** Contractors issued by the Department of **Treasury**, Division of Revenue; and
- Copies of valid Contractor or Trade Licenses and Permits (Plumbing, Electrical, etc.) where applicable.

The following documents are requested to be attached to the **Price** Proposal:

"SBE Form A" and "Form C Certification of SBE Status" of the SBE Utilization Attachment, as provided by the Corporation. Consistent with the set aside goals of 5% to businesses registered in the category of gross revenues that do not exceed \$1 million; and 10% to businesses registered in the category of having gross revenues exceeding \$1 million consistent with the standards established at 13 C.F.R. 121.201; and 10% to businesses in either category, the NJSCC encourages contractors to provide opportunities to SBE firms to participate in the performance of all projects.

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Contract No.	Contract Name & Location	School District	CCE Range
ES-0029-E01	3 East Orange Schools	East orange	\$250,000.00 - \$300,000.00

Sealed bid proposals will be received by the New Jersey Schools Construction Corporation ("NJSCC") at their offices listed below for the following work:

Contract No.: **ES-0029-E01**
 Contract Name: Cabling, Telephone System, Network Electronics & Servers
 District: East Orange
 County: Essex
 No. of Schools: 3 (Mildred B. Garvin MicroSociety ES, Langston Hughes ES, E.S. #5)
 CCE Range: **\$250,000 - \$300,000**

Brief description of work: Provide and install cabling, telephone system, network electronics, sewers and participate in the School & Libraries Division E-rate program, and as specified in the project manual.

This work will be bid and constructed as a single overall contract (one lump sum for all trades)

THE BIDDER MUST BE ENROLLED IN THE USAC, SCHOOL AND LIBRARY DIVISION GRATE PROGRAM AS A SERVICE PROVIDER AND HAVE AN **ACTIVE** SERVICE PROVIDER IDENTIFICATION NUMBER (SPIN) BY THE TIME OF AWARD.

Bid proposals for the above work will be received from bidders registered with the Division of Revenue and Department of Labor, and classified by the Department of Treasury, Division of Property Management and Construction and the NJSCC in the following trade(s):

Technology Contractor with a DPMC Classification of C051

Bid proposals must list the names of the firms who meet the above classifications.

Bids will be received until January 18, 2005 at **2:00** PM (local time) at which time the bids will be publicly opened and the lump sum base bid price submitted by each bidder will be read. Any bid proposal received after this date and time will be returned **unopened**.

A mandatory pre-bid conference will be held as follows:

Pre-Bid Date: December 21, 2004
 Pre-Bid Time: 1200 PM (local time)
 Pre-Bid Place: Newark Regional Office, NJSCC
 375 McCarter Highway
 Newark, NJ 07114

In addition to the mandatory pre-bid conference, all bidders on this project will be required to complete a project rating proposal and submit the completed Project Rating Proposal (PRP) by **5:00 PM** (local time) on December 27, 2004 to Mirna Quintana at the below NJSCC address:

If U.S. Mail:

NJSCC
 P.O. Box 991
 Trenton, New Jersey 08625-0991

If Fed Ex, UPS, Courier, Hand Delivery:

NJSCC
 1 West State Street
 First Floor (Wachovia Bank Building)
 Trenton, NJ 08625-0991

Copy of your firm's Business Registration Certificate MUST be submitted with the PRP.

Copies of the project evaluation forms are available from the PHF or the NJSCC.

Plans and specifications may be inspected or obtained as of December 13, 2004 for a non-refundable fee of \$100.00 for each set of documents. during regular business hours, from:

Don Todd Associates
 60 Evergreen Place, Suite 501
 East Orange, NJ 07018
 973-395-1300

Checks shall be made payable to the NJSCC.

Bidders are required to comply with the requirements of P.L. 1975, c. 127 (N.J.A.C. 17:27), pertaining to affirmative action and equal employment opportunity.

The NJSCC requires the contractor to provide opportunities to SBE firms to participate in the performance of this engagement, consistent with NJSCC's SBE Set-Aside Goals of 25% (5% to Category 4, 10% to Category 5, and the remaining 10% to be allocated among Category 4 and/or Category 5). To be registered in Category 4, a business must have gross revenues that do not exceed \$1 million. To be registered in Category 5, a business must have gross revenues exceeding \$1 million. The Small Business Administration size standards are established at 13 C.F.R. 121.201.

The NJSCC will not permit the Regional PMF or the sub-consultants to the Regional PMF, who provide services to the NJSCC for the above school district, to be engaged as a prime or subcontractor for this engagement. The Regional PMF or the sub-consultants to the Regional PMF, who provide services to the NJSCC for the above school district, shall not submit or be named in a bid for this engagement.

The NJSCC reserves the right to waive any non-material defects or to reject any or all bids.

For further information on NJSCC, please visit us at "www.njsc.com".
 DATE ADVERTISED: December 10, 2004

Mer the Mandatory Pre-Bid Conference is held, the list of attendees will be available here.

Project Name & Location
<u>Barry Garvin ECC</u>
<u>New - Langston Hughes Replacement (-x07)</u>
<u>New ES #5 (-x05)</u>

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INSTRUCTIONS TO BIDDERS

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Section 3	Project Rating Proposal
Section 4	Price Proposal
Section 5	Bid Bond
Section 6	Contract Award and Execution
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SECTION 1 – BID OVERVIEW

A bid consists of **two** separate proposals:

The first proposal is the “Project **Rating** Proposal”, which consists of information regarding the “other factors” which will be evaluated by the Corporation in its consideration of the bid. The Corporation will determine a Bidder’s Project **Rating** Limit based on this Proposal.

Important Note: a Bidder may not **submit a Price** Proposal that exceeds its Project **Rating** Limit for a project.

The second proposal is the “Price Proposal”, which contains the price the Bidder intends to bid for the work **as well as** other required information.

SECTION 2 -BIDDING PROCEDURES

21 EXAMINATION OF CONTRACT DOCUMENTS AND PROJECT SITE

The Bidder **shall** examine all Contract Documents, **noting** particularly all requirements that will *affect* the Bidder’s work in any way. Contract Documents **are** defined **as** all the documents identified in the General Conditions at section 1.1

Failure of a Bidder to be acquainted with the amount and nature of work **required to** complete any applicable division of the work, in conformity with all requirements of the project(s) and the package **as a whole**, will not be considered **as** a basis for additional compensation.

The Bidder shall evaluate each project site and related conditions, including without limitation the following:

- The condition, layout **and nature** of each project site **and** surrounding **areas**;
- The availability and **cost** of labor;
- The availability and **cost** of materials, supplies and equipment;
- The cost of temporary utilities **required** in the bid;
- The cost of any permit or license **required** for the projects and not obtained by the Corporation;
- The generally prevailing climatic conditions; and
- Conditions bearing upon transportation, **disposal**, handling, and storage of materials.

Unless otherwise specified in the Contract Documents, borings, test excavations and other subsurface information, if any, are provided solely to share information available to the Corporation and any use of or reliance upon such items by the Bidder is at the risk of the bidder.

2.2 PRE-BID CONFERENCE AND ADDENDA

All Bidders must attend the mandatory pre-bid conference. No Project Rating Proposal will be accepted from any Bidder that fails to attend the mandatory pre-bid conference. In the case of a Joint Venture, only one representative from the Joint Venture need attend the pre-bid conference.

The mandatory pre-bid conference will be held as set forth in the Bid Advertisement appearing in selected newspapers and at the Corporation's website: www.niscc.com.

The Corporation may issue Addenda, no less than 72 hours prior to the opening of the Price Proposal, excluding Saturdays, Sundays and legal holidays, to clarify, interpret, correct or change the Contract Documents. The Corporation's authorized and approved Project Management Firm (PMF) shall provide copies of Addenda to each firm that purchased the Contract Documents and attended the pre-bid conference. Failure to acknowledge the addenda, and include such acknowledgement with the Price Proposal, may result in the Price Proposal being rejected.

The Corporation may issue an Addenda less than 72 hours prior to opening of the Price Proposal provided that the Price Proposal opening date is changed in the Addenda to a date that is at least 72 hours from the date of the Addenda.

Bidders shall not rely on any oral answers to questions raised at the pre-bid conference or at any other time. Bidders shall not rely on any interpretation or clarification of or correction or change to the Contract Documents unless it is in the form of a written Addendum.

2.3 INTERPRETATION

If the Bidder finds any perceived error or omission in the Contract Documents or any conflict or discrepancy within the Contract Documents or between the Contract Documents and any applicable provision of law, the Bidder shall submit a written request to the Corporation's PMF firm for interpretation or clarification. Failure to submit said request shall be deemed a waiver for any claims for future compensation regarding discrepancies within the Contract Documents.

The Bidder shall be responsible for delivery of such requests no later than seven (7) days prior to the Price Proposal opening date.

All responses to such requests shall be in the form of written Addenda.

The submission of a Price Proposal is conclusive evidence that the bidder has completely reviewed the Contract Documents and fully understands and agrees to all of the requirements, terms and conditions set forth therein.

2.4 STANDARDS

The articles, devices, materials, equipment, forms of construction, fixtures and other items named in the specifications to denote kind and quality shall be known as standards and all bids shall be based upon those standards.

Where two or more standards are named, the bidder may furnish any one of those standards.

Items, which are not standards, may be used only if accepted pursuant to the requirements of Section 2.5 herein

2.5 PROPOSED EQUALS

If the Bidder proposes to use articles, devices, materials, equipment, forms of construction, fixtures or other items other than those standards named, the bidder shall **certify** that the item is equal in **quality** and in all aspects of performance and appearance to the standards specified.

In addition, the Bidder shall submit information to the PMF no later than five (5) business days prior to the **Price Proposal opening** date, which information shall include:

- The **name** and a complete description of the proposed **equal**, including drawings, performance and test data, and other information necessary for a complete evaluation; and
- A statement **setting** forth any changes, which the proposed equal will require in the projects.

If the Corporation approves the proposed equal, the PMF shall issue an Addendum describing and authorizing use of the new **standard**.

The decision to approve or disapprove a proposed equal shall be solely within the discretion of the Corporation, and shall be final when made. The Corporation shall have the discretion to **reject** a proposed **equal**, for any reason whatsoever, including the fact **that** the bidder failed to provide sufficient information to enable the Corporation to completely evaluate the proposed equal without delay in the scheduled Price **Proposal opening** date.

No Bidder shall rely on a proposed equal in the preparation of its bid, **unless** that proposed equal has been expressly approved as a standard in the form of an Addendum issued prior to the **Price Proposal opening date**.

2.6 BIDDING DOCUMENTS

Plans and specifications will be made available to the Bidder for review.

A copy of the plans and specifications will be available for purchase in the **amount** listed in the Bid Advertisement.

2.7 COPIES OF THE DRAWINGS AND SPECIFICATIONS

Unless otherwise specified in the Contract Documents, the PMF shall furnish to the successful bidder, free of charge, five (5) sets of the Project Manual, Drawings, **specifications and** Addenda.

The **successful** bidder may obtain additional copies or sepias of the Drawings and Specifications from the Design Consultant, upon **request**, at the **cost** of reproduction, if any.

SECTION 3 – PROJECT RATING PROPOSAL

3.1A SUBMISSION OF PROJECT RATING PROPOSAL

All **Bidders** are required to submit a completed Project Rating Proposal on or before the date and time listed in the Bid Advertisement or **such** other date as **set by** Addenda (“submission date”). **All** submissions must be delivered in accordance with Section 8 herein. Faxed or email copies are not acceptable.

Bidders shall fill in all relevant blank spaces in the Project Rating Proposal form in **ink or** by typewriting.

The Bidder must sign the Project Rating Proposal form in ink and all signatures must be original. If the bidder is a corporation, partnership or sole proprietorship, the legal name of the Bidder shall be printed or typed on the

line provided and **an** officer, **partner** or principal of the bidder, **as** applicable, **shall** sign the Project Rating Proposal.

Projects listed on the Project Rating Proposal must be **the** experience of the Bidder **and must** have been **completed** within the past seven (7) years. "Completed" is defined as projects where - at a minimum - a temporary certificate of occupancy **has** been **granted** or in the case where a new or amended certificate of occupancy is not **required**, projects that **are** 100% complete.

The Bidder must provide at least **two (2)** projects meeting the above criteria or it will be **deemed** ineligible to submit a price proposal.

The Project Rating Proposal of the bidder **with** whom the Corporation **executes** a contract shall be **incorporated** into the Contract Documents, as if fully rewritten therein.

3.1B SUBMISSION OF PROJECT RATING PROPOSAL BY A JOINT VENTURE

When two or more Bidders, **each** having valid classifications in the trade category or **categories** required by the Bid Advertisement, propose to form a joint venture for the **purpose** of submitting a bid **on a** specific package, the joint **venturers** shall submit a Statement of Joint Venture, in the form prescribed by the Corporation, with **their** Project Rating Proposals. For joint venture bidders, each individual firm comprising the joint **venture** shall submit a **separate** Project Rating Proposal that will be individually evaluated. The Project Rating Limit for **each** individual firm that comprises the joint **venture**. will be **added together** to achieve a Project Rating Limit for the joint **venture**.

Each member of the Joint Venture **must** sign its Project Rating Proposal form in **ink** and all signatures must be original. If the Bidder is a corporation, partnership or sole proprietorship, the **legal name** of the bidder shall be printed or **typed** on the line provided and **an officer**, partner or principal of the bidder, **as** applicable, **shall sign** the Project Rating Proposal.

3.2 DETERMINATION OF PROJECT RATING LIMIT

A Bidder's Project Rating Limit will be **determined** by the following:

The bidders largest listed project **X (1 +the sum of Sections 3.2.1, 3.2.2 and 3.2.3 listed** below).

A Bidder's Project Rating Limit cannot **exceed** 150% of the bidders largest listed project.

3.2.1 REFERENCES

The Corporation will select, at its **discretion**, two (2) project or **owner contacts** listed in the Project Rating Proposal and obtain reference **information from** these contacts. Reference information will include the following **seven (7)** categories:

- b** Safety.
- ✓** The quality of the construction.
- ✓** The timeliness of the work performed.
- ✓** The efficiency of the bidder's contract administration
- ✓** Supervision of **subcontractors**.
- ✓** The Bidder's level of cooperation during the **course** of the construction
- ✓** The timeliness and efficiency of punch list work corrections.

Project contacts will be asked if the performance in each of the seven (7) categories “exceeded expectations,” “met expectations” or fell “below expectations,” and the Corporation will assign to the response the percentage adjustment listed below as appropriate for the response provided for each project or owner reference contacted as listed below:

	Exceeded <u>Expectations</u>	Met <u>Expectations</u>	Below <u>Expectations</u>
Safety	+5%	+3%	-5%
Quality of the construction.	+5%	+2%	-5%
Timeliness of the work performed.	+2%	+1%	-2%
Efficiency of the Bidder's contract administration.	+2%	+1%	-2%
Supervision of subcontractors.	+2%	+1%	-2%
Bidder's level of cooperation during construction.	+2%	+1%	-2%
Timeliness and efficiency of punch list work corrections.	+2%	+1%	-2%

The Corporation will then total the project reference adjustments together and the sum shall be the “Reference Adjustment”. Should the Corporation be unable to verify a reference, no percentage adjustment will be made to the bidders largest listed project.

3.2.2 SAFETY

- A. Based on the NJ Workers Compensation Insurance Experience Modification Rate (EMR) listed by the bidder in the Project Rating Proposal, the Corporation will assign an EMR percentage as listed below:

EMR is less than or equal to .90	+20%
EMR is > .90 but less than or equal to 1.00	+10%
EMR is >1.00 but less than or equal to 1.10	-10%
EMR is >1.10 but less than or equal to 1.20	-20%
EMR is >1.20	-40%

The Corporation reserves the right to verify this information.

- B. Based on the Safety Professional information listed by the Bidder in the Project Rating Proposal the Corporation will assign a Safety Professional percentage as listed below:

	<u>Yes</u>	<u>No</u>
Employee of the firm with safety responsibilities.	+2%	0%
Employee of the firm completed OSHA 500 or OSHA 502 in last 4 years.	+2%	0%
Employee of the firm completed STS-Construction.	+2%	0%
Employee of the firm completed AGC/A Safety Management Course.	+2%	0%
Employee of the firm completed OSHA 30 Hour Construction Course.	+2%	0%

The Corporation reserves the right to verify this information.

The Corporation will then add the EMR percentage and the Safety Professional percentage together for a “Safety Adjustment”.

3.2.3 PREVAILING WAGE

Based on the Prevailing Wage Record with the N.J. Department of Labor listed by the Bidder in the Project Rating Proposal the Corporation will assign a Prevailing Wage Adjustment as listed below:

The firm has been adjudicated to have committed the following prevailing wage rate violations during the past five (5) years:

None	0%
One	-10%
More than one	-20%

The Corporation reserves the right to verify **this** information

3.3 NOTIFICATION OF PROJECT RATING LIMIT

Within five (5) business days after the submission **date** as listed in the Bid Advertisement or **such other** date as set by Addendum, the Corporation will inform all bidders by facsimile, mail or posting on the Corporation's web site (www.njscc.com) of **the** Bidder's Project Rating Limit.

.Any Bidder who disagrees with its Project Rating Limit may challenge the **determination** by **making** a written request to the Director of Procurement setting forth **the** specific **grounds** for the challenge and the challenge must be received by the Corporation within **three** (3) business **days** of the posting of **the** results on the Corporation's web site (www.njscc.com). **The Director**, or his/her representative, will review the challenge and issue a final written **determination** within **three** (3) business days. **At the discretion of the Director** or his/her representative, additional information may be requested from the bidder, in which case a formal **written** determination will be issued within **three** (3) business **days** of receipt of said information. **The** determination will be made strictly **on** the information submitted.

SECTION 4 -PRICE PROPOSAL

4.1 A PRICE PROPOSAL

Any exception to the **wording** of the bid form shall cause the Price Proposal to be rejected **as non-responsive**.

Unless **the** Bidder withdraws the Price Proposal prior to the Price Proposal submission date **and** time, as provided in Section 4.5 herein, the bidder shall be required to comply with all **requirements** of the **Contract Documents**.

The Bidder shall fill in all relevant blank **spaces** in the **Price Proposal** in **ink** or by **typewriting**. The Bidder shall show all bid amounts in **both** words **and** figures. In the **case of a** conflict **between** the words and figures, the amount shown in words shall govern. In the **case of a** conflict between the total lump sum bid price and the sum of the prices allocated to each school in the package, the total lump sum bid price **shall** govern.

The Bidder **must** sign the Price Proposal in ink and all **signatures** must **be** original. If **the** bidder is a corporation, partnership or sole proprietorship, the legal **name** of the bidder shall be printed or typed on the line provided and an officer, partner or principal of the bidder, **as** applicable, shall sign **the** Price Proposal and attach **the** Corporate Seal to the signature.

4.1 B PRICE PROPOSAL BY A JOINT VENTURE

Bidders submitting a bid **as** a Joint Venture **shall** comply with all the requirements in section 4.1 A. In addition, each member of the Joint **Venture** shall sign the **price** Proposal, have its signature witnessed and **where** appropriate, attach the Corporate **Seal** to each signature.

4.1 C REQUIRED CLASSIFICATION AND SUBMITTALS

Each Bidder and subcontractor(s) **must** be classified by the Department of the Treasury, Division of Property Management and Construction and must be **prequalified** by the Corporation in the **trade(s)** specified in the Bid

Advertisement so that the bidder and **subcontractor(s)** classifications, when considered in totality, meet the requirements of the Bid Advertisement and **as** modified by Addendum ,

Each Bidder shall include all required documentation with its Price Proposal, including, but not limited to:

- A submission of a valid Bid Bond in the proper amount on the form supplied by the Corporation;
- "Total Amount of Uncompleted Contracts" form as provided by the Corporation and completed by the bidder;
- For the Bidder and subcontractors in the **trades** listed in the Bid Advertisement, copies of their current, valid certificates of registration issued pursuant to "The Public Works Contractor Registration Act," P.L. 1999, c. 238;
- For the Bidder and subcontractors in the **trades** listed in the Bid Advertisement, copies of their current, valid Business Registration Certificate for State Agency and Casino Service Contractors issued by the Department of the Treasury, Division of Revenue; and
- For the Bidder and subcontractors in the principal trades listed in the Bid Advertisement, copies of all current, valid contractor or trade licenses and permits **required** under applicable New Jersey law.

Each bidder is requested to include the following information with its Price Proposal:

"SBE Form A" and "Form C Certification of SBE Status" of the **SBE** Utilization Attachment, as provided by the Corporation. Consistent with the **set** aside goals of **5%** to businesses registered in the category of **gross** revenues that do not exceed **\$1 million**; and **10%** to businesses registered in the category of having **gross** revenues exceeding **\$1 million** consistent with the **standards** established at **13 C.F.R. 121.201**; and 10% **to** businesses in either category, the NJSCC **encourages** contractor to provide opportunities to SBE firms to participate in the performance of all projects.

4.2 DELIVERY OF PRICE PROPOSALS

The Price Proposal shall be enclosed in a sealed envelope that is clearly **marked** with the Bidder's Name, Contract Number, Contract Name, School District, **County** and the **date** of Price Proposal submission.

The Bidder must submit its sealed Price **Proposal** to the Director of Contract Procurement in accordance with Section 8 herein.

If the sealed Price Proposal is enclosed in another envelope for the purpose of **delivery**, the exterior envelope shall be clearly marked **as** containing a Price Proposal with the Project Name, Contract Number, and the date of the **Price** Proposal submission shown on the envelope.

Any Price Proposal that arrives after the time **set** for submission will be returned to the Bidder unopened.

4.3 OPENING OF PRICE PROPOSAL

All **Price** Proposals submitted on or before the date **and** time **scheduled** for submission will be publicly opened and the lump **sum** base prices submitted by the bidders will be **read** at the time and place indicated in the Bid Advertisement, or such other time **and** place as may be established by Addendum.

Bidders, their authorized agents, and other interested parties **are** invited to be present.

The public opening and reading of Price Proposals is for **informational** purposes only **and** is not to be construed as an acceptance or **rejection** of any bid submitted.

4.4 PRICE PROPOSAL EVALUATION CRITERIA AND PROCEDURES

The Corporation, in determining the **successful** Bidder, will evaluate the Price Proposals for responsiveness, including but not limited to verifying that:

- The submission of a valid Bid Bond in the proper amount on the form supplied by the Corporation;
- The Bidder and all subcontractors **are** classified, prequalified, registered and licensed as *required* by the Bid Advertisement; *and*
- The award of the contract in addition to the uncompleted work will not exceed the aggregate limit of the bidder.

The responsible Bidder whose responsive bid offers the Corporation the lowest price and which does not exceed the Bidder's Project Rating Limit as established through the evaluation of the Bid Price Proposal, shall be named the **successful** Bidder.

4.5 WITHDRAWAL OF PRICE PROPOSAL

A Bidder may withdraw a Price Proposal after it **has** been received by the Corporation, provided the Bidder **makes** a request in writing to the Director of Contract Procurement of the Corporation in accordance with Section 8 herein, and the **request** is received by the Corporation prior to the deadline for the submission of the Price Proposal. **Price Proposals** may **not be withdrawn** after the **submission** deadline **has passed**.

If a Bidder wants to make a change in a previously submitted Price Proposal, it must do so prior to the deadline for submission, by submitting a letter **requesting** the withdrawal of the previous submission and acceptance of a replacement Price Proposal.

SECTION 5 - BID BOND

The Bidder shall submit with **its** Price Proposal a Bid Bond, **equal** to ten percent (10%) of the total **cost** of the lump sum base bid, in the form provided by the Corporation.

The Bid Bonds of the apparent **successful** bidder and the two next most **successful** Bidders will be returned after execution of the Contract or rejection of all **Price** Proposals. The Bid **Bonds** of all other bidders will be **returned** no later than **ninety (90)** days after submission of the Price Proposal.

If, after issuance of a Notice to Award, the bidder fails to comply with all requirements of **Section 6** below within the time specified **in** the Contract **Documents**, the Corporation may proceed to recover under the terms and conditions of the Bid Bond, in accordance with **Section 6** below.

SECTION 6 - CONTRACT AWARD AND EXECUTION

Upon determination of the **successful** Bidder, the Corporation shall **so** notify the Bidder by **issuing** a **Notice** of Award. Within **five (5) business days** of the **date** of the **Notice of Award**, the recipient of the **Notice** of Award, shall complete and deliver the following documents to the Corporation, on forms provided by the **Corporation**:

- Executed form of Contract;
- Performance and payment bonds in the amount of **one hundred** percent (100%) of the contract amount;
- Certificate(s) of **insurance** and, if **requested**, a certified copy of the Bidder's insurance policies, including a copy of additional insured endorsement;
- Form AA-201 Initial Project Workforce **Report**;
- Corporate resolution;

- SBE Form A and Form C - Certification of SBE Status
- Integrity Affidavit;
- Disclosure to the Unit of Fiscal Integrity General Consent and Waiver; and
- Any other required documents.

The Corporation may extend the time for submission of the documents ~~set~~ forth above if **good** cause is shown by the bidder and if the Corporation determines, in its sole discretion, that the delay in document submission will not unduly delay project schedules.

Failure on the part of the Bidder that received the Notice of Award to execute and deliver all of documentation as provided in this Section, in the manner and within ~~the~~ time provided by the Contract Documents, is **just** cause for annulment of the Award and for the exclusion of the bidder from bidding on subsequent Corporation contracts for **such** period as the Corporation may deem appropriate. If the Award is annulled for ~~the~~ above reasons, the Bid **Bond** shall become forfeited and the Corporation may proceed to recover under the terms and conditions of the Bid Bond. Award may then be made to the next lowest responsible bidder, or the Contract may be re-advertised.

SECTION 7 – RIGHTS OF THE CORPORATION

The Corporation **reserves** the right to **reject** any Project **Rating** Proposal or Price Proposal that does not conform in all material respects with the requirements of the contract documents.

The Corporation **reserves** the right to reject any Project **Rating** Proposal or Price Proposal **deemed** non-responsive.

The Corporation reserves the right to reject any **Project** Rating Proposal or Price Proposal for **any** reason **deemed** to be in the best public interest.

The Corporation reserves the right to reject any **Price Proposal** if ~~the~~ price exceeds the Corporation's construction **cost** estimate.

The Corporation reserves the **right** to waive technicalities and the right to advertise for new bids.

The Corporation **reserves** the right to rescind any **determination** of the **successful bidder** or any Notice of Award if it determines that either was issued in error, or if it **becomes** aware of information or developments that impact on the responsibility of the bidder.

SECTION 8 – DELIVERY/MAILING OPTIONS

Submission of any document(s) to the Corporation shall comply with the following:

US Mail Address

NJSCC
P.O. Box **991**
Trenton, New Jersey **086250991**

Fed Ex. UPS. Courier. Hand Delivery

NJSCC
1 West State St. (Wachovia Bank Building)
2nd Floor
Trenton, New Jersey **08625-0991**

PROJECT RATING PROPOSAL

PROJECT RATING PROPOSAL SUBMISSION

for

BID

to

NEW JERSEY SCHOOLS CONSTRUCTION CORPORATION

for the following Package:

Contract Number: ES-0029-E01

Contract Name/Description: Cabling, Telephone System, Network Electronics & Servers

District: East Orange

County: Essex

Bid of _____
(Bidder's name) (Bidder's Federal I.D. #)

a corporation organized and existing under the laws of the State of _____

or a partnership or joint venture consisting of _____

or an individual, trading as _____

The bid for this package consists of two separate proposals:

The first proposal is the "Project Rating Proposal", which consists of information regarding the "other factors" which will be evaluated by the Corporation in its consideration of the bid. The Corporation will determine a Bidder's Project Rating Limit based on this proposal.

Important Note: A Bidder may not submit a Price Proposal that exceeds its Project Rating Limit for a project.

The second proposal is the "Price Proposal", which contains the price the Bidder intends to bid for the work as well as other required information.

A. General

This Project Rating Proposal is an evaluation of "other factors" as required by the Educational Facilities Construction and Financing Act. Analysis of the information submitted in this Project Rating Proposal will provide a Project Rating Limit for this bid package.

All bidders are required to submit this completed Project Rating Proposal **on** or **before** the date and time listed in the Bid Advertisement or such other date **as** set **by** Addenda. Faxed or email copies are not acceptable.

Failure to include all of the required information may preclude the bidder from achieving a Project Rating Limit sufficient to submit a Price Proposal. A Bidder may not submit a Price Proposal for a project that exceeds its Project Rating Limit.

The Corporation, after review of the information submitted in the Project Rating Proposal, will determine a Project Rating Limit for the bidder as described in the Instructions to Bidders.

A Bidder's Project Rating Limit cannot exceed 150% of the bidders largest project listed in the Project Rating Proposal.

B. Project Team:

Identify the Project Team members to be used on the School Facilities Projects that comprise this Package. The Project Manager is the office staff member who usually is responsible for scheduling and may be responsible for hiring/selecting subcontractors. The Superintendent is the field staff member who has overall on-site responsibility for a Project/Package. In each category, write the name of the individual who will be performing the functions described above, regardless of the actual titles the individuals hold within your firm.

If one individual will assume more than **one** of the roles listed above, he or she should be listed in more than one of the categories below. If different individuals will be acting as Project Managers or Superintendents on the different Projects that comprise this Package, you should list each such individual on a separate line.

Project Manager: _____

Superintendent: _____

C. Listing of Projects:

Identify at least two (2) projects completed by your firm within the past 7 years. "Completed" is defined as projects where – at a minimum – a temporary certificate of occupancy has been granted or in the case where a new or amended certificate of occupancy is not required, projects that are 100% complete. This information must be provided on the chart provided on page 3 of this Project Rating Proposal. The projects listed must be the experience of the bidder. Joint venture experience will not be accepted unless the same joint venture is bidding on this project.

Failure of the bidder to provide at least **two (2)** projects meeting the above criteria will result in the bidder being deemed ineligible to submit a Price Proposal.

The Corporation will select, at its discretion, two (2) project or owner contacts listed by the Bidder and obtain reference information from the project or owner contact. Reference information will include the following seven (7) categories:

- 3 Safety.
 - The quality of the construction.
 - The timeliness of the work performed.
 - The efficiency of the bidder's contract administration.
- 3 Supervision of subcontractors.
 - The bidder's level of cooperation during the course of the construction
 - The timeliness and efficiency of punch list work corrections.