NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3900-09T4

T.N. WARD, INC.,

Appellant,

v.

SOUTH JERSEY TRANSPORTATION AUTHORITY, and HUNTER ROBERTS CONSTRUCTION GROUP, LLC,

Respondents.

Argued October 12, 2010 - Decided October 26, 2010

Before Judges Lisa, Reisner and Alvarez.

On appeal from the South Jersey Transportation Authority, Resolution No. 2010-21.

Paul A. Bucco argued the cause for appellant (Davis, Bucco & Ardizzi, attorneys; Mr. Bucco and Robert D. Ardizzi, on the briefs).

Mark P. Asselta argued the cause for respondent South Jersey Transportation Authority (Brown & Connery, LLP, attorneys; Mr. Asselta, on the brief).

Bruce L. Phillips (Venzie, Phillips & Warshawer) of the Pennsylvania bar, admitted pro hac vice, argued the cause for respondent Hunter Roberts Construction Group, LLC (Stephen A. Venzie and Mr. Phillips, attorneys; Mr. Venzie and Mr. Phillips, of counsel and on the brief).

PER CURIAM

This is a public bidding case. Appellant, T.N. Ward, Inc. (Ward) appeals from the final action of the South Jersey Transportation Authority (SJTA), as embodied in its April 20, 2010 resolution, awarding a contract to Hunter Roberts Construction Group, LLC (Hunter) for the construction of a terminal expansion and federal inspection services facility at the Atlantic City International Airport. Ward argues that, although the amount of its bid was higher than Hunter's, Hunter's bid contained material non-waivable defects, as a result of which it should have been rejected and the contract should have been awarded to Ward as the lowest responsible bidder. Ward asks that we vacate the SJTA's April 20, 2010 resolution, direct the SJTA to award the contract to Ward, and award counsel fees to Ward. Based upon our review of the record in light of the controlling legal principles, we conclude that Hunter's bid did not contain any material defects. Accordingly, we affirm.

I

After advertising for bids, the SJTA opened sealed bids on March 18, 2010.[1] The specifications called for a single bid by a

[1] This project had been previously bid. However, after disputes arose regarding defects in some of the bids, including the (continued)

general contractor. Hunter's total bid was $25,157,675. Ward submitted the second lowest bid, in the amount of $25,847,000.

On March 31, 2010, Ward's attorney wrote to the SJTA protesting Hunter's bid. The letter specified four[2] specific defects as follows: (1) listing a structural steel contractor which was not certified by the American Institute of Steel Construction (AISC), in violation of the specifications; (2) naming two structural steel contractors, in violation of anti-bid shopping laws; (3) inaccurately identifying subcontractors that would perform various categories of work; and (4) misrepresenting the amount of work to be performed by small business enterprises (SBEs). Ward's attorney demanded that Hunter's bid be rejected and the contract be awarded to Ward. Ward's attorney sent two follow-up letters, on April 6 and 14, 2010, expanding upon these points.

On April 19, 2010, representatives of the SJTA conducted a hearing to further consider Ward's protest. It is unclear from

---

(continued)
lowest bid, the SJTA rejected all bids and re-bid the project. That action was not appealed by any party and is not germane to this appeal.

[2] The letter listed five defects. Items three and four both asserted inaccurate subcontractor identification, each with respect to a different subcontractor. We have combined these into a single item for purposes of discussion, which is consistent with the manner in which Ward has categorized the items in its appellate brief.

the record whether Ward or the SJTA requested the hearing. It is clear, however, that Hunter was not invited to have its representatives present at the hearing. Ward's attorney issued a fourth letter to the SJTA, dated April 19, 2010, in the nature of a legal brief for consideration at the hearing on that date.

The hearing was conducted by various staff members of the SJTA. None of the SJTA commissioners were present. Those present for the SJTA were its in-house counsel, its special counsel for this project, its deputy executive director, its project administrator for engineering, its engineering project manager for this project, its engineering manager, and its administrative services manager.

At the outset of the hearing, in-house counsel stated that the SJTA was "offering [Ward] the opportunity to lodge its protest or voice its concerns regarding the potential awarding of the project." He characterized the proceeding as "informal" and stated that the SJTA would not be offering any testimony, but that the SJTA representatives were "here to hear the arguments from [Ward's counsel]." Special counsel reiterated at the outset that this was an "informal" proceeding, continuing that "[w]e're not using this as an opportunity to present all the evidence that might bear on this particular dispute in response to the request by [Ward]. We're here to hear

information." At the end of the hearing, special counsel further explained that "this is not the end of these proceedings, I'm sure, and the SJTA and this group [presumably referring to the SJTA staff members present] certainly would reserve the right, if we think it's necessary, to have additional hearings and maybe supplement the factual record if we think that would be beneficial to the overall system."

At the hearing, Ward's counsel presented brief testimony by three witnesses: John DeVecchio, Ward's executive vice-president; David Galli, a representative of Central Metals, Inc. (Central Metals), one of the structural steel contractors named in Hunter's bid proposal; and Anthony Branda, a project manager estimator for Guthrie Glass & Mirror, Inc. (Gutherie), a subcontractor listed by Hunter to perform the awning and canopies work. We will discuss their testimony later in this opinion.

On the next day, April 20, 2010, the Board of Commissioners of the SJTA met and unanimously adopted the resolution awarding the contract to Hunter and directing its executive director to execute the contract documents. The resolution recited that upon opening and tabulating the bids on March 18, 2010, Hunter's bid was deemed the lowest responsible bid. The resolution made no mention of Ward's protest or the administrative hearing. By

awarding the bid to Hunter following the sequence of events we have described, it is reasonable to infer that the information, assertions, and legal arguments presented by Ward through its counsel's letters and at the hearing were insufficient to dispel the SJTA's initial conclusion that Hunter's bid was not only the lowest in amount but the "lowest responsible bid." Stated conversely, the SJTA found Ward's protest factually and legally deficient.

At oral argument, the SJTA's attorney explained that, although there is nothing in the record to substantiate it, the SJTA found it unnecessary to engage in fact-finding. This was so because, even if the facts asserted by Ward (including the testimony it presented at the hearing) were true, no material defect in Hunter's bid was established under the controlling legal principles. Although we are able to review the matter now before us based upon these representations and assumptions, we express the view that, where factual disputes are presented to a public entity in connection with a bid protest, the entity should account for those matters in its decision-making process. Failure to do so could impede informed judicial review and could require a remand for that purpose. We are able to proceed in this case because all of the factual matters presented by Ward

are contained in the record on appeal, and we, like the SJTA, accept them as true for purposes of our analysis.

After the SJTA awarded the contract on April 20, 2010, Ward filed a complaint in lieu of prerogative writs in the Law Division on April 22, 2010. After some limited proceedings in the Law Division, Ward acknowledged that, because the SJTA is a state agency, jurisdiction lay in the Appellate Division, see R. 2:2-3(a)(2), not the Law Division. Accordingly, on May 3, 2010, Ward voluntarily dismissed its Law Division complaint and filed this appeal.

On May 6, 2010, Ward moved before this court for a stay of the execution and performance of the contract between the SJTA and Hunter, for acceleration of the appeal, and for supplementation of the record. On May 26, 2010, we granted the stay and ordered acceleration. We denied leave to supplement the record.

II

Ward has raised a threshold issue as to which statutory provisions pertaining to public bidding apply in this case. In the course of its bid protest before the SJTA and in the Law Division, it contended that the Local Public Contracts Law (LCPL), N.J.S.A. 40A:11-1 to -51, applies. The SJTA has contended all along that it is governed by the provisions of

N.J.S.A. 52:32-2, which we will refer to as the "State Bidding Law." On appeal, Ward has modified its position. In its brief, it contends that it is unclear whether the SJTA is a local or state agency, but suggests that under either the LCPL or the State Bidding Law the result would be the same. At oral argument, Ward's attorney conceded that the State Bidding Law controls, but argued that we should consider provisions in the LCPL in determining the correct application of the State Bidding Law to the facts of this case. Indeed, by voluntarily dismissing its Law Division action and filing this appeal pursuant to Rule 2:2-3(a)(2), Ward has, in effect, acknowledged that the SJTA is a state agency, as a result of which the State Bidding Law applies.

The issue is not a close one. The SJTA is clearly not a local contracting unit within the definition of the LCPL. See N.J.S.A. 40A:11-2(1). It was established by the South Jersey Transportation Authority Act, N.J.S.A. 27:25A-1 to -42, as a "body corporate and politic" within the Department of Transportation. N.J.S.A. 27:25A-4. By statute, the SJTA

> shall constitute an instrumentality of the State exercising public and essential government functions to provide for the public safety, convenience, benefit and welfare, and the exercise by the authority of the powers conferred by this act shall be deemed and held to be an essential government function of the State.

[N.J.S.A. 27:25A-4.]

Pursuant to Article V, section 4, paragraph 1 of the State Constitution, which requires that all instrumentalities of state government and their respective functions, powers and duties be allocated within a principal department of the State, the Legislature allocated the SJTA within (but independent of) the Department of Transportation. Ibid.

According to the legislative findings and declaration in the Act,

> [i]t is the public policy of this State to provide for the coordinated development and planning of the State's transportation system both on the State and regional level. Through the medium of the Transportation Executive Council, . . . the activities of the various transportation related authorities are coordinated on the State level.
>
> [N.J.S.A. 27:25A-2a.]

Similar entities have been determined to be state agencies. The statute which created the New Jersey Meadowlands Commission "unassailabl[y]" created a state agency. Infinity Broad. Corp. v. N.J. Meadowlands Comm'n, 187 N.J. 212, 222 (2006). That statute, N.J.S.A. 13:17-5, states: "The commission shall constitute a political subdivision of the State established as an instrumentality exercising public and essential governmental functions, and the exercise by the commission of the powers

conferred by this act shall be deemed and held to be an essential governmental function of the State." See id. at 222 n.2; see also S. Jersey Port Corp. v. Modern Handling Equip. Co., 225 N.J. Super. 451, 456 (Law Div. 1988) (holding that the South Jersey Port Corporation is a state agency, and is not a contracting unit within the meaning of the LPCL).

As we will further discuss, determination of which public bidding law applies is significant, not only with respect to jurisdiction, but as to our substantive analysis as well. The two laws contain materially different provisions that bear directly upon some of the issues raised in this appeal. Unquestionably, the SJTA is a state agency, and the State Bidding Law applies in this case.

III

Under the State Bidding Law, bid specifications may be prepared in a manner that calls for a "single over-all contract," N.J.S.A. 52:32-2b(2), in which case the contract will be awarded to the "single lowest responsible bidder." N.J.S.A. 52:32-2c. That is what was done here. Because Hunter's bid was the lowest in amount, the sole issue for judicial determination is whether the SJTA erred in concluding that Hunter's bid was free of material defects that would disqualify it from receiving the contract award.

"The purpose of all bidding statutes is to secure competition and guard against favoritism, improvidence, extravagance and corruption, in order to benefit the taxpayers and not the bidders." Hall Constr. Co. v. N.J. Sports & Exposition Auth., 295 N.J. Super. 629, 634 (App. Div. 1996) (quoting In re Honeywell Info. Sys., Inc., 145 N.J. Super. 187, 200-01 (App. Div. 1976), certif. denied, 73 N.J. 53 (1977)) (internal quotation marks omitted). Consequently, "public bidding statutes are to be construed with sole reference to the public good and rigidly adhered to by the courts." Id. at 634-35 (citing Statewide Hi-Way Safety, Inc. v. N.J. Dep't of Transp., 283 N.J. Super. 223, 230 (App. Div. 1995)). The conditions and specifications of a bid "must apply equally to all prospective bidders; the individual bidder cannot decide to follow or ignore these conditions." Id. at 635. It is, of course, fundamental that bid specifications must conform to the applicable bidding statutes.

Any material departure from bid specifications renders a bid non-conforming and invalidates it. Id. at 635 (citing Twp. of Hillside v. Sternin, 25 N.J. 317, 323 (1957)). Although minor or inconsequential discrepancies and technical omissions can be waived, material conditions cannot be waived by the contracting authority. Meadowbrook Carting Co. v. Borough of

Island Heights, 138 N.J. 307, 314 (1994). A defect is considered material if (1) waiver of the defect would deprive the public entity of its assurance that the contract will be entered into, performed, and guaranteed according to the specified requirements, and (2) its waiver would adversely affect the competitive bidding process by placing a bidder in a position of advantage over other bidders, or by otherwise undermining the necessary common standard of competition. Id. at 315 (quoting L. Pucillo & Sons, Inc. v. Twp. of Belleville, 249 N.J. Super. 536, 547, certif. denied, 127 N.J. 551 (1991)).

Applying these principles, we now consider each of the four items in Hunter's bid alleged by Ward to constitute material defects.

A.

Ward argues that Hunter's bid was materially defective because one of the two structural steel subcontractors it listed does not hold an AISC certification. To place this issue in perspective, we set forth the applicable provisions in the bid specifications. The specifications required completion of a "SUBCONTRACTOR DECLARATION," which contained the following directions:

> Each bidder shall set forth in the bid the names and addresses of the subcontractors being utilized for this project for the categories of work listed below. **The**

> **General Contractor shall list their company name if the category of work is being done by the General Contractor.** Failure of the bidder to name all referenced categories will be cause for rejection of the bid.

Another section of the specifications set forth the process for responding to substantive inquiries from bidders regarding the specifications. Responses to such inquiries included in addenda would be posted on the SJTA website throughout the bidding process and would be binding on all bidders. "Addendum No. 3," issued on March 12, 2010, contained a number of questions and responses, including the following:

> Question #80 - Please clarify whether AISC certification [is] required for structural steel fabricators and erectors?
> **Response - Yes, AISC Certification is required for structural steel fabricators and erectors.**

The original specifications had not mentioned an AISC certification requirement.

In its subcontractor declaration form, Hunter listed two structural steel subcontractors: S. Grossi & Sons, Inc. (Grossi) and Central Metals. Hunter did not specify the work each of these subcontractors would perform.

The structural steel category on the subcontractor declaration form required that the listed subcontractor(s) "[m]ust have DPMC [New Jersey Division of Property Management and Construction] Classification: Trade Code C028, C029."

Included in its bid package, Hunter attached DPMC certifications for Central Metals, listing classifications C028 (welding) and C029 (structural steel & ornamental iron), and for Grossi, listing classification C029 (structural steel & ornamental iron).

Ward asserted that Central Metals is not AISC certified, but it admitted that Grossi is AISC certified. At the hearing, Ward presented the testimony of David Galli, an employee of Central Metals. In response to specific questions asked by Ward's counsel, Galli testified that Central Metals submitted price quotes to Hunter for some aspects of the steel work, including miscellaneous metals, ornamental ironwork, and metal stairs, but did not submit to Hunter a quote for structural steel work. As we have stated, we accept that testimony as a fact.

Without dispute, Central Metals does not hold an AISC certification, but Grossi does. Ward argues that because one of the two designated subcontractors for structural steel work is not AISC certified, the SJTA has no adequate assurance that the structural steel work will be performed by an AISC certified contractor. Ward therefore contends that the second Meadowbrook prong is implicated because Hunter was placed at an advantage in that other prospective bidders who could not obtain the services

of an AISC certified steel subcontractor would forgo placing a bid, rather than submit a bid naming an uncertified subcontractor.

We find Ward's argument unpersuasive. Hunter's bid lists two structural steel contractors, one of which is indeed AISC certified. Therefore, accepting Addendum No. 3 as part of the bid specifications, Hunter satisfied the requirement to list an AISC certified contractor under this category.

Further, based upon Galli's testimony and the DPMC classification codes applicable to Central Metals and Grossi, it was reasonable for the SJTA to infer (as it and Hunter now contend on appeal) that Grossi, the AISC certified contractor, would perform the structural steel fabrication and erection aspect of the structural steel work, and Central Metals, the only subcontractor of two listed that holds a DPMC classification for welding, would perform the welding work.

Even if this were not the case, the SJTA was justified in not finding a defect in Hunter's bid because a listed subcontractor could further subcontract an aspect of the work requiring AISC certification to an AISC certified sub-subcontractor.

We are satisfied from our review of the record that the listing of a subcontractor under structural steel that was not

AISC certified, under the circumstances we have described, did not constitute a deviation from the bid specifications.

B.

Ward asserts another defect in Hunter's bid under the structural steel category. Ward argues that because Hunter listed two subcontractors under this category, without specifying the scope of work each would perform, its bid would promote bid shopping and contravene legislative intent opposed to that practice. However, Ward's argument relies on the so-called anti-bid shopping law contained in the LCPL, specifically in N.J.S.A. 40A:11-16, which does not apply in this case.

We outlined the history of that provision, including its amendments and Governor Kean's Reconsideration and Recommendation Statement discussing bid shopping, in Clyde N. Lattimer & Son Construction Co., Inc. v. Township of Monroe Utilities Authority, 370 N.J. Super. 130 (App. Div. 2004). It is clear from that history that the Legislature and Governor inserted the anti-bid shopping provisions in the LCPL by design. In its present form, that section states that for bidding on the construction of public buildings in which the entire cost of the work will exceed the bid threshold of the LCPL, the specifications may include separate categories for (1) plumbing and gas fitting, (2) steam power plants and steam and hot water

heating and ventilating apparatus, (3) electrical work, (4) structural steel and ornamental ironwork, and (5) all other work. N.J.S.A. 40A:11-16a.

The section further requires that whenever a bid sets forth more than one subcontractor for any of the categories (1) through (4) that we have mentioned, the bidder must submit with its bid a certificate which "shall set forth the scope of work, goods and services for which the subcontractor has submitted a price quote and which the bidder has agreed to award to each subcontractor should the bidder be awarded the contract." N.J.S.A. 40A:11-16b. Therefore, under the LCPL, if the names of two bidders were submitted under the structural steel and ornamental ironwork category, the bid would be defective if it was not accompanied by a certificate describing the scope of work to be performed by each such subcontractor in accordance with a price quote from each such subcontractor.

The Legislature has not seen fit to include a similar provision the State Bidding Law. That law lists the same five categories for which separate plans may be included in the specifications. N.J.S.A. 52:32-2a. It further provides that, where a single over-all contract is to be awarded, the bidder "shall set forth in the bid the name or names of all subcontractors to whom the bidder will subcontract for the

furnishing of any of the work and materials specified in branches (1) through (4) in subsection a. of this section . . . ." N.J.S.A. 52:32-2b. Hunter has complied with the specifications in this regard.

There is nothing in the State Bidding Law or in the specifications that prohibits a bidder from listing more than one subcontractor within a particular category of work. By listing two structural steel contractors, Hunter has certified in its subcontractor declaration that both of these subcontractors are "being utilized for this project." This is not a situation like the one we discussed in Prismatic Development Corp. v. Somerset County Board of Chosen Freeholders, in which multiple subcontractors in the same category of work were listed in an LCPL case, some of which the bidder would use and some of which it would not use. 236 N.J. Super. 158, 161-62 (App. Div.), certif. denied, 118 N.J. 205 (1989), overruled on other grounds, Meadowbrook, supra, 138 N.J. at 320, superceded by statute, L. 1997, c. 408. It is in those circumstances that the Legislature has prohibited the practice of bid shopping under the LCPL. By requiring a scope of work description where multiple subcontractors were listed for a single category of work, general contractors were precluded from

negotiating for a better deal among those subcontractors post-award.

That is not the case under the State Bidding Law. That law requires only that the bidder list "the name or names of all subcontractors to whom the bidder will subcontract for the furnishing of any of the work and materials" in one of the specified categories, such as structural steel and ornamental ironwork. N.J.S.A. 52:32-2b (emphasis added). Therefore, the Legislature has determined that for state agencies, it is sufficient that the general contractor identify multiple subcontractors within a category. This does not allow the general contractor to later choose among them through a negotiating process to the general contractor's advantage. It requires the general contractor to assure the state agency that if there is more than one subcontractor in that category, both or all of them "will" perform a portion of the work. The Legislature has also seen fit not to require advance price quotes from subcontractors or to require an itemization by the general contractor of the scope of work of each such subcontractor in a category in which more than one subcontractor is listed.

We recognize the public policy underlying the prohibition of bid shopping. As we have described, the scheme prescribed by

the State Bidding Law does not allow for wholesale bid shopping. To the extent that it allows some flexibility with regard to the specific scope of work that each listed subcontractor in a particular category "will" perform, we view this as an intentional legislative design. We are confident that had the Legislature intended to incorporate the anti-bid shopping provision of N.J.S.A. 40A:11-16 in the State Bidding Law it would have done so. We find no ambiguity in the omission of this provision from the State Bidding Law. Therefore, there is no need for judicial interpretation that would insert a provision which the Legislature has intentionally not inserted. Indeed, to do so would exceed our role, which requires that a clear, unambiguous statutory provision should be enforced as written. Dixon v. Gassert, 26 N.J. 1, 9 (1958); LaSala v. LaSala, 335 N.J. Super. 1, 10-11 (App. Div. 2000), certif. denied, 167 N.J. 630 (2001) (quoting Lehmann v. Kanane, 88 N.J. Super. 262, 265 (App. Div.), certif. denied, denied, 45 N.J. 491 (1965)).

C.

We next consider Ward's argument that Hunter's bid was materially defective for failing to properly name subcontractors by misrepresenting which subcontractors would perform various categories of work on the project. As we have previously set

forth, bidders were required by the specifications to list in their subcontractor declaration the subcontractor(s) that would perform each listed category of work. Fifty-eight categories are listed on the subcontractor declaration form.

Ward contends that Hunter listed subcontractors in some of the categories that will not actually perform the work in those categories. Ward bases its contention on the fact that some subcontractors did not submit price quotes to Hunter in advance of the bid in those categories. As we have previously stated, we accept as true, as did the SJTA, the factual evidence Ward presented at the administrative hearing. Ward relies upon that "unrebutted" testimony in support of its position.

Anthony Branda, a Guthrie employee familiar with the project, testified. After Branda stated his name and employment status, Ward's attorney asked him a single question: "Did Guthrie Glass and Materials bid the awnings and canopies to Hunter Roberts?" Branda answered, "No, we did not." No one asked Branda whether his company would perform that work. Branda never said his company would not perform that work.

Similarly, David Galli, an employee of Central Metals, was asked whether his company "bid the structural steel to Hunter Roberts." He answered, "We did not." When asked again to confirm that he "did not give Hunter Roberts a price quote," he

reiterated that he did not. Again, Galli was not asked whether Central Metals would perform that work, and he never said the company would not perform it.

Finally, John DeVecchio, Ward's executive vice president, provided hearsay testimony about another subcontractor, Cirignano Contracting, Inc. (Cirignano). DeVecchio said he was familiar with Cirignano and that it was a painting and wall covering contractor. He said he had never known the company to perform other kinds of work. He said he had spoken to Tom Cirignano, who told him he had only submitted price quotes to Hunter for painting, but did not submit price quotes for other categories for which Hunter listed Cirignano. These categories included insulation work, doors and windows, drywall and metal framing, fireproofing, and rough carpentry. Again, Ward's attorney did not ask DeVecchio whether Cirignano stated that his company would not perform the work in these other categories. His questions were limited to whether or not price quotes had been submitted to Hunter for these items.

As we have previously set forth, the controlling public bidding law in this case is the State Bidding Law, not the LCPL. Even under the more restrictive LCPL, where a single subcontractor is named in a particular category there is no requirement for the general contractor to submit a certificate

setting forth the scope of work based upon a price quote for the subcontractor within a category. N.J.S.A. 40A:11-16b; Lattimer, supra, 370 N.J. Super. at 132, 138. In this case, Hunter listed a single contractor for fifty-seven of the fifty-eight categories listed on the subcontractor declaration form. Therefore, even under the LCPL, if it were applicable, there would be no defect with respect to those categories because of the absence of advance price quotes.

More importantly, the controlling statute in this case, N.J.S.A. 52:32-2, simply does not require advance price quotes. It merely requires that the general contractor "set forth in the bid the name or names of all subcontractors to whom the bidder will subcontract" various categories of work. N.J.S.A. 52:32-2b. The specifications were drafted to impose such a requirement, not only with respect to the four required categories, but for all categories of work. Hunter complied with the requirement. Therefore, accepting as true the testimony presented by Ward at the hearing, Hunter's bid was not defective in this regard.

D.

Finally, Ward argues that Hunter's bid was materially defective because it contained misrepresentations as to the level of involvement by SBE subcontractors. The specifications

expressed a goal of allocating twenty-five percent of the contract to SBE contractors. However, the specifications also made clear that "[t]his is not a Set-Aside bid," and that bidders were requested to include SBE information "for informational purposes only." Hunter identified three of its subcontractors as SBE contractors, Guthrie, Cirignano, and Vineland Tile Company, Inc. Hunter set forth the following dollar amounts for the work to be performed by each: Guthrie, $1,000,000; Cirignano $4,500,000; and Vineland Tile Company, Inc. $1,250,000.

At the administrative hearing, while providing his hearsay testimony about Cirignano, DeVecchio testified that Cirignano was not registered as an SBE. He said, "I checked on the State website. Absolutely not. I talked to Tom [Cirignano] and he said no." This testimony proved unreliable, and Ward subsequently conceded that Cirignano was a registered SBE contractor and withdrew the argument that it was not.

Ward argues that because Hunter's subcontractor declaration overstates the scope of work that will be performed by Cirignano and Guthrie, Hunter materially misrepresented the level of SBE participation in its bid by artificially increasing the purported level of participation by those two subcontractors. For the reasons we stated in the preceding section, we reject

this argument. Advance price quotes were not required. Hunter is required to use the designated subcontractors for the categories of work for which they are listed. There is no evidence in the record that Guthrie and Cirignano will not do that work.

Further, this is not an SBE set-aside program. Twenty-five percent SBE participation was only a goal, and the SBE information was required for informational purposes only. Therefore, even if there were a defect, it would not be material.

The SJTA action is affirmed, and the stay previously imposed by this court is vacated.