

Contact: John Palladino, Esq
Hankin Sandman & Palladino
Phone 609-344-5161
Fax 609-344-7913

30 S. New York Ave
Atlantic City NJ 08401
john@hankinsandman.com
www.hankinsandman.com

**HANKIN SANDMAN &
PALLADINO**

Press Release

HANKIN SANDMAN & PALLADINO ATTORNEYS ACHIEVE MAJOR VICTORY IN APPELLATE DIVISION BATTLE OVER CONSTRUCTION OF MERCER COUNTY COURT HOUSE

**APPELLATE DIVISION UPHOLDS TRIAL COURT DECISION
REJECTING CONSTRUCTION BID OF HUNTER ROBERTS;
HANKIN SANDMAN & PALLADINO CLIENT ERNEST BOCK &
SONS, INC. NOW HOLDS THE LOW BID**

ATLANTIC CITY, NEW JERSEY FEBRUARY 22, 2010: Last week the Appellate Division of the Superior Court issued an opinion in an emergent appeal affirming Hankin Sandman & Palladino ("HS&P")'s trial court victory on behalf of its client, general contractor Ernest Bock & Sons, Inc ("EBS"), said John Palladino, an HS&P partner and lead counsel for the litigation. In January, 2009 the Mercer County Improvement Authority ("MCIA") solicited bids for the construction of a new criminal court house. The apparent low-bid was submitted by Hunter Roberts Construction Group, with EBS submitting the second-lowest bid. When the MCIA awarded the contract to Hunter Roberts, HS&P filed suit on behalf of EBS, alleging that Hunter Roberts had violated New Jersey public bidding laws by failing to properly disclose the owners of the company. The trial court sided with EBS, and threw out Hunter Robert's bid, leaving EBS with the low bid for the project. Hunter Roberts and the MCIA filed an emergent appeal seeking to reverse the ruling of the trial court.

The Appellate Division again sided with HS&P and its client, EBS. "The Appellate Division agreed with Judge Bookbinder's decision at the trial court level, and found that Hunter Robert's had failed to comply with the corporate disclosure requirements of New Jersey's public bidding laws," said Palladino. New Jersey law requires a corporation bidding on a public contract to disclose all individuals who own at least 10% of the corporation. Hunter Robert's bid did not list the three (3) individuals who ultimately owned the company. "There are certain mistakes in a bid that can be waived and certain mistakes that cannot be

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waived," explained Palladino, "and our argument all along was that this type of mistake cannot be waived. Fortunately, the Court agreed with us."

MCIA and Hunter Roberts now have twenty (20) days to appeal the decision to the New Jersey Supreme Court. "I am hopeful that this decision will end this litigation and EBS can get about the business of building this important court facility," said Palladino.

EBS was represented in this matter by HS&P attorneys John Palladino and Colin Bell. HS&P is a full service law firm located in Atlantic City and Cape May Court House, New Jersey. Palladino and Bell practice in all areas of construction and public bidding law.

A copy of the Appellate Court's decision is enclosed with this release.

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0051-09T2
A-0150-09T2
A-0199-09T2

ERNEST BOCK & SONS, INC.,

Plaintiff-Respondent,

v.

MERCER COUNTY IMPROVEMENT
AUTHORITY,

Defendant-Appellant,

and

HUNTER ROBERTS CONSTRUCTION
GROUP, LLC,

Defendant-Respondent.

ERNEST BOCK & SONS, INC.,

Plaintiff-Respondent,

v.

MERCER COUNTY IMPROVEMENT
AUTHORITY,

Defendant-Respondent,

and

HUNTER ROBERTS CONSTRUCTION
GROUP, LLC,

Defendant-Appellant.

ERNEST BOCK & SONS, INC.,

Plaintiff-Appellant,

v.

MERCER COUNTY IMPROVEMENT
AUTHORITY and HUNTER ROBERTS
CONSTRUCTION GROUP, LLC,

Defendants-Respondents.

Argued December 1, 2009 - Decided February 18, 2010

Before Judges Wefing, Messano, and LeWinn.

On appeal from the Superior Court of New Jersey, Law Division, Burlington County, Docket No. L-2503-09.

William Harla argued the cause for appellant Mercer County Improvement Authority in A-0051-09T2 and respondent in A-0150-09T2 and A-0199-09T2 (DeCotiis, FitzPatrick, Cole & Wisler, LLP, attorneys; Mr. Harla, of counsel; Catherine E. Tamasik and Victoria A. Flynn, on the briefs).

Bruce L. Phillips (Venzie, Phillips & Warshawer) of the Pennsylvania Bar, admitted pro hac vice, argued the cause for appellant Hunter Roberts Construction Group, LLC in A-0150-09T2 and respondent in A-0051-09T2 and A-0199-09T2 (Stephen A. Venzie, attorney; Mr. Phillips, of counsel and on the briefs; Mr. Venzie, on the briefs).

John F. Palladino argued the cause for appellant Ernest Bock & Sons, Inc., in A-0199-09T2 and respondent in A-0051-09T2 and A-0150-09T2 (Hankin Sandman & Palladino, attorneys; Mr. Palladino and Colin G. Bell, on the briefs).

PER CURIAM

These three back-to-back appeals, which we consolidate for the purpose of this opinion, involve a public works contract which the Mercer County Improvement Authority (MCIA) awarded to the lowest bidder, Hunter Roberts Construction Co., LLC (Hunter), on July 14, 2009, for the construction of a new criminal courthouse in Trenton. The second lowest bidder, Ernest Bock & Sons, Inc. (Bock), filed a complaint in lieu of prerogative writs challenging the award on the basis that Hunter's bid was non-conforming and invalid for (1) naming an unqualified subcontractor and (2) failing to comply with corporate ownership disclosure requirements. Bock further sought to compel the MCIA to award the contract to it as the next lowest responsible bidder. The matter was transferred from Mercer County to Burlington County.

On September 1, 2009, Judge Ronald E. Bookbinder, rendered a decision rejecting Bock's first claim, but finding that Hunter's bid was "materially defective for failing to comply with the [o]wnership [d]isclosure requirements of N.J.S.A. 52:25-24.2 and N.J.S.A. 40A:11-23.2, as required by the bid specifications." Therefore, the judge rescinded the contract award to Hunter. These three appeals followed.

In Nos. A-0051-09T2 and A-0150-09T2, the MCIA and Hunter separately appeal from provisions of the September 1, 2009 order rescinding the contract award to Hunter. In No. A-0199-09T2, Bock appeals from the provision in that order that Hunter's bid was not defective for naming a structural steel subcontractor that was not AISC¹-certified as required by the MCIA's bid instructions. For the reasons that follow, we affirm the rescission of the contract awarded to Hunter substantially for the reasons stated by Judge Bookbinder in his written decision. Therefore, we dismiss Bock's appeal as moot.

I.

The factual background giving rise to these appeals may be summarized as follows. On January 30, 2009, the MCIA issued an "Advertisement for Bids," soliciting bids for the construction of a new Mercer County criminal courthouse. When the bids were opened on April 24, 2009, Hunter was the lowest bidder at \$51,483,000; Bock was the next lowest bidder at \$51,643,000. Bock submitted an objection to Hunter's bid on May 1, 2009. On July 14, 2009, the MCIA awarded the contract to Hunter. Bock's lawsuit followed.

In order to understand the issue presented by Bock's successful challenge to Hunter's bid, it is necessary to review

¹ American Institute of Steel Construction.

the pertinent bidding instructions issued by the MCIA, Hunter's compliance with those instructions, and the applicable statutory mandates.

The MCIA's bidding instructions stated in Section 1, entitled "INVITATION TO BID":

D. The Bid Documents include the Bidding Requirements and the proposed Contract Documents. The Bidding Requirements consist of the Notice to Bidders, the Instructions to Bidders, any Supplementary Instructions to Bidders, the Proposal Forms and any other sample bidding and contract forms included or referenced in the Specifications. The proposed Contract Documents consist of the form of Agreement between the Owner and Contractor, Conditions of the Contract (General, Supplementary and any other Conditions), the Drawings, Specifications and all Addenda issued during bidding period.

The bidding instructions with respect to corporate disclosure provided as follows:

3. QUALIFICATION OF BIDDERS

A. Bidders . . . shall be pre-qualified by the State of New Jersey, Department of Property Management and Construction for the type of work bid, prior to submission of Bids

. . . .

8. PREPARATION OF BIDS

. . . .

F. In addition to the Pre-
Qualification requirements
specified above, each Bid shall
include or be accompanied by [a]:

. . . .

(v). Disclosure Statement setting forth
names and addresses of all
stockholders of [sic] partners who
hold ten percent (10%) or greater
interest in any corporation of
[sic] partnership bidding on the
Project, in accordance with
N.J.S.A. 52:25-24.2.

Section 16 of the bidding instructions, entitled "LISTING
OF STOCKHOLDERS OR PARTNERS," stated:

A. Pursuant to [N.J.S.A. 52:25-24.2] prior
to the receipt of the bid, or accompanying
the bid, all corporate or partnership
bidders shall submit a statement setting
forth the names and addresses of all
stockholders in the corporation or
partnership who own 10% or more of its
stock, of any class or of all individual
partners in the partnership who own 10% or
greater interest therein, as the case may
be. If one or more such stockholder or
partner is itself a corporation's stock, or
the individual partners owning 10% or
greater interest in that partnership, as the
case may be, [sic] shall also be listed.
The disclosure shall be continued until
names and addresses of every non-corporate
stockholder and individual partner,
exceeding the 10% ownership criteria
established in this act, has been listed.

B. Any bidder whose stockholders or partners
own less than ten percent (10%) of the stock
shall certify such fact to the Owner as a
condition of his bid.

One of the forms attached to the bidding materials was captioned "STATEMENT OF OWNERSHIP[,]" and read:

[N.J.S.A. 52:25-24.2] provides that no corporation or partnership shall be awarded any State, County, Municipal, or School District contract for the performance of any work of [sic] the furnishing of any materials or supplies, unless prior to performing the work or furnishing of any materials or supplies, and prior to the receipt of the bid or accompanying the bid of said corporation or partnership, there is submitted a Statement set[ting] forth the name [sic] and addresses of all stockholders in the corporation or partnership who own ten percent (10%) or more of its stock of any class, or of all individual partners in the partnership who own a ten percent or greater interest therein.

If there are no owners or partners with 10% or more interest in your company enter "None" below.

This form provided spaces to list the name, address and percentage of ownership of each stockholder. A copy of N.J.S.A. 52:25-24.2 was appended to the form.

Hunter's "STATEMENT OF OWNERSHIP" submitted with its bid listed Hunter Roberts Holdings, LLC, in Oklahoma City, as its sole shareholder. No other company or individual was identified.

On May 7, 2009, in response to Bock's protest after the bids were opened, Hunter sent the MCIA parts of a form that it had filed in 2008 with the New Jersey Division of Property

Management and Construction (DPMC) in the Department of the Treasury during the bidder prequalification process. On that form, Hunter had stated that Hunter Roberts Holdings, LLC, was owned by G. Jeffrey Records, Jr. (54.27%), Martha Records (22.865%), and Kathryn Records Ryan (22.865%).

Hunter also reminded the MCIA that the DPMC had assigned Hunter the classification of general construction/construction manager after receiving that corporate disclosure information. Hunter consequently claimed that its bid was not defective, because its "public records filing with the agency of the state, i.e.,] DPMC, which is charged with the responsibility of 'pre-qualifying' all bidders for the contract" fully disclosed all shareholders, complied with the bidding requirements, and provided sufficient public notice.

According to the certification of Phillip S. Miller, Executive Director of the MCIA, who was involved in preparing the bidding package,

[The] MCIA uses a model corporate disclosure statement form provided by the State Department of Community Affairs—Division of Local Government Services ("DCA") for its bids to ensure compliance with statutory public procurement requirements, including N.J.S.A. 52:25-24.2. The model form requires bidders to identify "all stockholders in the corporation or partnership who own ten percent (10%) or more of its stock of any class, or of all individual partners in the partnership who

own a ten percent or greater interest therein." [The] MCIA has used this form for prior procurements, with no objection.

Miller opined that Hunter's corporate ownership statement "was accurate and completely responsive to the questions posed by the model form." He stated that because the DPMC had prequalified Hunter and, "[a]s part of the prequalification process, Hunter Roberts was required to fill out a form to provide [the] DPMC with information regarding the company that owns it, as well as the ownership interest of its holding company, Hunter Roberts Holding, LLC[,]" Hunter had complied with the corporate disclosure requirement in the bidding materials. Miller further certified that the "DPMC would not have issued a Notice of Classification for Hunter Roberts without this information" and "[the] MCIA therefore relied on the determination rendered by [the] DPMC that Hunter Roberts provided all the information required by the DPMC prequalification process, which would satisfy the disclosure requirements of N.J.S.A. 52:25-24.2."

Mercer County's Office of Inspector General conducted a due diligence investigation relating to Hunter's bid, and concluded in June 2009 that Hunter "appear[ed] to be an experienced and reputable construction company," and that there were no "concerns reflecting upon that company's financial ability or

moral integrity to provide services as the general contractor for the construction"

In July 2009, before the contract was awarded, the Office of the State Comptroller examined Hunter's bid and declared that it "appear[ed] to be in order and compliant with the specifications[.]" That office had previously approved the bid specifications and forms before the MCIA had advertised the bids.

II.

Judge Bookbinder concluded that Hunter had failed to comply with the corporate disclosure requirements in the bidding instructions, based upon the following analysis:

This [c]ourt holds that Hunter Roberts' bid to the MCIA was materially defective because it did not meet the requirements of N.J.S.A. 52:25-24.2 and N.J.S.A. 40A:11-23.2. Specifically, this [c]ourt holds that disclosure of any 10% shareholders must be made directly to the public entity running the bidding. Hunter Roberts failed to provide the MCIA with the names and addresses of the three 10% shareholders: Jeffrey Records, Jr., Martha Records, and Kathryn Records Ryan. This failure represents a material defect that cannot be cured.

The judge noted that the statutory "disclosure requirement was incorporated into the MCIA bidding process via a form titled 'Statement of Ownership[,]'" and found:

In the process of submitting its bid for the Project, Hunter Roberts completed the "Statement of Ownership" form. On this form, "Hunter Roberts Construction Group, LLC" simply listed "Hunter Roberts Holdings, LLC" as its sole shareholder. This submission did not meet the ownership disclosure requirement of N.J.S.A. 52:25-24.2 Hunter Roberts Holdings, LLC did, in fact, have three 10% shareholders Thus, Hunter Roberts' failure to include these three names violated New Jersey law and constituted a material non-waivable defect in the bid submission.

The judge rejected Hunter's argument that it "did, in fact, provide an accurate and complete statement of corporate ownership 'prior to the receipt of the bid or accompanying the bid' . . . in two separate ways."

First, [d]efendants point to the deference that is generally granted to public entities in selecting a successful bidder. They argue that [the] MCIA's acceptance of Hunter Roberts' ownership disclosure was appropriate because the model disclosure form provided by [the] MCIA and used by Hunter Roberts was created by the New Jersey Department of Community Affairs and authorized by the Office of the State Comptroller. Moreover, following the submission of bids, the Office of the State Comptroller examined Hunter Roberts' submission and authorized [the] MCIA to accept the bid. Defendants argue, therefore, that the acceptance of Hunter Roberts' bid was appropriately within the deference granted [the] MCIA and, insofar [a]s it was made in reliance on forms and authorizations supplied by other state entities, should be respected by this [c]ourt.

The [c]ourt finds this line of argument to be entirely without merit. [The] MCIA does not possess the authority to ignore the State of New Jersey's public bidding laws. Neither the Department of Community Affairs nor the Office of the State Comptroller possesses the authority to ignore the State of New Jersey's public bidding laws. Nor do they possess the power to authorize other entities to ignore the State of New Jersey's public bidding laws. Thus, if Hunter Roberts neglected to provide the required ownership information for Hunter Roberts Holdings, LLC, no model form instructions or departmental authorization is able to override the clear [statutory] mandate[s] Following the laws of the State of New Jersey is not a matter of deference.

Second, [d]efendants argue that Hunter Roberts met the ownership disclosure requirement by providing the three required names to . . . [the] DPMC . . . during a prequalification process. This prequalification process was required for any company who wished to bid on the Project and resulted in the DPMC issuing a "Notice of Classification." Hunter Roberts provided a copy of this "Notice of Classification" to [the] MCIA along with its bid. Thus, [d]efendants argue that because Hunter Roberts publicly identified the owners of Hunter Roberts Holdings, LLC during a prequalification process prior to [the] MCIA's receipt of the bid, the requirements of N.J.S.A. 52:25-24.2 are satisfied.

Unfortunately for [d]efendants, this argument fails for several reasons. First, while N.J.S.A. 52:25-24.2 allows an ownership statement to be submitted "prior to the receipt of the bid or accompanying the bid," N.J.S.A. 40A:11-23.2 insists that an ownership disclosure statement made pursuant to [N.J.S.A. 52:25-]24.2 must be "submitted at the time specified by the

contracting unit for the receipt of the bids" Insofar as [N.J.S.A. 40A:11-]23.2 postdates the enactment of [N.J.S.A. 52:25-]24.2 and specifically references it, this [c]ourt views the timing language found in N.J.S.A. 40A:11-]23.2 to be controlling. To allow submission of an ownership disclosure prior to the "receipt of bids" would render the plain language of [N.J.S.A. 40A:11-]23.2 meaningless.

Moreover, no alternate interpretation of [N.J.S.A. 40A:11-]23.2 appears viable. The legislative history surrounding [that section] is quite explicit in detailing the section's purpose. The Senate Sponsor . . . declared that "[c]urrent law requires bidders to submit a statement of corporate ownership, . . . and a listing of subcontractors The substitute would render a failure to submit either of these items at the time specified for the submission of bids to be a fatal, incurable defect." Sponsor's Statement, A.2807, 208th Leg. (N.J. 1998) and Senate Community and Urban Affairs Committee Statement, S.946, 208th Leg. (N.J. 1998).

The judge concluded that Hunter's "disclosure to the DPMC fails to satisfy [N.J.S.A. 52:25-]24.2 because the disclosure was to [the] DPMC rather than to [the] MCIA."

The judge rejected Hunter's suggestion "that the disclosure may be submitted to any state agency as long as notice of the disclosure is passed along to the entity receiving the bids[,]" and held that the "most commonsensical interpretation of [N.J.S.A. 52:25-]24.2 requires that the disclosure should be submitted to the entity that is actually running the bidding.

This seemingly clear inference is supported by the policy goals underlying the statute." The judge reasoned that

[t]he identities of shareholders are only meaningful in the context of a specific bid for a specific job at a specific time in a specific locality. Thus, in order to be effective, disclosure must be made to the entity actually making the bidding decision. Disclosure to another entity - be it the DPMC, the SEC, or the Attorney General - does nothing to make the bidding process more transparent or fair. [The] MCIA and any members of the public following the bidding process gained nothing by knowing that Hunter Roberts had disclosed its ownership to the DPMC a year earlier. This is because the goals of [the] DPMC's disclosure requirement were not necessarily identical to the goals of disclosure to [the] MCIA. In other words, each entity was looking for something different. It was also entirely possible that salient facts or circumstances changed in the year between the disclosure to [the] DPMC and the bid submission to [the] MCIA. Thus, [the] MCIA could not simply rely on the fact that [the] DPMC had examined Hunter Roberts' disclosure.

. . . .

Defendants also argue that this [c]ourt should not simply look to pre-bid disclosure, but should instead take into account Hunter Roberts' post-bid clarification. Defendants argue that Hunter Roberts met its disclosure obligations by clarifying the "Statement of Ownership" form to include the shareholder information for Hunter Roberts Holdings, LLC shortly after the bid was submitted. . . . Unfortunately for [d]efendants, however, there is nothing in the case law [cited by defendants] suggesting that inadequate or inaccurate

disclosure may be cured after the submission of the bid.

. . . .

[T]his court interprets N.J.S.A. 52:25-24.2 as providing bidders with no leeway to supplement or clarify inadequate or inaccurate ownership disclosure statements. [The cases upon which defendants rely] only allow clarification when the initial ownership disclosure is already adequate and accurate. . . . Hunter Roberts' disclosure was not accurate, adequate or facially valid because it did not meet the explicit require[ment]s of [N.J.S.A. 52:25-]24.2

N.J.S.A. 40A:11-23.2 is even more explicit in refusing to allow defective bids to be cured[, and] states that an ownership disclosure statement meeting the requirements of N.J.S.A. 52:25-24.2 must be "submitted at the time specified by the contracting unit for the receipt of the bids" A failure to submit a proper ownership statement "shall be deemed a fatal defect that shall render the bid proposal unresponsive and that cannot be cured by the governing body." The plain language of this section is consistent with the holdings of both [cases cited by defendants] insofar as those cases allowed subsequent clarification only when proper disclosure statements pursuant to N.J.S.A. 52:25-24.2 were "submitted at the time specified by the contracting unit for the receipt of bids." Thus, the relevant statutes and case law are unanimous in refusing to allow an inaccurate, inadequate, or improper ownership disclosure to be cured.

III.

On appeal, both the MCIA and Hunter contend that the trial judge erred in ruling that Hunter's bid was materially defective for failing to comply with the ownership disclosure requirements of N.J.S.A. 40A:11-23.2 and N.J.S.A. 52:25-24.2, as required by the MCIA's bidding instructions. We disagree.

Hunter contends that a statement of corporate ownership pursuant to N.J.S.A. 52:25-24.2 is only mandatory under N.J.S.A. 40A:11-23.2 when that statement is required by the explicit bid plans and specifications advertised by the contracting entity; it further contends that the MCIA's disclosure form required bidders to disclose only the name and address of shareholders or partners with a 10% interest or greater and thus did not require disclosure of the specific shareholders of Hunter Roberts Holdings, LLC. Hunter also argues that the MCIA's bid specifications "enlist[ed] and nominate[d] the DPMC as its agent for purposes of pre-qualifying all bidders" prior to the receipt of bids; therefore, Hunter's disclosure of corporate ownership information to the DPMC before the bidding process was "tantamount" to submission of that same information to the MCIA during the bidding process. Finally, Hunter argues that because the bid documents accorded to the MCIA the discretionary power to conduct post-bid investigations of a bidder's responsibility,

the MCIA was entitled to rely on the data given to the DPMC and on that agency's determination that a particular bidder was qualified.

The MCIA essentially endorses Hunter's arguments, and contends that its reliance on other agencies such as the DPMC "make[s] the competitive process more economical and convenient for the contracting agency," and that it "should not be faulted or prevented from relying on other governmental agencies with procurement experience for assistance in reviewing the experience and qualifications of bidders." The MCIA further argues that the timing of submissions in N.J.S.A. 40A:11-23.2 ("to be submitted at the time specified by the contracting unit for the receipt of bids"), and N.J.S.A. 52:25-24.2 (submitted "prior to the receipt of the bid or accompanying the bid"), is "a distinction without a meaningful difference."

We are satisfied that these arguments lack sufficient merit to warrant extended discussion in this opinion. R. 2:11-3(e)(1)(E). As noted, we are satisfied that Judge Bookbinder's decision is "based on findings of fact which are adequately supported by [the evidence]" R. 2:11-3(e)(1)(A). We add only the following brief comments.

N.J.S.A. 40:11-23.2 provides, in pertinent part:

When required by the bid plans and specifications, the following requirements

shall be considered mandatory items to be submitted at the time specified by the contracting unit for the receipt of the bids; the failure to submit any one of the mandatory items shall be deemed a fatal defect that shall render the bid proposal unresponsive and that cannot be cured by the governing body:

. . . .

- c. A statement of corporate ownership pursuant to [N.J.S.A.] 52:25-24.2

Moreover, the MCIA's bidding documents expressly provided, in Section No. 8 of the instructions, that "each Bid shall include or be accompanied by" a "Disclosure Statement setting forth names and addresses of all stockholders o[r] partners who hold ten percent (10%) or greater interest in any corporation o[r] partnership bidding on the Project, in accordance with [N.J.S.A.] 52:25-24.2." (Emphasis added.) This requirement was expressly imposed "in addition to the Pre-Qualification requirements specified" in Section 3, which required bidders to be "pre-qualified by the . . . [DPMC] for the type of work bid" (Emphasis added.) These provisions fatally undermine defendants' contention that the documents Hunter submitted to the DPMC satisfied the bid requirements.

Defendants' arguments ignore the plain language of N.J.S.A. 40A:11-23.2, and attempt to impose discretionary authority upon the MCIA to waive the statute's specific mandates. However, we

have recognized that the intent of this particular statutory provision is to "circumscribe[] the authority of local contracting agencies to waive bid defects" P & A Constr., Inc. v. Twp. of Woodbridge, 365 N.J. Super. 164, 176-77 (App. Div. 2004).

Finally, we briefly address the two cases on which defendants primarily rely: Stano v. Soldo Constr. Co., 187 N.J. Super. 524 (App. Div. 1983); and Schlumberger Indus., Inc. v. Borough of Avalon, 252 N.J. Super. 202 (App. Div. 1991), certif. denied, 130 N.J. 8 (1992). In Stano, the bidder "had provided an accurate shareholders' statement, but due to the complexity of the facts it was unavoidably confusing. The later clarification was simply intended to aid the county in its interpretation of the statement and was permissible [under N.J.S.A. 52:25-24.2]." 187 N.J. Super. at 539. In Schlumberger, the bidder was permitted to amend its ownership disclosure documents to reflect that it was wholly owned by a public corporation of the same name with no 10% shareholders. 252 N.J. Super. at 212.

We concur with Judge Bookbinder's view that these cases are factually distinguishable to a degree that renders them inapplicable to defendants' contentions. As we have noted, "[i]n those cases, the challenged bids were facially valid, with

no apparent defects. Both bidders had submitted adequate and accurate disclosure forms which were supplemented to reveal additional facts." Muirfield Constr. Co. v. Essex County Improvement Auth., 336 N.J. Super. 126, 137 (App. Div. 2000).

Both the public interest and the public's perception that the bidding process is fair, competitive and trustworthy are critical components and objectives of our public bidding statutes. When dealing with a carefully structured regulatory scheme which requires . . . disclosure of ownership interests . . . , the public must be assured that information is accurate and truthful when sworn to and cannot be subject to modification after the fact to meet a bidding requirement that all other responsible bidders met in the first instance. We recognize that on occasion this may prove to be a hardship to an otherwise responsible bidder who negligently failed to comply with a requirement such as this, but on balance the public interest is best served by strict scrutiny of the ownership disclosure provision which, in simple terms, must be complied with correctly the first time.

[Id. at 137-38.]

We are satisfied that Judge Bookbinder's comprehensive and thoughtful opinion properly applied the statutory provisions intended to serve this particular "public interest[.]" Ibid.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office



CLERK OF THE APPELLATE DIVISION