



Via Email and UPS Overnight Delivery

April 28, 2015

Mr. Robert Atkinson, President  
Duall Building Restoration, Incorporated  
531 Union Mill Road  
Mt. Laurel, New Jersey 08054

Re: Bridgeton Broad Street Elementary School Exterior Masonry & Structural Repairs  
NJSDA Contract No. EP-0078-C01  
Bid Protest by Duall Building Restoration, Incorporated  
Final Agency Decision

Dear Mr. Atkinson:

The New Jersey Schools Development Authority ("NJSDA") is in receipt of your April 24, 2015 protest letter submitted on behalf of Duall Building Restoration, Inc. ("Duall") in connection with the above-referenced procurement. The NJSDA has also received and considered your email, transmitted at 4:53 p.m. on April 23, 2015. This correspondence is the NJSDA's Final Agency Decision on Duall's protest.

Price Proposals for this procurement were opened on April 21, 2015. Duall's Price Proposal contained a bid amount of \$1,790,000.00. Duall's bid package included an Uncompleted Contracts Form reflecting an uncompleted contracts amount of \$5,000,000. The sum of Duall's bid and the uncompleted contracts amount equals \$6,790,000.00, a sum in excess of Duall's Aggregate Rating of \$5,500,000. On April 23, 2015, the NJSDA sent a letter to Duall advising that its bid must be rejected as unresponsive because the bid amount, when added to the outstanding uncompleted amount of all of its existing contracts, exceeds Duall's Aggregate Rating.

Pursuant to N.J.S.A. 18A:7G-37, at the time of bid, a bidder must certify that "the amount of its bid proposal and the value of all of its outstanding incomplete contracts does not exceed the firm's existing aggregate rating limit." The NJSDA's regulations reiterate this statutory requirement, as follows:

Each price proposal shall be accompanied by an Uncompleted Contracts Form, executed by the bidder, which is a statement of the current value and status of the bidder's backlog of uncompleted construction work as of the price proposal due date, and which includes a certification that, if the bidder is awarded the contract for the construction of the schools facility project that is the subject of the procurement, the award will not cause the bidder to exceed its aggregate rating. . . . A bidder shall not submit a price proposal that causes the total outstanding amount of all of its existing contracts, both public and private as described in the Uncompleted

Mr. Robert Atkinson, President

April 28, 2015

Page 2

Contracts Form, to exceed its aggregate rating. N.J.A.C. 19:38B-6.1  
(emphasis added).

Duall's bid package included an NJSDA Total Amount of Uncompleted Contracts Form certifying "that the Firm's total amount of uncompleted construction work (defined as the total contract value of unbilled work – including public and private) as of the bid due date is \$5,000,000." Your April 23, 2015 email explained that the \$5,000,000 figure included on this form reflects "total work on hand combining DPMC and private work together." It also explains that "uncompleted work for DPMC is only [\$]3,574,210." We understand this to mean that the \$5,000,000 figure included on Duall's Uncompleted Contracts Form is the total for public (DPMC) and private work.

In Duall's protest letter, you indicate that the \$5,000,000 figure typed on Duall's Uncompleted Contracts Form "included un-bonded private work that should not have been counted as uncompleted DPMC work." We understand this to mean that Duall contends (1) that it was only required to disclose the bidder's backlog of uncompleted construction work on DPMC contracts (public contracts) on its Uncompleted Contracts Form; and (2) that it was not required to include the amount of its backlog of uncompleted construction work on private construction work (or at least "un-bonded" private construction work). These contentions are wholly inconsistent with the statutory and regulatory authority referenced above and Duall has provided no legal authority supportive of its position.

Based upon the NJSDA's review of Duall's submissions, it appears that Duall's Uncompleted Contracts Form does not reflect a clerical error. Rather, the form appears to correctly reflect what you indicate is the total outstanding amount on all of Duall's existing contracts, both public and private. This amount is precisely what is required to be disclosed and certified to on the Uncompleted Contracts Form under the applicable statutory and regulatory authorities. The total of the bid amount (\$1,790,000) and the correctly disclosed outstanding contracts amount (\$5,000,000) is \$6,790,000. Since this total exceeds Duall's \$5,500,000 aggregate rating, Duall's bid must be rejected.

Even if the amount reflected on Duall's Uncompleted Contracts Form was an erroneous amount, allowing Duall to correct such a bid defect post-bid would be an extraordinary remedy. Allowing Duall to correct such a "clerical" error post bid would likely give rise to a protest that Duall had thereby been afforded a competitive advantage over other bidders. Because no clear clerical error has been identified, the NJSDA does not address the merits on this issue.

For the foregoing reasons, Duall's protest is rejected. This is a Final Agency Decision.

Sincerely,



Donald Guarriello, Vice President and Chief Financial Officer  
New Jersey Schools Development Authority

Mr. Robert Atkinson, President

April 28, 2015

Page 3

cc: Andrew Yosha, NJSDA Executive Vice President, Program Operations & Strategic Planning

Raymond Arcario, NJSDA Vice President, Construction Operations

Jane F. Kelly, NJSDA Vice President, Corporate Governance and Operations

C. Aidita Milsted, NJSDA Program Director

Sean Murphy, NJSDA Director, Procurement

Albert D. Barnes, NJSDA Chief Counsel