

**FINAL AGENCY DECISION**

June 3, 2016

Via Email and Regular First Class Mail

Lisa H. Lesser, Esquire
General Counsel
Dobco, Inc.
30 Galeski Drive, Suite 202A
Wayne, New Jersey 07410

**Re: West New York – Harry L. Bain PS#6
NJSDA Contract No. HU-0026-C01
Perth Amboy – Seaman Avenue Elementary School
NJSDA Contract No. ET-0031-B01
Protest By Dobco, Inc.**

Dear Ms. Lesser:

The New Jersey Schools Development Authority (“NJSDA”) is in receipt of your March 7, 2016 formal protest letter on behalf of Dobco, Inc. (“Dobco”) relating to the Project Rating Limit (“PRL”) issued by the NJSDA to Dobco for the above-referenced procurement for construction services for the Harry L. Bain PS#6 Elementary School in West New York, New Jersey (the “WNY Procurement”). We are also in receipt of Dobco’s March 7, 2016 correspondence transmitting its Project Rating Proposal (“PRP”) for the Price and Other Factors procurement for Design-Build services for the Seaman Avenue Elementary School in Perth Amboy, New Jersey (the “PA Procurement”), which references its March 7, 2016 protest submitted in connection with the WNY Procurement.

On December 29, 2015, the NJSDA published the Advertisement for the WNY Procurement. The Advertisement advised potential bidders that the Construction Cost Estimate or CCE for the Procurement was between \$13,000,000 and \$15,000,000. Under cover of letter dated February 5, 2016, Dobco submitted a Project Rating Proposal (“PRP”) for the Procurement. By letter dated February 26, 2016, the NJSDA advised Dobco that its PRL for the Procurement is \$81,124,230.

By letter dated March 7, 2016, Dobco submitted its PRP for the PA Procurement. In that letter, Dobco requested that the NJSDA apply its most recent PRL on file (i.e. the PRL issued for the WNY Procurement), which was under protest. Dobco further stated that, for purposes of the PA Procurement only, and because the PA Procurement was within the disputed PRL amount, Dobco would rely on the PRL, explicitly reserving its rights to proceed with the protest.

Dobco’s PRL for the WNY Procurement (\$81,124,230) was over five times the upper limit of the CCE of \$15,000,000 and is almost twice the upper limit of the CCE of \$47,000,000 for the PA Procurement. Thus, Dobco’s current PRL did not preclude or in any way bar Dobco from submitting a bid proposal for the WNY Procurement, nor, as agreed by Dobco, does it preclude Dobco from

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submitting a bid proposal for the pending PA Procurement. We would also note that Dobco did not submit a bid proposal for the WNY Procurement. As Dobco was not precluded by virtue of its current PRL from bidding for the WNY Procurement and is not precluded from bidding on the PA Procurement, Dobco's protest is rendered moot.

The foregoing notwithstanding, the issue raised by Dobco in its protest is one of first impression. In an effort to address any possible confusion as to the ability of a potential bidder to aggregate projects for purposes of obtaining a PRL, the NJSDA has taken several steps to clarify this issue.

Starting in May 2016, the NJSDA is requiring all firms to submit new PRP's in order to obtain a new PRL. Potential bidders will not be permitted to rely on PRL's issued prior to May 2016. The revised PRP now includes the following language:

In most cases, a "project" will be associated with a single contract. In the event that a Bidder proposes that separately bid contracts should be aggregated for treatment as a single project, the Bidder's Project Rating Proposal Submission must request such treatment, include relevant information on each of the contracts proposed to be aggregated and provide support for why aggregation should be permitted. The NJSDA, in its discretion, may permit aggregation of contracts with the same owner for treatment as a single project when such aggregation demonstrates that the Bidder can concurrently manage, construct and deliver an integrated project of the stated combined magnitude of cost, size and complexity.

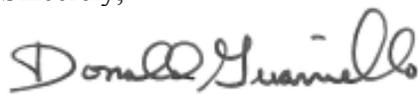
Accordingly, potential bidders may propose aggregation of prior projects for purposes of the NJSDA's calculation of the firm's PRL, provided that the bidding firm delivers relevant information and support at the time of PRP submission as to why the aggregation should be permitted. Potential bidders are reminded, however, the NJSDA is not obligated to permit the aggregation for purposes of establishing the bidder's PRL. If the NJSDA, in its discretion, does not permit aggregation, it will nevertheless consider the value of the individual contracts in calculating the PRL, provided that the prospective bidder has included that information with its submission.

Conclusion

Dobco's protest has been rendered moot for the reasons set forth herein.

This is a Final Agency Decision.

Sincerely,



Donald R. Guarriello
Vice President and Chief Financial Officer

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cc: Charles B. McKenna, NJSDA Chief Executive Officer
Jason Ballard, NJSDA Chief of Staff
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