

**FINAL AGENCY DECISION**

May 24, 2019

Via Email and Regular First Class Mail

Mr. David Temeles  
Prismatic Development Corp.  
60 US Highway 46 East  
Fairfield, New Jersey 07004

**Re: Perth Amboy – New High School  
NJSDA Contract No. ET-0099-B01  
Protest By Prismatic Development Corp.**

Dear Mr. Temeles:

The New Jersey Schools Development Authority (“NJSDA”) is in receipt of your May 8, 2019 electronic correspondence (with attachment) on behalf of Prismatic Development Corp. (“Prismatic”), requesting that the NJSDA re-evaluate the Project Rating Limit (“PRL”) issued to your firm on May 6, 2019 for the above-referenced procurement (the “Procurement”). Consistent with the terms of the Request for Proposals (“RFP”) for the Procurement and applicable regulations, the NJSDA is treating Prismatic’s May 8, 2019 electronic correspondence as a formal protest of the NJSDA’s calculation of Prismatic’s PRL. This letter is the NJSDA’s formal response and final agency decision on Prismatic’s protest.

The Procurement was advertised on March 26, 2019. Under the terms of the Advertisement, any firm wishing to submit a proposal was required to attend a mandatory pre-bid conference and site visit on April 9, 2019. Furthermore, all interested bidders were required to submit a Project Rating Proposal (“PRP”) form no later than 2:00 p.m. on April 23, 2019.

Prismatic delivered its PRP to the NJSDA in accordance with the timeframe set forth in the Advertisement. In its PRP, Prismatic listed its current New Jersey Workers Compensation Insurance Experience Modification Rate (“EMR”) as 1.056. NJSDA’s Procurement Division independently confirmed Prismatic’s EMR through the website of the New Jersey Compensation Rating & Inspection Bureau (“NJCRIB”). Pursuant to the provisions of the RFP and consistent with the NJSDA’s regulations, the NJSDA calculated Prismatic’s PRL as \$192,531,656, using the EMR provided by Prismatic. By letter dated May 6, 2019, the NJSDA advised Prismatic of its PRL for the Procurement.

As noted above, on May 8, 2019, Prismatic submitted electronic correspondence to the NJSDA, requesting the re-evaluation of its EMR based on correspondence from its insurance broker attached thereto. The attached correspondence opined that there was an error in Prismatic’s

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EMR, based on a 2015 New York claim. The broker's letter also provided a corrected (but estimated) EMR for 2018 of 0.878. The letter further advised that the broker was working to have the correct data sent to NJCRIB and "re-rates" issued.

On May 13, 2019, the NJSDA advised Prismatic that it could not accept the information provided by Prismatic's broker in light of the fact that the NJCRIB website continued to list Prismatic's EMR as 1.056. On May 20, 2019, Prismatic forwarded a screenshot from the NJCRIB website that reflected a revised EMR for Prismatic of 0.878. The NJSDA has independently confirmed that NJCRIB issued an EMR of 0.878 to Prismatic on May 17, 2019, which is effective from October 18, 2018 through October 18, 2019.

Prismatic's May 8, 2019 electronic correspondence requesting the re-evaluation of its PRL was timely submitted just two (2) days after the NJSDA's PRL notification letter to Prismatic. In its May 8, 2019 electronic correspondence, Prismatic provided a clear explanation for and evidence of its challenge to its listed EMR. Prismatic then proceeded to timely pursue and advise the NJSDA of the issuance of NJCRIB's revised and retroactive EMR for Prismatic. Since the revised EMR issued by NJCRIB is retroactively effective as of October 18, 2018, it is reasonable and appropriate for the NJSDA to utilize the corrected EMR in calculating Prismatic's PRL for the Project. The NJSDA discerns no prejudice to the other prospective bidders from its determination to utilize the corrected EMR in the re-calculation of Prismatic's PRL, particularly since Technical Proposals and Price Proposals for the Procurement are not due until July 2, 2019.

Accordingly, the NJSDA will issue a revised PRL to Prismatic using the 0.878 EMR. Prismatic will be notified in a separate writing of the revised PRL. The revised PRL will also be posted to the NJSDA's website.

This is a Final Agency Decision.

Sincerely,



Donald R. Guarriello  
Vice President and Chief Financial Officer

cc: Manuel Da Silva, NJSDA Interim Chief Executive Officer  
Andrew Yosha, NJSDA Chief Operating Officer  
Jane F. Kelly, NJSDA Vice President, Corporate Governance and Legal Affairs  
Pamela Luster, NJSDA Vice President, Administrative Operations  
Thomas Schrum, NJSDA Vice President, Real Estate Services and Predevelopment  
Roy Garcia, NJSDA Chief of Staff

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Sean Murphy, NJSDA Director of Procurement  
Martin Taylor, NJSDA Senior Procurement Analyst  
Albert D. Barnes, NJSDA Chief Counsel  
Cecelia E. Haney, NJSDA Deputy Chief Counsel  
Desmond H. O'Neill, NJSDA Senior Counsel  
Terminal Construction Corp./Dinallo Construction Corp. Joint Venture  
Dobco, Inc./Intercontinental Construction Contracting Joint Venture  
Epic Management, Inc.  
T.N. Ward Company  
Tutor Perini Building Corp.