

**SUPPLEMENTAL FINAL AGENCY DECISION**Via Email

February 8, 2016

Edwin J. Edwards, Vice President
Neuber Environmental Services, Inc.
42 Ridge Road
P.O. Box 541
Phoenixville, Pennsylvania 19460

Dilip Verghese, President
D&K Construction Co., Inc.
155 Union Avenue
Middlesex, New Jersey 08846

Denise Petrizzo, President
Tricon Enterprises Incorporated
322 Beers Street
Keyport, New Jersey 07735

Stephen Bialkowski, Esquire
Law Offices of Stephen Bialkowski, LLC
275 North Franklin Turnpike, Suite 210
Ramsey, New Jersey 07446

**Re: Irvington Madison Avenue Elementary School Early Site Package
NJSDA Contract No. ES-0027-N01 RB1
Bid Protests By Neuber Environmental Services, Inc., D&K Construction Co., Inc.
and Tricon Enterprises, Inc.**

Dear Messrs. Edwards, Verghese and Bialkowski and Ms. Petrizzo:

On January 27, 2016, the New Jersey Schools Development Authority (“NJSDA”) issued a Final Agency Decision on Bid Protests made on behalf of Neuber Environmental Services, Inc. (“Neuber”), Tricon Enterprises, Inc. (“Tricon”) and D&K Construction Co., Inc. (“D&K”) relating to the above-referenced procurement for demolition and early site services for the Madison Avenue Elementary School in Irvington, New Jersey (the “Procurement”). On January 28, 2016, Mr. Tom Camarda of Tricon transmitted correspondence to me expressing Tricon’s disappointment with the NJSDA’s decision, reiterating Tricon’s previously stated position that identification of an electrical subcontractor for specified electrical work was not required for the Procurement and arguing that the Contract Specifications included HVAC work required to be

Edwin J. Edwards
Dilip Verghese
Denise Petrizzo
Stephen Bialkowski
February 8, 2016
Page 2

performed by an HVAC subcontractor. This correspondence addresses Tricon's sole new contention that the bidders were required to name an HVAC subcontractor and serves to supplement the NJSDA's final agency decision issued in this matter on January 27, 2016.

In evaluating Tricon's new contention, the NJSDA has reviewed and considered the documentation referenced in the NJSDA's January 27, 2016 final agency decision, together with Mr. Camarda's January 28, 2016 correspondence to me.

Tricon contends that the "Contract Specifications set forth that 'refrigerant recovery' was part of the HVAC work for the project. This work is done by an HVAC contractor and would require that the HVAC contractor be named on each of the bids that were submitted."

Contrary to Tricon's contention, the specifications relating to refrigerant recovery arise under the Structure Demolition section of the Contract Specifications and should not be characterized as "HVAC work". The specifications require that refrigerant contained in mechanical devices encountered during demolition, such as household air conditioner window units and refrigerator/freezers, must be recovered in accordance with applicable EPA regulations and that a certified refrigerant recovery technician provide a statement to that effect. This requirement does not necessitate the engagement of an HVACR subcontractor. While a person that holds an HVACR license may also be certified as a refrigerant recovery technician, a person certified as a refrigerant recovery technician need not hold an HVACR license.

For these reasons, Tricon's suggestion that the bids of bidders (including Tricon) that failed to identify an HVACR subcontractor in their Price Proposals must be rejected is without merit. For the reasons stated herein, Tricon's further protest set forth in its January 28, 2016 correspondence is rejected.

This is a Final Agency Decision.

Sincerely,



Donald R. Guarriello
Vice President and Chief Financial Officer

Edwin J. Edwards
Dilip Verghese
Denise Petrizzo
Stephen Bialkowski
February 8, 2016
Page 3

cc: Charles B. McKenna, NJSDA Chief Executive Officer
Jason Ballard, NJSDA Chief of Staff
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 of Procurement
Albert D. Barnes, NJSDA Chief Counsel
Cecelia E. Haney, NJSDA Senior Counsel
Desmond O'Neill, NJSDA Assistant Counsel