



State of New Jersey

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DIVISION OF PURCHASE AND PROPERTY
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September 30, 2021

Via Electronic Mail Only DVSTruck@yahoo.com

Dean Severino
DVS Trucking Co.
58 Borough Street
Rutherford, NJ 07070

Re: I/M/O Bid Solicitation #20DPP00525 DVS Trucking Co.
Protest of Notice of Termination
T0777 Snow Plowing and Spreading Services - NJDOT

Dear Mr. Severino:

This letter is in response to your email of September 14, 2021, to the Division of Purchase and Property (Division) on behalf of DVS Trucking Co. (DVS). In that correspondence, DVS protests the Notice of Termination issued by the Division's Procurement Bureau (Bureau) on September 13, 2021. The Notice of Termination advised DVS that it was the Division's intent to terminate DVS' Master Blanket Purchase Order (Blanket P.O.) for Bid Solicitation #20DPP000525 - T0777 Snow Plowing and Spreading Services - NJDOT (Bid Solicitation) based upon the Division's Contract Compliance and Audit Unit (CCAU) resolution of the two Formal Complaints (Nos. 21-02-01 and 21-03-01) filed by the New Jersey Department of Transportation (NJDOT).

By way of background, on April 9, 2020, the Bureau issued the Bid Solicitation on behalf of the NJDOT, to solicit Quotes from qualified Vendors {Bidders} to provide snow plowing and spreading services on all State interstates and highways under the jurisdiction of NJDOT. On June 9, 2020, the Division's Proposal Review Unit opened 215 Quotes, submitted by 197 Vendors {Bidders}. After the review and evaluation of all Quotes received was completed, the Bureau prepared a Recommendation Report which recommended Blanket P.O. awards to those responsible Vendors {Bidders} whose Quotes, conforming to the Bid Solicitation are most advantageous to the State, price and other factors considered. On July 13, 2020, a Notice of Intent to Award was issued advising all Vendors {Bidders} that it was the State's intent to award a Blanket P.O.s consistent with the Bureau's Recommendation Report. On October 1, 2020, DVS was awarded a Blanket P.O. for price line 323 – Spreading Services – 211 Ramsey Yard/15 Arrow Road, Ramsey, NJ. During the 2020/2021 winter season, NJDOT filed two complaints with CCAU alleging theft of salt and poor performance by DVS.

First, on February 11, 2021, NJDOT filed Formal Complaint No. 21-02-01 alleging that DVS was disappearing from its designated spreading area, kept returning to the NJDOT salt yard to obtain more salt, and ignored phone calls from NJDOT. NJDOT alleged that DVS was misappropriating NJDOT salt. In support of this allegation, a NJDOT representative went to the DVS Trucking Yard, and observed what was

believed to be freshly dumped NJDOT salt. On May 27, 2021, CCAU issued its resolution to Formal Complaint No. 21-02-01, finding that DVS had admitted to misappropriating the salt and therefore, had failed to perform as required by the terms and conditions of the Blanket P.O. Specifically, CCAU concluded,

Based upon the documents and information provided by the DOT, the CCAU finds that the record supports a finding against the vendor. This complaint is resolved against DVS Trucking for failure to perform pursuant to the contract.

Additionally, CCAU recommends that DOT's State Contract Number T0777, Snow Plowing and spreading Services – NJDOT, be referred to the Procurement Bureau for review of possible remedies under the contract, including but not limited to cancellation for cause.

Second, on March, 3, 2021, the NJDOT filed a Formal Complaint No. 21-03-01 against DVS. This complaint alleged a record of poor performance and communication by DVS. See, NJDOT March, 3, 2021 Complaint. Specifically, Formal Complaint No. 21-03-01 alleged: (1) DVS showed up to the 12/14/2020 call-out with only 4 trucks, when 6 trucks were required; (2) During the 12/16/2020 storm, DVS employees were rude to NJDOT staff, did not respond to calls from NJDOT, DVS did not inform NJDOT when trucks broke down, and DVS employee left the scene of an accident where wires were taken down; (3) DVS did not show up for the call-out on time and with only 5 trucks, the 6th truck showed up 40 minutes late; (4) DVS left salt piles on the roadway, shoulders and the ramps causing NJDOT staff to clean up the piles; (5) DVS staff left an assigned work area and did not respond to phone calls; (6) DVS staff left an assigned work area to attend to a broken down truck; (7) one truck was missing the on-board wetting system; and (8) DVS employees left their trucks during a spreading event.

On May 27, 2021, CCAU issued its resolution to Formal Complaint No. 21-03-01, finding that DVS showed up to several call-outs without the required number of trucks, and failed to perform in accordance with the terms of the Blanket P.O. Specifically, CCAU concluded,

Based upon the documents and information provided by the DOT, the CCAU finds that the record supports a finding against the vendor. This complaint is resolved against DVS Trucking for failure to perform pursuant to the contract.

Additionally, CCAU recommends that DOT's State Contract Number T0777, Snow Plowing and spreading Services – NJDOT, be referred to the Procurement Bureau for review of possible remedies under the contract, including but not limited to cancellation for cause.

This resolution constitutes CCAU's decision on this matter, made in accordance with the provisions of N.J.A.C. 17:12-4.4 et seq., and which may be appealed in writing, setting forth specific cause for the appeal, to the Director, Division of Purchase and Property, within ten (10) days after its receipt.

On May 28, 2021, the NJDOT submitted a request to the Procurement Bureau that DVS' Blanket P.O. be cancelled.

DVS did not file an appeal to the director within the ten (10) period required by the regulations noted above. Thereafter, on September 13, 2021, based upon NJDOT's request, the Bureau wrote to DVS advising it of the Division's intent to cancel DVS' Blanket P.O. for Price Line 323. On September 14, 2021, DVS responded to the Notice of Termination stating that it wanted to "appeal the decision of termination."¹

In consideration of DVS' protest, I have reviewed the record of this procurement, including the Bid Solicitation, the submitted Quotes, the relevant statutes, regulations, and case law. This review of the record has provided me with the information necessary to determine the facts of this matter and to render an informed final agency decision on the merits of the protest.

Here, DVS' Blanket P.O. requires that:

Upon receipt of a Call-Out, the Vendor {Contractor} shall:

- A. Assemble the required number of trucks and/or equipment at the Assembly Location and be fully able and prepared to begin Operations within two (2) hours of Call-Out; and
- B. Upon arrival at the Assembly Location with a full complement of prepared trucks, equipment, and drivers/operators, the Vendor {Contractor} shall immediately notify the NJDOT Site Supervisor when it is present and fully prepared to commence Operations.

[Bid Solicitation Section 3.8.2 *Vendor {Contractor} Call-Out Procedure.*]

Further, the Blanket P.O. states:

The Vendor {Contractor} shall be prohibited from using NJDOT spreading materials for any purpose other than the spreading of State roadways or as directed by an NJDOT Site Supervisor. Any violation of this requirement may result in the Vendor's {Contractor's} Blanket P.O. being terminated.

Additionally, applying excess material on the roadway as a method of spinning off any unused material is strictly prohibited, and may also result in a formal complaint with CCAU and possible Blanket P.O. termination.

[Bid Solicitation Section 3.19.1 *Unauthorized Use of NJDOT Deicing/spreading materials.*]

Moreover, the Blanket P.O. specifically advises Vendor {Contractors} of the importance of complying with the contractual requirements, and that termination could occur if the requirements are violated.

The services required by this Bid Solicitation are essential to the safety and welfare of all roadway users. As such, all services must be provided promptly, efficiently, and without delay. The performance of the Vendor {Contractor} shall be evaluated by either the SCM or the NJDOT Site

¹ DVS did not submit an appeal of either of the May 27, 2021, CCAU resolutions to the Division's Director as required by N.J.A.C. 17:12-4.4 et seq.

Supervisor for each snow event, based on the following criteria and possible infractions:

- A. Response time;
- B. Reporting with less than the minimum required amount of trucks and/or equipment;
- C. Unsafe plowing/spreading practices;
- D. No show;
- E. Vehicle safety markings;
- F. Usage of ill-equipped and/or faulty equipment;
- G. Compliance with the NJDOT Site Supervisor instructions;
- H. Damage caused to State property due to the Vendor's {Contractor's} personnel's' negligence;
- I. Use of an unlicensed driver/operator; and
- J. Violation of any NJDOT plowing/spreading guidelines.

Please note: Two (2) or more documented violations of one (1) or any of the above referenced infractions, may result in the termination of the awarded snow section in question from the Vendor's {Contractor's} Blanket P.O., and/or the termination of the Vendor's {Contractor's} entire Blanket P.O.

[Bid Solicitation 3.20.4 *Performance*, emphasis added.]

The State of New Jersey's Standard Terms and Conditions (SSTC) associated with this procurement permit the Division's Director to terminate a Blanket P.O. upon notice to the contractor. Specifically, SSTC Section 5.7 *Termination of Contract* states in pertinent part:

5.7 TERMINATION OF CONTRACT

...

B. For Cause:

1. Where a contractor fails to perform or comply with a contract or a portion thereof, and/or fails to comply with the complaints procedure in N.J.A.C. 17:12-4.2 et seq., the Director may terminate the contract, in whole or in part, upon ten (10) days' notice to the contractor with an opportunity to respond; and
2. Where in the reasonable opinion of the Director, a contractor continues to perform a contract poorly as demonstrated by e.g., formal complaints, late delivery, poor performance of service, short-shipping, so that the Director is required to use the complaints procedure in N.J.A.C. 17:12-4.2 et seq., and there has been a failure on the part of the contractor to make progress towards ameliorating the issue(s) or problem(s) set forth in the complaint, the Director may terminate the contract, in whole or in part, upon ten (10) days' notice to the contractor with an opportunity to respond.

...

[Emphasis added.]

Here, on two occasions, DVS showed up to a call-out without the required number of vehicles ready to perform the contract work. In its response to the CCAU complaint, DVS did not dispute the allegations of the complaint, but rather offered excuses for why the trucks were unavailable or late to the call-out. Further, DOT complained that on at least one occasion, DVS left piles of salt along the state's roadway. Again DVS did not dispute the allegation of the complaint. DVS' violation of the terms of the Bid Solicitation potentially jeopardized the safety and welfare of the traveling public. Again, I note that DVS did not offer any facts or information in support of the appeal or dispute the finding of either of the May 27, 2021 CCAU resolutions. Having found that DVS failed to show up to call-out without the required vehicles and equipment on several occasions, I need not address the remaining DOT allegations.

Accordingly, based upon the foregoing, I find no reason to disturb the Bureau's recommendation that DVS' Blanket P.O. for price line 323 be terminated. Accordingly, I sustain the September 13, 2021, Notice of Termination. This is my final agency decision with respect to the protest submitted by Messercola.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

c: R. Regan
K. Popso
N. Ghorbani