



State of New Jersey

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DIVISION OF PURCHASE AND PROPERTY
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March 24, 2017

Via E-mail Frankie.Mcdonald@GSHGROUP.com and Regular Mail

Frankie McDonald, Vice President
George S. Hall, Inc.
4 Gatehall Drive, 2nd Floor
Parsippany, New Jersey 07054

RE: Formal Complaint No.: 14-10-11
State Contract No.: 81016/T1372
Purchase Order No.: 7983112

Dear Mr. McDonald:

This letter is in response to your December 4, 2014 letter on behalf of George S. Hall, Inc. (GSH), appealing the November 26, 2014 formal decision of the Contract Compliance and Audit Unit (CCAU) of Division of Purchase and Property (Division). In this appeal, GSH contends that it handled the emergency call immediately, made every attempt to physically respond within two hours, and when it was not able to physically respond, advised the caller from Marie Katzenbach School for the Deaf (MKSD) to contact another State vendor. GSH requests that the formal complaint, filed by the MKSD and the CCAU decision be removed from GSH's performance file.

In consideration of your appeal, I have reviewed CCAU's record of this matter, including the requirements of State Contract No. 81016/T1372. I set forth herein my determination regarding the CCAU's November 26, 2014 decision.

By way of background, Request for Proposal #12-X-21805: HVAC Refrigeration and Boiler Repairs Statewide (RFP) sought "qualified contractors to inspect repair and provide preventative maintenance for various HVAC, Refrigeration and Boiler Systems throughout the State" for the State's using agencies. (RFP § 1.1 *Purpose and Intent*). In addition, using agencies had to the option to utilize contracts for emergency repairs. (*Ibid.*) Contracts were awarded to those vendors whose proposals conformed to the RFP requirements and were most advantageous to the State, price and other factors considered. (*Ibid.*)

On October 20, 2014 at 10:20 am, MKSD placed a call to GSH to request emergency service on a feed water pump that was malfunctioning. GSH's representative advised MKSD that there was no one available, but that another company would be contacted to provide the emergency service requested. MKSD followed-up with an email to GSH at 10:50 pm¹ stating:

¹ In the complaint, MKSD states that the follow-up email was sent at 12:40 pm; however, the copy of the email provided by MKSD with its complaint is time-stamped 10:50 am.

Our feed water pump which supplies feed water for boilers to produce steam is very noisy therefore please send your service man to fix the pump immediately as we have no reliable back up pump. Our blanket purchase order No is 7983112.

Please note if we don't have working feed water pump we would not be able to provide the heat to the school which could negatively effect (sic) the HEALTH & SAFETY of the students and staff.

[October 20, 2014 email from Harinder S. Randhawa, MKSD to Ashley Cintron, GSH]

GSH responded at 11:01 am, by email, stating “[u]nfortunately we do not have anyone to provide service at this time. Please try Peterson.”

On October 28, 2014, MKSD filed Formal Complaint No. 14-10-11 stating that GSH “did not comply with emergency service call requirement.” Responding to that complaint, GSH maintained

In regards to the complaint itself I would like to point out that we did respond to the complaint and advised that we were unable to attend the service call, and further suggested that Harinder contact one of the other designated vendors, as per the contract structure.

I do not believe that we breached the contract in any way and remained compliant at all times.

We appreciate your consideration in this matter.

[November 13, 2014 email response to Complaint from GSH.]

In reply, MKSD noted that “since outside temperatures were below freezing, I was very concerned about the health and safety of our students, staff and school buildings. I was hoping that GS Hall would have come out to make emergency repairs to our pump.” (MKSD November 17, 2014 reply statement). In addition, MKSD advises that LGB Mechanical, Inc. made the pump repairs the following day and that it took 20 hours to complete the job. (MKSD November 21, 2014 email).

After review of MKSD's complaint and GSH's response, CCAU concluded that

According to the contract, MKSD is to contact the contract vendor that best meets its needs. In this case, neither contract vendor provided the emergency service. There is no provision in the contract for a vendor to decline to provide a quote for and/or perform a requested service. The intent of the contract is for agencies to have vendors available to provide HVAC, Refrigeration and Boiler system repair and maintenance. In this emergency situation, MKSD was forced to go to a vendor outside the central region for the repair. Please be advised that continued failure to respond to a request for service will be cause for CCAU to recommend removal from the State Contract.

[CCAU Final Decision dated November 26, 2014.]

With respect to emergency repair services, the contract provides:

3.8 EMERGENCY REPAIR SERVICE CALLS

The contractor shall meet or exceed the following minimum response times as specified below. Failure to respond to any of the time frames specified shall result in a formal complaint to be filed with the Division of Purchase and Property and may result in contract cancellation.

The State shall not guarantee any minimum or maximum number of emergency hours per call.

3.8.1 EMERGENCY RESPONSE TIME

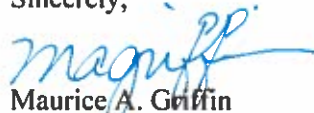
Emergency calls are those service calls when the work consists of correcting failures that constitute an immediate danger to personnel or property. Any work considered by the State Contract Manager or a designee, to be of an emergency nature may also be classified as an emergency call, such as, the State's request to correct equipment failure or problems in time to avoid violations or building evacuations due to temperatures exceeding required limits. The call back response time is two (2) hours from the time of notification. The contractor shall make every attempt to physically respond to emergency call within two (2) hours. Each Using Agency will designate an official to place any emergency calls. A list of these personnel will be provided to the successful contractor(s) upon request. This service will be conducted during any time of the day or night which may include both overtime and normal hours.

The contractor shall remain on the job until the emergency has been resolved and all work has been approved by the State Contract Manager or designee.

The initial call was placed by MKSD to GSH at 10:20 am. At that time, GSH responded that it did not "have anyone available right now but will try contacting E.K.S., Inc. to come out to provide the service." (October 28, 2014 Complaint). Less than 1 hour later, GSH responded that it did not have anyone to provide the service. GSH argues that it responded within the required two (2) hour response time and further "made every attempt to physically respond" pursuant to Section 3.8.1; however, it had no personnel available. Based upon the record before me and the language of the contract, there is insufficient information upon which a determination can be made on whether or not a contract violation occurred. Accordingly, the resolution of this complaint against GSH is reversed and this matter is returned to the CCAU for additional fact finding to determine whether a contract violation occurred.

The Division appreciates GSH's continuing interest in doing business with the State of New Jersey and thanks you for registering your business with **NJ START** the State of New Jersey's new eProcurement system.

Sincerely,


Maurice A. Griffin
Acting Director

MAG: RUD

c: A. Davis