



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
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October 27, 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 – Request for Reconsideration
T0777 Snow Plowing and Spreading Services - NJDOT

Dear Mr. Severino:

This letter is in response to your correspondence of October 5, 2021, on behalf of DVS Trucking Co. (DVS) which was received by the Division of Purchase and Property's (Division) Hearing Unit. In that correspondence, DVS requests that the Division reconsider the termination of DVS' Master Blanket Purchase Order (Blanket P.O.) for price line 323. As noted in the Division's September 30, 2021, final agency decision, DVS's Blanket P.O. for Bid Solicitation #20DPP000525 - T0777 Snow Plowing and Spreading Services - NJDOT (Bid Solicitation) was terminated based upon the Division's Contract Compliance and Audit Unit's (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 were 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 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. After reviewing the Formal Complaint and the responses submitted by DVS on or about March 8, 2021 and March 11, 2021, on May 27, 2021, CCAU issued its resolution to Formal Complaint No. 21-02-01. CCAU concluded that DVS had failed to perform as required by the terms of the Blanket P.O. stating:¹

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.

Second, on March, 3, 2021, the NJDOT filed 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 as it showed up with only 5 trucks when six trucks were required, 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. DVS admitted many of the allegations were correct in its response to the complaint, while offering its viewpoint of the events.²

¹ The May 27, 2021 decision in response to Formal Complaint No. 21-02-01 was emailed to DVS Trucking at dvstruck@yahoo.com.

² DVS' responses may be found in the nine (9) attachments included with its March 10, 2021 email to CCAU's mailbox: 1) Reply to State of New Jersey Formal Complaint Form (Form CC-36) by Dean V. Severino dated March 10, 2021; 2) Exhibit A, Vendor's reply to 1st "Performance Rating for Plowing & Spreading Contractor by Event (Form MT-55A)"; 3) Exhibit B, Vendor's reply to 2nd "Performance Rating for Plowing & Spreading Contractor by Event (Form MT-55A)"; 4) Exhibit C, Vendor's reply to 3rd "Performance Rating for Plowing & Spreading Contractor by Event (Form MT-55A)"; 5) Exhibit D, Vendor's reply to 4th "Performance Rating for Plowing & Spreading Contractor by Event (Form MT-55A)"; 6) Exhibit E, Vendor's reply to 5th "Performance Rating for Plowing & Spreading Contractor by Event (Form MT-55A)"; 7) Exhibit F, Vendor's reply to 6th "Performance Rating for Plowing & Spreading Contractor by Event (Form MT-55A)"; 8) Exhibit G, Vendor's reply to 7th "Performance Rating for Plowing & Spreading Contractor by Event (Form MT-55A)"; 9) Exhibit H, Vendor's reply to 8th "Performance Rating for Plowing & Spreading Contractor by Event (Form MT-55A)".

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.³ 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.

DVS did not file an appeal to either of the complaint resolutions with the Director within the ten (10) day period as required by the regulations noted above.

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

I, Dean Severino, am acknowledging receipt of your email, to the Notice of Termination of PO blanket # 20-GNSV2-01213 and I would like to appeal the decision of termination of this PO blanket # 20-GNSV2-01213 that my firm was awarded.

Thank you,
Dean Severino

The Division accepted this email as protest of the September 14, 2021 Notice of Termination.

On September 30, 2021, the Division issued its final agency decision which sustained the Notice of Termination stating in part:

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

³ The May 27, 2021 decision in response to Formal Complaint No. 21-03-01 was emailed to DVS Trucking at dvstruck@yahoo.com.

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.

DVS responded by email to the final agency decision on September 30, 2021, stating in part:

I am responding to the email I received today regarding the appeal/protest I previously sent to you.

I would like to address the fact that on the e-mail dated 05/28/21 you are referring to (see email attached at the bottom). I did receive an email on that date, but it was not a Blanket PO cancellation to me, it was an awarded email to Morton Salt Inc. I did not reply back to it because I saw it was just a bid notification awarded email. If I had had received a cancellation email prior to the one you sent 09/13/21, I would have responded right away, as I did. I responded on 09/14/21.

Please review your email records and you will see that no Blanket P.O. cancellation was submitted to me and I should not be cancelled for not responding for something I had no idea was in process.

Included with DVS's response to the September 30, 2021, final agency decision was the email shown below.

----- Forwarded Message -----
From: NJSTART <noreply@njstart.gov>
Sent: Friday, May 28, 2021, 10:59:33 AM EDT
Subject: Bid Awarded - Bid # 20DPP00538, T0213 - Rock Salt, Treated Salt and Solar Salt - Statewide

Bid # 20DPP00538 has been awarded
The following vendor(s) have been awarded all or part of the bid:

Morton Salt Inc.
East Coast Salt Dist
CARGILL INCORPORATED
American Rock Salt Co., LLC

The selected vendor(s) are advised that Master Blanket Purchase Order(s) will be forthcoming. Thank you for your participation.

Use this link to log on to NJSTART: <https://www.njstart.gov/bsa/view/login/login.xhtml>

On October 1, 2021, the Division's Hearing Unit responded to DVS advising that on May 27, 2021, not May 28, 2021, the Division's Contract Compliance and Audit Unit sent DVS the resolutions to the two Formal Complaints filed by NJDOT. As a courtesy, the Division's Hearing Unit attached the May 27, 2021 emails from CCAU to its correspondence.

Thereafter, on October 5, 2021, DVS sent a follow-up email to the Division's Hearing Unit, which stated:

I am writing this letter not only to appeal a prior decision by the NJDOT but to request a hearing which I did not have a chance to participate in. Sometime around May 28, 2021, I received by electronic mail, a notice of

a bid awarded to another contractor (See Bid # 20DPP00538 awarded to Morton Salt Inc., attached). I did not receive any other correspondence, by regular postal or electronic mail from the NJDOT other than that during that time period.

I did recently receive a notice of a decision stating a bid solicitation (#20DPPP00525) which I was awarded was being solicited to another contractor and I had a right to appeal that decision. It is apparent that there was a clerical mix up where I received a correspondence meant for someone else, and probably someone else received a correspondence meant for me. I know that is an assumption, but I never received any notice for a hearing regarding my contract with the state. I received the notice of a hearing that took place without any participation by me, and resulted in the loss of my salting contract.

First, in the October 5, 2021 correspondence, DVS states that it “never received notice of any hearing regarding [its] contract with the state...I would like the opportunity to have a hearing”. DVS further notes that it appears that there as a clerical mix up as it never received notice of the hearing. As noted above, on September 14, 2021, DVS responded to the Notice of Termination stating that it wanted to “appeal the decision of termination,” DVS did not request an in-person hearing, and therefore, no hearing was scheduled and the protest was resolved based upon the written record. DVS has only now, in the request for reconsideration, requested an in-person hearing, as permitted by N.J.A.C. 17:12-3.3(b)(1)(iii). With respect to DVS’ request for an in-person presentation, pursuant to N.J.A.C. 17:12-3.3(e), “[t]he Director has sole discretion to determine if an in-person presentation by the protester is necessary to reach an informed decision on the matter(s) of the protest. In-person presentations are fact-finding for the benefit of the Director.” Further, “[i]n cases where no in-person presentation is held, such review of the written record shall, in and of itself, constitute an informal hearing.” N.J.A.C. 17:12-3.3(d). Here, I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes received, the Evaluation Committee Report, the Bureau’s Recommendation Report, the relevant statutes, regulations, case law, the protest and request for reconsideration submitted by DVS. The issues raised were sufficiently clear such that a review of the record of this procurement 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 and the request for reconsideration on the written record, as such an in-person hearing is not warranted.

Second, with respect to DVS’ claim that it never received an opportunity to appeal a decision to cancel its contract, as noted above, on May 27, 2021, CCAU sent DVS the CCAU resolutions to Formal Complaint No. 21-02-01 and Formal Complaint No. 21-03-01, and DVS did not submit an appeal of either of the resolutions to the Division’s Director as required by N.J.A.C. 17:12-4.4 et seq. Upon receipt of resolution, DVS had the right to file an appeal to the Director within ten (10) business days in accordance with N.J.A.C. 17:12-4.4. Here, both resolutions were sent by email to dvstrucking@yahoo.com on May 27, 2021. The email address used by CCAU when issuing the decisions was the same email address use when communicating with DVS regarding the complaints; and as noted above, DVS responded to those complaints. Additionally, it is the same email address used in the instant protests. CCAU advises no ‘undeliverable’ email was received after the decisions were emailed. The record indicates that DVS was provided with notice and an opportunity to appeal the decisions related to the CCAU’s resolutions to the complaints filed by NJDOT, and no appeal was filed within the permitted time period.

Third, in the protest DVS claims that the only email it received on May 28, 2021, was an email related to the award of Blanket P.O.s for T0213 – Rock Salt, Treated Salt and Solar Salt – Statewide. DVS believes that its receipt of that email “was a clerical mix up where I received a correspondence meant for someone else, and probably someone else received a correspondence meant for me.” It appears that DVS

claims that it did not receive the May 27, 2021 emails from CCAU with the resolutions to the two Formal Complaints filed by NJDOT. First, the May 28, 2021, email to DVS regarding T0213 was an auto-generated email notice sent by the State's NJSTART eProcurement system alerting DVS that a contract award had been made for Bid Solicitation #20DPP000538 – T0213 Rock Salt, Treated Salt and Solar Salt - Statewide. The record shows that DVS was the recipient of that email because DVS is registered for a commodity code associated with that procurement. Therefore, as a potential Vendor {Bidder}, DVS received the notice of award even though DVS had not submitted a Quote in response to Bid Solicitation #20DPP000538. With respect to the May 27, 2021 emails from CCAU with the resolutions to the two Formal Complaints filed by NJDOT, as noted above, both resolutions were sent by email to dvstrucking@yahoo.com and no 'undeliverable' email was received, accordingly the decisions were presumed to have been received.

Finally, as explained in the final agency decision on September 30, 2021, which sustained the Notice of Termination, DVS did not dispute the allegations of the complaint, but instead offered excuses for why it failed to show up to call-out without the required vehicles and equipment on several occasions. Because DVS had received and acted on its opportunities to dispute NJDOT's allegations, no additional fact-finding hearing was necessary to resolve the protest filed by DVS on September 14, 2021. Thus, neither the original protest filed September 14, 2021, nor this request for reconsideration, set forth any reason why the contract should not be terminated.

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 and the October 1, 2021 final agency decision.

Sincerely,



Maurice A. Griffin,
Acting Director

MAG: RUD/CKK

c: R. Regan
K. Popso
N. Ghorbani