



## State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
OFFICE OF THE DIRECTOR

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September 19, 2019

Via Electronic Mail [elitetruckingandrigging@yahoo.com] and USPS Regular Mail

Stephen Defilippi  
Elite Trucking and Rigging, LLC  
315 Maxim Drive,  
Hopatcong, New Jersey 07843

Re: I/M/O Bid Solicitation #18DPP00205-Elite Trucking and Rigging, LLC  
Protest of Notice of Termination  
T0777 for Snow Plowing and Spreading Services, Blanket P.O. #18-PROS1-00531

Dear Mr. Defilippi:

This letter is in response to your email of September 10, 2019 on behalf of Elite Trucking and Rigging, LLC (Elite) to the Division of Purchase and Property's (Division) Hearing Unit, protesting the Division's Procurement Bureau's (Bureau) September 6, 2019, letter in which it informed Elite of its intent to terminate the Master Blanket Purchase Order (Blanket P.O.) awarded to Elite in connection with Bid Solicitation #18DPP00205:T0777 for Snow Plowing and Spreading Services (Bid Solicitation).

By way of background, on January 30, 2018, the Bureau issued the Bid Solicitation on behalf of New Jersey Department of Transportation (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 the NJDOT. Bid Solicitation § 1.1 *Purpose and Intent*. The Bureau intended to award Blanket P.O.s to those responsible Vendors {Bidders} whose Quotes, conforming to the Bid Solicitation, were most advantageous to the State, price and other factors considered. Ibid.

On March 1, 2018, the Bureau issued Bid Amendment #1, which included answers to questions, deletions/revisions to the Price Sheet/Schedule, revisions to Attachment #1 – Vendor {Bidder} Equipment Form (Attachment 1) and other modifications to the Bid Solicitation {RFP}.

On March 16, 2018, the Division's Proposal Review Unit opened 164 Quotes received through the State's **NJSTART** eProcurement system and/or hardcopy format by the submission deadline of 2:00 pm eastern time. Those Quotes which conformed to the administrative requirements for Quote submission were forwarded to the Bureau for review and evaluation consistent with the requirements of Bid Solicitation.

After completing the evaluation of the Quotes received, on August 22, 2018, the Bureau completed 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. The Recommendation Report recommended awarding Elite a Blanket P.O. for

Price Line 320. On August 24, 2018, the Bureau issued a Notice of Intent to Award advising all Vendors {Bidders} that it was the State's intent to award Blanket P.O.s consistent with the Bureau's Recommendation Report. The Blanket P.O. awards were finalized on September 21, 2018.

On January 23, 2019, NJDOT filed Formal Complaint No. 19-01-13 with the Division's Contract Compliance & Audit Unit (CCAU), advising that:

NJDOT has given Elite Trucking and Rigging multiple attempts to preform to the specifications of its contract, yet Elite has repeatedly failed to do some and in each instance, the performance of Elite Trucking & Rigging is more egregious than the last. As the attached MT55s illustrate, on numerous occasions for both spreading and plowing, Elite Trucking & Rigging has failed to arrive with the proper number of trucks, failed to arrive on time, and failed to remain on duty until released by NJDOT. While NJDOT is aware that Elite Trucking & Rigging vehicles have been involved in no-fault accidents, this does not absolve them of their duty to fulfill the terms of the contract. During this latest event, NJDOT had to utilize a Strike Team to augment the truck shortage caused by Elite. We are not seeking reimbursement, as the Strike Team's hourly rate is lower than that of Elite. As a result of NJDOT having numerous issues with Elite Trucking & Rigging and their failure to report with a full complement of trucks on multiple occasions, NJDOT is requesting Elite Trucking & Rigging be relieved of their contracts with NJDOT. NJDOT reserves the right to fill any sections without second bidders, using its authority under waiver AM039.

[See, CCAU Formal Complaint No. 19-01-13.]

CCAU forwarded NJDOT's Formal Complaint to Elite on February 4, 2019 and again on February 19, 2019, requesting Elite's written response by March 5, 2019. On March 26, 2019, CCAU issued a letter to Elite and NJDOT, advising that the Formal Complaint No. 19-01-13 was resolved against Elite for poor performance during the snow events of January 18, 19 and 20, 2019. (See, March 26, 2019 CCAU letter). In its letter CCAU advised that as of the date of the letter, March 26, 2019, Elite had not responded to NJDOT's complaint. (See, March 26, 2019 CCAU letter, pg. 1). After reviewing the information provided by NJDOT in connection with the Formal Complaint, specifically the MT-55A<sup>1</sup> Performance Rating for Plowing & Spreading Contractor by Event Forms, CCAU concluded that:

For Snow Events on December 23, 2018, January 3, 2019 and January 7, 2019, Elite was either short [of] a truck, or had trucks show up late to the staging location. Section 3.8 *Vendor {Contractor} readiness and Call-Out*, [which] states in part, "[i]f the Vendor {Contractor} fails to arrive with a full complement of trucks within the required timeframe the Vendor {Contractor} shall not be eligible for the Minimum Compensation and shall only be paid for the actual number of hours worked for each truck..." Therefore, the contract has language to address these typed of situations.

For [the] Snow Event on January 18, 2019, the MT-55A form submitted by [NJ]DOT states that one of Elite's drivers (sic) had shut off his phone

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<sup>1</sup> MT-55A is a New Jersey Department of Transportation, Division of Operations' Performance Rating for Plowing & Spreading Contractor by Event form, which is designed to outline the justification of the rater's assertion that the vendor is non-compliant.

and radio and abandoned his spreading section, returning to the contractor's yard, dropping off the truck fully loaded with salt, and left the yard. [NJ]DOT was forced to switch one of its own drivers to cover the section. The driver returned the salt after the event.

For [the]Snow event on January 19<sup>th</sup> and 20<sup>th</sup>, MT-55A states that Elite only provided 10 of the required 16 trucks and [NJ]DOT was forced to call in a Strike Team...

[See, CCAU March 26, 2019 letter, pg. 2.]

Based on the above facts provided by NJDOT, and because Elite failed to respond to NJDOT's complaint, CCAU found against Elite for poor performance during Snow Events on January 18, 19 and 20, 2019. *Ibid.* Elite had an opportunity to appeal CCAU's determination within 10 days of its March 26, 2019 decision, however, it did not.

On September 6, 2019, the Bureau's sent a Notice of Termination to Elite, advising that it intended to terminate Elite's Blanket P.O. for price Line 320, pursuant to Bid Solicitation Section 9.0 *State of New Jersey Standard Terms and Conditions*, section 5.7 (B)(1) *Termination of Contract*, based on the following:

1. On December 23, 2018 and January 3, 2019, the Vendor {Contractor} failed to supply the required number of trucks for the below referenced price line. The Vendor {Contractor} was one (1) truck short for each instance;
2. On January 7, 2019, all trucks that Vendor {Contractor} was supposed to provide were late; and
3. On January 18, 2019, one (1) truck showed up late and one (1) truck abandoned post.

On September 9, 2019, Elite sent a letter to the Bureau, protesting the termination for the following reasons:

- On December 23, 2018, the truck driver had a death in the family, thus failing to show up;
- On January 7, 2019, the truck was late because a newly purchased truck was being prepared to replace a truck that was previously in accident and repair one spreader truck.
- On January 18, 2019, one spreader truck was late because Elite had to "replace a main hose on the spreader."
- The truck driver responsible for the abandoned post quit his job with no notice.

[See September 9, 2019 Elite Protest Letter, pg. 1-2.]

In consideration of Elite's protest, I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes received, the CCAU complaint, the protest, the relevant statutes, regulations, and case law. This review 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 submitted by Elite. I set forth herein my final agency decision.

Bid Solicitation Section 9.0 *State of New Jersey Standard Terms and Conditions*, section 5.7 *Termination of Contract* in relevant part states:

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.

In its September 10, 2019 letter, Elite does not dispute that it failed to comply with the requirements of the Bid Solicitation/Blanket P.O. on multiple occasions. Additionally, CCAU provided Elite with the opportunity to respond to NJDOT's complaint and explain its reasons for continued poor performance, but it failed to do so. Bid Solicitation Section 3.8 *Vendor {Contractor} Readiness and Call-Out* requires that

All trucks must be fully operational and ready to report for a Call-Out by October 1<sup>st</sup> of each year of the Blanket P.O. {Contract}.

Upon receipt of a Call-Out, the Vendor {Contractor} shall assemble the required number of trucks and/or equipment at the Assembly Location designated by NJDOT. The Vendor {Contractor} shall be prepared to begin snow plowing Operations and/or spreading services within the following timeframe:

- A. Vendors {Contractors} awarded a Blanket P.O. {Contract} in Phase One (1) Of the Procurement must report within two (2) hours of a Call-Out;
- B. Vendors {Contractors} awarded a Blanket P.O. {Contract} in Phase Two (2) of the Procurement must report within three (3) hours of a Call-Out; and
- C. Vendors {Contractors} awarded a Blanket P.O. {Contract} in Phase Three (3) of the Procurement must report within three (3) hours of a Call-Out.

In its protest, Elite did provide a response to the complaint filed by NJDOT. Elite's response, however, does not excuse its performance. Even giving Elite the benefit of the doubt related to the driver walking off the job, three separate and additional contract failures remain. There is no dispute that Elite failed to comply with requirements of Bid Solicitation Section 3.8. Based on the facts provided by NJDOT,

Elite was given multiple opportunities to rectify its performance and comply with the specifications of the Bid Solicitation/Blanket P.O. It failed to do so.

Elite provides no facts disputing NJDOT's allegations or CCAU's findings. In fact, in the protest Elite acknowledges its failure to perform on multiple occasions. Therefore, the record supports NJDOT's request that Elite's contract be terminated and the Bureau's termination of Elite's Blanket P.O. #18-PROS1-00531 for Price Line 320 for failure to perform and comply with a contract.

In light of the findings set forth above, I sustain the Notice of Termination. This is my final agency decision on this matter.

Thank you for your company's continuing interest in doing business with the State of New Jersey and for registering your business with **NJSTART** at [www.njstart.gov](http://www.njstart.gov), the State of New Jersey's new eProcurement system.

Sincerely,



Maurice A. Griffin  
Acting Director

MAG: RD

c: A. Davis  
R. Regan  
K. Popso  
K. Centofanti