



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
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March 23, 2017

Via Regular Mail

Ronald Edelman, Esq.
Fuhrman & Edelman
The Ellipse Building
4201 Church Road, Suite 9
Mount Laurel, New Jersey 08054

RE: Formal Complaint No.: 14-05-05
State Contract No.: 81332/T0106
Purchase Order No.: 14002012

Dear Mr. Edelman:

This letter is in response to your February 2, 2015, correspondence on behalf of Municipal Equipment Enterprises (Municipal) in which Municipal appeals the January 20, 2015, decision of the Contract Compliance and Audit Unit (CCAU) of the Division of Purchase and Property (Division). In this appeal, Municipal requests that the formal complaint filed by County of Union Purchasing (Union County) be removed from CCAU's files on the basis that the contract at issue has been satisfied in full.

In consideration of your appeal, I have reviewed CCAU's complete record of this matter, including the requirements of State Contract No. 81332/T0106 and any amendments thereto, communications between Municipal and Union County regarding the contract, the Formal Complaint filed by Union County, the January 20, 2015 decision of the CCAU (CCAU Decision), and the relevant purchase orders and pricing sheets. By way of background, in May 2012, contracts were awarded to those bidders who provided proposals to the State which conformed to the requirements of Request for Proposal #12-X-21817 for Police and Homeland Security Equipment and Supplies (RFP) and that were "most advantageous to the State, price and other factors considered." (RFP § 1.1 *Purpose and Intent*.) Awarded contracts were extended to the State's cooperative purchasing partners.

On December 5, 2013, Union County requested and received a quote from Municipal for Setina brand products under the State contract 81332/T0106. In its response, Municipal claimed that the items requested by Union County were not covered under the contract. (CCAU Decision, p. 1.) Union County provided Municipal with copies of the State contract price sheets indicating that the requested items were in fact covered by the State contract. (CCAU Decision, p. 1.) On February 25, 2014, Municipal provided Union County with a final quote based upon the State contract price sheets which were in effect at the time that Union County placed the order. (*Id.*) On March 10, 2014, Union County sent Purchase Order# 14002012 to Municipal. (County of Union Purchase Order dated March 10, 2014.) Union County alleges that subsequently, Municipal advised Union County that the order had not been placed and that Municipal's parts manager wanted to discuss the pricing on the purchase order. (CCAU Decision, p. 2.) On April 17, 2014, Union County again explained to Municipal that the pricing needed to comply with the State contract price sheets. (*Id.*) Municipal again allegedly claimed that not all of the items requested by Union County

were covered by the State contract. (*Id.*) Union County, for a second time, provided Municipal with the 2012 price sheets demonstrating that the Setina products ordered were included on the State contract. (*Id.*) The following day, Municipal allegedly advised Union County that it could not fulfill the order using the 2012 price sheets as the company would lose money. (*Id.*) On April 30, 2014, Municipal's president, Len Polistina called Union County to discuss the pricing. (*Id.*)

The order having not been fulfilled and the matter of pricing having not been resolved, on May 8, 2014, Union County filed a formal complaint (#14-05-05) with CCAU. (Formal Complaint dated May 8, 2012). In response to the complaint, on May 16, 2014, Municipal wrote to CCAU advising that "we have placed the order for the customer referencing the purchase order mentioned. We will deliver per our contract regardless of the pricing issue." (Municipal's May 16, 2014 response to formal complaint #14-05-05). In addition, in its May 16, 2014 response, Municipal noted that "there was an error in the original pricing sheet that had been received Setina...Last year we submitted pricing changes that were not received by the correct person at the State. The new price list did not get published."¹ In its response to the complaint, Municipal also acknowledged that there was some delay in communicating with Union County. (*Ibid.*)

On July 8, 2014, Union County notified CCAU that "[t]he vendor has fulfilled the order of the purchase order in question. Len has also apologized. However, after discussing this matter with [the Union County] director we would ask that the complaint stay on file. This matter would not have been solved without the formal complaint." (CCAU Decision, p. 3.)

On January 20 2015, CCAU issued its decision resolving the matter against Municipal for unsatisfactory service. (CCAU Decision.) Although Municipal alleges that Union County "knew that there would be an approximate 60-day lee-time (sic)" to fill the order for the product, there is nothing in the record to reflect that. Indeed, Municipal's contract delivery terms are 14 days ARO. (State Contract 81332/T0106.) At the time of Union County's initial request for a quote in December 2013 the Setina products were included on the 2012 price sheet for State contract T0106. Because of Municipal's repeated claims that the products were not included on the State contract and continued disputes over pricing, the order was not filled by Municipal until May 2014, and only after Union County filed a formal complaint. In the CCAU Decision, CCAU noted that "this complaint will become part of Municipal's vendor performance file and may be used in the evaluation of future bids submitted. **However, the record will reflect that Municipal did take corrective action and eventually delivered the items at the contract price in effect at the time of the order.**" (CCAU Decision, p. 3, emphasis added.)

There being no other relevant facts and no mitigating factors, because Municipal delayed fulfilling Union County's order as described above without any colorable justification, and then did so only after Union County filed the Formal Complaint, I affirm CCAU's decision and deny Municipal's request to have the subject complaint removed from Municipal's file. This is my final agency decision with respect to the appeal submitted by Municipal Equipment Enterprises. You have the right to appeal this final administrative determination of the Division of Purchase and Property to the Superior Court of New Jersey, Appellate Division, within 45 days of the date of this decision in accordance with the New Jersey Court Rules, Rule 2:2-3, et seq.

¹ At the time of Union County's Order, the 2012 price sheet was in effect, as the updated price list was not approved by the Division until May 19, 2014.

Although the record of this complaint will remain intact, Municipal, like any other vendor with an adjudicated complaint on file, can and should continue to offer proposals for State contracts. The Division appreciates Municipal's continuing interest in doing business with the State of New Jersey and for registering your company with **NJSTART** at www.njstart.gov, the State of New Jersey's new eProcurement system.

Sincerely,


Maurice A. Griffin
Acting Director

MAG: RUD

c: A. Davis
L. Scutari