



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR
33 WEST STATE STREET
P. O. BOX 039
TRENTON, NEW JERSEY 08625-0039
<https://www.njstart.gov>

CHRIS CHRISTIE
Governor

FORD M. SCUDDER
State Treasurer

KIM GUADAGNO
Lt. Governor

JIGNASA DESAI-MCCLEARY
Director

March 10, 2017

Via Electronic Mail [mhandel2@optonline.net] and USPS Regular Mail

Michael A. Handel
Handel Construction Co. Inc.
22 Foothill Drive
Pompton Plains, NJ 07444

Re: Appeal of Formal Complaint No. 16-02-12, Contract No. 82336
RFP #13-X-22591 Snow Plowing & Hauling Services Statewide for the N.J.D.O.T. (T-0777)

Dear Mr. Handel,

This letter is in response to your email addressed to the Contract Compliance and Audit Unit (CCAU) of the Division of Purchase and Property (Division), dated January 15, 2017, and regarding Formal Complaint No. 16-02-12 filed against Handel Construction Co. Inc. (Handel) by the New Jersey Department of Transportation (NJDOT). The Division accepts your email correspondence as a formal appeal of CCAU's January 5, 2017 administrative resolution of the subject complaint against Handel. I have reviewed the facts of this case pursuant to N.J.A.C. 17:12-4.5(a) and set forth herein my final agency decision.

The background of this case is as follows. The Division issued the subject Request for Proposal (RFP) on behalf of the NJDOT to "solicit proposals for snow removal and hauling services, statewide for a three (3) year period." RFP §1.1 *Purpose and Intent*. For purposes of bidding, the RFP divided the 13,000 lane miles of State roadways into 279 snow sections. Ibid. Each snow section required a certain number of snow plows to remove snow curb-to-curb, and bidders were permitted to bid either an hourly rate with DOT providing snow plows and related mounting apparatus or an hourly rate with the vendor providing the snow plows and related mounting apparatus. Ibid. Bidders were permitted to bid on one or more snow sections in one or more regions or multiple snow sections within a region.¹ RFP §4.4.7 *Method of Bidding*.

After the public opening of timely submitted proposals and subsequent evaluation, Handel was awarded Price Line 1 (snow section 5210261—North crew 210 Paterson), Price Line 18 (snow section 5214261—North crew 214 Totowa), and Price Line 32 (snow section 5217263—North crew 217 Riverdale) for term contract T-0777, effective August 15, 2012, and subsequently extended through July 21, 2017.²

¹ These regions correspond to the North, Central, and South Regional Emergency Operations Centers. RFP §3.20 *Accident Reporting*.

² The Division exercised the option for two one-year extensions. RFP §5.2 *Contract Term and Extension Option*. Handel was also awarded contract number 82819, Price Lines 19 (snow section 5214262—North crew 214 Totowa)

Concerning vendor call-out and readiness, the RFP specified in Section 3.5:

All trucks shall be ready to report for a snow call-out by October 1 of each year of the contract. The apparatus shall remain installed continuously through the period from October 1 to April 30 of the following year, during each winter season this contract is in effect. The vendor shall not use any truck provided for this contract on any other snow plowing or spreading contracts if such use will hinder or conflict with the requirements of this contract.

Upon an award, the vendor must provide the NJDOT with a telephone number, which is monitored by the vendor 24 hours a day, seven days a week, to be used for call-outs. The NJDOT reserves the right to call out less than the awarded number of trucks as its needs dictate. All callouts will be issued from the NJDOT Regional Emergency Operations Center by telephone. Upon receipt of a call-out, the vendor shall assemble the requested number of trucks and/or other equipment at the assembly location designated by NJDOT, as noted in Section 3.6, within [120³] minutes of the call-out and be prepared to commence snow plowing/removal operations. The vendor shall notify the NJDOT Regional Emergency Operations Center or the designated representative immediately when the trucks and/or other equipment arrive at the designated assembly location fully prepared to commence snow plowing/removal operations.

As long as the vendor reports to the designated assembly area within [120] minutes of callout as described above, with the required number of trucks fully prepared for operation, the vendor will be entitled to a minimum payment of eight (8) hours per truck, including the Superintendent's truck. The guaranteed payment will consist of either Deployed Time, Operating Time or a combination thereof. Deployed Time will be paid for actual time standing by at the designated assembly or other location waiting to begin, continue, or cease operations, for up to two hours. After two hours, Operating Time will be paid whether operations have begun or not. If the vendor has not arrived with the required number of trucks within the required [120] minute period, each truck will only be paid for the actual hours worked and the Superintendent will be paid from the time that the first truck arrives.

The eight (8) hours minimum time clock starts whenever each of the vendor's trucks arrive at the assembly area and are placed on either Operating or Deployed Time status and is within the [120] minute timeframe. If all of the requested trucks do not arrive within the required [120] minute timeframe, then none of the trucks receive the eight (8) hour minimum.

....

From 2013 through 2016, NJDOT filed four complaints against Handel for various infractions, including failure to have trucks inspected by the October 1 deadline, failure to report within 120 minutes of the call-out time, and failing to report with the full complement of trucks. These four complaints were resolved administratively; however, CCAU's review and resolution identified assessments/liquidated damages assessed by NJDOT for each of these complaints as set forth in the RFP.

and 54 (snow section 5225262—North crew 225 East Hanover), in response to RFP #13-X-22747, *Snow Plow and Hauling Services - NJDOT Re-Bid For All Open Snow Sections*.

³ Addendum #1, *Answers to Electronic Questions and Additions, Deletions, Clarifications and Modifications to the RFP*, modified the call-out time from 90 minutes to 120 minutes.

NJDOT filed Formal Complaint No. 16-02-12 against Handel on February 12, 2016, alleging: 1) late delivery/no delivery, 2) non/poor performance, 3) product/service does not meet specifications, and 4) and unsatisfactory product/service. The complaint was based on services associated with a large snow event referred to as the “Jonas Storm,” which resulted in snow accumulations of anywhere between 10 and 30 inches of snow throughout the State on January 23, 2016. Specifically, the complaint stated the following:

Plowing vendor [Handel], Contract # 82336 Line #32, Section #5217263⁴ was called on 01/22/16 at approximately 2200hrs to report for duty. No contact was able to be made for some time. The Superintendent reported at 0200hrs but none of the drivers had reported as of this time. Six (6) of the requested eight (8) trucks were left on the site prior to the event. One (1) of the six (6) began leaking oil shortly after it was started and had to be considered broke[n] down. Of the five (5) remaining trucks, three (3) had plows attached that were not prepared for plowing, thus leaving only two (2) usable trucks that could plow. At approximately 0300hrs, after management [assessed] the situation, the two (2) usable trucks were sent home because other resources had already been called into maintain the roadway section that [Handel] could not provide the requested number of trucks . . . in a timely manner. The two (2) usable trucks were paid two (2) hours each. With that, [Handel] did not comply with Section 3.5 Call Out & Readiness, failed to meet the one hundred twenty (120) minute response time and failed to provide the requested number of trucks. A letter stating the same has also been sent by email to the vendor on 2/12/16.

CCAU provided notice of Formal Complaint No. 16-02-12 to Handel on February 17, 2016, and provided an opportunity to submit a substantive response by March 2, 2016. After Handel’s failure to respond, CCAU issued a second notice to Handel and provided a second opportunity to submit a response by March 21, 2016. On March 22, 2016, Handel emailed CCAU, stating it had met with NJDOT, was gathering “proofs,” and had requested a second meeting to resolve the issue. Handel also requested an extension to respond to the complaint. CCAU granted Handel an opportunity to respond by April 5, 2016. Handel did not submit a written response, but rather requested an in-person meeting with CCAU.

On May 13, 2016, CCAU met with Handel. To dispute the allegations in NJDOT’s complaint, Handel provided its telephone records associated with 973-703-XXXX⁵ to show no calls were received between the hours of 1:30 p.m. on January 22, 2016, and 12:09 a.m. on January 23, 2016. As noted in CCAU’s January 5, 2017 administrative resolution, Handel also stated the following during that meeting:

- DOT did not contact Handel at the primary contract phone number until around 12:12 a.m. on January 23, 2016. Handel provided a print out of a Sprint telephone bill for the primary phone number [973-703-XXXX]. The phone log shows no incoming calls from 1:30 p.m. on January 22, 2016, until 12:09 a.m. on January 23, 2016. Handel stated this call was from his superintendent. The next call on the bill, 12:12 a.m. was from DOT according to Handel;
- Six of the trucks were left on site as of 3:30 the afternoon of January 22, 2016;
- Eight trucks were present within the required contracted time frame, however two of the drivers were subs and DOT was not familiar with them;

⁴ Price Line 32 included Route 23, from South of Black Oak Ridge Rd. in Wayne to Center St. in Butler (mile post 9.2 to mile post 16.4).

⁵ As stipulated in RFP Section 3.5, this was the telephone number Handel provided to be “monitored by the vendor 24 hours a day, seven days a week, to be used for call-outs.” For privacy reasons Handel’s direct phone number is not included in this decision.

- The drivers were in their personal vehicles, not in the trucks and were on site prior to the call out time;
- The blades that DOT claims were not prepared for plowing had been declared acceptable as of the time of the last snow storm (3/5/15) and nothing had occurred since. Also, Handel stated that DOT performed an inspection on the blades on June 1, 2015.
- [A] ninth truck was available to substitute for the truck that was leaking oil, however the DOT supervisor at that site (snow-section 5217263) stated it was not permitted as the truck was dedicated to a different snow section.

Following the meeting, CCAU requested additional information from NJDOT. NJDOT provided a record of the Regional Emergency Operation Center's telephone record showing it placed calls to Handel's provided number on January 22, 2016, at 10:01 p.m., 10:03 p.m., 10:15 p.m., and 10:16 p.m. Additionally, regarding the plow blades, NJDOT stated that it did not inspect the blades but merely took an inventory of the plow blades in June 2015. CCAU again provided Handel an opportunity to respond by June 17, 2016; however, Handel did not provide a written response or explain the discrepancy in the phone records.

CCAU issued its administrative resolution on January 5, 2017. In response to Formal Complaint No. 16-02-12 CCAU found as follows:

. . . in this instance, DOT was forced to call in other resources to plow Handel's snow section since Handel only had two trucks available that were approved to plow. Accordingly, this complaint is resolved against Handel for failure to perform in violation of Section 3.5 of its State Contract Number 82336.

....

CCAU recommends Handel's State Contracts Number 82336 (Snow Plowing & Hauling Services Statewide for the N.J.D.O.T) and 82810 (Snow Plowing & Hauling Services – N.J.D.O.T Re-bid for all open snow sections) be referred to the Procurement Bureau for review of possible remedies under the contract, including but not limited to cancellation for cause.

In its January 15, 2017 appeal of CCAU's determination, Handel asserts "[t]here are misstated contract specifications as well as inaccurate depictions of the events of the of 1/22/16 and 1/23/16" and that there are "alleged allegations of falsification of documents, yet no proofs are provided." Handel also states:

There is no mention of the initial meeting with [NJDOT], at the Mt. Arlington regional center, at which time certain State employees were not allowed to attend. These employees would have verified my actions and conversations on 1/23/16 as well as their approval of my actions. There are allegations of not providing documentation to the State, which I did provide to representatives in Trenton at the meeting.

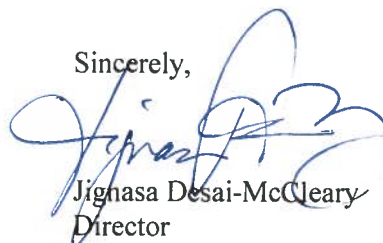
Despite these statements, Handel did not present any additional information or evidence in its appeal to contradict the findings of CCAU, nor does it explain which contract specifications are misstated. A review of the record shows that CCAU was aware of the initial meeting between Handel and NJDOT and it was taken into consideration when issuing the administrative resolution. Furthermore, a review of the Regional Emergency Operation Center's call log shows that four telephone calls were placed to Handel's provided telephone number to report for duty at 10:01 p.m., 10:03 p.m., 10:15 p.m., and 10:16 p.m. on January 22, 2016. Additional phone calls were placed by Steve Smolinski, Acting Area Supervisor, to Handel on January 22, 2016, at 10:28 p.m. and 10:38 p.m. The record reflects these

calls were unanswered. Although given an opportunity to explain the discrepancy between Handel's and the State's phone logs, and the fact that these calls appeared to go unanswered, Handel provided no explanation why its submitted records show no incoming nor outgoing phone calls between 1:30 p.m. on January 22, 2016, and 12:09 a.m.⁶ According to NJDOT emails, at approximately 10:32 p.m., Bruce Baker, Crew Supervisor of the Riverdale Maintenance Yard, was informed that a Handel employee was being dispatched to Handel's house to wake him, as he had not answered any phone calls. The first time NJDOT was able to reach Handel was at approximately 12:30 a.m. on January 23, 2016, via phone call from Smolinski. In light of the magnitude of the snow event forecast for this time period, I find it surprising that a vendor to this contract would not keep cognizant of pending weather conditions and the need for its snow plow services.

Regarding the plowing blades, via email dated May 18, 2016, Baker explained that he spoke to Handel "at least 3 to 4 times verbally over the phone between September 2015 through the date of incident [January 22, 2016] and requested [Handel] check his plows and let [Baker] know if he needed anything which he did not." Handel's supervisor and a driver arrived at the Riverdale Maintenance yard at approximately 2:15 a.m., despite the fact that according to the RFP requirements this was beyond the 120-minute response time. It was at this time that Bruce Baker noticed that three of the trucks left on location had blades that were one inch or less, one truck had an oil leak, and one truck was from the Paterson Yard route. By 3:00 a.m. on January 23, 2016, only two out of the required eight plow trucks were usable and able to plow. These two trucks were paid for two hours each. Snow began falling at approximately 3:30 a.m. Due to the anticipated magnitude of the storm and lack of response from Handel, NJDOT had already assembled a backup crew, which was ultimately used for this snow section.

Handel's response time was therefore not in keeping with the requirement set forth in RFP Section 3.5 that "upon receipt of a call-out, the vendor shall assemble the requested number of trucks and/or other equipment at the assembly location designated by NJDOT, as noted in Section 3.6, within [120] minutes of the call-out and be prepared to commence snow plowing/removal operations." Accordingly, I uphold the determination of CCAU in finding Formal Complaint No. 16-02-12 be resolved against Handel and see no reason to disturb CCAU's referral of Handel's State contract numbers 82336 and 82819 to the Bureau for possible remedies under the contract terms, including termination. This is my final agency decision.

Sincerely,



Jignasa Desai-McCleary
Director

JD-M:DF

c: A. Davis, CCAU
J. Paul, CCAU
L. Johnson, CCAU
G. Olivera, DPP
K. Woolford, DPP
B. Gallagher, DPP

⁶ It is noteworthy that the telephone records show significant activity before and after this time.