



## State of New Jersey

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DIVISION OF PURCHASE AND PROPERTY  
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February 20, 2018

Via Email [[agenova@genovaburns.com](mailto:agenova@genovaburns.com)] and USPS Regular Mail

Angelo J. Genova, Esq.  
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Re: Request for a Stay – Opus Inspection, Inc.  
RFP #16-X-24049: Enhanced Motor Vehicle Inspection/Maintenance System

Dear Mr. Genova:

This letter is in response to your correspondence of January 5, 2018, to the Division of Purchase and Property's (Division) Hearing Unit on behalf of Opus Inspection, Inc. (Opus). In that letter, Opus requests a stay of the January 3, 2018, final agency decision which directed that the Division's Procurement Bureau (Bureau) rescind the August 18, 2017 Notice of Intent to Award (NOI) and review the remaining proposals submitted in response to the subject solicitation and issue a new NOI if appropriate.

By way of background, the subject Request for Proposal (RFP) was issued on December 21, 2015, by the Bureau on behalf of the New Jersey Motor Vehicle Commission (MVC) and the New Jersey Department of Environmental Protection (DEP). The purpose of the RFP was to solicit proposals to engage a contractor to implement a next generation motor vehicle inspection and maintenance system. RFP § 1.1 *Purpose and Intent*. It is the intent of the Division to award one contract to that responsible bidder whose proposal, conforming to the RFP, is most advantageous to the State, price and other factors considered. *Ibid.* On February 22, 2016, four proposals received by the submission deadline were opened by the Division's Proposal Review Unit. All four proposals were forwarded to the Bureau and then provided to the Evaluation Committee (Committee) for review and evaluation consistent with the criteria set forth in the RFP § 6.7 *Evaluation Criteria*. Based upon that evaluation, on May 13, 2016, the Bureau issued the NOI advising all bidders that it was the State's intent to award a contract to SGS Testcom, Inc. (SGS Testcom).

Thereafter, Parsons Environment and Infrastructure Technology, Inc. (Parsons) requested copies of the proposals submitted by all other bidders. Parsons was provided with over 3,000 pages of information, including the redacted proposals and an exemption log. In a July 2016 summary action, Parsons challenged the redactions made to the proposals submitted by its competitors. On October 14, 2017, the Law Division entered an order upholding the Division's redactions but for the names of the SGS Testcom employees who had been identified to work on the contract. Parsons filed an appeal of the Law Division's decision which is currently pending before the Superior Court of New Jersey, Appellate Division (Appellate Division).

Oral Argument on the matter was held on December 14, 2017 and the decision is currently pending before the Appellate Division.

On October 24, 2016, Parsons and Opus submitted protests to the Division challenging the intended contract award to SGS Testcom. On July 31, 2017, the Division issued its final agency decision finding that SGS Testcom's submitted *Ownership Disclosure Form* did not accurately reflect its full ownership structure, which resulted in a material deviation rendering its proposal nonresponsive. Accordingly, the Bureau was directed to rescind the May 13, 2016, NOI and issue an Amended NOI as appropriate. On or about August 24, 2017 SGS Testcom filed its appeal of the Division's July 31, 2017 final agency decision. That appeal is currently pending with the Appellate Division.

On August 18, 2017, the Bureau issued an Amended NOI indicating that it was the State's intent to award a contract to Opus. On September 11, 2017, Parsons filed a protest challenging the intended contract award. On January 3, 2018 the Division issued its final agency decision concluding that the Proposal submitted by Opus was non-responsive as Opus failed to include a draft CIF Staffing Plan with its proposal as required by the RFP. On January 5, 2018, Opus requested that the Division stay both the "rescission of the August 18, 2017 NOI and the issuance of a new NOI." Opus Stay Request p. 1. On or about January 10, 2018 Opus filed an appeal of the Division's January 3, 2018 NOI with the Appellate Division.

Subsequent to Opus' January 5, 2018 letter to the Division requesting a stay, on January 11, 2018 the Division received a letter from Parson's in opposition to Opus' stay request. Additionally, on January 11, 2018 and January 16, 2018 the Division received letters from Applus Technologies, Inc. (Applus) and SGS Testcom respectively, in support of Opus' request for a stay.

In consideration of this request for stay, I have reviewed the record of this procurement, including Opus' request for a stay, the letters received from Parsons, Applus and SGS Testcom, both in opposition to and in favor of the request for a stay, the RFP, the proposals submitted, the Division's final agency decision, along with the relevant statutes, regulations, and case law. This review of the record has provided me with the information necessary to determine the facts of this matter and to render a decision on the merits of Opus' request that the Division stay the "rescission of the August 18, 2017 NOI and the issuance of a new NOI."

A stay is an extraordinary remedy and a party who seeks a stay must satisfy a particularly heavy burden to demonstrate by clear and convincing evidence that the party is entitled to the relief sought. Gauman v. Velez, 421 N.J. Super. 239, 247-48 (App. Div. 2011) (internal citations and quotations omitted, emphasis added); see also, McKenzie v. Corzine, 396 N.J. Super. 405, 414 (App. Div. 2007) (stating that plaintiff must prove each of the Crowe factors and establish each by clear and convincing evidence). In exercising its discretion to grant a request for stay, an agency must be guided by certain fundamental principles:

- (1) A preliminary injunction should not issue except when necessary to prevent irreparable harm...
- (2) Temporary relief should be withheld when the legal right underlying plaintiff's claim is unsettled...
- (3) Preliminary injunction should not issue where all material facts are controverted. Thus, to prevail on an application for temporary relief, a plaintiff must make a preliminary showing of a reasonable probability of ultimate success on the merits...

- (4) The final test in considering the granting of a preliminary injunction is the relative hardship to the parties in granting or denying the relief...

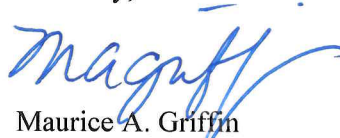
[Crowe v. De Gioia, 90 N.J. 126, 132-34 (1982).]

Opus has not satisfied the heavy burden of demonstrating all of the Crowe factors necessary for the granting of a stay, in particular, Opus has not demonstrated that it will suffer irreparable harm, a likelihood of success on the merits, or that the balance of hardships weighs in favor of granting the stay.

However, as of this date, there are three matters pending before the Appellate Division related to the subject solicitation. Additionally, it has been more than two years since the RFP was advertised and it has led to three protests and three appeals. Given this, and that any additional notice of intent to award a contract would almost certainly trigger additional protests and other possible appeals, further delaying the actual contract award and the commencement of work required by the RFP, the Division has determined that a stay is nevertheless appropriate. A stay will permit the Division and the Using Agencies to revisit the procurement and the specifications to ensure that the specifications clearly and appropriately reflect the work the State requires.

Accordingly, the Division will stay the implementation of the January 3, 2018, final agency decision which required that the Bureau rescind the August 18, 2017 NOI, review the remaining proposals submitted, and issue a new NOI if appropriate. The Division's stay will be in effect for a period of sixty (60) days through April 23, 2018.

Sincerely,



Maurice A. Griffin  
Acting Director

MAG: RUD

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