



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>

Telephone (609) 292-4886 / Facsimile (609) 984-2575

PHILIP D. MURPHY
Governor

ELIZABETH MAHER MUOIO
State Treasurer

SHEILA Y. OLIVER
Lt. Governor

MAURICE A. GRIFFIN
Acting Director

June 28, 2022

Via Electronic Mail Only rheineman@krollfirm.com

Raymond Heineman, Esq.
Kroll, Heineman, Ptasiewicz & Parsons
Metro Corporate Campus I
99 Wood Avenue South, Suite 307
Iselin, NJ 08830

Re: I/M/O Bid Solicitation #20DPP00471 Service Employees International Union, Local 32B-J
Request for a Stay
T1628 Enhanced Motor Vehicle Inspection Maintenance System

Dear Mr. Heineman,

This letter is in response to the Request for Stay dated June 16, 2022, submitted to the Division of Purchase and Property (Division) on behalf of Service Employees International Union, Local 32B-J (SEIU) with respect to for Bid Solicitation #20DPP00471 – T1628 Enhanced Motor Vehicle Inspection Maintenance System (Bid Solicitation).

By way of background, on August 28, 2019, the Division's Procurement Bureau (Bureau) issued the Bid Solicitation on behalf of the Motor Vehicle Commission and the Department of Environmental Protection who are partners in implementing an Inspection and Maintenance Program to protect the health and safety of New Jersey residents. Bid Solicitation § 1.1 *Purpose and Intent*.

On June 23, 2021 the SEIU submitted a challenge to the workforce specifications of the Bid Solicitation. Specifically, SEIU requested that the Bid Solicitation be modified to require the contractor give all employees of the current vendor the right of first refusal with regard to employment under the new contract under the same terms and conditions of employment established in the current collective bargaining agreement between SEIU and the current vendor. The Division issued a final agency decision on June 29, 2021, which found no amendments to the Bid Solicitation were necessary. The Division found the plain language of the Federal Clean Air Mandate Compliance Act (Act), L. 1995, c. 112, codified at N.J.S.A. 39:8-44(c)(7) required the original contractor awarded a contract for privatization of the State's inspection and maintenance program offer employment to all then-full-time employees of the Division of Motor Vehicles. The Division rejected SEIU's argument the Act required that any future contractor be obligated to hire the employees of any prior contractor providing the services for the State's inspection and maintenance program.

On July 21, 2021, the Division's Proposal Review Unit opened three (3) Quotes received by the submission deadline. Quotes were submitted by Parsons Environment and Infrastructure Group, Inc. (Parsons), Opus Inspection, Inc. (Opus), and Applus Technologies, Inc.

On November 22, 2021, the Evaluation Committee prepared a report detailing the review of the Quotes submitted and recommended that Opus be awarded the Contract. Thereafter, the Bureau prepared a Recommendation Report summarizing the procurement and recommended that the contract be awarded to Opus based upon the review and evaluation conducted by the Evaluation Committee. On December 21, 2021, the Bureau issued the Notice of Intent to Award (NOI) advising all Bidders of the State's intent to award a Contract to Opus.

On January 10, 2022, Parsons and SEIU submitted protests to the Division. On May 20, 2022, the Division issued final agency decisions with respect to both protests and sustained the Bureau's December 21, 2021, NOI. On that same date, the Bureau awarded Contract No. (Master Blanket Purchase Order Number) 20-TELE-15299 to Opus with an effective date of August 6, 2022.

On June 16, 2022, SEIU submitted a request for stay to the Division. SEIU asserts the Bid Solicitation required "the successful bidder to offer employment to any qualified personnel currently employed with the current vendor" because it "recognized the importance of maintaining an uninterrupted transition from the current inspection program to the new program by maintaining a competent, experienced and well-trained workforce of inspectors." *SEIU Stay Request p. 1*. SEIU also argues the Division's May 20, 2022, final agency decision found the Bid Solicitation required that a new contractor offer employment to all current qualified employees and Opus purported willingness to meet and negotiate with the Union. *Ibid.*

SEIU states that following the issuance of the NOI, it contacted Opus to begin the interview and hiring process for the persons employed by the current vendor. *SEIU Stay Request p. 3*. SEIU notes that Opus declined to take any action as there were pending protests which had yet to be resolved by the Division. *Ibid.* Following the issuance of the May 20, 2022 final agency decisions, SEIU states that it contacted Opus again to discuss the hiring of the current employees and to discuss the terms and conditions of employment. *Ibid.* SEIU claims that Opus has attempted to evade its requests to negotiate, despite the fact that in SEIU's opinion, Opus is the "clear successor to the current vendor and is obligated to recognize the union [and] maintain the terms and conditions the current CBA, pending negotiation of a successor agreement." *Id. at p. 2*.

Opus was afforded the opportunity to respond to the request for a stay, which it did on June 22, 2022. In opposition to SEIU's request for a stay, Opus notes SEIU already made two unsuccessful challenges to the workforce specification of the Bid Solicitation. Further, Opus notes SEIU conceded that it takes no issue with the Division's contract award to Opus because SEIU "is neutral concerning which contractor is ultimately awarded the contract and supports any award that protects employment standards and ensures safe quality service for the public." Opus Response p. 2, citing, SEIU's stay request, p. 3.

In addition, Opus states:

Finally, with respect to the SEIU's argument that "Opus is a perfectly clear successor to the current vendor and is obligated to recognize the Union [and] maintain the terms and conditions of the current CBA, pending negotiation of a successor agreement", this is simply not an accurate statement of the law. Opus maintains the right to offer employment to any individuals it so desires on terms and conditions it deems appropriate. Whether or not the SEIU's members are offered and accept employment

under the terms Opus sets will decide if the SEIU has representational rights, if any, over any of Opus' newly hired workforce. At no time has Opus committed to hiring the workforce and entering into collective bargaining with the SEIU.

[Opus Response, p. 4.]

Opus contends that to the extent SEIU believes that there is an unfair labor practice charge to be resolved, the Division is not proper forum to resolve that dispute. In fact, Opus states that SEIU acknowledges that the Division is not the proper venue to resolve the alleged dispute as SEIU has filed a claim before the National Labor Relations Board.¹ Opus Response, p. 2, footnote 4.

In consideration of this request for stay, I have reviewed the record of this procurement, including SEIU's stay request, the Bid Solicitation, the Quotes received, the protests and final agency decisions, 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 an informed decision on the merits of the request for a stay.

Because a request for a stay is an extraordinary remedy, the party who seeks a stay "must satisfy a 'particularly heavy' burden." Gauman v. Velez, 421 N.J. Super. 239, 247 (App. Div. 2011) (quoting Rinaldo v. RLR Inv., LLC, 387 N.J. Super. 387, 396 (App. Div. 2006)). In exercising discretion to grant a request for stay, an agency must be guided by the four fundamental principles set forth in Crowe v. De Gioia, 90 N.J. 126 (1982). First, a stay should be granted only "when necessary to prevent irreparable harm." Id. at 132 (citing Citizens Coach Co. v. Camden Horse R.R. Co., 29 N.J. Eq. 299, 303 (E. & A. 1878)). Second, "temporary relief should be withheld when the legal right underlying plaintiff's claim is unsettled." Id. at 133 (citing Citizens Coach, 29 N.J. Eq. at 304-05). Third, the "plaintiff must make a preliminary showing of a reasonable probability of ultimate success on the merits." Ibid. (quoting Ideal Laundry Co. v. Gugliemone, 107 N.J. Eq. 108, 115-16 (E. & A. 1930)). The fourth and final consideration "is the relative hardship to the parties in granting or denying the relief." Id. at 134 (citing Isolantite Inc. v. United Elect. Radio & Mach. Workers, 130 N.J. Eq. 506, 515 (Ch. 1941), mod. on other grounds, 132 N.J. Eq. 613 (E. & A. 1942)). The movant must clearly and convincingly demonstrate the right to a stay. Waste Mgmt. of N.J., Inc. v. Union Cty. Utils. Auth., 399 N.J. Super. 508, 520 (App. Div. 2008).

SEIU did not address any of the Crowe factors in its request for a stay. As such, SEIU has not demonstrated its right to a stay. However, I will briefly address the statements made by SEIU's in the stay request here.

First, as noted in the Evaluation Committee Report, Opus represented to the State that it would meet with SEIU Local 32BJ leadership to negotiate and discuss the new program upon the Blanket P.O. effective date. Evaluation Committee Report, pgs. 12-13. Specifically, Opus's Quote contained the following statement:

¹ On June 22, 2022, SEIU forwarded a copy of its unfair labor practice charge which had been filed with the National Labor Relations Board to the Division.

Staffing retention and recruitment

Upon Blanket P.O. effective date, the Opus HR team will immediately meet with the incumbent's management team to schedule meetings with employees at each of the CIF locations, while Opus management team members will meet with SEIU Local 32BJ leadership to begin discussing the new program details. Through well-planned job fairs, we will introduce facility personnel to Opus organization, policies, procedures, benefits, and salary grades. We will provide applications for employment at these meetings and answer any questions employees may have.

[Opus Quote, PDF Page 584.]

Notably, the Blanket P.O./Contract effective date has not yet occurred. While the Contract award was made on May 20, 2022, the effective date is August 6, 2022. Therefore, to the extent that Opus has not engaged in discussions with the SEIU, it has not acted in a manner contrary to the statements made in its Quote.

Second, while the Division recognizes SEIU is seeking to protect the rights of its members, the Division rejects SEIU's continued misinterpretation of the terms of the Bid Solicitation and Division's final agency decisions. Neither the Bid Solicitation nor the Division's final agency decisions require the successful bidder to hire the current contract's inspections staff.

The Bid Solicitation stated:

- A. To ensure an uninterrupted transition from the current inspection program to the new program, the Vendor {Contractor} should offer employment under the NGSystem to any qualified personnel currently employed with the current vendor prior to the Blanket P.O. effective date.
- B. In the event the Vendor {Contractor} determines it is not practicable or possible to retain any individual(s), the Vendor {Contractor} should provide a written report to the SCM documenting its best efforts along with recommendation to fulfill staffing requirements.

[Bid Solicitation Section 3.14 *Workforce* (emphasis added).]

Importantly, Bid Solicitation Section 2.2 *General Definitions* defined "should" as "that which is permissible or recommended, not mandatory." By way of contrast, the Bid Solicitation Section 2.2 *General Definitions* defined "shall" as "that which is a mandatory requirement." As such, SEIU is mistaken in its belief that the successful bidder, here Opus, is required to offer employment to the SEIU's members who are employed by Parsons. Rather, the Bid Solicitation encouraged the successful bidder to offer employment to qualified personnel.

Finally, the State of New Jersey cannot provide legal guidance to bidders or contractors regarding the requirements of the National Labor Relations Act, regulations and case law. Whether or not Opus will be considered a "successor employer" depends on facts not known to or under the control of the State or not yet to be established.

As noted above, Opus indicated, it would enter into discussions with SEIU to discuss the program details and discuss employment after the Contract effective date. Opus Quote – *Staffing retention and recruitment*, p. 584. Accordingly, I do not find that Opus has made misrepresentations to the State or acted in a manner contrary to the statements made in its Quote regarding the Bid Solicitation's terms for

workforce. Because SEIU has not satisfied the heavy burden of demonstrating all of the Crowe factors necessary for the granting of a stay, the request for a stay is denied.

Sincerely,



Maurice A. Griffin
Acting Director

MAG: RUD

c: M. Dunn
J. Pastuzyn
J. Borek, Esq.