



## State of New Jersey

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

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October 16, 2018

Via Electronic Mail [[joelawfirm@yahoo.com](mailto:joelawfirm@yahoo.com)] and USPS Regular Mail

Joseph O. Consiglio, Esq.  
Golden Crest Corporate Center  
2273 Hwy. #33, Suite 207  
Hamilton Square, NJ 08690

Re: I/M/O Bid Solicitation #18DPP00205 H. Liedtka Co., Inc.  
T0777 Snow Plowing and Spreading Services  
Request for a Stay

Dear Mr. Consiglio:

This letter is in response to your email of October 11, 2018, on behalf of H. Liedtka Co., Inc. (Liedtka) to the Division of Purchase and Property (Division). In that email Liedtka requests a stay of the contract awards pending the outcome of an appeal, which is yet to be filed with the Superior Court of New Jersey Appellate Division.

By way of background, on January 30, 2018, the Bureau issued the Bid Solicitation on behalf of the 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 NJDOT. Bid Solicitation § 1.1 *Purpose and Intent*. It is the State's intent to award Statewide Blanket P.O.s to those responsible Vendors {Bidders} whose Quotes, conforming to this Bid Solicitation are most advantageous to the State, price and other factors considered. *Ibid*. On February 28, 2018, the Bureau issued Bid Amendment #1 responding to the questions posed by potential Vendors {Bidders} and providing a revised Bid Solicitation. On March 16, 2018, the Division's Proposal Review Unit opened Quotes from 164 Vendors {Bidders} received through the State's *NJSTART* eProcurement system and/or hardcopy format by the submission deadline of 2:00 pm eastern time. After conducting a preliminary review of the Quotes received, 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 Section 6.7 *Evaluation Criteria*.

After completing the review of all Quotes received and completing all phases of the procurement, on August 22, 2018, the Bureau prepared 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. On August 24, 2018, the NOI was issued advising all Vendors {Bidders} that it was the State's intent to award a Blanket P.O.s consistent with the Bureau's Recommendation Report. Specifically, the NOI included a spreadsheet of "intended awardees and associated price lines" and advised that it was "the intent of the Director of the Division of Purchase

and Property (Division) to make a Master Blanket Purchase Order (Blanket P.O.) award” in accordance thereof.

On August 30 and 31, 2018, the Division received Liedtka’s protest challenging the intended Blanket P.O. awards. Liedtka argued its pricing was lower, that it proposed all required equipment, and that it “had the applicable equipment and they are supremely qualified based upon their many years of experience performing this exact job.” After review of Liedtka’s protest, on September 5, 2018, the Division upheld the Bureau’s recommendation that price line 337 be awarded to Ivyland. See, I/M/O Bid Solicitation #18DPP00205 H. Liedtka Co., Inc. (hereinafter, “IMO H. Liedtka Co.”), at 9.

On September 10, 2018, Liedtka submitted a request for reconsideration of the September 5, 2018 Final Agency Decision IMO H. Liedtka Co. In its request for reconsideration, Liedtka argued “the State’s interpretation of the pertinent provisions is contrary to their plain meaning.” After review, finding no reason to disturb the Bureau’s recommendation or the final agency decision in IMO H. Liedtka, on September 21, 2018, the Division issued its decision sustaining the September 5, 2018 final agency decision.

As noted above, on October 11, 2018, Liedtka submitted a request for stay to the Division stating:<sup>1</sup>

In my recent email, I indicated my client intends to formally appeal the final agency decision of the State which rejected Liedtka's bid. As part of the appeal process to the Appellate Division, I am required to ask the State to voluntarily stay further action pending the appeal concerning award and/or execution of the specific contract which forms the basis of this dispute. As such, kindly accept this email as Liedtka's request for the State to stay further action concerning this contract pending the outcome of the appeal. I respectfully submit a voluntary stay on the part of the State would actually expedite the Appellate process, I respectfully submit it is in all parties interest to agree to the stay and simply limit the litigation to the ultimate merits of the dispute. Because of the narrow scope of the issue in dispute (i.e. the State's interpretation of the contract documents as they apply to V-boxes and tailgate spreaders), I believe we will be able to move forward on a very expedited schedule. In light of the emergent nature of this matter, I would ask that you give this matter your immediate attention.

A request for 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. Zoning Bd. v. Service Elec. Cable Television, 198 N.J. Super. 370, 279 (App. Div. 1985); Gauman v. Velez, 421 N.J. Super. 239, 247-48 (App. Div. 2011) (internal citations omitted); 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 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

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<sup>1</sup> On October 15, 2018 counsel for Liedtka wrote to the Division requesting that the Division issue its decision on its stay request by October 16, 2018.

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).

The New Jersey courts have consistently held that a movant must clearly and convincingly demonstrate the right to a stay. Waste Management of New Jersey, Inc. v. Union County Utilities Authority, 399 N.J. Super. 508, 520 (App. Div. 2008). In its request to the Division, Liedtka did not address or set forth any facts or information which demonstrate by clear and convincing evidence that it is entitled to stay. Therefore Liedtka's request for a stay is denied. However, for the sake of completeness, I will briefly address each of the Crowe factors below.

**1. Liedtka will not suffer irreparable harm if the stay of the Contract award is denied.**

Liedtka will not suffer irreparable harm if the stay of the Blanket P.O. awards is denied. When considering a stay, "harm is generally considered irreparable in equity if it cannot be redressed adequately by monetary damages." Crowe, supra, 90 N.J. at 132-33. While monetary damages are never available for the failure to award a public contract, not every request for stay that concerns a public contract award is granted. See, e.g., In re Challenge of Contract Award Solicitation No. 13-X-22694 Lottery Growth Mgmt. Servs., 436 N.J. Super. 350, 358 (App. Div. 2014) (denying stay of award of contract). This is one of the pillars underlying the public bidding law. The public interest, however, is greatly affected if the Division is unable to complete the Blanket P.O. awards. In order to be ready for the 2018-2019 snow season, ensure that all necessary equipment is ordered and available, NJDOT required that the Blanket P.O.s be awarded prior to October 1, 2018. This ensures that NJDOT has sufficient time to perform all necessary vehicle inspections prior to the commencement of the winter snow season. Further, NJDOT has already commenced the process of distributing equipment, as may be necessary, and performing the inspections necessary for the 2018-2019 snow season. However, even if Liedtka would suffer irreparable harm, a finding of irreparable harm alone is not sufficient to permit the court to grant injunctive relief as the movant has the burden to establish all of the Crowe factors.

**2. Liedtka has the legal right to request a stay of the Contract award.**

The Division acknowledges that it is well settled that a bidder claiming to be entitled to an award of a contract has standing to challenge the award of a contract to another. M.A. Stephen Construc. Co., Inc. v. Borough of Rumson, 125 N.J. Super. 67, 74 (App. Div. 1973).

**3. Liedtka has not demonstrated a reasonable probability of ultimate success on the merits.**

The New Jersey courts have consistently held that a movant bears the burden to satisfy a particularly heavy burden [to] demonstrate by clear and convincing evidence that the party is entitled to the relief sought. Zoning Bd. v. Service Elec. Cable Television, 198 N.J. Super. 370, 279 (App. Div. 1985); Gauman v. Velez, 421 N.J. Super. 239, 247-48 (App. Div. 2011) (internal citations omitted); 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); Waste Management of New Jersey, Inc. v. Union County Utilities Authority, 399 N.J. Super. 508, 520 (App. Div. 2008).

In its request for stay, Liedtka did not address any of the Crowe factors. Rather, Liedtka notes that there is simply a narrow issue in dispute regarding the Division's interpretation of the terms and

conditions set forth in the Bid Solicitation related to V-box and tailgate spreaders. Liedtka simply requests that the “bidding process be stayed” until its appeal has been decided. Liedtka has not established that it has a reasonable probability of success on the merits, entitling it to a stay.

**4. The balance of the relative hardship weighs in favor of denying the request for a stay.**

Lastly, Liedtka has not established that the balance of the hardship weighs in its favor.

Bid Solicitation Section 3.5 *Snow Season* advises that “the Vendor {Contractor} shall be prepared to provide services during the Winter Season period, beginning October 1<sup>st</sup> through April 30<sup>th</sup>.” As such, all Vendors {Contractors} will be required to have “All trucks . . . 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}.” Therefore, it is imperative that the State have the Blanket P.O.s in place by October 1, 2018. As noted above, if the State does not move forward with the Blanket P.O. awards, the public will suffer hardship if NJDOT is unable to perform necessary equipment inspections and provide the Vendors {Contractors} with equipment, if necessary, prior to the start of the 2018 snow season. The inability to have the necessary equipment and vehicles in place in the event of an early storm (an event which has occurred in past years) would have a severe impact on the health and safety of the public. “The important role the public interest plays when implicated, as here, and have held that courts, in the exercise of their equitable powers, may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved.” Waste Management of New Jersey, Inc. v. Morris County Mun. Utilities Authority, 433 N.J. Super. 445, 453-54 (App. Div. 2013) citing, Union County, supra, 399 N.J. Super. at 520-21.

Further, I note that the Division’s governing regulations permit the Division to award contracts, notwithstanding the receipt of a protest under certain circumstances. “The Director may award the contract, notwithstanding the receipt of a protest pursuant to the above provisions, if the failure to award the contract will result in substantial cost to the State or if public exigency so requires. In such event, the Director shall notify all interested parties.” N.J.A.C. 17:12-3.3(c). Because of the important public interest, and because Liedtka has not establish a probability of success on the merits or that the balance of equity’s weighed in its favor, as permitted by the Division’s governing regulations, the Division and NJDOT have already moved forward with the contract awards prior to the receipt of Liedtka’s request for a stay.

In light of the findings set forth above, I deny Liedtka’s request for a stay. Thank you for your company’s continuing interest in doing business with the State of New Jersey and for registering your company with **NJSTART** at [www.njstart.gov](http://www.njstart.gov), the State of New Jersey’s eProcurement system. I encourage you to log into **NJSTART** to select any and all commodity codes for procurements you may be interested in submitting a Quote for so that you may receive notification of future bidding opportunities.

Sincerely,



Maurice A. Griffin  
Acting Director

MAG: RUD

c: P. Michaels  
L. Spildener  
M. Groninger