IN THE MATTER OF BID SOLICITATION #25DPP01134 R&B DEBRIS, LLC .	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-000158-25 ON APPEAL FROM STATE OF NEW JERSEY DEPARTMENT OF TREASURY, DIVISION OF PROPERTY AND PURCHASE

BRIEF OF APPELLANT, R&B DEBRIS, LLC

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Dated: October 21, 2025

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PRELIMINARY STATEMENT

This matter arises from the Division of Purchase and Property's ("DPP") improper rescission of contract awards previously issued to R&B Debris, LLC ("R&B") (and several other contractors) under Bid Solicitation #25DPP01134 for Snow Plowing and Spreading Services for the New Jersey Department of Transportation. On June 27, 2025, the DPP issued a Notice of Intent to Award to R&B for multiple "price lines," i.e., hourly rates per truck for snow plows, hourly rates for superintendents, and hourly rates for hauling for a predetermined section of the highway (referred to as a "Snow Section"). In reliance on that award, R&B expended substantial resources to acquire snow removal equipment to prepare for performance of the contract during the upcoming winter season commencing on October 1, 2025.

More than two months later, on September 5, 2025, the DPP issued a revised Notice of Intent to Award, rescinding R&B's award based on an alleged failure to present plows for inspection—a requirement that was not articulated in the bid solicitation nor procedurally permitted. The DPP's revised Notice of Intent to Award was in complete contradiction of the original intent of the Bid Specifications, which was to award the work to "first preference" bidders that were going to supply their own equipment during the contract term, and only award the work to "second preference bidders" that would utilize NJDOT's equipment if no contractor bid under the first preference.

R&B timely filed a protest on September 10, 2025, challenging the rescission on multiple grounds, including that the inspection process was arbitrary, procedurally flawed, and relied on extra-contractual criteria not found in the solicitation. On September 12, 2025, the DPP issued a Final Agency Decision denying R&B's protest.

R&B now appeals that decision, asserting that DPP's actions were arbitrary, capricious, and contrary to law. R&B is not alone: it is believed that as many as thirteen (13) other contractors were similarly affected by the DPP's arbitrary inspections and award rescissions, several of which have already filed their own appeals and emergent applications for stay. This suggests systemic defects in the award and inspection process and confirms that neither the Solicitation nor the Notice of Intent to Award permitted the DPP to rescind awards based on post-award, pre-contract equipment inspections. It is implausible that so many experienced contractors would have misinterpreted the requirements of the Bid Solicitation. Simply put, any reasonable reading of the Bid Solicitation makes it clear that the awardees were not required to make the snow plows and trucks available for inspection until the contract term commenced on October 1, 2025.

DPP's rescission is in direct contradiction with the applicable statutory regulations, which only permit the DPP to rescind an award if an awardee fails to produce certain certifications or other essential documents identified in the Notice of Intent to Award (which are not at issue here). Moreover, even if the DPP did have statutory authority to support its actions (it does not), its conduct was arbitrary and capricious. It is apparent from the DPP's conduct that the "inspections" were merely pretext for the DPP's decision to change the bid specifications after the award to shift from first-preference bidders to second-preference bidders. This is supported by, among other things, (1) the DOT's representations that R&B's proof of purchase of the snow plows was sufficient to meet their requirements during the inspection; (2) the DPP's rescission of a substantial portion of the first-preference bidder's awards; (3) the DPP's unreasonable restraints placed on the bid protest procedures; and (4) the DPP's attempt to re-bid work that is the subject of this Court's stay order.

Because the DPP's actions violate the public bidding laws, the Court should overturn the DPP's Final Agency Decision and direct the DPP to award the price lines to R&B. To rule otherwise would wreak havoc on the public bidding process by allowing government agencies, like the DPP, to alter bid specifications to create new requirements months *after* awarding the work. This would ultimately stifle competition and prevent the public from obtaining a fair, reasonable price for public works.

PROCEDURAL HISTORY

On September 10, 2025, R&B filed a formal protest with the DPP. 296a. On September 12, 2025, the DPP issued its final agency decision, affirming the rescission of the price lines formerly awarded to R&B. 305a. R&B requested that the DPP stay the award of the contracts until R&B could pursue its appeal in this Court. 332a. On September 29, 2025, the DPP rejected R&B's request for a stay. 334a. The same day, R&B filed an application for permission to file an emergent motion, which was granted. 342a. In the Order granting R&B's emergent motion, the Court stayed the DPP from taking further action until further Order of the Court, and directed the parties to file briefing in support and in opposition to a motion for emergent relief on an expedited basis. *Id.* After briefing, on October 10, 2025, the Court entered an Order granting the motion for stay pending an expedited appeal. 380a.

STATEMENT OF FACTS

A. The Initial Bid Award to R&B

On January 23, 2025, the DPP issued Bid Solicitation No. 25DPP01134, T0777 – Snow Plowing and Spreading Services, NJDOT (the "Solicitation"). 92a. Section 8.9 of the Solicitation set forth the evaluation criteria, which included consideration of bidder experience, equipment preference, and price. 130a. The Solicitation offered a **first preference** to bidders proposing to provide their own snow plowing equipment, over those intending to utilize NJDOT-owned equipment. 131a. R&B submitted a timely bid as a first preference bidder, with the intent of acquiring the necessary snow plow equipment upon award of contract but prior to the commencement of the contract term. 296a.

On April 4, 2025, the DPP opened 176 bids. 306a. R&B's submission included all required documentation including ownership disclosure forms, pricing sheets, and experience forms. 297a. Critically, the DPP assessed the bids for responsiveness and rejected several of the Quotes because they were non-responsive under N.J.A.C. 17:12-2.2. 306a. After determining that R&B's Quote for Plowing and Hauling Services was responsive (200a), on June 27, 2025, the DPP issued Notice of Intent to Award and Recommendation Report, which named R&B as the lowest-priced, first preference awardee for multiple price lines. 143a. Indeed, in the Recommendation Report, the DPP stated that aside from Price Lines 126-129 (relating to hauling), "R&B was deemed responsive for all other Price Lines submitted as part of its Quote." 200a. R&B had at that point cleared all mandatory submission requirements and was formally identified as an intended contract awardee. 143a-154a, 200a. In the Notice of Intent to Award, the DPP awarded 301 out of the 317 price lines (95%) to 1st preference bidders (i.e., contractors that were supplying their own plows and not using NJDOT provided plows). 143a-153a.

B. R&B's Purchase of Equipment in Reliance on the Notice of Intent to Award

In reliance on the June 27 Notice of Intent, R&B made substantial investments in preparation to perform the contract, including investing more than $200,000 to acquire snow plowing equipment required of a first preference bidder. Paid receipts and purchase confirmations were submitted to NJDOT as proof of compliance with the Solicitation's requirements and to demonstrate readiness for the anticipated contract start date of October 1, 2025. 218a-232a.

C. NJDOT's Improper Inspection

On July 17, 2025, NJDOT issued a letter purporting to invoke Section 4.12.2 of the Solicitation, directing R&B to present all trucks and plows for inspection within ten business days. 233a. However, Section 4.12.2 of the Bid Solicitation, entitled "Equipment Inspections" ***only*** provided that the DPP had the right to inspect vehicles and equipment "at any time during the Contract term and/or a Call-Out." 112a.

A "Call-Out" is defined by 9.3 of the Bid Solicitation as a "Telephone call from the NJDOT informing the Contractor to report for Operations at the Assembly Location at a specified time." 140a. The term "Operations" as used in the definition refers to "The performance of any work pursuant to this Bid Solicitation." 141a. Thus, a Call-Out refers a post-contract snow event where the NJDOT calls the contractor to advise it that it needs to report to perform its snow plowing services pursuant to the contract.

Per Section 5.1 of the Bid Solicitation, the Contract Term was for a three-year period, and the anticipated Contract effective date was provided on the "Summary" page of the Bid Solicitation in NJSTART. 125a. NJSTART provided that the anticipated three-year term for the Contract would run from October 1, 2025 through September 30, 2028. NJSTART.GOV, *available at* https://www.njstart.gov/bso/external/bidDetail.sdo?docId=25DPP01134&external=true&parentUrl=close (last visited Oct. 1, 2025).

Although this equipment inspection occurred prior to the start of the Contract Term (as no contract was executed) and prior to the Call-Out readiness deadline of October 1, 2025, R&B complied with the request. During the inspection, NJDOT representatives acknowledged that R&B's paid receipts constituted acceptable evidence of compliance. 355a. Despite NJDOT's acceptance during the inspection, R&B was later deemed non-compliant by DPP for failing to physically present all snow plow equipment at that time. 298a.

D. DPP's Wrongful Rescission of the Award to R&B

Over seven weeks after the inspection, on September 5, 2025, the DPP issued a Revised Notice of Intent to Award, rescinding R&B's awards for multiple price lines, including Price Line #157, 164, 165, 166, 244, 245, 246, 302, 303, 304, 308 and 309. 236a, 288a. Those awards were mostly reallocated to second preference bidders, despite R&B's documented compliance with all bid requirements as a first preference bidder. Indeed, the Revised Notice of Intent to Award was a complete about-face, changing 147 of the line items from 1st preference to 2nd preference (NJDOT-supplied equipment) (***i.e., a 918% increase over the initial award***). 236a-243a. In the Revised Notice of Intent to Award, instead of allowing the bidders to protest within 10 business days as permitted by N.J.A.C. § 17:12-3.3(b), the DPP shortened the deadline to protest to *only three business days*. 243a. Nonetheless, R&B timely filed its Notice of Protest, which was wrongfully denied by the DPP.

E. DPP's Inadequate Notice of Temporary Stay

On or about October 3, 2025, DPP issued to the public a Notice of Temporary Stay, explaining that certain price lines were stayed as a result of this Court's Orders. 371a. However, missing from DPP's Notice are certain price lines that were previously awarded to R&B, including 157, 164, 165, 246, 302, 304, 308, and 309. 371a; 287a. Further, the Notice of Stay did not identify certain price lines (155 and 305) that should have been awarded to R&B after two other bidders were disqualified (and who R&B believes did not file an appeal of the Agency's Decision). 287a. Thus, it is unclear whether the DPP has honored the Court's stay order with respect to all of the applicable price lines.

F. DPP and DOT's Attempt to Rebid the Stayed Awards, in Violation of this Court's Order.

On the same date that this brief was due (October 20, 2025), the New Jersey Department of Transportation ("DOT") issued a Request for Quotes for "Snow Plowing and Spreading Services ("RFQ"). 382a. The Submission date for the RFQ is October 28, 2025. 382a. In the RFQ, the DOT attempts to re-bid three price lines that are the subject of the current stay (165, 304, and 309) as ***permanent*** contracts, and re-bid two other price lines (166 and 245) as temporary awards from the 2025-2026 winter season. 412a-413a. In the RFQ, the DOT is seeking bid prices using NJDOT provided snow plows. 451a. While Contractor's are permitted to supply their own plows and equipment, it is at their own discretion and at no cost to the DOT. 392a; 401a-402a.

LEGAL ARGUMENT

I. STANDARD OF REVIEW

"[A]n appellate court reviews agency decisions under an arbitrary and capricious standard." *Zimmerman v. Sussex Cnty. Educ. Servs. Comm'n*, 237 N.J. 465, 475 (2019); *Melnyk v. Bd. of Educ. of the Delsea Reg'l High Sch. Dist.*, 241 N.J. 31, 40 (2020). **However, "Appellate courts review legal conclusions, including those reached by an administrative agency, de novo."** *Suburban Disposal, Inc. v. Twp. of Fairfield*, 383 N.J.Super. 484, 492, 892 A.2d 720, 724 (N.J. Super. Ct. App. Div. 2006) (emphasis added). The interpretation of provisions included in a bid solicitation and an assessment of whether the bidder complied with those requirements is a legal issue subject to a *de novo* review. *See Applied Landscape Techs., Inc. v. Borough of Florham Park*, A-3476-12T1, 2013 WL 2371704, at *5 (N.J. Super. Ct. App. Div. June 3, 2013) (holding that whether a bidder complied with a specific section in the bid solicitation that required the disclosure of any plumbing subcontractors was a legal issue subject to a *de novo* review).

On appeal, the judicial role in reviewing all administrative action involves three inquiries:

> (1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law;
>
> (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and
>
> (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.

Allstars Auto. Grp., Inc. v. N.J. Motor Vehicle Comm'n, 234 N.J. 150, 157 (2018) (quoting *In re Stallworth*, 208 N.J. 182, 194 (2011)).

"The underlying and foundational purpose of public bidding in New Jersey is 'to guard against favoritism, improvidence, extravagance and corruption[, and] ... to secure for the public the benefits of unfettered competition.'" *Keyes Martin & Co. v. Dir., Div. of Purchase & Prop.*, 99 N.J. 244, 256 (1985) (quoting *Terminal Constr. Corp. v. Atl. Cnty. Sewerage Auth.*, 67 N.J. 403, 410 (1975)). To achieve this purpose, courts will set aside any award or contract entered into where such practice may have played a part, even if it is evident that in fact there was no corruption or any actual adverse effect upon the bidding process." *Id.*

II. THE COURT SHOULD OVERTURN THE DPP'S FINAL AGENCY DECISION AND AWARD THE PRICE LINES TO R&B. (305a)

An analysis of the *Allstars* factors make it clear that DPP's Final Agency Decision was arbitrary and capricious. The record contains no evidence to support the DPP's finding that it had the authority to rescind the award to R&B based on a pre-contract equipment inspection, as the terms of the Bid Solicitation only authorized the DPP to inspect equipment during the contract term. Further, the agency's action violates both express and implied legislative policies – namely, that contractors are entitled to rely on notices of intent to award and that the government cannot create new requirements after issuing the notice of intent to award but before the execution of the contract. Finally, applying the legislative policies of promoting fair and equitable public bidding procedures to ensure that the public gets the best price and bidders are placed on equal footing, it is clear that the DPP erred in rescinding the award to R&B.

A. <u>THE DPP PROPERLY DETERMINED THAT R&B WAS RESPONSIVE AND RESPONSIBLE (200a); THEREFORE, PROVIDING THE PLOWS WAS ONLY A CONTRACT COMPLIANCE ISSUE THAT COULD NOT SERVE AS THE BASIS TO RESCIND THE AWARD (298a; 310a).</u>

In its previous filings with the Court, the DPP has repeatedly conflated the principles of "responsiveness," "responsibility," and contract compliance. However, a clear understanding of these three principles is essential to the assessment of this appeal.

The DPP issued the Solicitation and received bids pursuant to its statutory authority and implementing regulations, including N.J.A.C. § 17:12-2.7. Upon receipt of bids or proposals, the DPP staff were obligated to review all bids to determine "responsiveness to the material requirements" of the Solicitation, and to ultimately recommend award to the bidders, or rejection of the bid. N.J.A.C. § 17:12-2.7(a)-(f).

The DPP was required to appoint a division staff member or create an evaluation committee to evaluate bids for responsiveness. N.J.S.A. § 17:12-2.7(a). Instead of creating a committee (which could have included both DPP and DOT representatives), the DPP assigned the evaluation to division staff member, Michael Maciolek. 245a. **Thus, DOT was not part of the procurement process and should have played no part in the decision-making process.**

In his June 27, 2025 Recommendation Report, Mr. Maciolek made the determination that R&B was **<u>responsive</u>** for all of the Price Lines that it was awarded. 200a. Upon receipt of such a recommendation, the director may:

> issue a **notice of intent to award** to a **<u>responsible</u> bidder** whose **conforming proposal** is most advantageous to the State, price and other factors considered, or to reject all proposals when the Director determines it is in the public interest or the State's interest to do so.
>
> [N.J.A.C. 17:12-2.7(g) (emphasis added).]

Thus, prior to issuing a notice of intent to award, the DPP must determine whether the bidder is "responsible." The term "Responsible" is defined by N.J.A.C. § 17:12-1.3 as "a bidding entity deemed by the [DPP] to have integrity and to be reliable and capable of performing all contract requirements."

Two days after the recommendation was issued by Mr. Maciolek, and consistent with the recommendation, the Director issued a Notice of Intent to Award to R&B. By issuing the June 27, 2025 Notice of Intent to Award to R&B, ***the Director already determined that R&B was both responsible and had submitted a responsive bid.*** In light of these determinations, the DPP can only justify its decisions if it had a legitimate basis to rescind the award. Simply put, it does not.

B. <u>THE DPP DID NOT HAVE STATUTORY AUTHORITY TO RESCIND THE AWARD (302a; 330a).</u>

The DPP only has the authority to rescind a duly issued notice of award based on an awardee's failure to provide certain certification or other essential documents that were not included with the proposal but required for the contract award and expressly identified in the Notice of Intent to Award. Indeed, N.J.A.C. § 17:12-2.7(h) provides:

> The notice of intent to award document sent to the scheduled contract awardee(s) shall include the **identification of certification(s) and/or other essential documents** that were not required to be included with the proposal **but are required for contract award** and a designated date when the required certifications and/or documents are due. **A scheduled awardee's failure to comply within the time afforded shall constitute grounds for the Director's rescission of the notice of intent to award to the non-responding scheduled awardee.** If the requested materials are not timely submitted, the Director may refer the matter back to the evaluation committee or the assigned Division staff member for consideration as to whether the scheduled award should proceed, with reconsideration of all pertinent factors, including the issue of assessment of costs incurred by the State as a result of the scheduled awardee's delay by, or the non-award of the contract to, the named awardee.

N.J.A.C. 17:12-2.7(h) (emphasis added).

Thus, following the issuance of a notice of intent to award, the Director's discretion is limited to identifying any remaining certifications or "essential documents" in the Notice of Award that must be submitted prior to contract execution—not conducting impromptu inspections or setting arbitrary deadlines that were neither articulated in the Solicitation nor consistent with the contract award regulations.

Even if the Director had the authority to require a pre-contract inspection in the Notice of Award (it does not), it failed to make such a request in the Notice of Award. Rather, the Notice of Award merely requested that the awardees (1) accept the intended awards by 4 PM on July 7, 2025; (2) submit a copy of a New Jersey Certificate of Employee Information Report or a Letter of Federally Approved Affirmative Action Plan; and (3) provide a Certification of Insurance. 156a. The DPP did not rescind R&B's award due to any failure to comply with these documentary requirements set forth in the Notice of Intent to Award in compliance with N.J.A.C. § 17:12-2.7(h); rather, the DPP rescinded the award based on an alleged failed equipment inspection. 267a ("Therefore, the Bureau determined that it is in the State's best interest to rescind the intended award of these Price Lines to R&B pursuant to N.J.A.C. 17:12-2.7(h) for failing to provide the required equipment within the time established for inspections[.]") Thus, the DPP's rescission was in violation of the public bidding statutes.

Indeed, it was not even the Director or the DPP that requested the inspection – it was the DOT. 233a. The DOT had no involvement in the bid award process, as the Director assigned the assessment of the bids for responsiveness and responsibility to Mr. Maciolek. Accordingly, an alleged "failed' inspection by DOT could not serve as a proper basis for the DPP's rescission.

C. EVEN IF THE DPP HAD STATUTORY AUTHORITY TO RESCIND R&B'S BID (IT DOES NOT), THE CUMULATIVE EFFECT OF THE DPP'S ACTIONS RENDERED THE PROCUREMENT PROCESS ARBITRARY, CAPRICIOUS, UNREASONABLE, AND ULTRA VIRES (302a; 308a).

An administrative agency acts in an "arbitrary and capricious" manner when it takes "willful and unreasoning action, without consideration and in disregard of circumstances. " *Bayshore Sewerage Co. v. Dep't of Env't Prot.*, 122 N.J. Super. 184, 199, 299 A.2d 751, 759 (Ch. Div. 1973), *aff'd*, 131 N.J. Super. 37, 328 A.2d 246 (App. Div. 1974). N.J.A.C. § 17:12-2.7 (a), (b) and (f) requires the DPP to evaluate bids based only on the evaluation criteria disclosed in the Request for Proposals and to evaluate the proposals "objectively, impartially, and with propriety." Similarly, New Jersey courts have held that public agencies must establish a clear standard or norm to guide or control the exercise of their discretion to evaluate a bidder ***before – not after – the bids are opened***. *A & S Transp. Co. v. Bergen Cnty. Sewer Auth.*, 133 N.J.Super. 266, 276, (Law Div. 1975), *aff'd*, 135 N.J.Super. 117, 342 (App. Div. 1975); *CFG Health Sys., LLC v. Cnty. of Hudson*, 413 N.J.Super. 306, 316 (App. Div. 2010)("Settled principles of public bidding dictate that no material element of a bid may be provided *after* bids are opened.") (quoting *Suburban Disposal, Inc. v. Twp. of Fairfield*, 383 N.J.Super. 484, 492 (App. Div. 2006)). Indeed, as this Court recognized in *CFG Health*, "to sanction such a change in a publicly-bid contract would render the intent and purpose of the bidding statutes meaningless." *Id.* at 317. Thus, reliance on a new bid requirement issued post-bid opening is arbitrary and capricious.

As discussed more fully below, the DPP's actions, including adding a new material requirement that the awardees have the snow plows and trucks available for inspection *before* the Contract Term commenced and *before* the Contract Readiness date, were arbitrary and capricious because it created a new standard for exercising its discretion to award the contract after the bids were already opened and awarded. ***Critically, DPP cannot identify any provision in the Bid Specifications that made it mandatory to have the snow plows and trucks in the bidder's possession at the time of the bid or at any time prior to the start of the Contract Term.*** Because the DPP's actions are predicated on its post-opening and post-award attempt to change the conditions of the Bid Solicitation, this Court should overturn the DPP's decision to rescind the price lines awarded to R&B.

The DPP's arbitrary and capricious conduct becomes apparent when comparing the 2020 Solicitation to the current Solicitation. In the 2020 Solicitation, the NJDOT supplied all of the plows, attachments, and equipment for the snow plow work to the contract awardees. 31a. In the new Solicitation, the DPP changed things, by providing a preference-based system where contractors that supplied their ***own*** equipment would receive ***preference*** over the contractors that intended to use the

NJDOT-supplied equipment. 96a. By doing this, the DPP attempted to attract bidders to acquire expensive equipment so the State would not have to spend the money to purchase and maintain the equipment. After awarding the work largely to first preference bidders, and those first preference bidders expending significant capital to procure the equipment in advance of the Contract Readiness date, the DPP imposed a new pre-contract inspection requirement that was not set out in the Bid Solicitation that had the effect of tanking the entire bid preference system set out in the Bid Solicitation. Indeed, it resulted in a ***918% increase in the awards to the second preference bidders***. 236a-243a. The Court should not allow the State to arbitrarily upend the bid preference stated in the Bid Solicitation after bid opening.

i. The DPP Improperly Imposed Pre-Contract Equipment Inspection Requirements Not Authorized by the Bid Solicitation (296a; 308a).

As discussed above, the interpretation of the Bid Solicitation is a legal question that is subject to a *de novo* review by this Court. *Suburban Disposal,* 383 N.J.Super. at 492. In its rejection of R&B's request for a stay, the DPP relies on two sections of the Solicitation which it argues provide it authority to rescind R&B's award based on the allegedly failed pre-contract inspection. DPP argues that this power is derived from Section 4.12.2 ("Equipment Inspections") and Section 8.7 ("State's Right to Inspect Bidder's Facilities"). Neither provision supports the DPP's position. The "inspection" was mere pretext for DPP's arbitrary and capricious conduct, which led to the widespread withdrawal of the majority of price lines awarded under the Solicitation's stated goal of awarding to first preference bidders.

1. <u>The DPP Improperly Converted Section 4.12 of the Bid Solicitation from a Post-Contract Performance Obligation into a Pre-Contract Disqualification Criterion (299a; 308a).</u>

Section 4.12.2 expressly states: "All vehicles and equipment, whether provided by the Contractor or the NJDOT, shall be subject to inspection at any time **during the Contract term and/or a Call-Out**." (emphasis added).

A "Call-Out" is defined by 9.3 of the Bid Solicitation as a "Telephone call from the NJDOT informing the Contractor to report for Operations at the Assembly Location at a specified time." 140a. The term "Operations" as used in the definition refers to "The performance of any work pursuant to this Bid Solicitation." 141a. Thus, a Call-Out refers a ***post-contract*** snow event where the NJDOT calls the contractor to advise it that it needs to report to perform its snow plowing services pursuant to the Contract.

Per Section 5.1 of the Bid Solicitation, the Contract Term was for a three-year period, and the anticipated Contract effective date was provided on the "Summary" page of the Bid Solicitation in NJSTART. 125a. NJSTART provided that the anticipated **three-year term for the Contract would run <u>from October 1, 2025</u>** through September 30, 2028. NJSTART.GOV, *available at* https://www.njstart.gov /bso/external/bidDetail.sdo?docId=25DPP01134&external=true&parentUrl=close

(last visited Oct. 1, 2025). This is consistent with the DPP's Recommendation Report accompanying the Notice of Intent to Award, which stated that the contract term for the current contract expires 9/30/25. 158a.

Thus, the DPP ignores the plain language of Section 4.12.2, which allows for inspection in two circumstances: (1) during the Contract term, and (2) during a Call-Out. At the time of NJDOT's inspection of R&B's facilities in July 2025, neither of these conditions had been met. Indeed, the DPP admits that a contract was never entered into between DPP and R&B; therefore, the "Contract term" could not have started prior to inspection. 337a ("Although here R&B did receive the initial notice of intent to award, it did not obtain the contract"). Accordingly, the July inspection fell outside the scope of Section 4.12.2 and cannot be cited as a valid basis for rescinding R&B's award.

Moreover, the DPP's reliance on section 4.12.2 also does not coordinate with other sections of the Solicitation. Pertaining to plowing, the Solicitation contained two difference preferences: the first where the contractor provides the trucks and the plows, and the second where the contractor provides the trucks but the State provides the plows. 131a. R&B was awarded under the first preference, but when the State rescinded its NOI to R&B, it shifted each of those price lines to the second preference—contractor-provided truck with State-supplied plow. 236a. Under the second preference, the contractor is only required to pick up the State-supplied plows by October 1 under Section 4.15.5.1. 118a. However, the right to an inspection under Section 4.12.2 expressly applies to both arrangements, i.e. "All vehicles and equipment, whether provided by the Contractor or the NJDOT." 112a. Thus, if a contractor has until September 30th to pick up its State-supplied plow under Section 4.15.5.1, then Section 4.12.2 cannot be interpreted to permit inspection of the trucks and plows prior to this deadline. Because it is clear that the Bid Solicitation did not require an awardee to present vehicles and equipment for inspection before the execution of a contract or the commencement of the Contract Term on October 1, 2025, the DPP's rescission of its award to R&B based on an inspection that was not required or permitted under the Bid Solicitation was arbitrary and capricious.

2. The DPP Misinterpreted Section 8.7 of the Bid Solicitation by Treating Pre-Award Facility Inspections as Authorization for Pre-Contract Equipment Inspections (300a; 308a).

DPP's reliance on Section 8.7 (entitled "State's Right to Inspect Bidder's Facilities") is equally misplaced. On its face, Section 8.7 only permits a facility inspection "before making an award" – not after the award is issued but before a contract is executed. Moreover, as discussed, above, the DPP did not have the statutory authority to compel a facility inspection as a condition of the Notice of Intent to Award (and, in fact, it did not make that a condition in the Notice of Intent to Award). **Critically, the DOT did not invoke Section 8.7 as a basis for its inspection at the time it demanded the inspection**. 233a (citing only to Sections

4.4.1 and 4.12.2 of the Bid Solicitation). Rather, the DPP's assertion that its inspection was authorized under Section 8.7 is a post-hoc attempt by counsel to justify its prior improper actions.

DPP's argument also fails because the inspection contemplated in Section 8.7 is an inspection related to the bidder's "facilities" – not its vehicles and equipment. The DPP *now* takes the position that the term "facilities" as used in Section 8.7 really means "vehicles" and "equipment" based on the Oxford English Dictionary definition of "facility." 338a. However, a term in a contract should be interpreted to give effect to all terms of the contract, rather than an interpretation that would render another term superfluous or meaningless. *C.L. v. Div. of Med. Assistance & Health Servs.*, 473 N.J.Super. 591, 599 (N.J. Super. Ct. App. Div. 2022) ("Importantly, "[a] contract 'should not be interpreted to render one of its terms meaningless.'"); *see also* 11 Williston on Contracts § 32:5 (4th ed.). Further, where a contract contains specific defined terms, they govern over a general, undefined term. *Id.*

Crucial here is the fact that the DPP's construction is offered as a basis to rescind a validly issued award, and thus creates a forfeiture. "A recognized rule of construction dictates that an instrument, when a choice exists, is to be construed against rather than in favor of a forfeiture." *Lehigh Valley R. Co. v. Chapman*, 35 N.J. 177, 188 (1961). That rule applies to prevent DPP's application of the term "facility" beyond its plain meaning. Had DPP wished to impose a bid condition requiring possession of plows as a condition to bid, or at any date prior to the October 1 readiness date, it could easily have done so. Its tortured use of the "facility" inspection requirement serves as a poor substitute.

The Bid Solicitation references "equipment" 170 times and has an entire section defining the equipment requirements for the Project – Section 4.12. 112a. This section has a particular requirement for Equipment Inspections, which relates to the DPP's right to inspect "all vehicles and equipment" during the Contract term, as discussed above. 112a. In contrast, the Bid Solicitation only refers to "facilities" twice: once in Section 4.3 (relating to Government facilities, which is irrelevant to the matter at hand) and the second time in Section 8.7. Had the DPP wished for Section 8.7 to refer to equipment and vehicles, it could have written the Bid Specification to include those terms; however, by using a new (and different) term, "facilities," the only reasonably interpretation is that the DPP was referring to something *other than* equipment and vehicles – such as the bidder's physical facilities. *See Cambridge Dictionary*, "facility (noun)," (September 2025), *available at* https://dictionary.cambridge.org/us/dictionary/english/facility (last visited October 20, 2025) ("a place, especially including buildings, where a particular activity happens"); *Meriam-Webster Dictionary*, "facility (noun)" (September 2025), *available at* https://www.merriam-webster.com/dictionary/facility (last visited October 20, 2025) ("something (such as a hospital) that is built, installed, or established to serve a particular purpose").

At a minimum, the use of the undefined term "facilities" creates an ambiguity, that must be construed against the DPP as the drafter of the Bid Solicitation. *See M.J. Paquet, Inc. v. New Jersey Dep't of Transp.*, 171 N.J. 378, 398, 794 A.2d 141, 153 (2002) ("Where a court determines that an ambiguity exists in a government contract, the writing is to be strictly construed against the draftsman, the government entity."). Allowing the DPP to take advantage of this ambiguity months after awarding the contract line items to R&B (and others) under Preference 1 by rescinding its award seriously impairs the purpose of competitive bidding, and is contrary to New Jersey law. *Saturn Const. Co., Inc. v. Bd. of Chosen Freeholders, Middlesex Cnty.*, 181 N.J.Super. 403, 411 (N.J. Super. Ct. App. Div. 1981) (providing that specifications must (1) be "unmistakably clear because ambiguous terms 'may serious affect the purpose of competitive bidding'" and (2) "prescribe a common standard on all matters that are material to the proposals, (so) that interested persons may bid intelligently").

Putting aside whether the DPP/DOT had the statutory or contractual authority for the inspection, R&B fully complied with the July 2025 inspection request ***at its facility*** and provided paid receipts and purchase confirmations demonstrating that it had, in fact, purchased the necessary snow plow equipment. 218a-232a. NJDOT inspectors acknowledged that the documentation was sufficient to establish compliance with the Solicitation's requirements. 355a. Then, later—and without explanation—the DPP concluded R&B was non-compliant for failing to physically present all of the plows at the time of inspection. 298a. That is not only arbitrary, but also imposes requirements not found in the Bid Solicitation, creating an unlevel playing field for bidders. The DPP had no authority to mandate that an awardee mobilize all equipment for inspection on short notice, at a time before the contract was awarded, and well before the contract effective date. Nothing in the Solicitation—including Section 4.12.2 and Section 8.7—authorizes such action.

In sum, the Court should overturn the DPP's recission of R&B's contract award based on an impermissible inspection and in contravention to the statutory and regulatory framework governing public bidding.

D. THE DPP DISREGARDED SECTION 8.9 OF THE BID SOLICITATION'S MANDATORY FIRST-PREFERENCE AWARD STRUCTURE BY BYPASSING A RESPONSIVE, LOWEST-PRICED BIDDER (299a; 308a).

Section 8.9.2.1 of the Bid Specifications made it clear that the State would only evaluate 1st Preference bidders, i.e., bidders that would supply all require trucks and snow plows, before it would consider *any* 2nd Preference bidders, i.e., bidders supplying trucks, but using the NJDOT provided snow plows:

> **8.9.2.1 SNOW PLOWING AND HAULING SERVICES**
>
> Bidders who Bid on Price Lines 1- 317 for Snow Plowing and Hauling Services will be evaluated based upon the equipment preferences detailed below:
>
> 1st Preference – Bidders supplying all required trucks, that are all Class A trucks, all with Bidder provided snow plows; and
>
> 2nd Preference – Bidders supplying all required trucks, that are all Class A trucks, all with NJDOT provided snow plows.
>
> **The State will evaluate any and all responsive Bidders who bid 1st Preference for each Price Line. If there are no 1st Preference Bidders on that Price Line, the State will evaluate the 2nd Preference Bidders.** . . . (131a) (emphasis added).

The DPP's arbitrary and capricious decision to impose a new, pre-contract equipment inspection requirement that was outside of the Bid Specifications was mere pretext for the DPP's decision to rewrite Section 8.9.2 to reverse the bid preference. Indeed, when the DPP issued the Revised Notice of Intent to Award, it reallocated a substantial portion of the award from 1st Preference Bidders to 2nd Preference Bidders. Specifically, it changed 147 of the line items from 1st preference to 2nd preference (***i.e., a 918% increase over the initial award***). 236a-243a.

E. <u>THE DPP UNLAWFULLY ADVANCED THE CONTRACTUAL READINESS DEADLINE BY 75 DAYS WITHOUT FORMAL AMENDMENT OR LEGAL AUTHORITY (300a; 308a).</u>

The DPP's Decision is also contrary to the Contractor Readiness provision provided in Section 4.8.1 of the Bid Solicitation. Specifically, Section 4.8.1 provides:

> **4.8.1 CONTRACTOR READINESS FOR THE WINTER SEASON**
>
> The Contractor shall ensure that ***all trucks are fully operational and ready to report for a Call-Out <u>by October 1st</u> of each year of the Contract***. (111a) (emphasis added).

Thus, by the express terms of the Bid Solicitation, R&B was not required to have trucks that were "fully operational and ready to report" until (1) the Contract was executed; and (2) October 1, 2025, assuming a Contract was executed before that date. By rescinding R&B's award because R&B did not have its trucks fully operational and ready to report before both the execution of the Contract and the Contractor Readiness date of October 1, the DPP unlawfully advanced the Contractual Readiness deadline by 75 days, creating an unlevel playing field on the contractors that bid the work based on the express terms of the Bid Solicitation.

F. <u>THE DPP PLACED UNREASONABLE HURDLES ON PROTESTOR'S RIGHTS IN AN EFFORT TO AVOID JUDICIAL OVERSIGHT OF ITS ARBITRARY AND CAPRICIOUS CONDUCT (301a; 308a).</u>

By placing significant procedural hurdles on the awardees, the DPP attempted to create an unlevel playing field, and flatly disregarded the public's interest in a fair bidding process.

N.J.S.A. § 52:34-10.1 requires any employee of a State agency, including the DPP, to maintain a written record of each communications with a potential bidder from the date of the advertisement for bids to the date the contract is awarded. Similarly, pursuant to N.J.A.C. § 17:12-2.7(c), a bidder is entitled to receive notice of the basis for the rejection of its proposal.

N.J.A.C. § 17:12-3.3 provide the procedures that the DPP must follow to afford bidders the opportunity to challenge a proposal rejection or a notice of intent to award. Specifically, Section 3.3 provides that bidders have the right to submit a written protest (1) the DPP's rejection of its proposal, when such rejection arises out of an alleged failure to comply with a bid requirement; or (2) the DPP's issuance of a notice of intent to award. N.J.A.C. § 17:12-3.3(a)(1) – (2). It further provides that a protestor shall generally have **10 business days** to file its protest following written notification that its proposal is non-responsive or of the notice of intent to award or earlier if so stated in the notice of intent to award and may request an opportunity for an in-person presentation on the issues. *Id.* at (b). While the Administrative

Code does not require the DPP to hold an in-person hearing if one is requested (*Id.* at (e)), the New Jersey Supreme Court has recognized that "as a matter of good practice and fair procedure, an informal hearing or conference should be granted, if requested by a dissatisfied rejected bidder, particularly if he is the low bidder, prior to the execution of the contract with another bidder." *Commercial Cleaning Corp. v. Sullivan*, 47 N.J. 539, 550 (1966). Further, while the DPP is permitted to charge an administrative fee in connection with a bid protest, it is required to be calculated based on the estimated contract value, with only contracts exceeding $50 million receiving a filing fee of $1,000. N.J.A.C. § 17:12-3.5.

The DPP and the DOT's actions, when viewed together, make it apparent that they were acting with the intent of depriving R&B and other awardees of their contracts. Specifically:

- The results of the DOT's inspections were never put in writing, as required by N.J.S.A. § 52:34-10.1;
- The DPP did not provide R&B with notice of the alleged deficiency in advance of the rescission of its award, as contemplated by N.J.A.C. § 17:12-2.7;
- The DPP reduced the time period for bidders to protest from the statutory 10 business days (N.J.A.C. § 17:12-3.3(b)) *to only 3 business days*, i.e., a 70% reduction;

- In contradiction with *Commercial Cleaning*, the DPP refused R&B's request for an in-person presentation (304a);
- The DPP required all protestors to pay an over-inflated $1,000 filing fee without regard for the estimated contract value for each awardee, in violation of N.J.A.C. § 17:12-3.5 (156a);
- In response to R&B's bid protest, the DPP claimed, without any support, that R&B submitted a "falsified State-Supplied Price Sheet when it bid 1st Preference," in a clear attempt at intimidating R&B into not pursuing its protest (310a)[1]; and
- Attempting to re-bid price lines (through the DOT) in violation of this Court's stay order (382a).

Thus, the DPP's conduct during the protest process, in which it made every attempt to trample on R&B's rights as a legitimate protestor, is further evidence that its actions were arbitrary and capricious.

[1] A simple review of the State-Supplied Price Sheet makes it clear that R&B did not falsify any forms and that this allegation was an attempt by the DPP to disparage R&B. DPP claims that R&B falsified the Price Sheet by indicating that it would supply the snow plows under Preference #1 of the Bid Solicitation. R&B indicated that it would supply its own plows – which it would have done during the Contract Term but for the DPP's wrongful rescission of its award. Further, neither the Price Sheet nor the Bid Solicitation required R&B to have the plows at the time it submitted the Price Sheet and bid.

G. THE DPP'S ACTIONS VIOLATED THE DOCTRINE OF EQUITABLE ESTOPPEL (301a; 308a).

The doctrine of equitable estoppel provides that a party, by voluntary conduct, may be "precluded from taking a course of action that would work injustice and wrong to one who with good reason and in good faith has relied upon such conduct." *Williams Scotsman, Inc. v. Garfield Bd. of Educ.*, 379 N.J.Super. 51, 57 (App. Div. 2005). Although the doctrine of equitable estoppel is "rarely invoked against a governmental entity," the doctrine may be invoked where "the interests of justice, morality and common fairness clearly dictate that course." *Id.* at 58. Indeed, "the New Jersey Supreme Court has held that courts should examine equitable considerations when assessing governmental conduct and that the 'reliance factor,' in particular, should be taken into account by the court." *Id.* (citing *Skulski v. Nolan*, 68 N.J. 179, 198–99 (1975)). Thus, New Jersey courts distinguish an act that is "utterly beyond the jurisdiction" of the government (which may not be subject to equitable estoppel) from the "irregular exercise of a basic power" (which may be subject to equitable estoppel). *Id.*

R&B relied on the DPP's notice of intent to award, which expressly found that they were a responsive contractor, to expend over $200,000 to acquire snow plowing equipment. R&B further relied on the NJDOT's representation that the proof of purchase and anticipated delivery of the snow plowing equipment was sufficient to satisfy NJDOT's newly asserted inspection requirement, and continued to proceed with expending costs to ensure that it could meet the October 1 Contract Readiness date. The DPP's decision to rescind the notice of intent to award was not based on a bid defect that was "utterly beyond the jurisdiction" of the DPP to address; rather, it was an irregular exercise of its power to award the Contract. Thus, even though the DPP has broad discretion to award the Contract in the "best interests of the DPP," by initially awarding the Contract to R&B in June, and waiting three months (and less than a month before the Contract Readiness date) to rescind the award based on criteria not included in the Bid Solicitation, R&B's reliance on the DPP's initial notice of intent to award was justified and reasonable. Accordingly, the DPP should be equitably estopped from rescinding R&B's award to avoid injustice.

Further, in an effort to mitigate its damages, after the DPP wrongfully rescinded R&B's award, R&B placed its contracts for the purchase of the snow plow equipment on hold pending the outcome of this appeal. Accordingly, to the extent that the Court agrees that R&B's rescission of the award was arbitrary and capricious, the DPP should be equitably estopped from demanding immediate inspection of the snow plows for a reasonable period of time until R&B can complete its procurement.

H. THE DPP'S ACTIONS VIOLATED THE DOCTRINE OF FUNDAMENTAL FAIRNESS (301a; 308a).

The DPP must "turn square corners" in its dealings with the public, including in government contracts. *F.M.C. Stores Co. v. Borough of Morris Plains.*, 100 N.J. 418, 426 (1985). In the spirit of fairness, "a compromise to the integrity of the competitive [bidding] process cannot be countenanced[.]" *Matter of Protest by El Sol Contracting & Constr. Corp.*, 260 N.J. 362, 381 (2025).

The DPP's actions completely undermined the public bidding process and must be overturned to compel the DPP to ensure that the government is acting fairly to the public. Specifically, the DPP's creation of a new bid requirement for equipment inspections after issuing the notice of intent to award, and rescinding awards after the inspections, undermined the competitive bidding process by providing bidders who already owned the equipment or bid under the 2nd Preference with an unfair advantage. Essentially, the DPP's actions worked to "flip" the preference from 1st Preference to 2nd Preference, resulting in a substantial portion of the price lines going to 2nd Preference bidders. As a matter of fundamental fairness, the Court should not countenance the DPP's efforts to undermine the integrity of the bidding process.

CONCLUSION

For these reasons, R&B respectfully requests that this Court enter an Order (1) overturning the DPP's Final Agency Decision rejecting R&B's bid; (2)

compelling the DPP to award the price lines identified in the initial Notice of Intent to Award and any additional price lines that should be awarded to R&B as a result of other bidders failure to challenge the Revised Notice of Intent to Award; and (3) providing R&B with a reasonable amount of time to procure the snow plows in light of R&B's efforts to mitigate its losses after the DPP wrongfully rescinded the notice of intent to award.

RESPECTFULLY SUBMITTED,

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IN THE MATTER OF BID SOLICITATION #25DPP01134, R&B DEBRIS, LLC.	: SUPERIOR COURT OF NEW JERSEY : APPELLATE DIVISION : DOCKET NO. A-0158-25 : : CIVIL ACTION : : ON APPEAL FROM: : DEPARTMENT OF THE TREASURY : DIVISION OF PURCHASE AND : PROPERTY

BRIEF AND APPENDIX OF RESPONDENT DEPARTMENT OF THE TREASURY, DIVISION OF PURCHASE AND PROPERTY IN OPPOSITION TO APPEAL

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PROCEDURAL HISTORY AND STATEMENT OF FACTS[1]

The New Jersey Department of Transportation (NJDOT) works to make winter travel as safe as possible. NJDOT has 13,341 lane-miles of State and United States interstates and highways under its jurisdiction, including portions of US 80, 280, 78, 295 and 195 in New Jersey, that it strives to keep open and passable at all times in any winter weather. During a winter storm, NJDOT ensures that roads are safe for travel by using anti-icing materials and, when appropriate, removal of snow with plows. About NJDOT, Winter Readiness, Overview, dot.nj.gov/transportation/about/winter (last visited Oct. 1, 2024) (address modified to eliminate hyperlink). NJDOT uses contracted companies as part of its efforts to keep the roads de-iced and plowed.

The Division of Purchase and Property (Division) is the State's central procurement agency and is tasked with procuring goods and services for the State's departments to support the departments' operations. N.J.S.A. 52:25-6, N.J.S.A. 52:27B-55, -56; N.J.S.A. 52:18A-18. On behalf of NJDOT, on January 23, 2025, the Division issued Bid Solicitation #25DPP01134, T0777 Snow Plowing and Spreading Services (Bid Solicitation) to replace the prior snow plowing and spreading services contract awarded in 2020. The Bid Solicitation sought quotes from bidders to provide snow plowing and spreading services on

[1] Because they are closely related, these sections are combined for efficiency and the court's convenience.

all State interstates and highways under the jurisdiction of NJDOT for three years, plus four possible additional one-year extensions.[2] (Pa125.) The bid solicitation document becomes a part of the contract for those bidders who receive a contract award. Bid Solicitation Section 1.4 (Pa97.)

The Bid Solicitation divided the roads over which NJDOT has jurisdiction into 317 geographic sections for snow plowing and hauling services and included a State-Supplied Price Sheet with a specific set of price lines for each section.[3] (Ra1.) Then, for each section of road for which they wanted to provide a quote, bidders could offer snow plowing, salting or snow hauling services.[4] Ibid. Next, for those bidding on snow plowing services, there were two price line options for bidders. Bidders were to select just one. Bidders could (a) provide their own plowing equipment – truck and plow (termed "1st Preference"), or (b) provide their own trucks but have NJDOT supply the plows and other plowing equipment (termed "2nd preference"). Ibid. There would only be one award for snow plowing per price line, and the Division's preference

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[2] "Pb" refers to R&B's brief; "Pa" refers to its appendix.

[3] There were separate Price Sheets for each of the remaining two categories: "Other Equipment that the bidder can provide to the NJDOT"; and "Spreading Services."

[4] Bidder could also offer to provide additional equipment to the NJDOT for the winter season, but the appeal does not concern that portion of the Bid Solicitation.

was to award to a bidder who submitted a quote for the 1st preference, providing both the truck and the plow. (Pa131.)

The Bid Solicitation required bidders to submit, together with their quote, a form entitled "Offer and Acceptance Page." (Ra34.) That page has space for the bidder to provide information, a detailed certification and the signature of an authorized representative of the bidder to demonstrate the binding nature of the bid on a State contract. Ibid. The form also contains a section at the bottom of the form entitled "Acceptance of Offer" for the State's use only. Ibid. The section title is followed by the following language:

> ACCEPTANCE OF OFFER (For State Use Only) The Offer above is hereby accepted and now constitutes a Contract with the State of New Jersey. The Contractor is now bound to sell the goods, products, or services in accordance with the terms of the Bid Solicitation and the State of New Jersey Standard Terms and Conditions.
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> [Ibid.]

Then follows a place for an authorized representative of the Division to countersign and fill in the contract award date and the effective date of the contract. Ibid. R&B Debris, LLC (R&B) submitted its Offer and Acceptance Page with its bid, but it was never countersigned by the State. Ibid.

Because the Bid Solicitation also serves as a key document in the contract awarded from it, the Bid Solicitation distinguishes between what bidders must do and what the awarded contractor(s) must do. The Bid Solicitation defines the term "Contractor" as "[t]he Bidder awarded a Contract resulting from this Bid Solicitation." (Pa136.) R&B's offer and acceptance page was not countersigned by the Division. (Ra34.)

Bidders awarded a contract must be able to provide the services they bid on during the winter season, as defined in the Bid Solicitation in Section 9.3, which is from October 1 to April 30 each year. (Pa141.) To ensure all potential bidders understood the requirements of the bid solicitation before submitting a quote, on February 6, 2025, a pre-quote conference was held to provide potential bidders with an overview of the Bid Solicitation and the submission procedures and requirements. (Pa172.) Representatives of eight potential bidders attended; however, no representative from R&B was present. Ibid. Further, bidders were permitted to submit written questions to the Division about any of the specifications in the bid solicitation by February 13, 2025. Ibid. The Division responded to all questions received by posting Bid Amendment No. 1 on February 28, 2025. (Pa173.) Those answers also served to amend or supplement the original bid solicitation. (Pa172.)

To ensure that bidders only submitted quotes for those geographic areas they were capable of providing snow plowing and spreading services for, and that a bid for either first or second preference was actually backed by available equipment, Bid Solicitation Section 3.17 cautioned bidders that they "should only provide unit pricing for the lines that the bidder is willing and able to provide." (Pa106) (emphasis added). Further, given the importance of maintaining safe roads, the bid solicitation included language for inspections to ensure that the bidders and contractors had all the equipment needed to plow and verify the representations made in the bids. The bid solicitation Section 4.12.2 Equipment Inspections, provided:

> All vehicles and equipment, whether provided by the Contractor or the NJDOT, shall be subject to inspection at any time during the Contract term and/or a Call-Out. If the inspection reveals that any of the vehicles and/or equipment fail to comply with the requirements of the Bid Solicitation, including but not limited to Section 4.12.1, then that respective vehicle and/or equipment will not be permitted to operate.
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> [Pa112-13.]

Moreover, bid solicitation Section 8.7 — State's Right to Inspect Bidder's Facilities — provided: "The State reserves the right to inspect the bidder's establishment before making an award, for the purposes of ascertaining whether the bidder has the necessary facilities for performing the Contract." (Pa130.)

The Division opened 176 quotes on April 4, 2025, the bid submission deadline. (Pa173.) Of the quotes submitted, 169 of them were deemed administratively complete for further review. (Pa178.) After completing its review and evaluation of the quotes received, on June 27, 2025, the Division issued a Notice of Intent to Award letter (June NOI) advising all bidders of its intent to award contracts to sixty-four bidders. (Pa143.) The June NOI required the intended awardees to confirm their acceptance of the intended awards prior to the close of the protest period. (Pa156.)

R&B was the first preference intended awardee of twelve lines which cover sections of New Jersey Routes 29, 70, 73, 129, 130, 206, and 295.[5] (Pa148-156; Ra23-33.) On July 17, 2025, NJDOT sent R&B a letter to schedule an inspection of the trucks and plows that R&B intended to use to perform the contract work for the twelve lines. (Pa233.) Specifically, that letter advised R&B "[in] accordance with . . . Section 4.12.2 Equipment Inspections, be advised that NJDOT Winter Operations staff will be conducting an inspection of all <u>trucks and snow plowing equipment</u>. At the time of the inspection, each vehicle and equipment must be physically <u>on site</u> and presented with a valid vehicle registration." <u>Ibid.</u> (emphasis added).

NJDOT and R&B scheduled the inspection to be performed at R&B's New Jersey facility on July 22, 2025. (Pa309.) During the inspection, NJDOT found that R&B did not have necessary equipment to perform the work required under the Bid Solicitation. <u>See</u> September 4, 2025, Recommendation Report, pps. 18-50 (listing all rescinded awards due to a lack of equipment) (Pa245; Ra35.) NJDOT noted that R&B had "plows on order" but did not have the equipment available for inspection, as required by NJDOT's July 17, 2025 letter and the

[5] These lines were 157, 164, 165, 166, 244, 245, 246, 302, 303, 304, 308, and 309.

Bid Solicitation, and that R&B therefore failed the inspections. (Ra35.) NJDOT never advised R&B they had passed the inspection.

On September 4, 2025, the Division issued a Revised Recommendation Report. (Pa245.) Consistent with the inspection findings, the report stated that while R&B presented trucks for inspection it failed to make available for inspection the actual equipment needed to plow and that NJDOT could not ascertain whether R&B possessed the equipment necessary to service all of the lines awarded. (Pa287-90.) Based on that information, on September 5, 2025, the Division issued a Revised Notice of Intent to Award letter (September NOI) which rescinded the prior notice of intent to award the twelve lines to R&B. (Pa236.)

In accordance with N.J.A.C. 17:12-3.3(g), the Division shortened the protest period to five days to ensure that snow plowing contracts would be in place prior to the start of winter snow plowing season which began on October 1, 2025. <u>Ibid.</u> The September NOI also did not include a contractor for each service for each section of State road because there were no bidders for some price lines. <u>Ibid.</u> The NJDOT planned to procure contractors for those sections pursuant to a waiver of advertising procurement pursuant to N.J.S.A. 52:34-8, -9 and -10.

On September 10, 2025, R&B submitted a protest challenging the September NOI. (Pa296.) In its protest, R&B claimed the

> cumulative effect of these actions is that Protester — who was originally issued a Notice of Intent to Award on June 27, 2025 — was stripped of its awards based on criteria not contained in the Solicitation, after having rightfully relied upon the [June NOI], to expend significant sums so that snow plow equipment would be [in] place by Bid Solicitation deadlines. These actions were arbitrary, capricious, unreasonable, ultra vires, and contrary to law.
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> [Pa297.]

On September 12, 2025, the Division issued a final agency decision sustaining the September NOI. (Pa305.) On September 16, 2025, R&B sent a letter to the Division requesting "to stay any further action in connection with its decision," and appealed the final agency decision to the Appellate Division. (Pa332; Pa312.)

On September 29, 2025, the Division denied R&B's request to stay the September NOI pending appeal finding "R&B ma[de] no claim of an irreparable harm if the stay is denied." (Pa334.) Citing <u>Commercial Cleaning Corporation v. Sullivan</u>, 47 N.J. 539, 546-49 (1966), the Division concluded that R&B was also not entitled to a stay because, among other things, no bidder is entitled to a contract. (Pa336.)

Upon further application that same day, the Appellate Division granted R&B permission to make an emergent application to challenge the September NOI. (Pa353.) Accordingly, on October 1, 2025, R&B submitted its emergent motion with this Court to stay the Division's September NOI.

On October 3, 2025, the Division posted a Notice of Temporary Stay, which listed the price lines that were stayed as a result of this Court's October 10, 2025 order. (Ra40.)

Shortly thereafter, the Division posted on its website a notice of temporary stay listing the price lines that the Division would not be awarding pursuant to the Bid Solicitation until the appellate courts issued final rulings in this and two related matters.[6][7] (Ra40.)

Meanwhile, because the snow season for this year had started with no contractors set for all sections of the State roads, on October 20, 2025, NJDOT issued a request for quotes (RFQ) for snow plowing and spreading services to solicit bids for the award of three-year contracts that could be extended for up to four one-year terms for the price lines where no award was made or intended pursuant to the Bid Solicitation. (Ra41.) That RFQ was issued pursuant to a waiver of advertising procurement consistent with N.J.S.A. 52:34-8 and -10(b) and Treasury Circular 24-21 DPP. Ibid. The same RFQ also sought to obtain

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[6] We believe the following facts are outside the record but feel compelled to provide the information because R&B included it in its brief and there is not time to file a motion to strike.

[7] Two other matters pending before this Court also challenge the revised notice of intent to award a contract under T7077. Those matters are: IMO Bid Solicitation #25DPP01134 Jerrell's Landscapes & Nurseries, Inc., (A-0349-25) (Jerrell's) and IMO Bid Solicitation #25DPP01134 BVW Services, LLC Protest of Notice of Intent to Award, T0777 – Snow Plowing and Spreading Services – NJDOT (A-0335-25) (BVW).

temporary plowing coverage for those roads impacted by the stay. (Pa382; Ra41.)

Given that the NJDOT and the Division could not anticipate how long it will take for the Appellate Division to issue final orders in this matter and the two others raising similar issues, the temporary plowing contracts are for one year, but are subject to the State of New Jersey Combined Terms and Conditions that allow a termination on thirty days' notice or less to the awarded vendor, Section 5.7 (Ra127) or an extension if required for the interests of the State, Section 5.3 (Ra126). That flexibility will be used to terminate and or extend the temporary contract as necessary and allow the Division to award a contract pursuant to T7077 consistent with the court's final order and to ensure that there is snow plow coverage for all of the sections of the State roads during the snow seasons from October 1 to April 30.

On October 21, 2025, R&B e-mailed counsel for the Division claiming that the October 20th RFQ mistakenly included five price lines impacted by the stay issued by this court in this matter, for award of a longer-term contract. (Ra79.) On October 22, 2025, NJDOT issued a revised RFQ to correct the listed price lines and to clarify that the contracts to be awarded through NJDOT's RFQ for those lines affected by the stay were only temporary contracts. (Ra81.) In addition, the Division posted an updated public Notice of Stay dated October

22, 2025 correcting a mistake as to which the price lines were impacted by this Court's stay. (Ra118.)

LEGAL ARGUMENTS

I. THE DIVISION'S DECISION TO RESCIND THE AWARD TO R&B WAS NOT ARBITRARY, CAPRICIOUS OR UNREASONABLE.

While the Division's decision to award a contract is reviewed under the gross abuse of discretion standard, courts review Division decisions not directly related to the award of a contract under an arbitrary, capricious, and unreasonable standard. Barrick v. State, 218 N.J. 247, 259 (2014). Under that standard, an appellate court will not upset an agency's ultimate determination unless the agency's decision is shown to have been "arbitrary, capricious, or unreasonable, or [ ] not supported by substantial credible evidence in the record as a whole." Ibid. (quoting In re Stallworth, 208 N.J. 182, 194 (2011) (alteration in original)).

In applying that standard, courts are generally limited to determining:

> (1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law; (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.
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> [In re Carter, 191 N.J. 474, 482 (2007) (quoting Mazza v. Bd. of Tr., 143 N.J. 22, 25 (1995) (additional

citations omitted).][8]

R&B argues that the Division's rescission of R&B's award in the September NOI "rendered the procurement process arbitrary, capricious, unreasonable, and ultra vires." (Pb17.) R&B claims the Division did not identify any provision in the bid solicitation that made it mandatory to have the snow plows and trucks in the bidder's possession at the time of the bid or at any time prior to the start of the contract term. (Pb18.) R&B asserts the Division misinterpreted sections of the bid solicitation as authorization for pre-contract equipment inspections, thereby creating a new bid requirement after having already issued the notice of intent to award and the rescission of awards post-inspections. (Pb23.)

These arguments fail for multiple reasons: (1) the State had notified bidders in the Bid Solicitation of the possibility of a pre-award inspection and pinpointed exactly which sections of the bid solicitation authorize equipment inspections and was authorized to make such inspections; (2) the Division provided ample notice of the equipment inspections and treated all bidders equally; and (3) the Division's interpretation of the relevant sections is supported by the ultimate important public purpose of the solicitation.

First, R&B argues the July inspection was not a valid basis for rescinding

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[8] A fourth factor, whether the decision offends the State or Federal constitutions, is not impacted here. In re Jasper Seating Co., Inc., 406 N.J. Super. 213, 223 (App. Div. 2009).

R&B's award because it was outside the scope of Section 4.12.2 of the Bid Solicitation, which permits inspections during the contract term and during a Call-Out. R&B alleges the Division "altered" the bid specifications to create new requirements after already awarding the work. (Pb3.) Clearly, the bid specifications were not altered or amended so it would seem R&B is arguing that the Division misread or misapplied section 4.12.2. Contrary to R&B's claims, however, the pre-award inspection was not a new requirement. Section 8.7 of the Bid Solicitation—State's Right to Inspect Bidder's Facilities—permits the Division and/or NJDOT to conduct equipment inspections to ensure that the bidder had all of the equipment they needed to plow, consistent with how they bid. (Pa130.) Section 8.7 reads, "[t]he State reserves the right to inspect the bidder's <u>establishment</u> before making an award, for the purposes of ascertaining whether the bidder has the necessary <u>facilities</u> for performing the Contract." (Pa130) (emphasis supplied). Section 8.7's use of the terms "establishment" and "facilities" ensures that the definition of facilities encompasses not only the building, but the means necessary to accomplish the objective of the contract: on demand snow plowing and salt spreading service when the winter weather requires them.

R&B additionally argues Section 8.7 only permits an inspection before making an award, "not after the award is issued but before a contract is executed." (Pb23.) But R&B mistakes the Division's notice of intent to award a contract for the actual award. Here, the June NOI stated that the Divsion intended to award a contract to R&B. Here, R&B's offer and acceptance page was never countersigned, and thus no contract was formed, and an award was ever issued.

R&B also asserts the term "facilities" creates an ambiguity that must be construed against the Division as the drafter of the Bid Solicitation but that argument too fails. (Pb26.) One of the definitions of "facilities" is "the physical means or equipment required for doing something." Oxford English Dictionary, "facility (n.)," September 2025, https://doi.org/10.1093/OED/8921873702; Black's Law Dictionary, 591 (6th Ed. 1990) ("[T]hat which promotes the ease of any action, operation, transaction or course of conduct. The term normally denotes inanimate means rather than human agencies.").

It is well established that when interpreting a contract, or here a bid solicitation, "the court's goal is to ascertain the 'intention of the parties to the contract as revealed by the language used, taken as an entirety; and, in the quest for intention, the situation of the parties, the attendant circumstances, and the objects they were thereby striving to attain.'" Driscoll Constr. Co., Inc. v. New Jersey Dep't of Transp., 371 N.J. Super. 304, 313 (App. Div. 2004) (citations omitted). R&B's position assumes there is uncertainty about the ultimate purpose of the solicitation.

"To determine the meaning of the terms of an agreement by the objective manifestations of the parties' intent, the terms of a contract must be given their 'plain and ordinary meaning.'" Nester v. O'Donnell, 301 N.J.Super. 198, 210 (App.Div.1997) (quoting Kaufman v. Provident Life and Cas. Ins. Co., 828 F.Supp. 275 (D.N.J.1992)). The court should examine the document as a whole and the "court should not torture the language of [a contract] to create ambiguity." Ibid. (quoting Stiefel v. Bayly, Martin & Fay, Inc., 242 N.J. Super. 643, 651 (App.Div.1990)). Here, if we accepted R&B's position that "facilities" does not include vehicles and equipment, Section 8.7's language would have no effect as there are no buildings or property needed for the performance of the contract work. Moreover, the Bid Solicitation provides the context that supports the State's inspections. Section 3.17 cautioned bidders that they "should only provide unit pricing for the lines that the bidder is willing and able to provide." Bidders were aware, under Section 4.12.12, that vehicle and plow inspections would be necessary once the contract was awarded and reading Section 8.7 to also include pre-award inspection of faciltiies to include vehicles and equipment is in line with the overall intent of the contract.

Second, R&B ignores that the Bid Solicitation plainly addresses how the Division would evaluate quotes and the Price Sheet. Section 8.9 of the Bid Solicitation states that "[t]he following evaluation criteria categories . . . will be used to evaluate the Quotes received in response to this Bid Solicitation. The evaluation criteria categories may be used to develop more detailed evaluation criteria to be used in the evaluation process." (Pa131.) Section 8.9.1 further details that the Division will evaluate quotes based on the "experience of bidder," "the type of [b]idder equipment bid on the State-Supplied Price Sheet," and pricing. Ibid. Sections 8.9.2 and 8.9.2.1 explain the Division's intent to award one responsive bidder per price line for snow plowing and hauling services and those bidders who bid 1st preference ascertain they are "supplying all required trucks, that are all Class A trucks, all with Bidder provided snow plows." Ibid. Additionally, in the letter dated July 17, 2025, NJDOT advised R&B that it needed to inspect R&B's equipment R&B intended to use for the twelve lines it was awarded. (Pa233.) Similar letters were sent to all bidders who were in the NOI as intended awardees. There is no question that the Division uniformly and objectively applied this evaluation methodology equally and objectively across all bidders.

Thus, R&B was provided with ample notice from the Bid Solicitation and the subsequent NJDOT letter that for a 1st Preference bidder, it must provide its equipment, including plows, for inspection before contract award. When arranging the inspection by NJDOT, R&B understood that a pre-award facilities inspection of a 1st Preference bidder, bidding on a snow plow contract, would, of necessity, include a physical inspection of its snow plows.

Third, R&B further argues that the Division added a new material requirement that the awardees have the snow plows and trucks available for inspection before the contract term commenced. (Pb18.) However, Bid Solicitation Sections 3.17, 4.12.2 and 8.7 support the pre-award inspections.

R&B cannot show that the Divison's conduct of the procurement process was arbitrary, capricious and unreasonable. In fact, R&B cannot even established that the Division failed to follow procurement law. On the contrary, the record clearly shows that the Division did follow procurement law throughout the procurement process. Further, the evaluation criteria were equally and uniformly applied to all other bidders. The Division, as the agency expressly charged with managing the State's procurement process, possesses superior expertise regarding the subject and the court should not disturb the Division's decision. N.J.S.A. 52:27B-56. The Division had an articulable standard for award and it applied it to all bidders equally. (Pa56.) R&B expresses concern on appeal that the Division's chosen methodology undermined the necessary common standard of competition. (Pb12.) But all of the bidders had access to the same Bid Solicitation materials, had the same deadlines for quote submission, and were scored under the same methodology, and if they bid 1st preference, were subject to the same type of inspection so the playing field was level. (Pa56.) <u>Barrick</u>, 218 N.J. at 259 ("Requiring adherence to material specifications maintains a level playing field for all bidders competing for a public contract.").

As the statutory expert on public procurement, the public bidding statutory scheme vests discretion in the Division to select which of the bids is "most advantageous to the State," and R&B has not demonstrated any unreasonableness in the Division's procurement process. Barrick, 218 N.J. at 258 (citing N.J.S.A. 52:34-12(a)). For all of these reasons, the Division's decision to rescind the award to R&B was not arbitrary, capricious or unreasonable and should be upheld.

II. R&B WAS NOT A RESPONSIVE OR RESPONSIBLE BIDDER.

R&B simply was not a responsible bidder and its bid was not responsive to the requirements for which it bid and therefore this Court should uphold the Division's September 12, 2025 final agency decision. It is axiomatic that "the Division may not award a contract to a bidder whose proposal deviates materially from the [Bid Solicitation]'s requirements." Id. at 259. Requirements that are material to the Bid Solicitation are non-waivable and "the winning bidder's proposal must comply with all material specifications." Barrick, 218 N.J. at 259. Determining the materiality of a requirement is "reviewed under the ordinary standard governing judicial review of administrative agency final actions," namely the arbitrary, capricious, or unreasonable standard. Ibid. "With respect to the determination of whether a [bid solicitation] requirement must be regarded as material and, as a consequence, non-waivable, the threshold step of analysis is to determine whether there is a deviation." Id. at 260.

Determining the materiality of a requirement is "reviewed under the ordinary standard governing judicial review of administrative agency final actions," namely the arbitrary, capricious, or unreasonable standard. Ibid. "With respect to the determination of whether a [bid solicitation] requirement must be regarded as material and, as a consequence, non-waivable, the threshold step of analysis is to determine whether there is a deviation." Id. at 260. "On review, a court's role is to examine the correctness of the Director's determination [whether there is a deviation] based on the information available to the Director at the time bids are opened." Id. at 260-61.

A responsive quote is one that the Division deems to adequately address all material provisions of a bid solicitation, including its terms and conditions, specifications, and other requirements. N.J.A.C. 17:12-1.3; see also In Re Request for Proposals ##17DPP0014, 454 N.J.Super. 527 (App. Div. 2018) (requiring a contract with a hedge by a bidder as to price is a material deviation making the proposal non-responsive to the bid solicitation be rebid). Here, a quote that is not compliant to the material requirements of the bid solicitation shall not be eligible for further consideration for award of a Contract and the bidder offering said quote shall receive notice of the rejection of its quote. N.J.A.C. 17:12-2.7(c). "If the non-compliance is substantial and thus non-waivable, the inquiry is over because the bid is non-conforming, and a non-conforming bid is no bid at all." In re Protest of Award of On-Line Games Prod. & Operation Servs. Contract, 279 N.J. Super. 566, 595 (App. Div. 1995) (citing Twp. of River Vale v. Longo Constr. Co., 127 N.J. Super. 207, 222 (Law Div. 1974)). The test for materiality is well settled. A bid is not compliant if the State cannot be assured it will receive the benefit of the bargain it sought or if it undermines the common standard of comptetiion. Ibid.

Here, R&B was non-responsive because it bid 1st preference despite the inspection showing that it did not possess the requisite number of trucks and plows, contrary to Bid Solicitation Section 3.17 ("Bidders shall only provide unit pricing for the Price Lines that the Bidder is willing and fully able to provide, including all services specified by this Bid Solicitation, as applicable.") (Ra23-33.) The inspection conducted served to confirm that the intended awardees had the necessary equipment to perform the work for which it submitted quotes. If a bidder did not have the necessary equipment, its bid would be non-conforming. R&B's failed inspection constituted a material deviation from its proposal, making the proposal non-responsive to the Bid Solicitation. Without having the necessary equipment to plow, the State could not be be assured that when the time came to perform, R&B would be ready to do so. Further, awarding to R&B on the 1st preference when it did not have the required equipment would have undermined the standard of competition. Doing so would have allowed R&B to postpone the business cost of already having purchased the plows, and thus it put itself at an advantage over bidders that had already incurred those costs.

There is no dispute that R&B failed to make the necessary equipment available for NJDOT's inspection and so it was reasonable for the Division to conclude that it would be in the public's best interest to reallocate those price lines to ensure that the State would be prepared for the advancing snow season. That discretionary determination to rescind the price lines previously assigned to R&B in the NOI was well within the scope of its authority under N.J.S.A. 52:34–12(a) which provides that "any or all bids may be rejected when the State Treasurer or the Director of the Division of Purchase and Property determines that it is in the public interest so to do."

Case law is in accord. Our jurisprudence recognizes that the Legislature purposefully conferred broad discretion on the Director of the Division to determine "which bid will be most advantageous to the State." Commercial Cleaning Corp. v. Sullivan, 47 N.J. 539, 548 (1966). In re Jasper Seating Co., Inc. recognized the Division's determinations "as to responsibility of the bidder and bid conformity are to be tested by the ordinary standards governing administrative action." 406 N.J. Super 213, 355-56 (2009) (quoting On–Line Games, 279 N.J. Super. at 593).

A. The Division's evaluation was conducted consistent with the applicable regulations

R&B alleges that the Division was not permitted to include NJDOT as part of the evaluation process. (Pb12.) That is incorrect. A bid is to be evaluated by those who "have the relevant experience necessary to evaluate" the proposals. N.J.S.A. 52:34-10.3. NJDOT's involvement in assessing whether the intended bidders indeed had the required equipment is entirely consistent with the State's public bidding law. See Bid Solicitation Section 1.1 ("[S]now plowing and spreading services on all State interstates and highways [is] under the jurisdiction of the NJDOT."). In addition, the Bid Solicitation was advertised on behalf of NJDOT and clearly stated that NJDOT was entitled to inspect. See, e.g., (Ra41, Ra44) (covering Bid Solicitation Sections 4.8.2, 4.12.2, 4.15.1.1, and 8.7).

Lastly, R&B argues the Division's issuance of the June NOI constituted a determination by the Division that R&B was both responsible and had submitted a responsive bid. (Pb12.) However, the Division's responsibility review is typically limited to a financial review and complaints filed against the bidder with the Department of the Treasury Contract Compliance & Administration Unit. The June Recommendation Report clearly notes, "Assistant Director approval to waive the financial responsibility review was received by the Bureau on May 13, 2024." (Pa216.) It further stated:

> All intended awardees have no complaints on file with the Contract Compliance & Audit Unit. All

> intended awardees are not listed on the Suspension and Debarment list for the State of New Jersey nor on the federal debarment list. All proposed awardees are not listed on the Workplace Accountability in Labor List (WALL), provided by the New Jersey Department of Labor.
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> [Ibid.]

Had R&B submitted a responsive quote, it likely would have been found to be responsible as the Division waived the financial responsibility review and R&B had no complaints on file. Finally, even if the initial NOI did signify that the Division had found R&B's bid to be responsive, then the Division was mistaken. The inspection showed R&B's bid was not responsive for the 1st preference and the Division could not let the award go forward with a material deviation.

Therefore, on this record, the Division appropriately found R&B's bid to be neither responsive nor responsible.

III. THE DIVISION HAD THE STATUTORY AUTHORITY TO RESCIND THE AWARD TO R&B.

The Division had ample factual and legal grounds for rescinding the award to R&B.

New Jersey bidding statutes are intended to secure competition and "guard against favoritism, improvidence, extravagance and corruption," to benefit the taxpayers and not the bidders. See Trap Rock Industries, Inc. v. Kohl, 59 N.J. 471, 481–482 (1971). In this case, the Division's decision to rescind its intended award to R&B was permissibly based on the dangerous consequences that an award to R&B could have fostered. The vehicle inspections, permitted pursuant to Section 8.7 of the Bid Solicitation, proved that R&B did not have the necessary equipment to carry out the contract – contrary to its submitted bid. New Jersey contract law and case law dictates the award goes to "that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the State, price and other factors considered[.]" N.J.S.A. 52:34-12(g). See also Keyes Martin & Co. v. Director, Div. of Purchase and Property, Dept. of Treasury, 99 N.J. 244 (1985) ("[I]n a given bidding situation, the power of the Director to determine, considering the public interest, whose bid will be most advantageous to the State is independent of the requirements under the debarment and suspension regulations."). Importantly,

> Courts can intervene only in those rare circumstances in which an agency action is clearly inconsistent with its statutory mission or with other State policy. Although sometimes phrased in terms of a search for arbitrary or unreasonable agency action, the judicial role is restricted to four inquiries: (1) whether the agency's decision offends the State or Federal Constitution; (2) whether the agency's action violates express or implied legislative policies; (3) whether the record contains substantial evidence to support the findings on which the agency based its action; and (4) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors. Campbell v. Department of Civil Serv., 39 N.J. 556, 562 (1963); In re Larsen, 17 N.J. Super. 564, 570 (App.Div.1952).

> [George Harms Constr. Co. v. Turnpike Auth., 137 N.J. 8, 27 (1994).]

Thus, the Division has the statutory authority to award the contract to the bidder it deemed would be most advantageous to the State, as long as the bid conformed to the Bid Solicitation. While the Division must consider price, it is not limited to choosing the lowest bidder if that bidder's proposal is not responsive.

R&B argues the Division may only rescind a notice of award based on an intended awardee's failure to provide certain essential documents identified in the Notice of Intent to Award as being required for the contract. (Pb15.) However, there are many sections in the Bid Solicitation that put requirements on potential awardees and contractors, and violation of those sections would necessarily lead to a rescission of an intended award.

R&B also argues that a failed inspection by NJDOT could not serve as a basis for the Division's recission because it was not the Division that requested the inspection, but rather NJDOT who "had no involvement in the bid award process." (Pb17.) But as discussed above, the Division, as the central procurement agency for the executive branch, advertised the Bid Solicitation on behalf of NJDOT. Moreover, the Bid Solicitation clearly identified the NJDOT throughout and particularly with respect to the inspections conducted. (See, e.g., Bid Solicitation Sections 4.8.2, 4.12.2, 4.15.1.1, and 8.7). If R&B had questions about NJDOT's authority to conduct inspections under the Bid Solicitation, it could have raised the concern upon receipt of NJDOT's July 17, 2025, letter or in its September 10, 2025 protest letter to the Division. It did neither and it cannot now complain of an issue that it failed to raise below. See Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973) (finding that issues not raised below will not be considered on appeal).

NJDOT had the authority to inspect the facilities of all bidders, and the Division was authorized to rescind awards based on those inspections.

IV. THE DIVISION DID NOT DISREGARD SECTION 8.9 OF THE BID SOLICITATION'S MANDATORY FIRST PREFERENCE AWARD STRUCTURE.

R&B argues the Division's implementation of pre-contract inspections "was mere pretext for the [Division]'s decision to rewrite Section 8.9.2 to reverse the bid preference" to award to bidders supplying their own plows. (Pb18-19.) It asserts this claim is supported by alleged representations by R&B employees that R&B's proof of purchase of the snow plows was sufficient to pass the inspection; the Division's rescission of a substantial portion of the first-preference bidder's awards; the Division's "unreasonable restraints" placed on the bid protest procedures; and the Division's attempt to re-bid work that is the subject of this Court's stay order. (Pb3.) R&B identifies no objective facts to support those self-serving claims.

Far from establishing a nefarious intention to reverse the bid preference, the Division's rescission of R&B's as well as several other 1st preference bidder's intended awards shows the Division was actively enforcing the preference. Bidders who bid 1st preference were to be "fully able to provide . . . all services specifed." Further, bidders who bid 1st preference but did not have all of the trucks or equipment were attempting to rewrite the requirement that they be (not be able to be in the future) fully able to perform the services. Here the Division found that, like R&B, other bidders improperly bid 1st preference despite not having the equipment needed to perform the work on which R&B bid. After completing the requisite equipment inspections of all sixty-four intended awardees the Division issued the September NOI re-noticing potential awards to first preference bidders who did possess the equipment, if such bidders where available for an award. If no first preference bidder was available, the Division noticed the intended award to the second preference bidder - consistent with Bid Solicitation Section 8.9. The State cannot be expected to award a snow plowing contract to a bidder who obtained a preference for having all of the needed equipment, but that does not actually possess the requisite equipment.

Lastly, contrary to R&B's assertion in its brief, NJDOT never attempted to solicit bids for any price lines that are the subject of the Court's stay order on the RFQ. NJDOT's request for quotes solely sought bids to cover those roads for which no bidder was listed as the intended awardee for the Bid Solicitation and to cover those lines which are subject of the stay for health and safety of the traveling public. Immediately upon being alerted that certain impacted lines were mistakenly listed on the RFQ, the Division corrected the error.

V. THE DIVISION DID NOT UNLAWFULLY ADVANCE THE CONTRACTUAL READINESS DEADLINE.

R&B asserts the Division's final agency decision was contrary to Section 4.8.1 of the Bid Solicitation, which reads "[t]he Contractor shall ensure that all trucks are fully operational and ready to report for a Call-Out by October 1st of each year of the Contract." (Pa111.) However, the Division did not advance this deadline. The Division merely made its inspections to ensure the 1st preference bidders actually had the equipment they were claiming to own by bidding 1st preference. Even those 1st preference bidders who were inspected and approved will still need to ensure that all trucks and equipment are fully operational and ready to be called out.

VI. THE DIVISION DID NOT PLACE UNREASONABLE HURDLES ON R&B'S RIGHTS IN AN EFFORT TO AVOID JUDICIAL OVERSIGHT.

The Division has at all times acted in good faith to balance its obligations to bidders and to the greater public to be ultimately served by the contracts. R&B's arguments to the contrary consist of little more than a list of grievances that have no basis in fact.

R&B's complaint that the regulatorily set administrative fee it paid to pursue its protest undermined its rights is without merit. (Pb29-30.) The estimated value of the contract, as listed in NJSTART, is $300,000,000. (Ra149.) Despite this high value, R&B argues the Division placed "unreasonable hurdles" on R&B's rights in an effort to avoid judicial oversight by requiring payment of an administrative fee. (Pb29-30.) With a contract of that value, the Division must implement certain safeguards to ensure the winning bidders will be able to perform. The $1,000 filing fee was set based on the value of the contract in accordance with the Division's duly promulgated regulations. N.J.A.C. 17:12-3.5 state that "[a]ny RFP with an estimated contract value over 50 million dollars and one cent ($ 50,000,000.01) shall be accompanied by a filing fee of $ 1,000.00."

Similarly, there is no merit to R&B's suggestion that the Division was not permitted to shorten the protest period and that the Division undermined R&B's right to protest by failing to hold an in-person hearing. (Pb29.) The Divison's decision to shorten the protest period was authorized by N.J.A.C. 17:12-3.3(g). The Administrative Code does not require the Division to hold an in-person hearing if one is requested. (Pb30.) The Court in <u>Commercial Cleaning</u> determined that a disappointed bidder for a State contract was not entitled to a "judicial or trial type of hearing." 47 N.J. at 550; <u>accord</u>, N.J.A.C. 17:12-3.3 (setting forth DPP's protest procedures requiring a written decision on the basis of a review of the written record of the procurement and making an in-person presentation available only at the Director's or her designee's discretion). The interests of time in moving forward with a timely contract award so that the contract could begin on October 1, 2025 was more than sufficient justification for each of the Division's decisions.

VII. THE DIVISION CANNOT BE ESTOPPED FROM FOLLOWING THE LAW.

R&B claims that the Division should be estopped from issuing the September NOI because it made expenditures in reliance on the notice of intent and relied on representations by NJDOT staff that receipts were sufficient proof of equipment to satisfy the inspection. (Pb31.) The court should reject those arguments.

As a general rule, "the doctrine of [e]quitable estoppel is 'rarely invoked against a governmental entity.'" Meyers v. State Health Benefits Comm'n, 256 N.J. 94, 100 (2023) (alteration in original) (quoting Middletown Twp. PBA Local No. 124 v. Township of Middletown, 162 N.J. 361, 367 (2000)). The reason is clear. The State's public contracting laws unequivocally require the Division to ensure that contracts are only awarded to responsible bidders in accordance with the applicable laws. In matters of public bidding, the integrity of the process, and not the expectations of non-conforming bidders are paramount. Simply stated, the Division cannot be estopped from following the law.

Second, applying estoppel here would "hinder or prejudice essential governmental functions." See Vogt v. Borough of Belmar, 14 N.J. 195, 205 (1954). NJDOT is a governmental entity tasked with keeping our roads as safe as possible for winter travel. Awarding a snow plowing contract to a bidder who does not possess any snow plows would hinder that essential government function. R&B was one of several companies inspected and found to have failed to meet the requirements for the 1st preference despite having so bid. Allowing R&B to proceed with the contract when the NJDOT had no assurance that R&B would be ready to perform during the snow season would not only potentially put New Jersey drivers on those road sections at risk, but it would also show inappropriate favoritism to R&B over other bidders. Such a compromise to the integrity of the competitive process cannot be countenanced. Meadowbrook Carting Co. v. Borough of Island Heights, 138 N.J. 307, 325 (1994) ("[T]he integrity of the bidding process is more important than the isolated savings at stake.").

Third, no bidder is entitled to award of a public contract. See Comm'l Cleaning Corp., 47 N.J. at 546-47. Even if R&B could arguably suffer monetary harm from not being awarded a contract pursuant to this Bid Solicitation, this is a risk a company routinely accepts when it participates in a public bidding process. By this reasoning, any incumbent vendor could show irreparable harm from loss of business and less revenue any time its bid is not accepted, or its contract is not extended.

VIII. RESCISSION OF R&B'S INTENDED AWARD WAS IN THE PUBLIC'S BEST INTEREST.

State law has long recognized that the purpose of the public bidding process is to "secure for the public the benefits of unfettered competition." Meadowbrook Carting Co. v. Borough of Island Heights, 138 N.J. 307, 313. To that end, "public bidding statutes exist for the benefit of the taxpayers, not bidders, and should be construed with sole reference to the public good." Borough of Princeton v. Bd. of Chosen Freeholders, 169 N.J. 135, 159-60 (1997).

The State and the public have substantial interest in implementing the Contract as soon as possible, which outweighs an incumbent vendor's interest in receiving a new contract. Readiness for winter weather is a public safety issue and the NJDOT must administer a large and complex contract to clear the many miles of roads for which it has responsibility whenever the weather requires it. Therefore, it is essential that there is a timely transition of vendors. For purposes of the Bid Solicitation, the winter season has already started as of October 1, 2025. (Pa19.) The State and its residents are at risk, not R&B. R&B fails to identify any bad faith or fraud in the Division's actions.

Construing this Bid Solicitation in favor of the public good, the Division properly rescinded awards to R&B after learning they did not have the plowing equipment necessary to perform the contract. See Borough of Princeton, 169 N.J at 159-60 ("[bids] should be construed with sole reference to the public good”).

CONCLUSION

For these reasons, the Director’s final agency decision should be affirmed.

Respectfully submitted,

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