
**IN THE MATTER OF BID
SOLICITATION #25DPP01134 BVW
SERVICES, LLC**

:
: SUPERIOR COURT OF NEW JERSEY
:
: APPELLATE DIVISION
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: NO: A-000335-25
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: ON APPEAL FROM STATE OF NEW
: JERSEY DEPARTMENT OF
: TREASURY, DIVISION OF
: PROPERTY AND PURCHASE
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AMENDED BRIEF SUBMITTED ON BEHALF OF APPELLANT BVW SERVICES, LLC

**COHEN, SEGLIAS, PALLAS,
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PRELIMINARY STATEMENT

This appeal arises from the arbitrary, capricious and unreasonable final agency decision of the New Jersey Department of Treasury, Division of Purchase And Property ("DPP") to cancel the award of snow removal work to Appellant BVW Services LLC ("BVW"). BVW's contract was cancelled along with that of 17 other awardees. The DPP cancelled the award to BVW because BVW did not gather 467 trucks and plows, in one location, mere weeks after award, months before the start of the contract and in the middle of the Summer. While the DPP claims that the inspection was needed to ensure that the DPP was a responsible contractor, under its regulations, the DPP already made that determination when it awarded 81 price lines, involving 467 trucks, to BVW.

Thereafter, the record reveals that throughout the Summer of 2025, as a responsible contractor, and consistent with the Solicitation, BVW set-up its operations in order to meet the contractual start date of October 1, 2025. When the DPP rescinded the award in September 2025, it awarded work to contractors that should have been deemed a lower preference than BVW and the 17 other contractors whose awards were rescinded. Because the DPP's decision was arbitrary, capricious, unreasonable and not supported by substantial credible evidence, this Court must reinstate the 81 prices lines awarded to BVW.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

1. The DPP's Solicitation for Three-Year Snow Removal Contracts Commencing on October 1, 2025, and BVW's Bid to Provide Snow Plowing.

On January 23, 2025, the DPP issued Bid Solicitation No. 25DPP01134, T0777 - Snow Plowing and Spreading Services, New Jersey Department of Transportation (the "Solicitation") with a contract begin date of October 1, 2025 and an end date of September 30, 2028. 1a-51a; 52a. The Solicitation sought bids for multiple services, including plowing with bidder provided trucks and equipment, plowing with NJDOT-owned equipment, and salt spreading services. 5a.

Section 8.9 of the Solicitation set forth the evaluation criteria, which included consideration of bidder experience, equipment preference, and price. 39a-43a. The Solicitation offered a first preference to bidders proposing to use their own snow plowing equipment, over those intending to utilize NJDOT-owned equipment. 40a. In particular, it stated that the DPP would evaluate bids based upon the following "equipment preferences":

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.

[40a]

This section went on to explain that the State would only evaluate "2nd preference bidders" for a "Price Line" if there were no "1st Preference Bidders." 40a.

In response to the Solicitation, BVW submitted a bid dated March 12, 2025. 53a. BVW submitted pricing for the first preference, as well as for the second preference, as a back-up, as the Solicitation explained that if a bidder included a price for both preferences, and was deemed "responsive", it would only be awarded the first preference. 76a-100a; 40a.

On the "Subcontract Utilization Form," BVW expressly wrote into that form that the subcontractors would be "provided upon award if necessary." 62a. That is because, at the time of bid, BVW did not know how many routes and trucks the DPP would award to BVW; thus, it did not know how many subcontracts it required.

2. BVW is Deemed a Responsive Bidder and Awarded 176 1st Preference Price Lines For Snow Plowing.

On April 4, 2025, the DPP opened 176 bids. On June 27, 2025, the DPP issued Notice of Intent to Award and Recommendation Report (the "June Award"), pursuant to which the DPP found that BVW provided the requisite bid documents and, therefore, was "eligible for award of plowing services only." 101a; 152a. The June Award also confirmed that "BVW was deemed responsive for all other Price Lines submitted as part of its Quote." 152a. Thus, the DPP accepted BVW's annotated "Subcontractor Utilization Form" and did not find

that that the failure to identify all subcontractors at the time of bid rendered BVW's bid as non-responsive. The June Award named BVW as the lowest-priced, first-preference awardee for multiple price lines. 116a-129a; 152a.

On July 7, 2025, BVW wrote to Michael Maciolek (the Procurement Lead for DPP) to confirm receipt of the June Award and accepted all price lines for which it was identified as the lowest responsible bidder under the Snow Plowing and Spreading Services solicitation. 176a. BVW also affirmed its commitment to provide its own plows for the Snow Plowing and Hauling Services category, in full compliance with the solicitation requirements. 176a.

In reliance on the June Award, BVW made substantial investments in preparation to perform the contract, including investing more than \$750,000 to acquire snow plowing equipment required of a first preference bidder. BVW also began to set up subcontracts for furnishing plows, trucks and drivers. On July 14, 2025, BVW wrote again to Mr. Maciolek requesting the contact information for the supervisors responsible for the snow routes which BVW had accepted. 178a. Mr. Maciolek did not respond.

3. **In July 2025, the NJDOT Demands that BVW Promptly Make Over 600 Trucks and Plows Available for Inspection, in One Location and at One Time.**

Three days after BVW followed-up with the DPP, Anthony Ennas (Senior Director of Statewide Operations for New Jersey Department of Transportation) wrote to BVW requesting an inspection for 635

trucks and snowplow equipment within ten (10) business days. 179a-181a. Mr. Ennas further demanded that "each vehicle and equipment must be physically onsite and presented with a valid vehicle registration." 179a. In making such a request, Mr. Ennas referenced section 4.12.2, which pertains to inspections during the contract term or during a "call out" for a weather event. BVW acknowledged receipt of the letter from Mr. Ennas on July 21, 2025. 183a.

On July 23, 2025, Mr. Ennas requested BVW's phone number, name and address of its "Headquarters." 182a-183a. BVW responded the same day by providing Mr. Ennas with the address and contact information for BVW's main office. 182a. On July 24, 2025, Mr. Ennas requested the same inspection, despite already being provided with the information requested concerning the location of BVW's facilities, but also expanded the scope of his prior request for information to include "an inspection of upwards of 650 trucks and plow set ups." 186a. Apart from the unusual nature of his request, Mr. Ennas also failed to cite or refer to any aspect of the June Award (including the Solicitation to which it relates) upon which his request for an inspection of BVW's vehicles and equipment in July of 2025—that is, more than two (2) months before the commencement of the contract term was scheduled to begin was being made.

Physical inspection of 635 trucks (or 650, for that matter), most of which are not even owned by BVW, but by its subcontractors,

would have incurred extraordinary costs and effort. Given that the request to inspect was made in July, many months from Winter, the trucks were being used for other purposes and projects, including site work, landscaping and other construction hauling. Coordinating such an inspection would require BVW to call in all of these trucks, many of which were owned by other entities and being used for other contracted purposes, and have them brought to a single expansive area that would have likely exceeded two football fields in size. Further complicating matters, an inspection in July - again, more than two months before the commencement date - would not even address the actual configuration of the trucks as snowplows, since the plows themselves are not mounted during the summer months. The requested inspection in July would therefore be not only impractical, but also entirely unnecessary given that the readiness of the equipment could not be properly assessed until the plows were physically attached closer to the actual start of the contract.

Regardless of the propriety and practicality of Mr. Ennas' request, BVW responded the same day by reiterating that it was cooperating with the NJDOT's various requests for information and would follow up with him in ten (10) short business days. 185a. On July 29, 2025, BVW provided the DPP with a list of twelve (12) expected subcontractors and advised that it would have registrations for trucks gathered in the next day. 188a-189a.

On July 30, 2025, BVW notified Mr. Maciolek that it would be unable to secure equipment for 31 of the routes previously awarded to it. 191a. BVW further stated that it would "continue with our current efforts to provide the information as requested to you." 191a. The next day, Mr. Maciolek confirmed BVW's forfeiture of 31 routes. Id. This brought BVW's truck and plow total down to 467 trucks. 190a-191a.

On July 30 and 31, in response to an email from BVW supplying truck registrations, Samantha Canulli (Contract Administrator at NJDOT), sent a series of emails to BVW regarding the inspection. 192a-193a. On July 30, Ms. Canulli wrote:

As stated in the letter sent on July 17, 2025 an inspection needed to be set up within 10 business days of the letter for all trucks and plows to be inspected. Sending registrations is not sufficient for an inspection. We are available all the rest of the week and the weekend to set up inspections. Failure to comply with the above or presenting fewer than listed number of trucks and equipment may result in the termination of the affected Bid Solicitation Price Lines.

Please let myself or Anthony know when tomorrow morning 7/31 when inspections For ALL TRUCKS AND ALL PLOWS.

[192a.]

On July 31, Ms. Canulli wrote:

As of today 7/31/25, there has not been a single inspection set up for the 467 trucks and plows claimed to be supported by your company.

The deadline for ALL TRUCK and PLOW inspections is 8/3/2025 no exceptions.

[192a.]

These e-mails essentially demanded that BVW acknowledge extra-contractual terms that did not appear in the June Award, and BVW had to have all 467 trucks and plows at one location for inspection, or risk having its contract rescinded. 192a.

4. **The NJDOT Encouraged the DPP to Cancel the Contract to BVW Because it Pushed back on the NJDOT's Unreasonable and Extra-contractual Inspection.**

On August 1, 2025—more than 60 days before the commencement of the contract term for the June Award—five NJDOT representatives were provided with full and unfettered access to BVW's facility, shop areas, garages, yard area, and equipment. 196a. At no point during this process did any of the representatives attempt to inspect any of the vehicles and equipment BVW had on site for deployment to provide plowing services. 264a.

After the inspection, Ms. Canulli wrote to the DPP to advise that BVW disagreed that it had any obligation under the Solicitation to make all of its 467 trucks available for inspection because the contract did not start until October 1, 2025. 194a Ms. Canulli further made clear to the DPP that in her opinion, the "NJDOT can request inspections whenever deemed needed with the intent to award." 194a.

Thereafter, on August 3, 2025, BVW wrote once again to Mr. Maciolek to demonstrate its efforts to work with Mr. Ennas and Ms. Cannuli, but explained that the requests were not supported by the Solicitation. In particular, section 4.12.2, cited by Mr. Ennas in his July 17, 2025 letter demanding the inspection, only permits inspections during the contract term. 197a-198a. BVW further advised that it and its subcontractors were expending "hundreds of thousands of dollars" to prepare for the contract start date, but that BVW was concerned that the NJDOT planned to "subvert the awards to [it]." 199a. Despite BVW's belief that no inspection was required before October 1, 2025, "in the spirit of cooperation," BVW offered to "provide all the location and # of trucks and plows." 199a. On August 4, 2025, Mr. Maciolek acknowledged receipt of BVW's August 3, 2025 correspondence yet failed to provide BVW with a substantive response. 197a.

5. BVW Tried Again to Accommodate the NJDOT's Premature Inspection Demands, but the DPP Canceled the Contract Awarded to BVW.

After more than a month without receiving a response to BVW's August 3rd correspondence, BVW extended another series of invitations aimed at accommodating the DPP's extra-contractual request for an on-site inspection of BVW's facilities and equipment prior to the October 1, 2025 commencement date. 200a. Specifically, BVW wrote to Mr. Maciolek on August 29, 2025 offering to arrange for 150 plows and frames to be inspected by the DPP on September

4 or 5, 2025, and another 100-250 plows and frames by September 15, 2025, with the balance to be inspected on October 1, 2025—the commencement date. 200a. When that correspondence went unanswered, BVW wrote again to Mr. Maciolek on September 4, 2025, renewing BVW's August 29, 2025 invitation. 200a. BVW received no response.

On September 5, 2025, the DPP issued a Revised Notice of Intent to Award (the "September Award"), rescinding BVW's awards for all price lines¹. 201a-209a. The DPP states that the reason for recission was due to BVW's failure to "schedule an inspection" of all of its vehicles and equipment by the given deadline. 229a-230a. While in its June 27, 2025 NOIA, the DPP awarded over forty Price Lines to BVW as a "First Preference" bidder, in its September 5, 2025 revised NOIA, the DPP awarded dozens of BVW's price lines to "Second Preference" Bidders. 201a-216a. For example, on Price Lines 109 and 196, the DPP explained that while it was rescinding an award to BVW, it could not award to the "next closest most advantageous" first preference bidder because those bidders, FS Trucking LLC and Akgun Transportation, also did not pass the NJDOT's inspection. 230a; 234a. In total, the September revised

¹ The DPP rescinded the following 81 lines from BVW: 108, 109, 110, 112, 113, 114, 119, 120, 123, 134, 136, 137, 138, 139, 177, 178, 179, 180, 181, 193, 196, 195, 196, 219, 224, 227, 230, 241, 242, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 267, 268, 269, 270, 271, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 285, 288, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 312, 313, 314, 315, 316, and 317. 229a-230a.

NOIA explained that eighteen (18) separate contractors, or approximately 30% of awardees, could not satisfy the NJDOT's inspection requirements and would have their awards rescinded. 227a-258a.

6. BVW Timely Protested the DPP's Decision, but the DPP Maintained the Cancellation in its Final Agency Decision.

On September 10, 2025, BVW filed a formal protest with the DPP. 261a-288a. On September 12, 2025, the DPP issued its final agency decision, affirming the rescission of the price lines formerly awarded to BVW. 289a-297a. On September 26, 2025, BVW requested that the DPP stay the award of the contracts until BVW could pursue its appeal in this Court. On September 29, 2025, the DPP rejected BVW's request for a stay. The same day, BVW filed a Notice of Appeal in the Appellate Division. 298-301a.

On September 30, 2025, BVW filed an application for permission to file an emergent motion, which was granted. This court, thereafter, granted BVW's motion to stay and for an expedited appeal.

LEGAL ARGUMENT

The DPP disregarded its own regulations, the express language of the Solicitation, and relevant circumstances when it cancelled the award to BVW, which constitutes arbitrary, capricious and unreasonable decision-making that this Court must overturn.

1. Standard of Review.

New Jersey's procurement laws are intended to "guard against favoritism, improvidence, extravagance and corruption" and to "secure for the public the benefits of unfettered competition." Barrick v. State of New Jersey, 218 N.J. 247, 258 (2014) (citing Keyes Martin & Co. v. Dir. of Div. of Purchase and Prop., 99 N.J. 244, 256 (1985)). Although the DPP has broad discretion to determine which bid is most advantageous to the State, "the grant of discretion to the Director to administer the public bidding process is not limitless." *Id.* Importantly, if the DPP's decision is shown to have been "arbitrary, capricious, or unreasonable, or [] not supported by substantial credible evidence in the record as a whole" than it should not be upheld by the Appellate Division. *Id.* at 259 (quoting In re Stallworth, 208 N.J. 182, 194, 26 A.3d 1059 (2011)(internal citations omitted)(alteration in original). Moreover, "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)

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). Moreover, in applying the arbitrary, capricious and unreasonable standard, "the court should determine whether (1) whether the agency's action violated the legislative policies expressed or implied in the act governing the agency; (2) whether the evidence in the record substantially supports the findings on which the agency's actions were premised; 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'." Barrick at 247 (quoting *In re Carter*, 191 N.J. 474, 482, 924 A.2d 525 (2007) (internal citations omitted)).

2. The DPP's Decision to Cancel the Award of 467 Price Lines to BVW is Arbitrary, Capricious, Unreasonable and Not Supported by Substantial, Credible Evidence. (262a)

The DPP's basis for its Final Agency Decision to cancel all price lines awarded to BVW and to, instead, award to the mostly 2nd Preference bidders cannot be maintained. Pursuant to its regulations, in June 2025, the DPP already determined that BVW was a responsive and responsible contractor. 152a. In the period after award and before the start of the contract, the DPP did not have the right under the Solicitation to demand inspection, at one location, of all 467 trucks and plows BVW intended to use. Since the DPP had no right to make such a demand in the Solicitation, the DPP's decision to cancel BVW's contracts for failing to pass

such an inspection is arbitrary, capricious, unreasonable and not supported by sufficient credible evidence.

A. The DPP Properly Determined BVW to be Responsive and Responsible. (267a)

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. 17:12.7(a)-(f).

In his June 27, 2025 Recommendation Report that recommended an award to BVW, Mr. Maciolek, the DPP's Procurement Lead assigned to this contract, determined that BVW provided evidence of the requisite experience for plowing services. 152a. He further determined that BVW's bid was responsive for the Price Lines the DPP recommended awarding to BVW. 152a. Therefore, Mr. Maciolek recommended an award for various price lines to BVW as set forth in Table A, because BVW was a "responsive bidder per price line for snow plowing and hauling services." 174a.

Upon receipt of a recommendation, like that one made by Mr. Maciolek, the director may:

issue a **notice of intent to award** to a **responsible 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).]

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 BVW for over forty Price Lines. 101a. By issuing the June 27, 2025 Notice of Intent to Award to BVW, pursuant to N.J.A.C. 17:12-1.3, ***the Director already determined that BVW was both responsible and had submitted a responsive bid.***

Notably, the DPP does not contend that the recommendation of award to BVW was made in error, that BVW's bid was non-responsive or that at the time of the award, the DPP considered BVW an irresponsible bidder. Instead, the DPP's decision to cancel the award to BVW was based upon subsequent activities - mainly the NJDOT's decision to demand an inspection that was not required by the Solicitation, and which was highly impracticable to satisfy. 230a.

B. The DPP Bases its Inspection Demand on Solicitation Provisions that Do Not Allow for Pre-Contract Term Inspections of All Trucks and Plows. (267a)

In its Final Agency Decision, the DPP relied on two sections of the Solicitation to support its rescission of BVW's award based on the allegedly failed inspection. 292a. The 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"). 292a. Neither provision supports the DPP's position, and this Court must review the DPP's legal interpretation of these provisions *de novo*. Suburban, 383 N.J. Super at 492.

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. Indeed, BVW was not alone in failing to satisfy the NJDOT's novel inspection requirement—seventeen (17) other contractors, or approximately 30% of all awardees, also had their price lines rescinded for the same reason. 227a-258a. This fact alone suggests that the inspection requirements in the Solicitation were not as clear as the DPP asserts.

i. Section 4.12.2 is Inapplicable Because the Contract Term Has Not Started. (267a)

Solicitation 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). 21a-22a. Thus, this section only permits an inspection in two instances: once the contract term has commenced or during a "call out."

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. 34a. NJSTART provided that the term of the contract **would run from October 1, 2025** through September 30, 2028. [52a]. Thus, under the first part of Section 4.12.2, the NJDOT could not demand an inspection until October 1, 2025.

Regarding the second part of this section, a "Call-Out" is defined by 9.3 of the Bid Solicitation as a "[t]elephone call from the NJDOT informing the Contractor to report for Operations at the Assembly Location at a specified time." 49a. Section 4.8.1 expressly provides that contractors must be ready for a call-out by October 1st of "each year of the contract." 20a. Therefore, by the plain language of this section, the call-out cannot occur before October 1, 2025 since contractors have through September 30, 2025 to prepare for a potential call-out.

This timeframe 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 on September 30, 2025. 129a.

The DPP ignores the plain language of Section 4.12.2, when it required that BVW make its vehicles and equipment available for an inspection months prior to October 1, 2025. At the time of NJDOT's inspection of BVW's facilities in August 2025, neither of these conditions had been met. Accordingly, the August inspection fell outside the scope of Section 4.12.2 and cannot be cited as "credible evidence" to support the DPP's cancellation of its award to BVW.

Moreover, the DPP's reliance on section 4.12.2 also does not coordinate with other sections of the Solicitation. For Second Preference awards, the contractor is only required to pick up the State-supplied plows by October 1 under Section 4.15.5.1. 27a. 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." 21a. 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 Solicitation did not require an awardee to present vehicles and equipment for inspection before the commencement of the Contract Term on October 1, 2025, the DPP's rescission of its award to BVW based on an allegedly failed inspection under Section 4.12.2 was arbitrary and capricious.

ii. Section 8.7 Does Not Empower DPP to Inspect Facilities After Issuing a Notice of Intent to Award, and Does Not Include Inspection of All Vehicles and Plows. (267a)

The DPP's reliance on Section 8.7 and assertion that it had a right to inspect in order to determine responsibility is equally misplaced. That provision, titled "State's Right to Inspect Bidder's Facilities" (39a), must be read in conjunction with the DPP's prior decision that BVW was a responsive and responsible bidder, the DPP's regulations, and other contract provisions.

Section 8.7 does not support the DPP's rescission of award to BVW for three reasons: a) the DPP already determined that BVW was responsible under its regulations when it issued its Notice of Intent to Award; b) the term "facilities" in Section 8.7 does not include vehicles and equipment; and c) the DPP's suggested interpretation of 8.7 conflicts with numerous other provisions, which make clear that contractors are provided several months between award and the start of the contract to set up their operations.

a) Under its Regulations, the DPP already determined that BVW was Responsible. (262a)

Pursuant to the DPP's procurement regulations, N.J.A.C. 17:12-1.1, et al., the Director may only issue a notice of intent to award ("NOIA") to a "responsible bidder," which is a bidder who is deemed by the DPP "to have integrity and to be reliable and capable of performing all contract requirements." N.J.A.C. 17:12-

2.7(g); N.J.A.C. 17:12-1.3. Having already made that finding, the DPP cannot now retroactively invoke Section 8.7 to reassess BVW's responsibility status using *ad hoc* inspection criteria not set forth as an element of "responsibility." Indeed, had the DPP desired to perform an inspection of BVW's facilities² prior to issuing a letter of intent to award to BVW, section 8.7 would give such authority. But to empower the DPP to conduct post-award (and pre-contract) inspections of bidder to determine responsibility would extend the Director's discretion beyond the limits imposed by the DPP's regulations. 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.

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

Thus, following the issuance of a NOIA, the Director's discretion is limited to identifying any remaining certifications or "essential documents" that must be submitted prior to contract execution. By its own regulations, the DPP is not authorized to demand exhaustive inspections in the period between post-award and pre-contract commencement.

² As explained *infra*, "facilities" does not include trucks and equipment.

The DPP's choice to ignore its own regulations, which require that NOIAs be given only to "responsible" contractors, is evidence that it now seeks to backfill the legal support for its inspection mandate. The DPP cannot point to one provision in the Solicitation that unambiguously required bidders to have all equipment and vehicles ready for inspection, in July, at one location.

b) The term "facilities" in Section 8.7 does not include vehicles and equipment. (292a)

Even if Section 8.7 does afford the State the right to inspect a bidder's facilities after issuing a NOIA (it does not), the right to an inspection is related to the bidder's "facilities" - not its vehicles and equipment. The DPP 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." 366a. 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.

The Bid Solicitation references "equipment" 170 times and has an entire section defining the equipment requirements for the Project - Section 4.12. 21a-23a. 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. 21a-22a. 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. 18a; 39a. 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 or could have included such a pre-contract inspection requirement in Section 4.12. However, by using a new (and different) term, "facilities," the only reasonable 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> ("a place, especially including buildings, where a particular activity happens"); *Merriam-Webster Dictionary*, "facility (noun)" (September 2025), available at <https://www.merriam-webster.com/dictionary/facility> ("something (such as a hospital) that is built, installed, or established to serve a particular purpose"). BVW fully complied with the July 2025 inspection request

of its "facilities," meaning the location of its business, as it did welcome the DPP to for an inspection on August 1, 2025. 196a; 264a.

Moreover, other canons of construction cut against the DPP's arguments. 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 inspection of all trucks and 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 word "facility" serves as a poor substitute.

c) The DPP's proffered interpretation of Section 8.7 does not harmonize with the contract as a whole, which makes clear that a bidder has until October 1st to establish their operations in advance of snow season. (295a)

The DPP's proffered interpretation of Section 8.7 is particularly challenged when the award to BVW, involving 467 trucks, is viewed as a whole three-year snow removal contract. Indeed, nothing in Section 8.7 expressly mandates that BVW be ready in July, for one inspection, at one location with hundreds of trucks and plows. In fact, the DPP's interpretation of Section 8.7

has the logical effect of requiring that contractors be operationally ready for an inspection of all equipment and vehicles immediately after receipt of an NOIA, and every day thereafter for the 3-year term of the contract. But this interpretation directly conflicts with Section 4.8.1 which states: "The 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." 20a.

Moreover, the Solicitation does **not** require that, at the time of bid or award, bidders or awardees own or control all equipment. Rather, the Solicitation provides contractors time and flexibility in how to they will satisfy the contract requirements and get ready for the start of the winter season, which runs from October 1st - April 30th. 18a.

The practical realities that a contractor will need time in the non-Winter Season to assemble its operation are acknowledged in the Solicitation. One possible way that a contractor can satisfy its obligation is to subcontract under Section 3.13.8 of the Solicitation, which allows contractors to add subcontractors via a "Subcontractor Utilization Plan." 12a. Since bidders do not know how many price lines they may be awarded until after the award is made, it would be nearly impossible and unrealistic for a contractor to line up all subcontracts prior to bid. Instead, if needed once the award is issued, a contractor can submit subcontracts to the DPP through Section 3.13.8. 12a. BVW advised

the DPP in its bid that it would provide a Subcontractor Utilization form upon "award if necessary" (62a), and the DPP still determined BVW to be responsive. This fact further shows that at the time of award, the DPP recognized a period of operational set-up by the selected contractors. In the weeks after award, BVW supplied subcontractor information. 189a.

Moreover, the Solicitation acknowledges that during the non-Winter Season, the contractors' trucks are used for non-State related activities. Outside of the Winter Season, under Sections 4.12.7.2 and 4.12.7.3, the NJDOT may request that the contractor use its trucks to haul and/or load debris, **but** contractors may decline the request if their trucks or equipment are unavailable. 23a. Since the Solicitation acknowledges unavailability of trucks and equipment outside of the Winter Season, the DPP's proffered interpretation of Section 8.7 that would require total readiness throughout the year cannot be reconciled.

Since the Solicitation does not mandate readiness for snow removal activities all year, the absurdity of the DPP's inspection demand must be considered. In order to satisfy the NJDOT's request, BVW would have had to call-in trucks that were working in other capacities such as site work, landscaping and construction hauling, without affixed snow plows, many of which were owned by subcontractors. To make such a request is an "unreasoning action, without consideration and in disregard of circumstances."

Bayshore, 122 N.J. Super. at 199. Even if BVW could arrange such an inspection, the space requirement for 467 trucks is massive – likely over two football fields in size. Nowhere in the Solicitation does it require that the bidders have one location large enough to fit all of their plows and trucks. Instead, section 9.3 explained that in a call-out, which can only occur on or after October 1st, the NJDOT assigns the “Assembly Location.” 49a.

The DPP’s decision to cancel the award to BVW because it did not physically present all 467 the plows at the time of August 1, 2025 inspection is arbitrary, unreasonable and capricious. Barrick, 218 N.J. at 259. This is especially true because BVW went beyond its obligations in the Solicitation to accommodate the NJDOT. On August 29, 2025, BVW invited the NJDOT to inspect all 467 trucks in the following manner: 150 plows and frames to be inspected by the DPP on September 4 or 5, 2025, and another 100–250 plows and frames by September 15, 2025, with the balance to be inspected on October 1, 2025—the commencement date. 200a. The DPP’s decision to rescind the NOIA a week later, despite this offer from BVW, demonstrates its bullshness to rescind rather than carefully consider the Solicitation’s requirements and whether BVW could perform.

C. Because the Solicitation Did Not Support the NJDOT’s Inspection Requirements, there is no Non-Arbitrary or Unreasonable Reason to Cancel BVW’s Contract and Award the Majority of Price Lines to Second-Preference Bidders. (262a)

N.J.S.A. 52:34-13 mandated the State Treasurer to publish rules and regulations determining terms and conditions to "promote competition," and implement N.J.S.A. §§ 52:34-6 to 52:34-20. The DPP's decision to act in violation of its adopted regulations and the Solicitation violates the legislative policies of N.J.S.A. §§ 52:34-6 to 52:34-20. Barrick at 247. Competition is not promoted when agencies act inconsistent with the information conveyed to bidders. In this specific situation, by inflating its inspection abilities in the Solicitation and by distorting its regulations, the DPP eliminated 30 percent of contractors and grossly reduced the competition.

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 required 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. . . .

[40a (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 NOIA, 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). 201a-207a.

Furthermore, the DPP acted in a manner inconsistent with supporting competition amongst responsible contractors for State work. In response to the NOIA, because it is a responsible contractor, BVW incurred in excess of \$700,000 to prepare for the contract. If the DPP is permitted to rescind awards for reasons not set forth in the regulations or a Solicitation, responsible contractors who have the funds and willingness to invest in their operations will be less interested in working with the State. It is anti-competitive to award contracts to bidders that the DPP finds responsible, encourage the contractors to incur costs in reliance on the future work in the award, and then cancel the award

for reasons that 30% of awardees could not satisfy. Such actions do not promote competition in State procurement, a key legislative goal, and is evidence of the DPP's arbitrary and capricious conduct. Barrick at 247.

Furthermore, because the Solicitation did not require BVW to make all vehicles and equipment ready for an inspection prior to the contract, there was no evidence to support the DPP's decision to rescind the award and the decision was not reasonable. Barrick at 247. Stated differently, since the only reason set forth by the DPP for rescission was that BVW failed to satisfy its extra-contractual inspection requirement, there is no other evidence to support the decision on which the DPP can rely.

Because the DPP's final agency decision was arbitrary, unreasonable, capricious or not supported by substantial credible evidence, this court must overrule the DPP's decision to rescind from BVW prices lines 108, 109, 110, 112, 113, 114, 119, 120, 123, 134, 136, 137, 138, 139, 177, 178, 179, 180, 181, 193, 196, 195, 196, 219, 224, 227, 230, 241, 242, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 267, 268, 269, 270, 271, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 285, 288, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 312, 313, 314, 315, 316, and should reinstate the award of these 81 lines to BVW.

CONCLUSION

For these reasons, BVW respectfully requests that this Court overrule the Final Agency Decision of the DPP and reinstate the award to BVW.

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Date: October 20, 2025

IN THE MATTER OF BID	:	SUPERIOR COURT OF NEW JERSEY
SOLICITATION #25DPP01134,	:	APPELLATE DIVISION
BVW SERVICES, LLC.	:	DOCKET NO. A-000335-25
	:	
	:	<u>CIVIL ACTION</u>
	:	
	:	ON APPEAL FROM:
	:	DEPARTMENT OF THE TREASURY
	:	DIVISION OF PURCHASE AND
	:	PROPERTY

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

Date Submitted: October 31, 2025

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PROCEDURAL HISTORY AND STATEMENT OF FACTS¹

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 during winter weather. The goal during a winter storm is to maintain the roads for safe travel, at safe speeds, 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 plowed and de-iced.

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 2020.² (Pa1.) The Bid

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

² "Pb" refers to BVW's brief; "Pa" refers to its appendix.

Solicitation sought quotes from bidders for snow plowing and spreading services on all State interstates and highways under the jurisdiction of NJDOT for three years, plus four possible additional one-year extensions. (Pa1.) The Bid Solicitation document becomes a part of the contract for those bidders who receive a contract award. Bid Solicitation Section 1.4. (Pa6.)

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 (Pa76.) Then, for each section of road for which they wanted to provide a quote, bidders could offer to provide either 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

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 The 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.

Division's preference was to award to a bidder who submitted a quote for the 1st preference, providing both the truck and the plow. (Pa5.)

The Bid Solicitation required bidders to submit, together with their quote, a form entitled "Offer and Acceptance Page." (Pa53.) 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.

[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. BVW Services, LLC (BVW) submitted its Offer and Acceptance Page with its bid, but it was never countersigned by the State. (Pa53.)

Because bid solicitations also serve as key documents in the contracts awarded from them, this 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.” (Pa45.) BVW’s offer and acceptance page was not countersigned by the Division. (Pa53.)

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. (Pa50.) 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. (Pa130.) Representatives of eight potential bidders attended; however, no representative from BVW 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. (Pa131.) Those answers also served to amend or supplement the original bid solicitation. Ibid.

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.” (Pa15) (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.

[Pa21-22.]

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.” (Pa39.)

The Division opened 176 quotes on April 4, 2025, the bid submission deadline. (Pa131.) Of the quotes submitted, 169 of them were deemed administratively complete for further review. (Pa136.) 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. (Pa101.) The June NOI required the intended awardees to confirm their acceptance of the intended awards prior

to the close of the protest period. (Pa174.) BVW was the first preference intended awardee of 112 lines 108-110, 112-114, 119-120, 123, 134, 136-139, 148-152, 159-162, 174, 176-181, 193-196, 203-209, 219, 224, 227, 230, 236-239, 241-242, 247-301, 312-317 (Price Lines.) (Pa101-115.) On July 17, 2025, NJDOT sent BVW a letter to schedule an inspection of the trucks and plows that BVW intended to use to perform the contract work for the price lines intended to be awarded to BVW. (Pa18.) Specifically, that letter advised BVW: “[in] accordance with . . . Section 4.12.2 Equipment Inspections, be advised that NJDOT Winter Operations staff will be conducting an inspection of all trucks and snow plowing equipment. At the time of the inspection, each vehicle and equipment must be physically on site and presented with a valid vehicle registration.” *Ibid.* (emphasis added.)

Between July 21, 2025 and July 23, 2025, NJDOT communicated with representatives from BVW to schedule vehicle inspections. (Pa182.) By way of email, NJDOT confirmed details from a phone call with BVW and reiterated that NJDOT expected to see all required trucks and plows at the scheduled inspection, and that it was the contractors responsibility to present all of the required equipment, including that of any approved sub-contractors, by the inspection deadline. (Pa185.) On July 30, 2025, BVW forfeited 31 of the lines from the June NOI, leaving BVW with 81 lines: 108-110, 112-114, 119, 120,

123, 134, 136-139, 177-181, 193-196, 219, 224, 227, 230, 241, 242, 247-265, 267-271, 273-282, 285, 288, 290-299, and 312-317. (Pa190-191)

The email correspondence continued between NJDOT and BVW on July 30, 2025, and July 31, 2025 and BVW never objected to the required inspection. (Pa190-Pa192.) During these communications NJDOT was clear about its expectations for the inspection; namely that 1) BVW would present all trucks and plows necessary to plow the road sections that BVW was awarded; and 2) its failure to present the required equipment could result in the termination of the awarded Price Lines. (Pa190-Pa192.) Again, at this point BVW made no objection to the required inspection, and did not oppose the requirement to present the required equipment for inspection, but BVW did not offer a date for the inspection as requested. Ibid.

After the email exchange on July 31, 2025, BVW emailed NJDOT to advise that it was prepared for an inspection the next day, August 1, 2025. (Ra1.) NJDOT summarized the correspondence and inspection in an email to DPP as follows:

As soon as NJDOT sent the letter out for inspections on 7/17/25. Anthony reached out to BVW (via phone calls and emails) to talk about setting up inspections numerous times. They took days to reach back out and finally had a phone call last Friday 7/25/25 and they informed Anthony they were getting the registrations together. Anthony informed them we needed to inspect the truck, registrations, and plows by 8/3/25

I met with BVW this morning 8/1/25 at their yard along

with Jeff Evanylo, Steve Irons, Ed Fala, and Dave Romeo.

BVW informed me that I was not allowed to send a letter and threaten them with 10 days to inspect 400+ trucks and plows. They said the contract technically doesn't start til October 1st and they would be ready, they are ordering plows now. BVW said it is not stated anywhere in the contract that NJDOT can do any of this. I informed BVW that it was in the sections referenced in the letter they received on 7/17/25. The entire tone of the meeting was threatening and stated they are in contact with a legal representative.

I informed BVW that NJDOT can request inspections whenever deemed needed with the intent to award. I also informed them that I would be reaching out to Treasury and my legal team. I am leaning on you guys to move forward.

I ended the meeting letting them know someone either NJDOT or Treasury would get back to them on their request of more time. BVW wants more time and NJDOT would like to rescind all their lines, they have not scheduled one truck or plow to be inspected as of today, Also they supposedly ordered plows that they cannot even guarantee for Oct 1st.

I have attached all correspondence with BVW for reference.

[Pa194.]

In sum, despite stating it was prepared for an inspection, BVW failed to present any equipment for inspection at that time. Ibid. This was despite the multiple notifications in the Bid Solicitation, NJDOT letter, emails, and phone calls that the equipment would need to be presented for inspection to ensure BVW had the equipment it indicated it possessed by bidding in its quote. Ibid.

As a result, NJDOT determined that BVW did not have necessary equipment to perform the work required under the Bid Solicitation. See (Pa210) (September 5, 2025 Recommendation Report, pps. 18-50 listing all rescinded awards due to failure or refusal of inspection for equipment).

On September 4, 2025, the Division issued a Revised Recommendation Report. (Pa210.) The report summarized the inspection process, explained that BVW failed to make available for inspection the actual equipment needed to plow and that NJDOT could not ascertain whether BVW possessed the equipment necessary to service all of the lines awarded. (Pa218-225.) Based on that information, and because several other intended awardees had also failed to confirm they had the necessary equipment, 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 price lines to BVW and those other non-compliant vendors. (Pa201.)

Because of the fast approaching winter snow season, the Division shortened the protest period to five days as permitted by N.J.A.C. 17:12-3.3(g) to ensure that snow plowing contracts would be in place prior to the start of snow season on October 1, 2025. Ibid. 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. Ibid. 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, BVW submitted a protest challenging the September NOI (Protest.) (Pa261.) In its Protest, BVW disputed NJDOT's report and claimed it provided "full and unfettered" access to the BVW facility, shop area, garages, yard and equipment. (Pa264.) BVW further claimed no NJDOT representative "attempt[ed] to inspect any of the vehicles and equipment BVW had on site for deployment or providing plowing services" or request a meeting to do so. (Pa264.)

On September 12, 2025, the Division issued a final agency decision sustaining the September NOI. (Pa289.) On September 29, 2025, BVW filed an appeal of the final agency decision with the Appellate Division and sought a stay from the Division. (Pa298.)

On September 29, 2025, the Division denied BVW's request to stay the September NOI finding "BVW does not have a reasonable probability of success on the merits because there is no evidence that the Acting Director's decision to award the contract was founded on bad faith, corruption, fraud, or gross abuse of discretion." (Ra10.)

Upon further application the following day, the Appellate Division granted BVW permission to make an emergent application to challenge the

September NOI. (Pa353.) Accordingly, on October 2, 2025, BVW 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. (Ra14.)

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.⁵⁶ (Ra124.)

For the stayed price lines, where possible, the Division extended the 2020 snow plow contract for six months to ensure there would be snow plowing coverage in the event of a snow event early in the 2025-26 snow season. Some of the price lines stayed as a result of the court's order in this matter, specifically lines 112, 113, 120, 123, 134, 137, 181, 195, 196, 224, 227, 230, 252, 254, 255, 256, 257, 259, 265, 275, 277, 278, 280, 281, 282, 288, 290, 291, 297, 312, 313, 314, 315, were subject to this short extension. (Ra117.)

⁵ We believe the following facts are outside the record but feel compelled to provide the information because BVW included it in its brief and there is not time to file a motion to strike.

⁶ 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 R&B Debris, LLC Protest of Notice of Intent to Award, T0777 – Snow Plowing and Spreading Services – NJDOT (A-0158-25) (R&B.)

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 and the September NOI (except for those that were stayed by order of the court.) (Ra17.) 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 temporary plowing coverage for those roads impacted by the stay. Ibid.

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 (Ra63) or an extension if required for the interests of the State, Section 5.3 (Ra62.) 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, BVW e-mailed counsel for the Division claiming that the October 20th RFQ mistakenly included price lines impacted by the stay issued by this court in this matter, for award of a longer-term contract. (Ra85.) 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. (Ra87.) In addition, the Division posted an updated public Notice of Stay dated October 22, 2025 correcting a mistake as to which price lines were impacted by this Court's stay. (Ra124.)

On October 30, BVW filed another request to file and emergent motion for stay but this time to stay the opening of bids for NJDOT's RFQ seeking both (a) contactors for price lines not at issue in this or any of the other two appeals, with the contract being for three years plus four possible one-year extensions, as well as (b) contractors for the temporary price lines, which are at issue here, with the contract being only for the 2025-26 snow season. The court granted the application, set a very expedited briefing schedule and issued a temporary stay until it rules on BVW's motion.

LEGAL ARGUMENTS

I. DPP'S DECISION TO CANCEL THE AWARD TO BVW WAS NOT ARBITRARY, CAPRICIOUS OR UNREASONABLE.

There was a reasonable basis and ample factual support for the Division's

September 12, 2025 final agency decision and therefore this Court should dismiss BVW's appeal.

The Division's decision to award a contract is reviewed under the gross abuse of discretion standard and 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.

[In re Carter, 191 N.J. 474, 482 (2007) (quoting Mazza v. Bd. of Tr., 143 N.J. 22, 25 (1995) (additional citations omitted).]⁷

BVW cannot meet its burden. BVW claims the Division did not have the right, under the Bid Solicitation, to demand inspection of the trucks and plow

⁷ 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).

equipment BVW intended to use. (Pb13.) It asserts the Solicitation provisions relied on by the Division do not allow for pre-contract term inspections of all trucks and plows, asserting the Division's interpretation of the provisions "do[] not harmonize with the contract as a whole." (Pb23.) BVW also disputes NJDOT's report and insists it went "beyond its obligations" to accommodate the inspections by inviting NJDOT to inspect its equipment on September 4 or 5, September 15, and October 1, 2025. (Pb26.)

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.

A. BVW'S Bid Was Not Responsive or Responsible.

BVW 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." Barrick, 218 N.J. at 259. Doing so would have allowed BVW to postpone the business cost of purchasing

the plows, and thus put itself at an advantage over bidders that had already incurred those costs. 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).)

Here, BVW was non-responsive as a 1st preference bidder as evidenced by its failure to provide the requisite number of trucks and plows at an inspection, 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.”) (Pa14-35.) The purpose of the inspection was 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. BVW's failed inspection constituted a material deviation from its proposal, making the proposal non-responsive to the Bid Solicitation.

The State cannot waive that deviation because without confirmation that BVW had the necessary equipment to plow and be prepared to respond to unpredictable demands of the winter season, BVW could not assure that it would be ready to perform. Further, awarding to BVW on the 1st preference when it did not have the required equipment would have undermined the standard of competition. Doing so would have allowed BVW 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 BVW 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 BVW 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.)

Lastly, BVW argues the Division’s issuance of the June NOI constituted a determination by the Division that BVW was both responsible and had submitted a responsive bid. (Pb14-15.) 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.

[Ibid.]

Had BVW submitted a responsive quote, it likely would have been found to be responsible as the Division waived the financial responsibility review and BVW had no complaints on file. Finally, even if the initial NOI did signify that the Division had found BVW's bid to be responsive, then the Division was mistaken. The inspection showed BVW'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 BVW's bid to be neither responsive nor responsible.

B. The Pre-Contract Inspections Were Authorized by the Bid Solicitation.

BVW argues the Division's decision to rescind its intent to award BVW price lines was improper 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. (Pb18.) That is simply incorrect. 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. (Pa39.) Section 8.7 reads, "[t]he 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." Ibid.

(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.

BVW additionally argues Section 8.7 only permits an inspection before issuing a letter of intent to award. (Pb23.) But BVW mistakes the Division’s notice of intent to award a contract for the actual award. Here, the June NOI stated that the Division intended to award a contract to BVW. However, BVW’s offer and acceptance page was never countersigned, and thus no contract was formed, and an award was never issued.

BVW also asserts the term “facilities” does not include vehicles and equipment and the rules of construction dictate that an ambiguity 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.) BVW’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 BVW’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. Courts do not read words and phrases “in isolation[,]” but instead “read them in context, along ‘with related provisions[,] . . . to give sense to the legislation as a whole.’” State v. A.M., 252 N.J. 432,

451 (2023) (quoting DiProspero, 183 N.J. at 492.) 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.” (Pa14.) 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 facilities to include vehicles and equipment is in line with the overall intent of the contract.

BVW ignores that the Bid Solicitation plainly disclosed 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.” (Pa40.) 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.

NJDOT reinforced these provisions in a July 17, 2025 letter advising

BVW that it would be inspecting the equipment BVW intended to use for the lines listed on the June NOI. (Pa179.) In fact, NJDOT sent similar letters 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, BVW 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 communicating with NJDOT to attempt to arrange inspections, BVW 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.

BVW 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.

BVW cannot show that the Division conducted the procurement process in an arbitrary, capricious and unreasonable manner, let alone establish that the Division failed to comply with procurement law. The Division uniformly applied the evaluation criteria to all 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. (Pa40.) BVW 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. (Pa40.) Barrick, 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 BVW 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 BVW was not arbitrary, capricious or unreasonable and should be upheld.

II. THE DIVISION WAS AUTHORIZED TO AWARD RESCINDED PRICE LINES TO 2ND PREFERENCE BIDDERS.

BVW 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. (Pb28.) BVW argues the Division eliminated thirty percent of contractors and “grossly reduced the competition” by “inflating its inspection abilities in the Solicitation” and “distorting its regulations.” (Pb27.) BVW 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 BVW’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 specified.” (Pa14.) 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 BVW, other bidders improperly bid 1st preference despite not having the equipment needed to perform the work on which BVW bid. After completing the requisite equipment inspections of all sixty-four intended awardees, the Division issued the September NOI re-noticing potential awardees to 1st preference bidders who did possess the equipment, if such bidders were available for an award. If no 1st 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.

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 a 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. (Pa18.) The State and its residents are at risk, not BVW. BVW 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 BVW 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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