



# State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
OFFICE OF THE DIRECTOR  
33 WEST STATE STREET  
P. O. BOX 039  
TRENTON, NEW JERSEY 08625-0039  
<https://www.njstart.gov>

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June 29, 2016

Via Electronic Mail [kevinr@dublinscrapmetal.com] and USPS Regular Mail

Kevin Rafferty, President  
Dublin Scrap Metal, Inc.  
489 Frelinghuysen Ave.  
Newark, NJ 07114

Re: Appeal of Formal Complaint No. 16-04-04, Contract No. 87503  
RFP #15-X-23520 Scrap Metal Disposal—Statewide (T-2634)

Dear Mr. Rafferty,

This letter is in response to your email addressed to Lori Johnson of the Contract Compliance and Audit Unit (CCAU) of the Division of Purchase and Property (Division), dated June 16, 2016, and regarding Formal Complaint No. 16-04-04 filed against Dublin Scrap Metal, Inc. (Dublin) by the Middlesex County Office of Purchasing (Middlesex). The Division accepts your email correspondence as a formal appeal of CCAU's June 6, 2016 administrative resolution of the subject complaint against Dublin. I have reviewed the facts of this case pursuant to N.J.A.C. 17:12-4.5(a) and set forth herein my final agency decision.

The background of this case is as follows. The Division issued the subject RFP on behalf of the Division of Property Management and Construction (DPMC), the Department of Transportation (DOT), the New Jersey State Police, additional State Using Agencies, and cooperative purchasing partners to "solicit proposals from qualified bidders for the disposal of light iron, steel, aluminum, cooper, stainless steel, brass, lead, lead acid batteries, crushed steel drums and other surplus scrap metal as needed." RFP §1.1 *Purpose and Intent*. After the public opening of timely proposals and subsequent evaluation, Dublin was awarded term contract T-2634, effective September 1, 2014, through August 31, 2017.

Concerning reporting requirements, the RFP specified in Section 3.6.2:

By the last business day of each month, the contractor will provide the weigh slips, itemized summary of the metals recycled, and payment for the total amount of scrap generated for the previous month. At a minimum, the payment summary shall include the date of pick-up, the commodity type (light iron, aluminum, copper, etc.), net weight, AMM index for that commodity for that date, total amount, and grand total for the month. Payment is to be made by check to "Treasurer, State of New Jersey". [sic]

Since commencement of the contract, there have been complaints of late payment and poor performance. On March 16, 2015, Distribution & Support Services (DSS) filed Formal Complaint No. 15-03-13 against Dublin, stating that, in violation of Section 3.6.2:

. . . September 2014 payment was 28 days late. Payment for November and December were over a month late. Of particular concern is that the State has not yet received payment (\$39,062.18) for October, 2014, and that in conversations with the company in January and February 2015, when I questioned the recent late [sic] payments, the excuse was that a major buyer reneged and/or hasn't yet paid Dublin. My concern is that Dublin may be having cash flow issues and stringing out payments to its customers. I want to make sure this is just a short term issue that will correct itself, DSS payments due for October 2014 and January 2015 will be promptly paid, and going forward, Dublin will abide by 3.6.2 payment schedule for the remainder of the contract.

Dublin responded to the allegations in the complaint, stating, "The delayed payment issue is short term and Dublin will resume payments as per contract as of payment due for March 2015 material." Dublin included a payment schedule and as of May 4, 2015, DSS reported that Dublin had fulfilled all outstanding payments.

Accordingly, on May 14, 2015, CCAU resolved Formal Complaint No. 15-03-13 against Dublin for late payment and failure to meet contract requirements. CCAU also noted that "Dublin has caught up with the payments as of the date of this letter."

On January 4, 2016, DSS filed Formal Complaint No. 16-01-01 against Dublin for failing to provide payment for both the October and November 2015 pickups. Dublin responded to the complaint, stating that "due to the absence of a strong metal market and steel demand . . . the ability to obtain high-valued prices for any scrap metal in the industry is difficult . . ." Dublin stated it intended to make payments for the monthly pickups, but was "looking at approximately 60 days from the end of each month." Following the complaint filing, DSS received payment for the October 2015 pickup on January 19, 2016 (33 business days late). Accordingly, on January 20, 2016, CCAU resolved Formal Complaint No. 16-01-01 against Dublin for late-delivery of payments.<sup>1</sup>

DSS filed Formal Complaint No. 16-02-05 against Dublin on February 2, 2016, stating the payment for November 2015 was still undelivered. On February 22, 2016, Dublin responded that "due to the continued market crash and drop in pricing and value for scrap metal material, payments are still being delayed [and] requested an extension of the \$26,206.39 November 2015 payment until February 26, 2016." Dublin also requested an extension of the December 2015 payment until March 2016.

As of March 4, 2016, DSS reported it had not received the November 2015 payment. Accordingly, on March 7, 2016, Formal Complaint No. 16-02-05 was resolved against Dublin for late payment.<sup>2</sup>

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<sup>1</sup> As of the date of the complaint resolution, payment for November 2015 had not been received.

<sup>2</sup> DSS advised the Division that it received the November 2015 payment of \$26,206.39 on March 21, 2016, and that it received the December 2015 payment of \$21,262.09 on March 11, 2016. DSS also advised that on May 11, 2016 it received a payment in the amount of \$22,770.26 that covered January 2016 pickups. However, as of June 20, 2016, DSS had not been paid for pickups made in February, March, and April 2016. The payment for May 2016 pickups is due on June 30, 2016. However, as noted later herein, DSS is working with Dublin to resolve these outstanding payments.

Finally, on April 15, 2016, Middlesex filed Formal Complaint No. 16-04-04 against Dublin for non/poor performance. Specifically, Middlesex alleged:

[Dublin] has not been sending checks or statements for scrap metal that has been picked up from Middlesex County locations in a timely manner since October 2015. Numerous calls have been made . . . to Maria Macera of [Dublin], and most recently to Barbara Pagan. Checks that were promised to be mailed on a certain date have not been mailed on several occasions. We were promised that a check and statement would be mailed to us the first week of February 2016, which as of the date of this writing has not been received. This problem has been ongoing since October 2015. The last payment we received from [Dublin] was in December 2015, which was payment for pick-ups through October 2015. . . . We received a statement for November 2015, which indicates a payment of \$4,000.00 is due [to] the County of Middlesex, but we have received no payment for this. A statement that was received on April 14, 2016 differs from previous statements and is incomplete.

CCAU advised both Mr. Rafferty and Ms. Pagan through an April 18, 2016 letter of the submitted complaint and of Dublin's opportunity to submit a substantive response by May 2, 2016. The letter further specified that a failure to respond would be cause "for immediate termination of the contract, without further notice . . . ."<sup>3</sup>

Following a lack of response, CCAU sent a second request to Dublin on May 19, 2016, advising that a substantive response to Formal Complaint No. 16-04-04 must be received by June 3, 2016. Addressed to Mr. Rafferty, this second request advised Dublin that a failure to respond will result in the complaint being resolved against Dublin. Dublin again failed to respond to Formal Complaint No. 16-04-04 and Middlesex had yet to receive payment as of June 6, 2016.

Accordingly, CCAU resolved Formal Complaint No. 16-04-04 against Dublin for non-performance for failing to remit payment and for failing to respond to the complaint process. CCAU further indicated in its June 6, 2016 resolution against Dublin that:

Based on Dublin's failure to remit payment to Middlesex as well as findings against Dublin for late payment in three other instances (Formal Complaints no. 15-03-13, 16-01-01, and 16-02-05) in just over one year, and the pending case with New Jersey Transit (Docket #ESX-L-007799-14) in which they owe New Jersey Transit \$141, 305.27, CCAU recommends Dublin's contract be cancelled for cause, effective immediately.

On June 13, 2016, Mr. Rafferty submitted an email containing a letter in response to the resolution of Formal Complaint No. 16-04-04. That letter stated:

. . . I would like to personally apologize for the length of time the addressed concerns have been active and for the lack of my direct contact. . . .

Over the course of the recent couple of years we lost The Founder of our organization, Gladys Rafferty, may her soul rest in peace, and in addition were affected by some major poor industry trends and low market values. These horrible market conditions prevented us from being paid timely or not at all yet, and the loss of our Founder impacted our ability to operate continually in the manner we did prior to all these changes. In the midst of all these hard times we continued to pay the

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<sup>3</sup> The record shows this notice was sent to [kevinr@dublinscrapmetal.com](mailto:kevinr@dublinscrapmetal.com). This is the same email address Mr. Rafferty used to submit the appeal which is the subject of this decision. This notice was also sent to [bpagan@dublinscrapmetal.com](mailto:bpagan@dublinscrapmetal.com) and [ann.hartwick@co.middlesex.nj.us](mailto:ann.hartwick@co.middlesex.nj.us).

State of New Jersey and Cooperative Purchasing agencies, including Middlesex County at the contracted prices, although quite late and still come still outstanding, we have not asked to adjust pricing based on much lower values and market conditions. We continue to pay the contracted prices and will continue to do so for the duration of the contract.

To address the specific concern of Ann V. Hartwick of Middlesex County Office of Purchasing, I will have my office Overnight Mail the entire past due balance on Wednesday, June 15, 2016 without fail or delay. As for The Main Contract directly with the State of New Jersey, and all other Cooperative Purchasing Agencies we will prepare a reasonable payment plan and submit to you by the end of the month of June 2016.

On June 16, 2016, Mr. Rafferty, on behalf of Dublin, submitted the letter which is the subject of this appeal. In that letter, Dublin asserts that the original email relating to Formal Complaint No. 16-04-04 submitted to Mr. Rafferty and Ms. Pagan on April 18, 2016, "was not received in [Dublin's] Exchange Inbox, instead as . . . found today, it was directed to our main company Spam folder. Therefore, the reason our reply was not submitted timely." Dublin also stated, "Please take note that in the past, you will find that any and all complaints and communication from your office have been responded to in a timely manner and as requested, with resolution."

Dublin further stated:

Please again understand that with several radical changes affecting our company over the course of the last couple of years, including the death of my Mom . . . and the extreme low market conditions that hit the entire industry, it has been difficult to maintain regular timely payments. These horrible market conditions have prevented us from paying timely, however, still and for the duration of the contract Dublin will continue to pay the State of New Jersey and Cooperative Purchasing agencies, including Middlesex County at the contracted prices, although quite late and still some still some outstanding, we have not asked to adjust pricing based on much lower values and market conditions. . . . If you refer to previous years of service, reference and payment you will find that we have not only paid the highest value for the material, but have extended our operation to increase productivity in your facilities as best we could, and have continued to pay what we owe always. We understand we have been delinquent however we will always pay in full for the material we pickup. We would like you to consider our many years of past service and goodwill in all areas of the State of NJ's needs for Recycling Services.

For record, we sent payment today via overnight mail to Ann V. Hartwick of Middlesex County Office of Purchasing, as promised in our reply of June 10<sup>th</sup>.<sup>[4]</sup> As for the main contract with the State of New Jersey, and all other Cooperative Purchasing Agencies we are in the process of preparing a reasonable payment plan and report showing all outstanding bills for scrap metal picked up and will have that to you by the end of the month of June 2016.

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<sup>4</sup> Middlesex reported that it received a payment in the amount of \$10,485.96 on June 16, 2016, which fulfilled the outstanding payments for pickups made in November 2015, December 2015, and January 16, 2016. However, as of June 21, 2016, it had not received payment for the following pickups: January 7, 2016, March 10, 14, 24, and 29, 2016.

Subsequent to CCAU's complaint resolution, Middlesex reported that it received a payment in the amount of \$10,485.96 on June 16, 2016, which fulfilled the outstanding payments for pickups made in November 2015 and December 2015, and on January 16, 2016. On June 24, 2016, Middlesex reported it had been paid in full for the remainder of all outstanding pick-ups and its account with Dublin was up-to-date. Furthermore, on June 20, 2016, DSS advised the Division that it is working with Dublin "to be somewhat flexible with [its] payments while [Dublin] work[s] on [its] business issues." Several other using agencies have also worked with Dublin throughout the term of this contract to date to resolve outstanding payment issues. This additional information appears not to have been known to CCAU when it resolved Formal Complaint No. 16-04-04. Accordingly, I remand the resolution of Formal Complaint No. 16-04-04 to CCAU for reconsideration inclusive of this additional information.

Sincerely,

  
Maurice Griffin  
Chief Hearing Officer

JD-M:DF

c: A. Davis, CCAU  
J. Paul, CCAU  
L. Johnson, CCAU  
G. Olivera, DPP  
K. Woolford, DPP  
R. Regan, DPP