



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>

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

FORD M. SCUDDER
State Treasurer

MAURICE A. GRIFFIN
Acting Director

April 6, 2017

Via Electronic Mail [hollyloft@icloud.com] and USPS Regular Mail

David Hollingsworth, President
TEC Elevator Company, Inc.
510 South Shore Road, Suite C
Marmora, NJ 08223

Re: Appeal of Formal Complaint No. 15-05-08, Contract No. 85646
RFP #14-X-23305 Elevator Maintenance, Repair, Testing, and Inspection Services (T-2946)

Dear Mr. Hollingsworth,

This is in response to your letter to the Division of Purchase and Property (Division) dated December 24, 2015, and received December 29, 2015, regarding Formal Complaint No. 15-05-08 filed against TEC Elevator Company, Inc. (TEC) by the New Jersey Division of Property Management and Construction (DPMC). In your letter, you appeal the December 15, 2015 administrative resolution of the subject complaint by the Division's Contract Compliance and Audit Unit (CCAU). 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 all State agencies to solicit proposals for maintenance, repair, testing, and inspection services for vertical transportation equipment in all State-owned buildings. RFP §1.1 *Purpose and Intent*. After the public opening of timely proposals, TEC was awarded term contract T-2946, effective December 24, 2013 through December 31, 2016, to provide elevator maintenance, repair, testing, and inspection services for certain State buildings, including the Labor Building. As specified in the RFP:

Upon award of the contract, the contractor must perform an existing deficiency inspection and develop a deficiency list for each building. The deficiency list must be submitted to the State Building Manager within sixty (60) days after the contract start date. The State Building Manager and assigned representatives will review the listing submitted and will have final say on the determination of the application deficiency and related costs. If a deficiency list is not submitted the contractor shall bear all repair/maintenance costs.

[(RFP §3.1.5.)]

In keeping with the RFP, TEC reviewed the existing conditions of the elevators in its assigned buildings and compiled a deficiency list, dated October 1, 2013, of items that needed to be addressed immediately. After submitting this list, along with the corresponding dollar estimates, the New Jersey Office of Management and Budget (OMB) approved the work and issued a signed Purchase Order (PO) on May 27, 2014. This PO authorized work to be performed on elevator cars number 2 and 6 in the Labor building. A subsequent PO dated August 5, 2014, authorized additional work to be performed, including repairing elevator car number 3 in the Health and Agriculture Building.

On May 8, 2015,¹ DPMC submitted formal complaint No. 15-05-08 against TEC for non/poor performance, unsatisfactory product/service, and failure to provide a timeline for completion of services. The complaint specified:

TEC Elevator was directed to repair multiple elevator deficiencies on all passenger and freight cars located at various sites, all dated [and] signed in 2014. I met with the owner [of TEC] April 1[st], at 12:00 and was promised a time line for completion within two weeks. Time line still not prepared and details of what is outstanding still being prepared by TEC. Work orders from 2014 still not being addressed.

Labor building has had #5 elevator out of service for months, with promises that the circuit board will be supplied. To date the unit is still not functioning. Number 1 at the same site has had a breakdown with people stuck inside and is still not working after a week of being [inoperable]. They appear to be incapable of repairing units that are disabled and remain out of service for weeks and months. Number 7 has work[ed] intermittently for the last two weeks and they ask our building manager to reset breaker.

[T]he building manager should not be involved in any elevator resets. A repair should make it unnecessary to have to reset breakers. They have attempted fixes on number 1 and 7 for over two weeks and cannot get them operational.

TEC responded to the complaint in a letter dated November 25, 2015,² stating the following:

. . . As of today, Wednesday November 25th, 2015, all outstanding deficiencies and repairs have been completed and satisfied. All building managers of the various buildings were informed with updates via emails and phone calls in regards to all repairs and service.

As of November 1st, 2015, [TEC] no longer performs maintenance or repairs for DEP and the Labor Building under the direction of DPMC.

DPMC responded to TEC's statement in a response dated December 4, 2015, stating that TEC's assertion that all deficiencies were completed and satisfied was "not accurate." DPMC explained:

. . . Some items on the deficiency list mention[ed] within [the complaint] are not done. Some examples are the following:

¹ CCAU received the complaint on May 12, 2015.

² It appears that during this time TEC was undergoing a change in ownership, resulting in a tardy response to the complaint. Although TEC did sign form CC-36 acknowledging receipt of complaint on May 18, 2015, it did not complete the "Respondent Reply" portion of the form. Upon additional request by CCAU, TEC submitted its reply.

1. The replacement of ropes for elevator car #2 was never completed. State's authorization TEC Elevator to complete the work May 2014. (Deficiency list) See attached.³
2. The replacement of ropes for elevator car #6 was never completed. State's authorization TEC Elevator to complete the work May 2014. (Deficiency list) See attached.
3. The circuit board replacement for elevator #5 was never completed. State's authorization TEC Elevator to complete the work April 2015.

As mentioned within TEC Elevator's response letter[,] it is correct that the general contractor[,] as per the start of the elevator construction contract[,] is to handle all elevator maintenance issues by his elevator sub-contractor. This means that the elevator contractor is now liable for the deficiency repair that TEC Elevator was to complete back in June 2014, which could mean additional cost to the State.

DPMC included a copy of the May 27, 2014 PO, authorizing the replacement of hoist ropes and shackles on elevator car #2 and #6, and an additional PO dated August 5, 2014, for \$50,000.00, authorizing the replacement of the front and back gearless hoist motor and pedestal double bearings on the #3 elevator. I also note that documentation submitted showed the April 2015 PO authorizing work on elevator car number 3 for the Health and Agriculture Building, not car number 5 in the Labor Building.

Upon receiving DPMC's response, CCAU requested a status update from TEC on the mentioned outstanding deficiencies through a December 7, 2015 correspondence. TEC failed to respond.

Thereafter, on December 15, 2015, notwithstanding TEC's previous response—that all repairs had been completed, CCAU issued a final resolution of Complaint No. 15-05-08 resolving the complaint against TEC for poor performance. The decision noted that although TEC stated that as of November 25, 2015, "all outstanding deficiencies and repairs were complete," DPMC listed three items as not completed: 1) the replacement of ropes for elevator car #2; 2) the replacement of ropes for elevator car #6; and 3) the circuit board replacement for elevator #5. The decision noted that DPMC authorized items one and two in May of 2014 and item three in April 2015 and provided the corresponding POs as proof of authorization.

TEC appealed CCAU's determination through its December 24, 2015 letter, presenting the following response to each of the mentioned deficiencies:

- The replacement of the elevator #2 hoist ropes was held up by the DPMC and ultimately cancelled by Joseph Ferrogine. I will add that the material to complete the project was purchased and delivered to the job site. The replacement of these ropes was last re-visited in September of 2015 and again the work was denied. We do have email documentation to support our position.
- The replacement of the elevator #6 hoist ropes was also held up by the DPMC and cancelled. We do have supporting email documentation to support our position.
- With regard to the circuit board replacement on elevator #5, [TEC] acknowledges that the elevator went down and we were authorized to replace the circuit board. What the complaint fails to disclose is that the control system is obsolete (currently being upgraded) and the board had to be repaired due to the component no longer being produced. There was no guarantee that this would solve the problem and in fact it did not.

³ I note that repairs to elevator cars #2 and 6 were not mentioned in the initial complaint.

Further to this was instruction by Joseph Ferrogine suggesting that I take the parts from elevator #2 and install them on elevator #5. I declined to do this, as I did not think it was wise to possibly damage more boards when the actual cause and problems with elevator #5 had yet to be resolved. Elevator #2 was capable of operating and just needed to have the State mandated cable replacement[;] however[,] Mr. Ferrogine chose to leave that elevator out of service.

At the request of the Hearing Unit, TEC submitted additional material to support its argument. Included in this documentation was a letter from the Assistant Deputy Director of DPMC dated October 9, 2015, stating the following:

SUBJECT: T-2946 Elevator Maintenance Labor Building

Please be advised that effective Sunday, November 1, 2015, due to an upgrade project to all of the elevators at the Labor Building, 1 John Fitch Way, Trenton, we will discontinue all maintenance and emergency service provided by TEC at this facility.

Per Section 3.1.9 of the RFP: "In the event a building is vacant or unoccupied for a period of time or if an elevator is repaired or remodeled (and subsequently covered under a warranty), the State shall notify the contractor to suspend or discontinue maintenance service for that elevator and may remove it from the contract."

....

TEC also supplied email correspondences from DPMC that documented the need to upgrade elevators, rather than repair them. Therefore, DPMC's statement in its December 4, 2015 response that TEC failed to complete certain repairs is misplaced, as the response from TEC reports that the elevators required upgrading, possibly precluding repair. As noted above, TEC was directed on October 9, 2015, that it would no longer perform maintenance on the elevators in the Labor Building "due to an upgrade project."

Based on the record and information before me, I set aside the decision of CCAU as to Formal Complaint No. 15-5-08 and remand this matter to CCAU to reopen the complaint and, based upon the record and information as indicated above, to determine whether TEC failed to complete the work authorized by the POs on its own accord or whether it was acting within the direction of DPMC.

Sincerely,



Maurice A. Griffin
Acting Director

MAG:DF

c: A. Davis, CCAU
J. Paul, CCAU
M. Dae, DPMC