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June 26, 2012

**VIA Hand Delivery and E-Mail**  
**[kbuffington@fortlauderdale.gov](mailto:kbuffington@fortlauderdale.gov)**  
**[rmckenney@fortlauderdale.gov](mailto:rmckenney@fortlauderdale.gov)**

Kirk Buffington  
Mr. Bob McKenney  
Procurement Specialist II  
City of Fort Lauderdale  
Fort Lauderdale, Florida 33351-6704

***Re: Formal Bid Protest on behalf of F.A. Johnson to  
423-11009 Storm Structure Service Maintenance (Annual Contract)  
("Bid")***

Dear Mr. Buffington and Mr. McKenney:

Please accept this formal bid protest which is being submitted on behalf of F.A. Johnson, pursuant to Florida Statute 120.57(3)(b) and City of Fort Lauderdale Code Section 2-199.1. Mr. Peter Cameron of F.A. Johnson previously notified you via e-mail that a formal protest to the City's Notice of Intent to Award the Bid would be forthcoming and your office confirmed that the deadline to protest was Tuesday, June 26, 2012. Enclosed please find the required Protest Application Fee of \$200.00 payable to the City of Fort Lauderdale.

On June 19, 2012, the City of Fort Lauderdale posted its intent to award Bid 423-11099 ("Bid") to A & A Drainage & Vac Services, Inc. ("A&A") F.A. Johnson submitted a timely bid in response to the City's Invitation to Bid. F.A. Johnson was listed as the third highest responsible bidder, however the first and second ranked bidders are not qualified to perform the services requested by the Bid.

Page 6, Part I "Information Special Conditions" provides in Section 05: "Eligibility: To be eligible for award of a contract in response to this solicitation, the Contractor must demonstrate that they have successfully completed services, as specified in the Technical Specifications / Scope of Services section of this solicitation are normally and routinely engaged in performing such services, and are properly and legally licensed to perform such work. In

addition, the Contractor must have no conflict of interest with regard to any other work performed by the Contractor for the City of Fort Lauderdale. Have no violations in the past three years. Have a minimum of six employees. Own a minimum of three permitted vacuum vehicles that can perform the bided activities. Must operate within the tri-County area. (Dade, Broward and Palm Beach).”

We do not believe that A&A is properly and legally licensed to perform the necessary work. As you are aware, the Construction Industry Licensing Board (CILB) certifies contractors in the State of Florida. We have performed a search for a license issued to A&A and there is no contractor’s license issued to this company. [www.myfloridalicense.com](http://www.myfloridalicense.com) is a State of Florida website where this check can be performed. We have also performed a search on the Broward County website, [www.broward.org](http://www.broward.org), and A&A does not appear to have a local contractor’s license. As such, we do not believe that A&A has the proper license to perform this service.

We also do not believe that A&A owns a minimum of three permitted vacuum vehicles as required by the Bid. Licenses to operate a vacuum vehicle are issued by Broward County. We have searched Broward County records and determined that at time of bid opening, A&A only had two licensed trucks, not the three required by the Bid. More specifically, Truck #1 is DPEP License #6210 and Truck #2 is DPEP License #6211. An online search can be performed at [www.dpep.broward.org/ENVIROS](http://www.dpep.broward.org/ENVIROS).

Similarly, the second ranked bidder Envirowaste Services Group, Inc. (“ESG”), is also not qualified to perform the services required by the Bid. Specifically, ESG has been cited by Miami-Dade County for multiple violations within the last three years. Copies of various violations are attached for your reference. Pursuant to Page 6, Part I, Section 05 a bidder is disqualified if it has received any violations within the past three years.

For the foregoing reasons, we believe that the City’s decision to award the Bid to A&A was in error because A&A’s bid proposal failed to conform in all material aspects to the Bid. Similarly ESG’s bid proposal did not conform to the Bid specifications. Both A&A’s and ESG’s bid proposals were in clear violation of the City’s Bid and each contained material deviations from the Bid’s requirements. *See Fla. Stat. 287.012 (25)* (defining a responsive bid as a bid, or proposal submitted by a responsive and responsible vendor that conforms in all material respects to the solicitation); *Intercontinental Properties, Inc. v. State Dept. of Health and Rehabilitative Services*, 605 So.2d 380 (Fla. 3d DCA 1992) (holding that a responsive bid means that the bid is submitted on the correct forms and contains all required information, signatures and notarization). Consequently, as a result of A&A’s and ESG’s bid proposal disqualifications, F.A. Johnson should have been awarded the contract as the lowest **responsible** bidder.

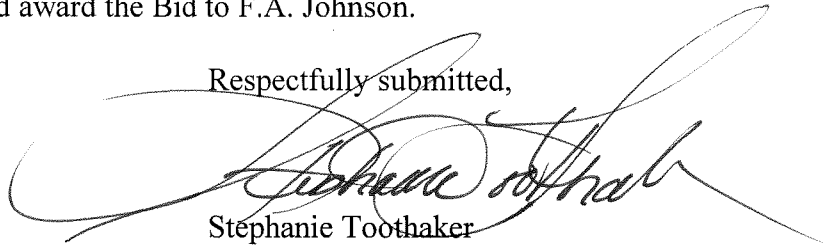
It is a well-established tenet of Florida law that “[c]ompetitive bidding in the granting of municipal contracts is employed for the protection of the public to secure by competition among bidders, the best results at the lowest price, and to forestall fraud, favoritism and corruption in the making of contracts.” *Armco Drainage & Metal Products, Inc. v. Pinellas County*, 137 So.2d 234, 235 (Fla. 2d DCA 1962). This ensures not only that the bid process is fair and equal to all bidders, but it secures public improvements at the lowest reasonable cost to the taxpayer. *Harris v. School Bd. Of Duval County*, 921 So.2d 725, 736 (Fla. 1<sup>st</sup> DCA 2006); *see also Central*

*Florida Equipment Rental of Dade County, Inc. v. Lowell Dunn Co.*, 586 So.2d 1171 (Fla. 3d DCA 1991) (noting that fraud in the bid process subjects cancellation of the award to a successful bidder). Consequently, as a result of A&A's misrepresentations and ESG's violations, F.A. Johnson respectfully requests that it be awarded the contract for the Bid.

Finally, A&A bid "0" on two items in its bid proposal. F.A. Johnson believes a bidder's zero dollar bid for an item is equivalent to no bid at all and renders the entire bid nonconforming. See *Harry Pepper & Associates, Inc. v. The City of Cape Coral*, 352 So.2d 1190 (Fla. 2d DCA 1977) (holding that deviations in a bid on a public project is sufficiently material to destroy its competitive character if the variation affects the amount of the bid by giving the bidder a benefit or advantage not enjoyed by other bidders).

Accordingly, for the reasons outlined above, F.A. Johnson requests that the City reject A&A's and ESG's bid proposals and award the Bid to F.A. Johnson.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'Stephanie Toothaker', is written over the typed name below.

Stephanie Toothaker  
For the Firm