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CITY COMMISSION

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August 28, 2012

VIA E-Mail and U.S. Mail

The Honorable Mayor John P. "Jack" Seiler
The Honorable Vice Mayor Charlotte Rodstrom
The Honorable Bobby DuBose
The Honorable Bruce Roberts
The Honorable Romney Rogers

ALL
COMMISSIONERS
RECEIVED

Via E-Mail and U.S. Mail

kbuffington@fortlauderdale.gov
rmckenney@fortlauderdale.gov

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

City Hall
100 North Andrews Avenue
Fort Lauderdale, FL 33301

Re: *Appeal To City Commission Pursuant to Section 2-199.1(c)(2) on behalf of F.A. Johnson to City's Response to Formal Bid Protest 423-11009 Storm Structure Service Maintenance (Annual Contract) ("Contract" or "Bid")*

Dear Mayor Seiler, Vice Mayor Rodstrom, Commissioner DuBose, Commissioner Roberts, Commissioner Rogers, Mr. Buffington and Mr. McKenney:

We are in receipt of Mr. Buffington's e-mail correspondence to me dated Sunday, August 26, 2012, advising that the City has reversed its earlier decision to award the above-referenced Contract to F.A. Johnson, and instead award the above referenced Contract to A&A Drainage & Vac Services, Inc. ("A&A").

On June 26, 2012, F.A. Johnson filed a timely protest to the City's June 19, 2012 Notice of Award to the above-referenced Bid. A copy of F.A. Johnson's Bid Protest is attached for your reference. In addition, F.A. Johnson provided a copy of the City's Bid to Mr. David Burgueno of

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Broward County's Permitting, Licensing and Consumer Protection Division. Mr. Burgueno reviewed the City's Bid and, we are advised, had numerous conversations with the City's Procurement Department and provided information that, specifically with regard to the City's Bid, a proper license is required.

As a result of F.A. Johnson's Bid Protest, followed by numerous conversations between Mr. Buffington and me and numerous conversations between Mr. Buffington's Office and Mr. David Burgueno, the City advised that it agreed with F.A. Johnson's protest that A&A did not have the proper licenses and qualifications to be able to perform the services required by the Bid.

Additionally, after advising that the City intended to find both the first ranked (A&A) and second ranked (Envirowaste Services Group, Inc. or "ESG") bids non-responsive, Mr. Buffington and representatives of his office met with Pete Cameron of F.A. Johnson and me on Thursday, July 26, 2012, under the auspice of negotiating a price agreeable to the City. At that meeting, Mr. Cameron provided the City with a significantly reduced price proposal that the City advised was acceptable. The City further advised that it would provide Mr. Cameron with follow up information on the timing for the award of the Contract to F. A. Johnson.

From that date until Sunday, August 26, when we received the City's e-mail, F.A. Johnson has relied on the City's verbal assurance that it was the City's intent to award the Contract to F.A. Johnson. It was not until we received the City's Sunday, August 26, 2012 e-mail correspondence that F. A. Johnson had any indication that that was not the case. As such, we will consider your August 26, 2012 e-mail as formal notification of the City's denial of F.A. Johnson's Protest pursuant to City of Fort Lauderdale Code Section 2-1999.1 (c) (2) and timely file this appeal of the City's denial pursuant to that same section within 3 business days.

GROUND

First, as noted in F.A. Johnson's Protest, we do not agree that A&A is 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 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, 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.

While the Central Examining Board does not currently include a specific category for drain cleaning/inspections, it should be noted that Broward County Code of Ordinances, Chapter 9, Contractors, Article V Engineered Construction Contractors, Sections 9-94(a) and (b) specify that Class "A" and Class "B" work includes not only construction and installation of piping systems, but also maintenance. Cleaning and Video inspection of storm drains is a form of maintenance, and therefore must be undertaken by a certified general engineered construction builder. This position was supported by Mr. Burgeuno of Broward County's Permitting, Licensing and Consumer Protection Division. Further, the letter you provided from Mr. Stone notes that while cleaning may be permitted, no "construction including repair" which intuitively includes *any* type of maintenance, may be performed. It's clear from Mr. Burgueno's interpretation and Mr. Stone's that different employees of Broward County's Licensing Department disagree on the meaning and intent of the licensing requirements, but even Mr. Stone notes that the County codes are currently in the process of being re-written to *better clarify that licensing is required* for cleaning, video inspection and sewer rehabilitation. So in that event, why would the City award a 3 year contract to A&A, an entity that does not carry the proper licenses, particularly in light of the County's pending amendments to its Code? For the sake of argument, even if Mr. Stone's interpretation were correct, when the Code Amendment is passed, A&A will be immediately non-compliant with the specific licensing requirements in the Code and will not be able to perform the services required by the City's contract.

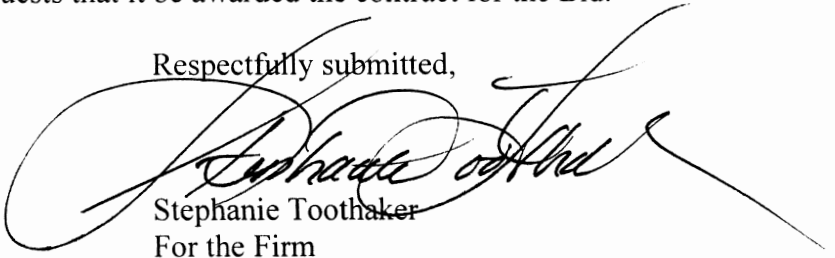
We also do not believe that A&A owns a minimum of three permitted vacuum vehicles as required by the Bid. Licenses to operate a vacuum vehicle are issued by Broward County. We have searched Broward County records and determined that at time of bid opening, A&A only had two licensed trucks, not the three 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. Additionally, we do not believe that A&A currently has the minimum six employees required for the City Contract. The Florida Department of Financial Services database identifies A&A has a Worker's Compensation Policy (Policy # 10639751, attached) that covers one (1) employee with Mr. and Mrs. Scrima claimed as exempt personnel. Either A&A has misrepresented its number of employees in its proposal to the City, or its number of employees per Florida Statute 440. Either misrepresentation is grounds for disqualification.

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 and we incorporate by reference the protest grounds regarding ESG provided in our initial Protest. 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. 1st 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.

Respectfully submitted,



Stephanie Toothaker
For the Firm