

Exhibit D

CHARLES W. SANDMAN, III, ESQUIRE

18 North Main Street
Cape May Court House, New Jersey 08210
Telephone: (609) 463-0094
Fax: (609) 463-3588

PLEASE REFER TO
OUR FILE NO

October 19, 2009

Paul J. Baldini, Esquire
Sea Isle City Solicitor
8405 E. Landis Avenue
Sea Isle City, New Jersey 08243

RE: Sea Isle City Towing Contract awarded to unqualified bidder

Dear Paul:

As you are aware, I represent Blakeslee Towing Recovery, Inc d/b/a Court House Towing, who was Sea Isle City's towing contractor for the last twelve (12) years and a bidder on the above referenced Contract. Pursuant to our conversation of yesterday, I understand that said Contract was awarded to Kindle Auto Plaza d/b/a C&E Towing (hereinafter C&E). I have reviewed C & E's bid submission and find that both C & E and their bid package do not comply with the city's specifications and should therefore be deemed unqualified.

As a preliminary matter, section 3A of the bid specification clearly states that this bid can only be awarded to the contractor that fully meets the requirements as outlined in the specifications. It appears that C & E's bid package is noncompliant with said specifications in almost every way. Below is a list of over a dozen of the stated specification deficiencies, at least half of which, are quite significant. Those deficiencies are as follows:

1. C & E, under its present ownership, does not have the required three (3) years experience. It was acquired by Kindle last year. Towing cars in relation to a dealership does not qualify a Contractor for the services required by this Contract. The experience required in this instance is towing services all hours of the day or night and in every type of circumstance (i.e. clearing accident scenes and roadways, towing vehicles off the beach etc.).
2. C & E's (Kindle Auto Plaza) principal place of business does not have a fenced in yard (see photo). This requirement is particularly important, as the law requires in some circumstances (Like DUI's and "Johns Law") that the car be in a locked and secured area. To have otherwise, is not

only a violation of the law but could incur major liability for the city should an accused drunk driver try to retrieve a car improperly section 8 (i).

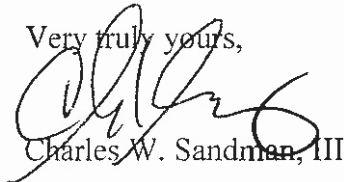
3. Since a fence does not exist a Zoning Application would be required to erect one and, as such, the proposed primary facility is presently not an approved use under the Middle Township Zoning laws Section 8 a. (iv). Also no certification was provided as called for in 8 e.
4. No Certificate of Occupancy was provided for the proposed secondary yard 5 a.
5. C & E's proposed secondary storage facility has no office, bathroom, waiting room, lighting or signage (even the primary has no C & E signage) (see photo) Section 8 a. (ii) (iii) (vi) 8 b.
 - * Both the primary or secondary storage facilities each must satisfy all requirements. An applicant cannot claim that whatever they lack in one they have on the other.
6. Copies of all current and valid drivers licenses for the operators of the service equipment employed by the contractor, whom shall be directly involved with this Contract were not provided as set forth in 4.b. One of the drivers license listed is expired (see attached).
7. Names of other municipalities and/or businesses for whom they have and/or are currently providing towing, storage and lock out services for the last three (3) years as set forth in 4.d. C & E submitted the New Jersey State Police, themselves (Kindle) and Rodney's Auto Repair. Problem is C & E have only been under the present ownership for one (1) year. The present owner cannot take credit for service provided by the prior owner.
 - Once again the specifications clearly state that failure to submit any of the Section 4 required information with the bid shall submit said bid to be disqualified by the city.
8. No detailed list of equipment as required by 7 a. b. contrary to this requirement, C & E submitted only three (3) photos of vehicles (2 flatbeds and a Heavy Duty) No four wheel drive vehicle was submitted. However they submitted 5 registrations, one of which is expired, one of the

wreckers has a dealer registration and dealer tags (it is illegal to operate a towing vehicle with dealer tags).

- Once again 7 c(v) states “failure to submit the required list of all vehicles including proof of ownership... shall be sufficient cause for rejection”.
9. Section 17 (ix) Insurance certificate presented has a thirty (30) day cancellation provision the specifications require sixty (60) days.
 10. No proof of Professional Trade Associations as set forth in 3 g. The only major relevant association in this area is the Garden State Towmans Association (attached please find a list of members) As you can see, C & E is not listed.
 11. Certificate of Surety from a bonding company or other documentation as set forth in section 3 f. was provided but not signed by principle of corporation. This documentation was signed by, Ed Boyle, who is listed as a parts manager. There is no executed authorization for him to act in this capacity.
- These are just the immediate and apparent problems with C & E’s award of this Contract there are many more should you require further proofs.

With regard to the deficiencies set forth above, the specifications, specifically state, any one, constitutes disqualification. There being so many facial deficiencies with regard to C & E’s bid package one would think that the city would have investigated C & E’s equipment and facilities and found them to be lacking as well. Accordingly, I am unable to understand how the city could even remotely consider C & E a qualified bidder, let alone the most qualified. This is particularly true when one considers the incredible wealth of qualification, experience and equipment that my client has possessed for many years. A review of my client’s submission will show that every single requirement of the specifications was meticulously followed with regard to each section. If you placed the Blakeslee package next to the C & E package the difference is night and day. This is why my client has been Sea Isle City’s towing contractor for the last twelve (12) years. In addition, it appears that my client was the only qualified bidder and should therefore be awarded this Contract. Please review and advise.

Very truly yours,



Charles W. Sandman, III

CWS:ks
cc: Louis Altobelli, Jr.

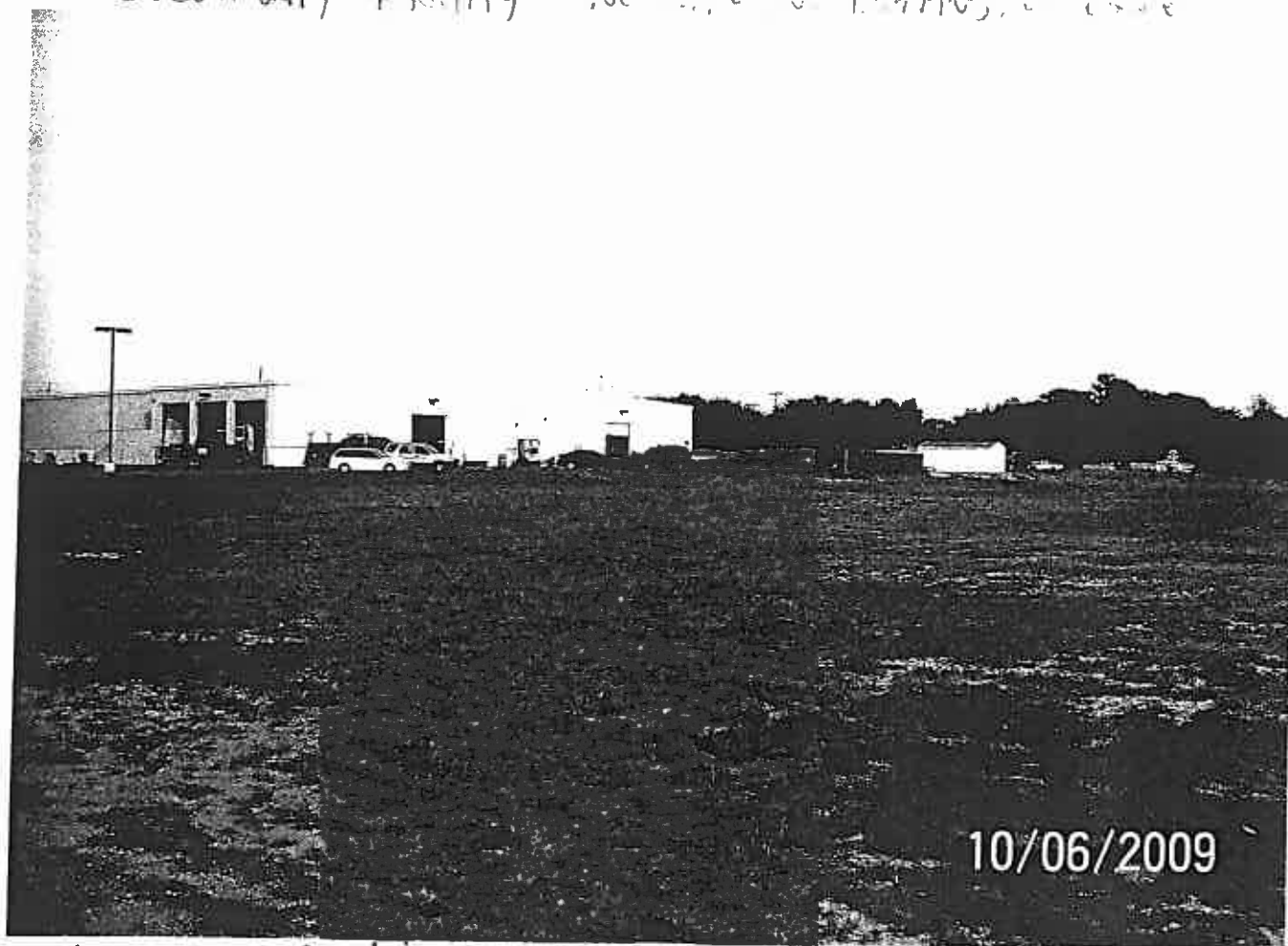


Primary facility





Secondary Facility No sign on building, a fence



PRIMARY Facility No sign on building



Sunday



Sunday

VEHICLE REGISTRATION



PLATE NO: XN735E GOOD THRU: 04/2010
VIN: [REDACTED]
FOR 2001 TRK BK GR: 25000 AX: 2
KINDLE FORD MERCURY LIN LDTOW 32
525 STONE HBR BLV BOX 7300L: 48836 25600 82101
CAPE MAY CRT NJ 08210 RENEWAL PT: CM
ED: 26000 FEE: 434.50 LF R620090770119

VEHICLE REGISTRATION



PLATE NO: XN734E GOOD THRU: 04/2010
VIN: [REDACTED]
FOR 1998 TRK WT GR: 24500 AX: 2
KINDLE FORD MERCURY LIN LDTOW
525 STONE HBR BLV BOX 7300L: 48836 25600 82101
CAPE MAY CRT NJ 08210 RENEWAL PT: CM
ED: 24500 FEE: 420.00 LF R620090370120

VEHICLE REGISTRATION



PLATE NO: XN905E GOOD THRU: 05/2008
VIN: [REDACTED]
FOR 2007 TRK YU GR: 25895 AX: 2
KINDLE FORD MERCURY LIN LDTOW 32
525 STONE HBR BLV BOX 7300L: 48836 25600 82101
CAPE MAY CRT NJ 08210 RENEWAL PT: CM
ED: 25985 FEE: 494.50 MS R620091920099

Express

VEHICLE REGISTRATION



PLATE NO: XN821E GOOD THRU: 05/2010
VIN: [REDACTED]
AUT 1971 TRK GR: 50200 AX: 2
KINDLE FORD MERCURY LIN LDTOW 33
525 STONE HBR BLV BOX 7300L: 48836 25600 82101
CAPE MAY CRT NJ 08210 RENEWAL PT: CM
ED: 50200 FEE: 843.00 LB R620091480062



DEALER REGISTRATION



PLATE NO: DKF1 € GOOD THRU: 03/2010

DEALER ID: [REDACTED]

KINDLE FORD MERCURY LIN
525 STONE HBR BLV BOX 730
CAPE MAY CRT NJ 08210
FEE: 0.00

DEALER AUTO 55
CC: [REDACTED]
RENEWAL PT:N1
[REDACTED]

Handwritten scribble or signature.



REGISTRATION Exp. 04/01

107-3378

(909) 465-9480

C & E
Quality Country

Quality Country

www.martini.com

04/01 2005

CERTIFICATE OF INSURANCE

UU3308 (9-82)



UNIVERSAL UNDERWRITERS INSURANCE COMPANY

7045 College Boulevard – Overland Park, Kansas 66211

hereby certifies that the following insurance policies have been issued on behalf of:

Acct. 

Name of Insured Kindle Ford
 Address of Insured 525 Stone Harbor Blvd Cape May Court House, NJ 08210

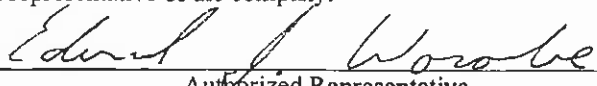
KIND OF INSURANCE	POLICY NUMBER	POLICY PERIOD	OUR LIMITS
Garage Operations & Auto Hazards Liability Including injury with respect to personal injury Protection, advertising product related damages, Legal damages, Owned, Non-Owned & Hired Vehicles + Umbrella		6/1/09-6/1/10	\$4,000,000
General Liability including Premises Hazard and Contractor's Hazard + Umbrella		6/1/09-6/1/10	\$4,000,000
RE Bid: Towing Contract			
Additional Insured- End. 0532 City of Sea Isle			
City of Sea Isle is named as an Additional Insured but only with respect to Kindle Ford negligent acts.			
30 Notice of Cancellation will be given except for Non-Payment which is 10 Days			

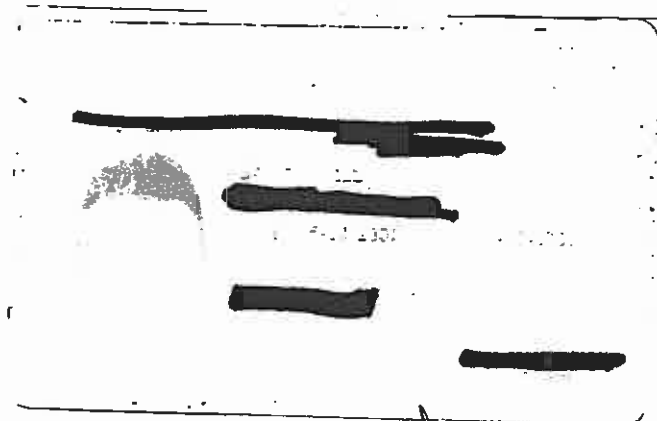
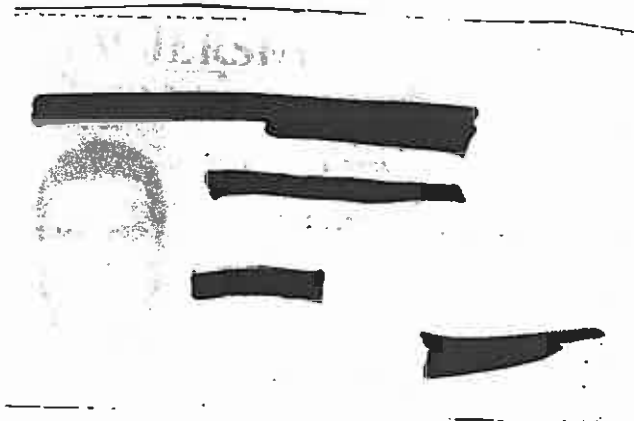
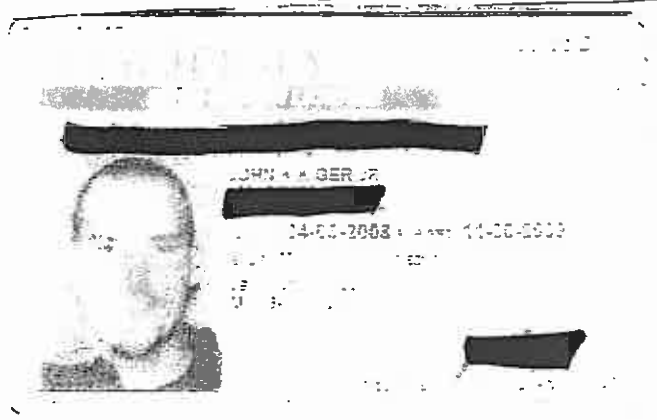
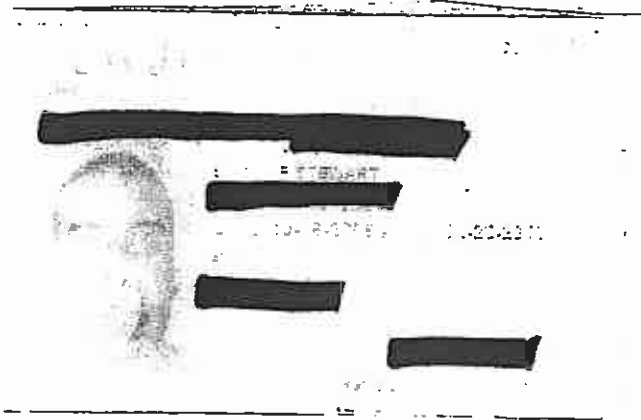
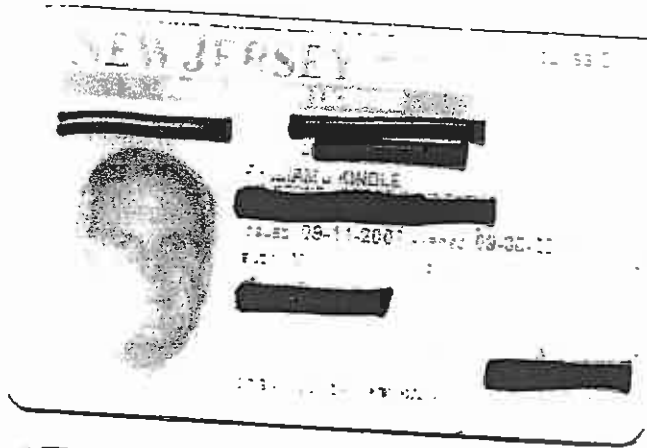
This Certificate of Insurance neither affirmatively nor negatively amends, extends or alters the coverage afforded by the policies listed above which have been issued by this Company.

In the event of any material change in, or cancellation of, said policies, the undersigned company will endeavor to give written notice to the party to whom this certificate is issued, but failure to give such notice shall impose no obligation nor liability upon the company.

Certificate of insurance prepared for: Name City of Sea Isle
4416 Landis Ave
Sea Isle City, NJ 08243

This certificate is not valid unless countersigned by an authorized representative of the company.

Date October 1, 2009 Countersigned by 
 Authorized Representative
 Edward J. Worobe, Regional Sales Manager



↑
New
Express

NEW JERSEY Motor Vehicle Commission
COMMERCIAL DRIVER LICENSE

CLASS A



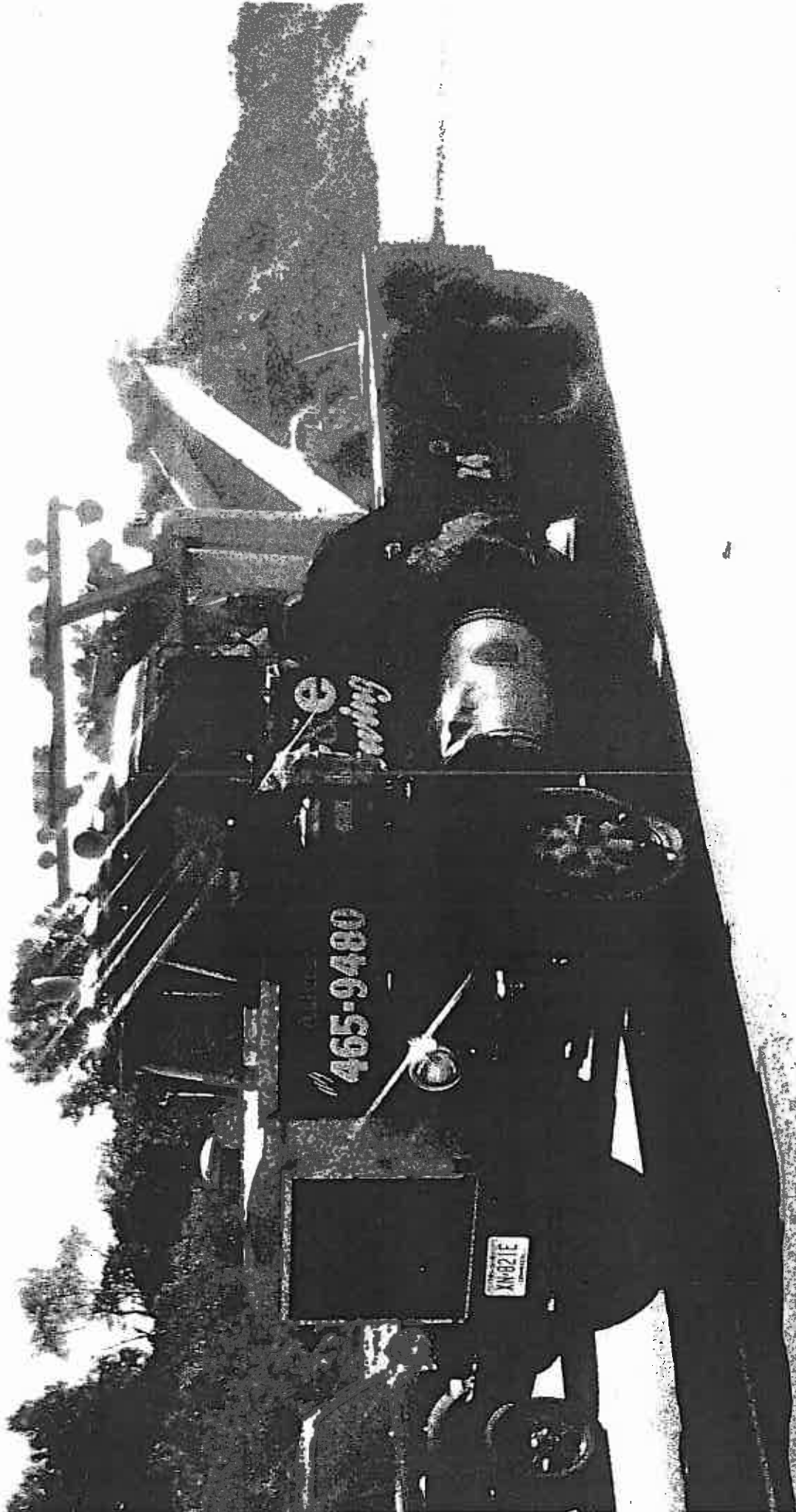
ANTHONY L. JACKSON

ISSUED: 05-30-2007 EXPIRES: 10-31-2010

ENDR MNT

RESTRICTIONS

ORGAN DONOR 00000000134 000000 11.00



10-23-2005

Emission stickers expired

**NEW JERSEY
TOW TRUCKS
2008**

JAN
FEB
MAR
APR
MAY
JUN

JUL
AUG
SEP
OCT
NOV
DEC



Heavy Duty
32,000 lbs. and over
No. H88503

2008

New Jersey

Diesel Emission Inspection

6

No. G016551

REGULAR MEMBERS

BOB'S AUTO BODY

Robert F. Davis
401 West Rio Grande Ave.
N. Wildwood, NJ 08260
Phone: 609-729-1219
Fax: 609-523-1231

BOONTON SERVICE CENTER

Joseph J. Bono III
240 Myrtle Ave
Boonton, NJ 07005
Phone: 973-263-8700
Email: btnserv556@optonline.net

BORCHERS AUTO SERVICE, INC.

Dick Borchers
87 Coles Rd.
Blenheim, NJ 08012
Phone: 856-227-8877
Fax: 856-374-0716
Email: borchers@bellatlantic.net
L, C, J, LO, R-A, R-S, S, T

BOYCE'S TOWING

Dennis J. Boyce
4036 Englishtown Road
Monroe Township, NJ 08831
Phone: 732-446-4996
Fax: 732-446-0843
L, M, H, A, AD, C, J, LO, R-A, R-B, R-S, S, T,
T-B, T-D, T-F, T-L

BULL DOG WRECKER SERVICES

Alan Kane
810 Frelinghuysen Avenue
Newark, NJ 07114
Phone: 973-589-7230
Fax: 973-643-5147
H, I, K, R-S, R-T, T-B, T-D, T-F, T-L

BUNKY'S TOWING & AUTO REPAIR

George Willis
30 Taft Street
Dover, NJ 07801
Phone: 973-366-4104
Fax: 973-537-9668
L, M, H, I, J, LO, R-A, R-S, S

C

C & L TOWING SERVICE

Charlie Napoli
73 Eagle Rock Ave.
East Hanover, NJ 07936
Phone: 973-386-9866
Fax: 973-386-1870
Email: www.candltowing.com
L, M, H, A, AD, C, I, J, K, LO, R-B, R-S, R-T,
S, T-B, T-D, T-F, T-L

C.H. AUTO

Carl Hobson
107 East Commodore Boulevard
Jackson, NJ 08527
Phone: 732-928-3713
Fax: 732-833-0019
Email: chfive0@aol.com
Web: www.chautos.com
L, M, H, C, I, J, R-A, R-T, S

CAMP AUTO & TRUCK PARTS, INC.

Don Campanello
9 Whitmore Avenue
Wayne, NJ 07470
Phone: 973-694-6798
Fax: 973-696-9007
Email: campautotruck@aol.com
Web: www.camptowing.com
L, M, H, A, C, J, LO, R-S, S, T, T-B, T-D, T-F,
T-L, T-R

CAR-TECH AUTO TRANSPORT, INC

Thomas Petronella
87 Randolph Ave
Avenel, NJ 07001
Phone: 732-539-1210
Fax: 732-680-0619
Email: Tommy@claa.com

CENTRAL TOWING & RECOVERY, INC.

Alan T. Gambacorto
31 Central Avenue
Red Bank, NJ 07701
Phone: 732-530-4041
Fax: 732-530-3828
L, M, H, C, I, J, LO, R-S, R-T, S

CERTIFIED AUTO MALL, INC.

Art Stahnten
5499 Route 9
Howell, NJ 07731
Phone: 732-730-1200
Fax: 732-730-8273
Email: dkb661@aol.com
C, I, J, L, LO, RA, S, T

CHICK'S TOWING SERVICE, INC.

Charles H. Graber
1135 Capital Highway
Pennsauken, NJ 08110
Phone: 856-662-6333
Fax: 856-662-8868
Email: chickstowing@comcast.net
Web: www.chickstowing.com
M, H, C, I, J, K, R-S, R-T, S, T-B, T-D, T-F,
T-L, T-R

CHUCK'S TOWING SERVICE, INC.

Charles A. Mason, Jr.
48 W. Taylor Avenue
Hamilton, NJ 08610
Phone: 609-888-4020
Fax: 609-392-3050
L, M, H, A, C, I, J, S

CIOFFI'S TOWING SERVICE

Alfred Cloffi
309 Chapel Ave West
Cherry Hill, NJ 08002
Phone: 856-662-0211
Fax: 856-486-2152
L, M, H, C, I, J, LO, R-S, S, T-B, T-D, T-L

CITY WIDE TOWING, INC.

Frank Thlssen
205 Chestnut St.
Ridgewood,, NJ 07450
Phone: 201-796-7732
Fax: 201-251-8112
C, H, J, L, LO, M, RA, RB, RS, S, TF

CLASSIC TOWING

John Santello
210 21st Avenue
Paterson, NJ 07501
Phone: 973-742-8008
Fax: 973-742-3492
Email: JT77@classic-towing.com
Web: classic-towing.com
L, M, H, A, AD, C, E, I, J, K, LO, R-A, R-B,
R-S, R-T, S, T, T-B, T-D, T-F, T-L, T-R

COOK'S TOWING

John Cook
P.O. Box 0093
Bellmawr, NJ 08099
Phone: 856-547-2773
Fax: 856-939-6673
L, M, C, I, J, LO, R-A, R-S, R-T, S

COPPA'S SERVICE CENTER

Mario Coppa, III
1 Moore Road
No. Brunswick, NJ 08902
Phone: 732-297-7530
Fax: 732-297-1717
Email: coppaservice@aol.com
L, M, H, AD, C, E, I, J, LO, R-A, R-S, R-T, S

CORIGLIANO TOWING, INC.

Michael Corigliano
27 Intervale Road
Boonton, NJ 07005
Phone: 973-334-3293
Fax: 973-334-1091
L, M, H, A, I, K, S, T-B, T-D, T-F, T-L, T-R

COURT HOUSE TOWING

Louis Altobelli
2702 Route 9 South
Rlo Grande, NJ 08242
Phone: 609-465-4108
Fax: 609-465-6689

CRANBURY SERVICE CENTER

Harry Stasinos
2734 Rt. 130
Cranbury, NJ 08512
Phone: 609-448-2002
Fax: 609-448-3132
Email: cranburyservice@aol.com
L, M, H, I, J, K, LO, R-A, R-S, R-T, S, T, T-B,
T-D, T-F, T-L, T-R

CRIGER SERVICE, INC.

Frank E. Lach
79 Lane Road
Fairfield, NJ 07004
Phone: 973-227-5090
Fax: 973-882-7534
L, M, H, AD, C, I, J, K, LO, R-A, R-B, R-S,
R-T, S, T

CTS/CARDACI TOWING

Phil Cardaci
330 Harvard Avenue
Hillside, NJ 07205
Phone: 908-686-4411
Fax: 908-687-2909
L, C, J

D

D & E ROAD SERVICE

Edward W. Hefter
726 Rt. 206 P.O. Box 411
Andover, NJ 07821
Phone: 973-786-5887
Fax: 973-786-5979
Email: deservice@palace.net
L, M, H, A, AD, C, I, J, LO, R-A, R-S, R-T, S,
T, T-B, T-D, T-F, T-L

DAILY AUCTION DELIVERY SERVICE, INC.

Joseph P. McOwen
1990 Route 206
Southampton, NJ 08088
Phone: 609-859-1095
Fax: 609-784-0295
Email: joeifagroup@aol.com
C, I
Repossession and transportation

DAVE'S HEAVY DUTY TOWING, INC.

Dave Bender
87 Old Camplain Rd.
Hillsborough, NJ 08844
Phone: 908-526-3999
Fax: 908-526-7618
Email: davesheavytowinginc@msn.com
M, H, A, AD, C, I, J, K, R-S, R-T, S, T-D, T-L

DAVID'S TOWING SERVICE

David F. Brigati
70 Lincoln Place
Garfield, NJ 07026
Phone: 973-458-9500
Fax: 973-772-1227
Email: davidstowing@aol.com
Web: www.davidstowing.com
L, M, H, A, C, I, J, K, LO, R-A, R-B, R-S, R-T,
S, T, T-B, T-D, T-F, T-L

DEFALCO'S INSTANT TOWING

Cheryl DeFalco
26 Commerce Street
Chatham, NJ 07928
Phone: 973-635-8333
Fax: 973-635-1750
L, M, H, AD, I, J, LO, R-A, R-B, R-S, S

DENTE BROTHERS TOWING

Carmine Dente, Sr.
27 Raymond Blvd.
Newark, NJ 07105
Phone: 973-344-3100
Fax: 973-344-0291
L, M, H, A, C, I, J, K, LO, R-S, S, T-D, T-F,
T-L, T-R

DTR AUTO SERVICE CENTER

Patrick E. O'Brien
422 Demarest Avenue
Closter, NJ 07624
Phone: 201-784-9032
Fax: 201-784-1092
Email: d.tr.towing@verizon.net
C, I, J, L, LO, M, RA, RS, S, T

Phone 973-627-7220

Fax 973-627-7848


McCarter's Towing LLC

Towing & Recovery Service

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Rockaway, NJ 07866
24 Hour Light & Heavy Duty Towing
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www.mccarterstowing.com

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Transport • Drive Away • Dealer Swaps • 24 Hour Towing and Road Services
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LARICK'S TOWING & TRANSPORT, INC.
Phone: (973) 627-7220 Fax: (973) 627-7220
mail: info@laricktowing.com Website: www.laricktowing.com

REGULAR MEMBERS

JL AUTOMOTIVE

Joseph C. Lane
339 Route 539
Cream Ridge, NJ 08514
Phone: 609-758-0087
Fax: 609-758-0165

JOHN'S MAIN AUTOBODY

John Appello
1445 Union Turnpike
North Bergen, NJ 07047
Phone: 201-861-1654
Fax: 201-864-2946
L, M, H, A, AD, C, I, J, K, LO, R-A, R-B, R-S, R-T, S, T, T-B, T-D, T-F, T-L, T-R

JOHNSON SPECIALIZED TRANSPORTATION, INC

Everett G. Johnson
302 Elbow Lane
Burlington, NJ 08016
Phone: 609-387-2495
Fax: 609-387-4049
Email: johnsonspecial@juno.com
L, M, H, I, J, K, LO, R-A, R-S, R-T, S, T-D, T-F, T-L

JULIAN'S GARAGE, INC

Joseph V. Julliano
919 Hwy 9 North
South Amboy, NJ 08879
Phone: 732-721-2900
Fax: 732-727-1188
Email: julgarage@aol.com
L, M, H, AD, I, J, K, R-A, R-B, R-S, R-T, S, T-D, T-F, T-L

K

KING HIGH GARAGE, INC.

James Gougeon
940 State Street
Perth Amboy, NJ 08861
Phone: 732-442-7676
Fax: 732-324-0533

L

LACEY AMOCO, INC.

Harry Pelcman
341 Route 9
Lanoka Harbor, NJ 08734
Phone: 609-971-1714
Fax: 609-971-8812
L, M, H, J, LO, R-A, R-S, R-T, T

LARICK'S TOWING, INC.

John Larick
400 Morris Avenue Ste. 105
Denville, NJ 07834
Phone: 973-627-1959
Fax: 973-627-2725
Email: john@laricktowing.com
Web: laricktowing.com
L, M, , C, I, J, LO, R-S, S

LARINI'S SERVICE CENTER

Ken Larini
272 Alexander Street
Princeton, NJ 08540
Phone: 609-924-8553
Fax: 609-924-8207
Email: larinissrvctr@aol.com
Web: www.larinis.com
L, I, J, LO, R-A, S, T

LEE'S GARAGE, INC.

Paul Sgro
853 Broadway
W. Long Branch, NJ 07764
Phone: 908-222-3644
Fax: 908-222-1763

LENNY'S TOWING & RECOVERY, INC.

Lenny Mongo
199 Carriage Lane
Delran, NJ 08075
Phone: 800-439-8781
Fax: 856-824-9448
Email: LennysTowing@aol.com
Web: LennysTowingServices.com
L, M, H, I, J, R-T, S, T

LINDEN AUTO BODY - TOWING

Wayne Smth
2715 Egg Harbor Road
Lindenwold, NJ 08021
Phone: 856-346-1055
Fax: 856-627-3847
L, M, C, I, R-A, R-B, R-T, S

LIVINGSTON COLLISION, INC.

Jean Crawford
521 W. Mt. Pleasant Ave.
Livingston, NJ 07039
Phone: 973-992-5274
Fax: 973-992-0852
Email: livingstoncoll@aol.com
L, M, H, I, J, LO, R-A, R-B, R-S, S

LOGAN TOWING

Nicholas DelGuidice
307 Manhattan Avenue
Jersey City, NJ 07307
Phone: 201-332-6399
Fax: 201-324-1756
L, M, H, C, J, LO, R-A, R-B, R-T, S

M

M & W TOWING SERVICE, LLC

John Dobos
415 West Street
Plainfield, NJ 07060
Phone: 908-755-5593
Fax: 908-755-8940
Email: mwaytorepair@verizon.net
C, I, J, L, LO, M, RA, RS, S, T, TF

MAG INDUSTRIES, LLC

Paul Muir
1079 State Highway 173
Asbury, NJ 08802
Phone: 908-735-5664
Fax: 908-735-6766
Email: paulm@magindustriesnj.com
C, I, J, L, LO, M, RA, RS, S, T
Auto sales, performance parts and detailing

MALANGA'S AUTOMOTIVE, INC.

Rick Malanga
39 Hamburg Turnpike
Riverdale, NJ 07457
Phone: 973-839-6710
Fax: 973-835-9719
L, M, H, A, C, I, J, R-A, R-S, S, T-B, T-D, T-F, T-L

MANDY'S SERVICENTER, INC.

Bob Mandy/Ken Mandy
24 Vineyard Rd.
Edison, NJ 08817
Phone: 732-287-2611
Fax: 732-287-0511
L, M, H, A, AD, C, I, J, K, LO, R-A, R-S, R-T, S, T-B, T-F, T-L, T-R

Exhibit E

CHARLES W. SANDMAN, III, ESQUIRE

18 North Main Street
Cape May Court House, New Jersey 08210
Telephone: (609) 463-0094
Fax: (609) 463-3588

PLEASE REFER TO
OUR FILE NO.:

October 27, 2009

Sent via Facsimile (609) 729 8627

Paul J. Baldini, Esquire
Sea Isle City Solicitor
4413 New Jersey Avenue
Wildwood, New Jersey 08260

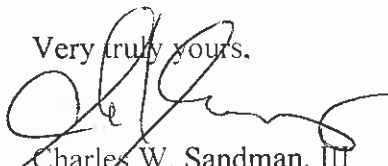
RE: Sea Isle City Towing Contract awarded to unqualified bidder

Dear Paul:

Consistent with my most recent submission in the above referenced matter, please find the enclosed Appellate Division case decided just yesterday, October 26, 2009, right on point. Accordingly, my client was the only qualified bidder. I would very much like to know the city's position before the end of the week.

Please review and advise.

Very truly yours,



Charles W. Sandman, III

CWS:ks
enclosure
cc: Louis Altobelli, Jr.

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2893-08T3

CIOFFI'S TOWING SERVICE, INC.,

Plaintiff-Appellant,

v.

BOROUGH OF COLLINGSWOOD and HELMRICH
TRANSPORTATION SYSTEMS, INC.,

Defendants-Respondents.

Argued October 15, 2009 - Decided October 26, 2009

Before Judges Axelrad and Fisher.

On appeal from the Superior Court of New Jersey, Law Division, Camden County, Docket No. L-3706-08.

William J. Pollinger argued the cause for appellant (William J. Pollinger, P.A., attorneys; Mr. Pollinger, on the briefs).

Taironda E. Phoenix argued the cause for respondent Borough of Collingswood (Brown & Connery, attorneys; Mr. Joseph M. Nardi, III and Ms. Phoenix, on the brief).

Daniel A. Bernardin argued the cause for respondent Helmrich Transportation Systems, Inc.

PER CURIAM

This appeal involves a dispute between two competing bidders for a municipal contract to provide towing services.

The successful bidder's proposal indicated it was in possession of two wreckers despite the specifications' mandate that three wreckers were required. We conclude the municipality could not waive this material nonconformity and, therefore, reverse the dismissal of the complaint and remand for judgment in favor of plaintiff, the next lowest bidder.

The critical facts in this case are neither complicated nor in dispute. Plaintiff Cioffi's Towing Service, Inc., and defendant Helmrich Transportation Systems, Inc., are operators of towing businesses. In 2008, defendant Borough of Collingswood (the municipality) sought bids on a three-year contract to provide towing services. The request for bids contained a list of "minimum standards" that all bidders "shall be required" to meet. Among those minimum standards was the mandate that the operator "must maintain" the following equipment:

- "One heavy duty wrecker - over 10 ton capacity";
- "One medium duty wrecker - 10 ton capacity";
- "One light duty wrecker - 4 ton capacity"; and
- "One flat bed truck"

The request for bids also indicated that the municipality reserved "the right to reject any or all proposals and to waive any immaterial informalities as may be permitted by law."

The municipality received three bids. The lowest bidder was disqualified for reasons not relevant here. Helmrich was the next lowest bidder. Helmrich's list of equipment, however, revealed it had only two wreckers, not the three wreckers required by the bid specifications. Notwithstanding this discrepancy, the municipality awarded the contract to Helmrich. Upon learning this, plaintiff immediately requested that the municipality rescind the award because Helmrich did not indicate it had the specified equipment, and did not supply a certified land survey and a certificate of good standing, as also required by the bid specifications. The municipality's administrator deemed the lack of a certified land survey and certificate of good standing to be immaterial and then sought out the chief of police's view regarding the adequacy of Helmrich's equipment. The chief of police concluded that "[a]lthough [Helmrich's] equipment list does not reference a medium duty towing vehicle, the equipment listed is sufficient to serve the [municipality's] needs for towing services based upon my familiarity with the frequency of calls for such services." As a result, the

municipality rejected plaintiff's request that the contract with Helmrich be rescinded.

Plaintiff immediately filed this action, seeking a judgment invalidating the municipality's contract with Helmrich and awarding the contract to plaintiff. The matter was scheduled for a plenary hearing on the return date of an order to show cause, but the parties agreed upon a submission of the undisputed facts and no live testimony was presented. A week after hearing the argument of counsel, the trial judge rendered an oral decision in which she held that the discrepancies between the bid specifications and Helmrich's proposal were immaterial and that the municipality's waiver of those discrepancies did not adversely affect the goals of competitive bidding because there was no proof of "fraud, bad faith or collusion surrounding the bid." Judgment was entered dismissing the complaint.

Because there is no dispute that Helmrich's bid failed to conform to the municipality's stated equipment requirement,¹ we

¹Plaintiff indicated at the plenary hearing that it would no longer argue that Helmrich's failure to provide a land survey and a certificate of good standing constituted nonwaivable deficiencies. Although plaintiff's brief reprises these arguments, in light of our disposition of the appeal we need not determine whether Helmrich's failures to provide a land survey and a certificate of good standing were material and nonwaivable
(continued)

focus on whether the "specific noncompliance constitutes a substantial and hence non-waivable irregularity." Twp. of River Vale v. R.J. Longo Constr. Co., 127 N.J. Super. 207, 216 (Law Div. 1974). The Supreme Court has determined that the test of materiality requires a two-prong analysis:

first, whether the effect of a waiver would be to deprive the municipality of its assurance that the contract will be entered into, performed and guaranteed according to its specified requirements, and second, whether it is of such a nature that its waiver would adversely affect competitive bidding by placing a bidder in a position of advantage over other bidders or by otherwise undermining the necessary common standard of competition.

[Meadowbrook Carting Co. v. Borough of Island Heights, 138 N.J. 307, 315 (1994) (internal quotation marks and citations omitted).]

Materiality is a question of law. Twp. of Hanover v. Int'l Fid. Ins. Co., 122 N.J. Super. 544, 548 (App. Div.), certif. denied, 64 N.J. 150 (1973).² In determining whether a condition

(continued)
or whether those arguments were abandoned and, therefore, no longer cognizable.

²The municipality contends that we may only intervene if its actions in waiving the defects in Helmrich's proposal constituted an abuse of discretion. That argument is not accurate. Although a public entity has the discretion to waive immaterial defects, it has no discretion to waive material defects. Star of the Sea Concrete Corp. v. Lucas Bros., Inc., 370 N.J. Super. 60, 72 (App. Div. 2004); Serenity Contracting
(continued)

is material or inconsequential, our Supreme Court has distinguished between requirements that lie at the heart of the undertaking and aspects of the bid that may be waived in "a sensible or practical way." Terminal Constr. Corp. v. Atlantic County Sewerage Auth., 67 N.J. 403, 411 (1975). For example, a bidder's submission of security for its performance is material, but the form of that security may "vary slightly" from that expressly requested. Ibid. Adhering to this approach, we conclude that Helmrich's departure from the three-wrecker requirement was not a mere irregularity but a material deficiency. Indeed, the Supreme Court has held that "conditions requiring detailed description of materials . . . [have] been found to be so material as not to be the subject of waiver." Ibid. (citing Case v. Trenton, 76 N.J.L. 696 (E. & A. 1909)). See also In re On-Line Games Prod. & Operation Servs. Contract, 279 N.J. Super. 566, 603 (App. Div. 1995) (holding that a bid to supply lottery machines was materially defective because the bidder failed to specify, as required, that the machines contained an electronic advertising screen that could be seen from fifteen feet away).

(continued)

Group, Inc. v. Borough of Fort Lee, 306 N.J. Super. 151, 156 (App. Div. 1997), certif. denied, 153 N.J. 214 (1998).

The materiality of this requirement is patently obvious. An operator's possession of the equipment deemed necessary to fulfill the municipality's towing requirements is essential to the undertaking. In inviting bids, the municipality expressly stated that the bidder would be required to have three wreckers, and made that known in mandatory terms, directing that the operator's bid "shall" meet the minimum requirement of three wreckers of the various sizes specified. This mandatory requirement could not be waived upon the municipality's later disavowal of its own specification. To invoke what the Court said in L. Pucillo & Sons, Inc. v. Mayor of New Milford, 73 N.J. 349, 356 (1977), we cannot "transform the mandatory requirement in [the] specifications into a polite request."

Consideration of the second prong leads to the same conclusion. The municipality's waiver of the three-wrecker requirement provided Helmrich with an advantage in the bidding process that strikes at the very heart of the Local Public Contracts Law, N.J.S.A. 40A:11-1 to -51, which was intended to encourage competition and to guard against "favoritism, improvidence, extravagance and corruption." L. Pucillo & Sons, Inc., supra, 73 N.J. at 356. See also George Harms Constr. Co. v. N.J. Tpk. Auth., 137 N.J. 8, 36 (1994); Van Note-Harvey Assocs., P.C. v. N.J. Sch. Dev. Auth., 407 N.J. Super. 643, 648

(App. Div. 2009). In her decision, the judge found this prong did not apply because plaintiff failed to provide evidence of "fraud, bad faith or collusion surrounding the bid." That is not the test. Plaintiff was not required to show actual fraud or corruption but only that the municipality's waiver of the three-wrecker requirement was "capable of becoming a vehicle for corruption or favoritism, or capable of encouraging improvidence or extravagance, or likely to affect the amount of any bid or to influence any potential bidder to refrain from bidding, or which are capable of affecting the ability of the contracting unit to make bid comparisons." L. Pucillo & Sons, Inc., supra, 73 N.J. at 357 (emphasis added).

There can be no doubt that the three-wrecker requirement could well have discouraged others, who did not possess that necessary equipment, from bidding, or could have influenced the amount of the bids submitted by those that did. By permitting Helmrich to skirt the bidding specifications, the municipality created a bidding procedure that was capable of becoming a vehicle for corruption or favoritism that warrants our intervention. Meadowbrook Carting, supra, 138 N.J. at 324-25 (holding that by awarding the contract "to one who fails to submit bids on all terms necessarily creates an inequality in the bidding and an opportunity for favoritism"). We, thus,

conclude that Helmrich's failure to meet the three-wrecker requirement constituted a material discrepancy that the municipality could not waive.

With Helmrich's disqualification, plaintiff assumes the position of lowest qualified bidder. As a result, plaintiff is entitled to what it would have received had the municipality properly recognized it was powerless to waive the nonconformity in Helmrich's bid. Neither Helmrich nor the municipality has argued that plaintiff is not entitled to this remedy or that the contract should be rebid.

Reversed and remanded for the entry of an order which invalidates Helmrich's contract and which directs the municipality to enter into a three-year contract with plaintiff on the terms contained in plaintiff's bid. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION

LAW OFFICES OF
CHARLES W. SANDMAN, III, ESQUIRE
18 N. MAIN STREET
CAPE MAY COURT HOUSE, NJ 08210
FAX (609) 463-3588

PLEASE REFER TO
OUR FILE NO. FILE #

CHARLES W. SANDMAN, III*
(609) 463-0094

*MEMBER OF PA BAR ALSO

FAX TRANSMITTAL COVER SHEET

TO: Paul J. Baldini, Esquire
Solicitor Sea Isle City

FROM: CHARLES W. SANDMAN, III, ESQUIRE

DATE: October 27, 2009

RE: Sea Isle City Towing Contract

FAX #: 729-8627

FAXED BY: Kim

TIME:

NUMBER OF PAGES BEING FAXED (including cover sheet): 11 (Please call if you do not receive all pages.)

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Oct 27 2009 11:03am

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Oct 27	10:57am	Fax Sent	7298627	5:53	11	OK

Exhibit F

LAW OFFICES
PAUL J. BALDINI, P.A.
A PROFESSIONAL CORPORATION

4413 New Jersey Avenue
Wildwood, NJ 08260
(609) 729-2600
(609) 729-8627 Fax

8405 E. Landis Avenue
Sea Isle City, NJ 08243
(609) 263-1100
(609) 263-8196 Fax
E-mail: pjblawwwd@yahoo.com
Please reply to:

PAUL J. BALDINI, ESQUIRE

Wildwood Office

FILE NO. 1027-268

Via regular mail & facsimile

November 16, 2009

Charles W. Sandman, III, Esquire
18 North Main Street
Cape May Court House, NJ 08210

RE: **Sea Isle City Towing Contract**

Dear Chuck:

Thank you for your letter of October 27, 2009. I have reviewed same and I don't see anything contained in the letter and the accompanying supporting documentation that changes the City's position. Based upon the above you should proceed accordingly.

Thank you for your time and attention to the above.

Sincerely,



Paul J. Baldini

PJB/cms

cc: James Terruso, C.F.O. (via e-mail)
George Smykowski, Administrator (via e-mail)
Cindy Chirchi (via e-mail)
Carmella Desiderio, Purchasing Agent (via e-mail)