

LANCIANO & ASSOCIATES, L.L.C.

Larry E. Hardcastle, II, Esq. – Id No.: 025742010

2 Route 31 North

Pennington, NJ 08534

(609) 452-7100

lhardcastle@lancianolaw.com

Counsel for Plaintiff FCC Consulting Services, LLC

FCC CONSULTING SERVICES,
LLC,

Plaintiff,

v.

CITY OF TRENTON,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MERCER COUNTY

DOCKET NO.: MER-L-_____-20

CIVIL ACTION

**VERIFIED COMPLAINT IN LIEU OF
PREROGATIVE WRITS**

The Plaintiff, FCC Consulting Services, LLC, by and through its undersigned counsel, by way of Verified Complaint against the Defendant, the City of Trenton hereby state and allege as follows:

PRELIMINARY STATEMENT

1. This matter arises from the Trenton City Council’s disregard of the Plaintiff’s rights under the Local Public Contracts Law. On two separate occasions, the Plaintiff has been identified by the committee charged with evaluating proposals to provide information technology services as being the most advantageous proposal. On two separate occasions, the Council refused to permit the award of the contract in dispute merely because the Plaintiff was the winner. The Council’s conduct violates the Local Public Contracts Law.

PARTIES

2. Plaintiff FCC Consulting Services, LLC (“FCC”) is a limited liability company organized and existing under the laws of the State of New Jersey with a principal place of business at 184 South Broad Street, Trenton, New Jersey.

3. The City of Trenton is a municipal corporation of the State of New Jersey with a principal place of business located at 319 East State Street, Trenton, NJ 08608

FACTUAL BACKGROUND

I. TRENTON’S FORM OF GOVERNMENT

4. Trenton City is a mayor-council plan of government authorized by the Faulkner Act, N.J.S.A §§ 40:69A-31 to 67.2.

5. That form of government divides the legislative and executive powers between the council and mayor, respectively. N.J.S.A. §§ 40:69A-36, 39.

6. The council’s legislative power, on the one hand, includes the power of “[a]pproval of contracts presented by the mayor.” N.J.S.A. § 40:69A-36(l).

7. The executive power, on the other hand, includes the power to “[n]egotiate contracts for the municipality, subject to council approval.” N.J.S.A. § 40:69A-40(j).

8. Trenton also has a department of administration, which is headed by Trenton’s business administrator. N.J.S.A. § 40:69A-44.

II. TRENTON’S RELEVANT HISTORY WITH COMPETITIVE CONTRACTING FOR TECHNICAL SUPPORT SERVICES FOR ITS INFORMATION SYSTEM

9. In 2006, the Trenton City Council approved the use of competitive contracting in the selection of a contractor to provide for the “operation,

management or administration of data processing services...” (hereinafter “IT Services”) A true and correct copy of that authorization is attached hereto as **Exhibit A**.

10. Since the passage of that resolution, the City of Trenton has used competitive contracting to select the contractor to provide IT Services.

III. THE PLAINTIFF’S HISTORY OF PROVIDING INFORMATION TECHNOLOGY SERVICES TO THE CITY OF TRENTON

11. In or around October 2015, FCC submitted a proposal in response to Trenton’s request for proposal to provide IT Services.

12. The evaluation committee selected FCC’s proposal and recommended that the Council approve the contract, which it did via Resolution 15-705. A true and correct copy of the Resolution and contract are attached hereto as **Exhibit B**.

13. Since that time, FCC has provided IT Services to Trenton in accordance with that contract.

14. It has never has been found, through either court adjudication, arbitration, mediation, or other contractually stipulated alternate dispute resolution mechanism, to have: failed to provide or perform goods or services; or failed to complete the contract in a timely manner; or otherwise performed unsatisfactorily under a prior contract with Trenton.

15. It has never defaulted on a contract, thereby requiring Trenton to utilize the services of another contractor to provide the goods or perform the services or to correct or complete the contract.

16. It has never defaulted on a contract, thereby requiring Trenton to look to its

surety for completion of the contract or tender of the costs of completion.

17. It has never been debarred or suspended from contracting with any of the agencies or departments of the executive branch of the State of New Jersey.

IV. THE PLAINTIFF IS SELECTED TO CONTINUE PROVIDING IT SERVICES, BUT THE COUNCIL REJECTS THE CONTRACTS

18. FCC's contract with Trenton was set to expire in late 2019.

19. Thus, Trenton prepared a Request for Competitive Contracting Proposals to Provide Technical Support Services. That RFP was identified as CC2019-10.

20. FCC submitted a proposal that was selected as the winning proposal in December 2019.

21. In accordance with the Faulkner Act, the mayor's office presented the contract to the Council for approval.

22. The Council withheld its approval not because of any technical defect, but because it was FCC that was selected.

23. Thus, the mayor's office readvertised the request for proposals, this time denominated as CC2020-03.

24. The readvertisement changed the terms of the contract to a two-year term with a one-year extension from a three-year term with two one-year extensions.

25. In March 2020, the evaluation committee once again selected FCC as the most advantageous proposal to provide the necessary IT Services.

26. Once again, the Council withheld its approval simply because FCC had been selected.

27. Following the second rejection by the Council, the statewide lockdown

prompted by the spread of the novel coronavirus SARS-CoV-2 caused a delay in reissuing the request for proposals.

28. Thus, the mayor's office did not readvertise the request for proposal until August 17, 2020, this time denominated as CC2020-08 (the "Operative RFP"). A true and correct copy of the Operative RFP is attached hereto as **Exhibit C**.

29. The Operative RFP required interested parties to submit a proposal by September 1, 2020, which FCC did.

30. The Council discussed the Operative RFP at meetings held on September 1 and 3, during which several members of the Council made their illegal bias against FCC apparent.

V. THE COUNCIL MAKES CLEAR ITS BIAS AGAINST THE PLAINTIFF

31. During its September 3, 2020 meeting, many members of the Council demonstrated a misapprehension of what services FCC was actually providing to Trenton.

32. For example, as support for their opposition to FCC, councilmembers brought up two points.

33. First, Council President Kathy McBride blamed FCC for the highly publicized failure of the police communication system during a bank robbery.

34. While it is true that the police communication system failed during an October 2019 bank robbery, it is equally true *that FCC had no responsibility over that system*.

35. That fact was confirmed by Trenton Business Administrator Adam E. Cruz,

who even offered to provide the Council with invoices showing that FCC, who is an information technology provider, had no responsibility for the event, which was a failure of the communications system.

36. Second Councilwoman Robin Vaughn faulted FCC for difficulties the school system had in accommodating remote learning during the early days of the pandemic.

37. Again, however, FCC had no responsibility for the administering the school district's network, a fact first made clear to her by Councilman Jerell Blakeley.

38. Mr. Cruz further substantiated that point by pointing out that the school board "has their own set of IT support."

39. Bizarrely, Councilwoman Vaughn admonished that FCC should "compete for the projects in the open market and allow the fair and open process to take place."

40. But the fair and open process had *twice selected FCC as the most advantageous contract*. It was only the Council's bias that stopped the FCC from being awarded the contract.

41. The Council ignored Mr. Cruz's attempt to educate them as to the scope and quality of FCC's services and instead persisted in ignorance.

42. Councilman George Muschal took the outrageous position that irrespective of FCC's suitability to provide IT Services, that it was not going to be awarded the Contract.

43. He even went so far as to state that he would withdraw a procedural motion that was holding up the meeting only if "Mr. Cruz says that the FCC is not going to

be back on that list to be put on there for us, for council, on the record, on the record.”

44. Mr. Cruz rejected Councilman Muschal’s demand by noting that to do so would constitute illegal bid rigging.

45. In a further attempt to illegally exclude FCC, the Council asked whether FCC could bid on the Operative RFP, to which the town attorney stated that it could and if the Council was seeking to disqualify FCC from being considered for the Operative RFP, the Council would have to provide FCC with a notice that it was considering taking such action.

46. Finally, he confirmed that requesting that the mayor’s office commit to *not* selecting FCC as the IT Services contractor would likely constitute illegal bid-rigging.

47. Councilman Jerell Blakeley was so incensed by the conduct of Councilman Muschal that he asked the Mercer County Prosecutor’s office to investigate Councilman Muschal for conspiracy to commit bid-rigging. A true and correct copy of an article discussing the referral is attached hereto as **Exhibit D**.

VI. THE MAYOR’S OFFICE, CONSTRAINED BY THE COUNCIL’S ILLEGAL CONDUCT, TAKES ACTION THAT DISADVANTAGES THE PLAINTIFF

48. Faced with the Council’s vendetta against FCC, Mr. Cruz confirmed that the mayor’s office had made two key changes to the way in which it was evaluating the proposals.

49. First, it completely changed the typical evaluation committee. In the first and second rounds of evaluation, the evaluation committee included Mr. Cruz,

Assistant Business Administrator Colin Cherry, and Budget Administrator Alphonso Jones.

50. Instead of the regular members, Mr. Cruz indicated that an alternative evaluation committee had been constituted.

51. Second, the mayor's office made the new evaluation committee aware of the Council's overt bias against FCC.

52. The mayor's office's attempt to accommodate the Council's overt bias has irretrievably damaged the fair and open process guaranteed to FCC by the Local Public Contracts Law.

53. Based on Mr. Cruz's statements, the mayor's office will present the Council with the proposal selected by flawed process on September 15, 2020, and the Council will vote on its approval on September 17, 2020.

CAUSES OF ACTION

COUNT I

(Temporary & Preliminary Restraints)

54. The Plaintiff incorporates herein by reference the allegations set forth above.

55. The Council's conduct constituted a *de facto* disqualification of the Plaintiff from being awarded the Operative RFP.

56. The Local Public Contracts Law only permits the disqualification of an otherwise qualified contractor if certain conditions are met and the contractor is afforded due process protections.

57. None of the conditions that would permit the Council to disqualify FCC

from consideration in connection with the Operative RFP are present.

58. Furthermore, the Council did not provide FCC with notice and an opportunity to be heard in connection with the *de facto* ban.

59. The mayor's office notified the committee evaluating the Operative RFP of the Council's animosity towards FCC.

60. Based on the foregoing conduct, FCC is unable to receive a fair and impartial evaluation of the proposal its submitted in response to the Operative RFP.

WHEREFORE, the Plaintiff respectfully requests that the Court enter an Order (A) temporarily and preliminarily restraining and enjoining Trenton from further consideration of the Operative RFP; (B) disbanding the currently constituted evaluation committee because of the taint caused by the Council's illegal bias against the Plaintiff; (C) ordering the Council to approve the Plaintiff's contact to provide IT Services if the reconstituted evaluation committee again selected it as the most advantageous proposal; and (D) granting such other and further relief as the Court deems just and equitable.

COUNT II
(Permanent Injunctive Relief)

61. The Plaintiff incorporates herein by reference the allegations set forth above.

62. The Council may not disqualify a potential contractor without going to the formalities demanded by the Local Public Contracts Law.

63. Additionally, the Council may not impose any requirement in connection with competitive contracting that "shall unfairly or illegally discriminate or exclude

otherwise capable vendors.” N.J.A.C. § 5:34-4.2.

64. By placing the requirement on the Operative RFP that the winner be a business other than the Plaintiff, the Council has violated both of the foregoing principles.

WHEREFORE, the Plaintiff respectfully requests that the Court enter an Order permanently enjoining the Council from imposing on the Operative RFP the condition that the winner be a business other than the Plaintiff and such other and further relief as the Court deems just and equitable.

LANCIANO & ASSOCIATES, L.L.C.
Counsel for the Plaintiff

By: 

Larry E. Hardcastle, II

Dated: September 14, 2020

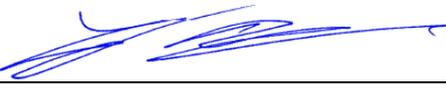
CERTIFICATION PURSUANT TO RULE 4:69-4

Pursuant to Rule 4:69-4, the Plaintiff has requested audio recordings of the meetings relied on in substantiating this Verified Complaint in Lieu of Prerogative Writs and will have transcripts created from those recordings.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Larry E. Hardcastle, II, Esq. is designated as trial counsel.

LANCIANO & ASSOCIATES, L.L.C.
Counsel for the Plaintiff

By: 

Larry E. Hardcastle, II

Dated: September 14, 2020

LANCIANO & ASSOCIATES, L.L.C.
Larry E. Hardcastle, II, Esq. – Id No.: 025742010
2 Route 31 North
Pennington, NJ 08534
(609) 452-7100
lhardcastle@lancianolaw.com

Counsel for Plaintiff FCC Consulting Services, LLC

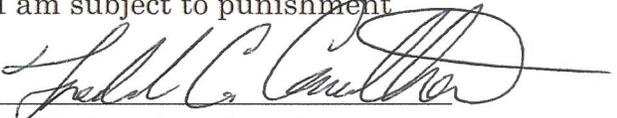
<p>FCC CONSULTING SERVICES, LLC,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>CITY OF TRENTON,</p> <p style="text-align: center;">Defendant.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION MERCER COUNTY</p> <p>DOCKET NO.: MER-L-_____ -20</p> <p style="text-align: center;"><u>CIVIL ACTION</u></p> <p style="text-align: center;">VERIFICATION</p>
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I, F. CHRISTOPHER CAROTHERS., of full age, being duly sworn according to law, upon my oath, depose and say:

1. I am an authorized representative of the Plaintiff, FCC Consulting Services, LLC,
2. I have read the verified complaint and the information contained in it is true and based on my personal knowledge.

CERTIFICATION IN LIEU OF OATH

The foregoing statements made by me are true and I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment



 F. Christopher Carothers

Dated: September 14, 2020