

**Matter of AAA Carting & Rubbish Removal, Inc. v
Town of Southeast**

2009 NY Slip Op 33388(U)

December 1, 2009

Supreme Court, Putnam County

Docket Number: 3197/2009

Judge: Andrew P. O'Rourke

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This opinion is uncorrected and not selected for official publication.

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DECISION AND ORDER

PUTNAM COUNTY
CLERK

2009 DEC -8 1 AM 10: 12

To commence the statutory period of appeals as of right CPLR (5515 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

**SUPREME COURT OF THE STATE OF NEW YORK
IAS PART, PUTNAM COUNTY**

**Present: Hon. Andrew P. O'Rourke
Supreme Court Justice**

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IN THE MATTER OF THE APPLICATION OF
AAA CARTING AND RUBBISH REMOVAL, INC.,

INDEX NO.:3197/2009
MOTION
DATE:11/18/2009

Petitioner,

For an order and judgment under and pursuant to Article 78 of the CPLR and for other relief
-against-

THE TOWN OF SOUTHEAST, MICHAEL RIGHTS,
AS SUPERVISOR OF THE TOWN OF SOUTHEAST,
PAUL P. JOHNSON, AS COUNCILMAN OF THE
TOWN OF SOUTHEAST, RICHARD B. HONECK AS
COUNCILMAN OF THE TOWN OF SOUTHEAST,
ROGER GROSS, AS COUNCILMAN OF TH TOWN
OF SOUTHEAST AND DWIGHT YEE, AS
COUNCILMAN OF TH TOWN OF SOUTHEAST AND
SANI-PRO DISPOSAL SERVICES CORP., D/B/A
SUBURBAN CARTING,

Respondents.

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The following documents numbered 1 to 26 read on this motion by petitioner to annul and vacate a contract award to Suburban Carting.

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Notice of Motion- Affidavits 1-2
Cross Motion
Answering Affidavits 11-12
Replying Affidavits 20, 24
Affidavits
Pleadings-Exhibits-Stipulations-Minutes 3-10, 13-18, 21- 23, 25
Briefs: Plaintiff 26
Defendant 19

Motion is decided as follows:

In July 2009, the Town of Southeast issued an “Information for Bidders and Contract Documents Specifications and Proposal for the Collection of Refuse, Garbage, Recyclable Materials and Bulk Collection Contract.”

The Bid of Request sought the solicitation of bids for six alternative proposals for the collection of refuse for the residents of the Town of Southeast. In addition, all bidders were required to furnish proof that it had been in continuous existence for five years prior to the submission of its bid and that during the five years, that it had successfully operated a refuse and/or recyclable material collection business.

Petitioner submitted its sealed bid to the Town on August 5, 2009..

Bids were submitted to the Town by Respondents Suburban Carting and Advance Waste System as well as petitioner.

Petitioner states at the time Suburban submitted its bid it had only been in existence for approximately three years and could not meet the 5 year requirement. Suburban Carting is the d/b/a of Sani-Pro Disposal Services Corp. According to the NYS Department of State, Division of Corporations, Sani-Pro Disposal Services, Corp was incorporated on June 28, 2006.

Petitioner met all of the bid requirements. Petitioner set forth references regarding its

refuse and carting from Town of Putnam Valley, Westchester County Parks and Recreation, Town of Harrison, Peekskill School District, Yorktown Central School District, Katonah Lewisboro School District and Village of Rye Brook.

On September 24, 2009 the sealed bids were open and a resolution introduced awarding the contract to petitioner AAA as the lowest bidder under Proposal 4. AAA bid was \$1,210,500 per annum and Suburban Carting's bid was \$1,496,205 per annum. The AAA Resolution acknowledged that the Board analyzed the bids, made site visit to the bidders business operation, analyzed and reviewed safety records, as well as bonds and insurance policies held by the bidders. One Councilman and one Special Districts Coordinator privately and publically declared that petitioner was a responsible bidder.

However, the AAA Resolution was voted against by Councilmen Gross Honeck and Johnson.

On the same day Councilmen Johnson, Gross and Honeck voted to grant Proposal 4 to Suburban Carting even though Suburban's bid was higher than AAA. No cogent explanation was articulated by the Board for rejecting AAA's significantly lower bid.

AAA states by accepting Suburban's bid the residents will pay over \$857,115 for the 3 year contract and two additional one year terms of \$574,410 for a total of \$1,428,525 over the bid of AAA.

On November 1, 2009, the Danbury New Times printed a quote of Councilman Johnson, who voted against AAA as stating "I believe that AAA can reasonably be construed as being responsible, in addition to being the lowest bidder."

On October 2, 2009 AAA wrote to the Board objecting to the award to Suburban as

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violative of General Municipal Law § 103 and demanded reconsideration. When AAA received no response another letter dated October 16, 2009 was sent to the Board, neither letter was answered.

Petitioner states pursuant to New York Town Law § 122 every officer, board or agency of a Town must let a contract for public work go to the lowest bidder if required under General Municipal Law § 103, which provides,

“Contracts...shall be awarded by the appropriate officer, board or agency of a political subdivision or of any district therein...to the lowest responsible bidder furnishing the required security after advertisement for sealed bids in the manner provided by this section.”

Petitioner states it was the lowest bidder. The award to Suburban is not based on substantial evidence, is arbitrary and capricious, represents an abuse of discretion and constitutes an error of law.

The award to Suburban violates § 103 of the Municipal Law and § 122 of the Town Law and is therefore void.

Petitioner states it has suffered irreparable harm as a result of the award of the contract to Suburban who was not the lowest bidder.

Petitioner requests the contract awarded to Suburban be annulled and set aside. That the award to Suburban be stayed; that the contract be awarded to AAA and that AAA be awarded costs, disbursements and reasonable counsel fees for this action.

In opposition, Richard B. Honeck, an elected member of the Town Board states on August 5, 2009 at 11 am the Town Clerk opened the bids. AWS was the highest, Suburban was

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next and AAA was the lowest bid.

Realizing that this was an important municipal service, Mr. Honeck and other Town Board members visited the operations of Suburban and AAA analyzing the trucks, maintenance facilities, safety records, loss avoidance programs, recycling facilities and programs, and other qualitative aspects of these operations.

On September 2, 2009, Mr. Honeck, Councilman Paul Johnson and the Town's Special District Coordinator, Mr. Levon Bedrosian visited Suburban's facilities and met with the principal, Nicholas and Joseph Orlanda and several other employees of Suburban.

Mr. Honeck also met with AAA. In comparison, AAA did not place a very high premium on safety and maintenance. AAA's campus is smaller than Suburban's. Suburban's facility was strikingly cleaner than AAA. AAA's fleet was older and its equipment was purchased "used." AAA did not have sufficient plant or equipment to serve the needs of the Town of Southeast. AAA did not conduct on going safety training and is not a union shop.

AAA's references, especially from Putnam Valley were not complimentary.

Furthermore, AAA did not hold the requisite permits to allow it to legally conduct business in Putnam County as a waste hauler on August 5, 2009 when the bids were open, nor on September 24, 2009 when the contract was awarded to Suburban.

Thus based on its investigation, the information obtained and the fact that AAA is not licensed to do business in Putnam County, the Board awarded the service contract to Suburban Contracting the lowest bidder.

The Board's action was not an abuse of discretion nor in violation of any statute.

In reply Pasquale L. Cartalemi, the office manager of AAA states, the Board of Southeast

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does not dispute that the contract to Suburban will cost the Town's residents \$857,115 more than if AAA was given the contract. Residents will also incur an additional \$574,410 if the contract is extended for two, one year terms.

Mr. Mr. Cartalemi refers to Councilman Johnson's August 28, 2009 memo wherein he refers to AAA as not only the lowest bidder but a "responsible" bidder... "because they have the experience, the capital and infrastructure to execute the Southeast Contract."

Mr. Cartalemi states after reviewing Mr. Honeck's affidavit it was apparent "that the majority of the Town Board of Southeast have an unfair bias in favor of Suburban and, consequently, accepted its significantly higher bid and awarded it the contract."

AAA states it has been a licensed hauler in Putnam County since 1994 through December 2008. AAA states each year Gordon Maxwell, an employee of the Putnam County Health Department would notify AAA regarding the renewal of its permit. Mr. Maxwell left his position in 2008 and the permit was inadvertently not renewed. More important being made aware of the failure to renew, AAA filed, paid the fee and received its permit.

Additionally, AAA states the permit was not a requirement for bidding. No where in the conditions "is there any requirement that a prospective bidder have an existing permit in order to be qualified to submit a bid proposal."

Furthermore, the lack of a permit was not set forth as a basis for denial of the contract to AAA. The lack a permit was only raised during these proceedings.

AAA states councilman Honeck met with Suburban at their facilities on September 2, 2009. However, Councilman, Honeck did not extend the same consideration to AAA. A visit was arranged, the Town Board abruptly cancelled and never bothered to visit AAA's facilities.

AAA states only Councilman Johnson came to AAA's facilities on a weeknight, August 27, 2009 at approximately 5:30 pm when the "employees had quit for the day and our operations were shut down." Councilman Johnson's "visit" was approximately thirty (30) minutes.

AAA states had Councilman Honeck and/or Councilman Johnson extended the same courtesies to AAA as they did to Suburban they would have learned that AAA also:

1. Conducts monthly safety and training meetings as required by the DOT.
2. AAA's insurance carrier does routine license checks on all drivers. AAA is registered with Clarity Testing which performs random drug and alcohol tests on AAA's drivers.
3. AAA conducts pre-employment screening and background checks on all employees including drug and alcohol screenings.
4. 50% of AAA's staff are men with over twenty years of experience.
5. AAA has daily inspection of its vehicles. Has 4 full time mechanics and fully stocked parts department.
6. 70% of AAA's trucks are 2000 or newer. 13% of its truck are specifically for refuse collection.
7. AAA's combined site is 6 acres and larger than Suburban's campus.

Since Councilman Honeck never met with AAA's officers or visited their site, his statement that "it was felt that AAA does not place a very high premium on safety and maintenance", has no basis, is defamatory and should not be considered by the Court.

According to records kept by the Federal Motor Carrier Safety Administration for the period ending November 22, 2009, AAA had no accidents. Suburban had one which led to any

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injury. 50 % of Suburban's inspected trucks we "out of service" while only 30.8% of AAA's inspected trucks were "out-of-service."

Councilman Honeck's conclusion that AAA did not have "sufficient equipment to service the Town of Southeast along with its other municipal clients" lacks any rationale or basis.

Council Honeck stated in his affidavit that he spoke to Judy Travis of the Town of Putnam Valley and that she complained of AAA's service.

Annexed to AAA's papers is a letter dated November 20, 2009 from Judy Travis, refuting Councilman Honeck's meeting. Ms. Travis indicated there were complaints from residents in "one specific part of Town." A meeting was held between AAA and the residents in question where recycling practice were discussed and "there have been no further complaints."

Furthermore, Ms. Travis made no statement regarding the Town of Putnam Valley being subject to any fines.

Although AAA called Levon Bedrosian, for clarification regarding some of the Bid question, no one ever returned a call.

Additionally, neither Councilman Honeck nor Councilman Johnson has set forth their credentials to determine the standard's of the industry and who does and does not comply with same.

AAA has an unblemished record for providing refuse services to the Town of Putnam Valley, Harrison and Rye Brook. AAA states no where does Councilman Honeck or Councilman Johnson refer to "Suburban Carting's infamous reputation and well-documented connection to organized crime." Suburban bought its predecessor's assets that it is not a "successor in interest" and thus cannot comply with the five year business requirement.

AAA was found to be a responsible bidder by a majority of the Board, was the lowest bidder and the contract was given to Suburban.

After a review of all documents the Court finds, AAA qualified with 5 years experience, was valued a responsible bidder and submitted the lowest bid, but did not receive the contract.

Suburban does not have the required time experience and submitted a bid that will cost the tax payers a huge amount of money.

Councilman Honeck and Councilman Johnson, without credentials, and without fairly inspecting and interviewing the bidders, made rash and unsupported statements as to AAA's ability, experience, facilities, safety programs and equipment.

The Court therefore grants the Petition to set aside and declare null and void the contract to Suburban Carting on the grounds that the Boards decision was arbitrary, capricious and not made upon facts and in good faith.

Petitioner is entitled to be awarded the contract as a responsible operator who submitted the lowest bid.

Petitioner is granted the costs and disbursements of this action.

This constitutes the decision and order of the Court.



Andrew P. O'Rourke
Justice of the Supreme Court

Dated: December 1, 2009
Carmel, NY

Robinson Brog Leinwand Greene Genovese and Gluck PC
1345 Avenue of the Americas
New York, NY 10105