

**BROWN & CONNERY, LLP**

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*Attorneys for Plaintiff, County of Camden*

THE COUNTY OF CAMDEN,

Plaintiff,

v.

FCR CAMDEN, LLC, d/b/a  
"ReCOMMUNITY,

Defendant.

**SUPERIOR COURT OF NEW JERSEY,  
LAW DIVISION,  
CAMDEN COUNTY**

**DOCKET NO.**

**VERIFIED COMPLAINT**

Plaintiff, the County of Camden ("County"), by way of Verified Complaint against Defendant FCR Camden, LLC, d/b/a "ReCommunity" ("FCR Camden"), hereby alleges:

**THE NATURE OF THE ACTION**

1. This is an action for declaratory relief to redress harm the County will suffer as a result of the unlawful acts of FCR Camden in imposing a new inspection protocol and additional fees upon the County that are not permitted by the Contract between them.

**THE PARTIES AND JURISDICTION**

2. Plaintiff, the County, is a body politic and corporate existing under the laws of the State of New Jersey and the lead agency for the Camden County Cooperative Pricing System, System Identifier #57-CCCPS.

3. Defendant, FCR Camden, is a corporation of the State of Delaware with an address of 2201 Mt. Ephraim Avenue, Camden, New Jersey 08104 and a corporate office at 809 West Hill Street, Charlotte, North Carolina 28208.

4. The Court has jurisdiction over FCR Camden because it is transacting business in this State and has contracted to supply services in this State and because its actions complained of herein were committed in New Jersey.

5. Pursuant to R. 4:3-2, venue is proper in Camden County because all events which are the subject of this matter have occurred in Camden County, New Jersey.

### **FACTUAL ALLEGATIONS**

#### **A. The County Authorized Competitive Contracting For The Procurement Of A Vendor To Provide Marketing Of Recyclable Materials**

6. The New Jersey Local Public Contracts Law (“LPCL”), N.J.S.A. 40A:11-1 et seq, provides for the use of competitive contracting in lieu of public bidding for the procurement of specialized good and services for certain purposes.

7. On December 15, 2016, the County, through its Board of Chosen Freeholders, passed Resolution 34 authorizing a competitive contracting process for the procurement of a vendor to provide marketing of recyclable materials for the County and various County agencies and authorities and County municipalities under the Camden County Cooperative Pricing System, ID#57-CCCPs.

#### **B. The County Request For Proposals**

8. On March 22, 2017, the County published its Notice seeking Proposals for Competitive Contracting Request For Proposals #17-10, Marketing Services of Single-stream Recyclable Materials for the County of Camden and Participating County Municipalities under

the Camden County Cooperative Pricing System, ID #57-CCCPS (“Request for Competitive Contracting Proposals” or “Request”).

9. The responses to the Request for Competitive Contracting Proposals were to be opened on April 13, 2017 at 11:00 am.

10. The Request states that the intent is to select a vendor to receive, sort, process and market single-stream recyclables generated by the County and participating County municipalities.

11. The Request states that responding firms should have extensive experience and a knowledgeable background and qualifications in the provision of the services requested.

12. The Request advises responding firms that the agreement resulting from the process was to commence on or before May 1, 2017.

13. The Request states that it is the vendor’s responsibility to be familiar with all federal, state and local statutes, and court rules and regulations applicable to the services provided.

14. The Request states that any questions regarding the Request were to be made in writing to Jack Sworaski, Director, Camden County Division of Environmental Affairs no later than March 28, 2017.

15. The Request states that any contract for services shall be subject to the availability and appropriation of sufficient funds for the purpose stated therein on an annual basis.

16. The Request states that one of the criteria for evaluating proposals includes an evaluation of whether the vendor has sufficient financial resources to meet its obligations according to the proposal.

17. The Request states that, pursuant to N.J.A.C. 5:34-4.3(c), and at the County's sole option, vendors may be invited to provide clarification regarding their submission. The presentation is to address only those matters specified by the County and shall not be used for negotiation of the contract.

18. The Request states that the term of the contract shall be three (3) years with two (2) one year options to renew to be exercised at the sole discretion of the County.

19. The Request states that recyclable materials include, but are not limited to: fiber, including newspapers with inserts, corrugated cardboard, chipboard/paperboard, brown paper bags, junk mail, magazines, office paper, manila folders, and soft cover books; glass bottles/containers; mixed plastic containers including numbers 1, 2, 4, 5 and 7; aseptic packaging, aluminum and ferrous containers.

20. The Request includes historical data as Attachment B, which indicates that the total annual aggregated total of recyclables is approximately 42,000 tons.

21. The Request states that by participating in the cooperative program, all municipalities identified in Attachment B shall be obligated to deliver all recyclables to the vendor's facility for the term of the agreement.

22. The Request states that the proposer is required to provide information regarding the process to be used for the receipt, weighing, off-loading and exiting of municipal vehicles.

23. The Request states that the proposer is required to provide information regarding any causes for rejection of loads delivered by or on behalf of the municipalities and the County.

24. The Request states that the proposer is required to provide information regarding the average residue percentage resulting from proposer's processing of recyclable materials.

25. The Request states in boldface and underlined print that **“Fees and Expenses cannot be negotiated, pursuant to this method of procurement, see: N.J.S.A. 40A:11-4.1 et seq.”**

26. The Request states that the vendor was permitted in Section G to provide any further pertinent data and information not included elsewhere and found necessary by the vendor.

27. On March 31, 2017, the County issued Clarification #1 in connection with the Request.

28. In Clarification #1, the County advised that it would not negotiate to allow proposers to have a bi-lateral option for the two (2) one year options.

29. In Clarification #1, the County advised that any payment due proposer for residue disposal shall be factored into the ACR consideration.

30. In Clarification #1, a potential vendor asked how the County would assure that the floor pricing offered by a vendor is valid and will be available if the markets are unfavorable. In response the County advised that if the successful vendor does not honor the floor pricing, such action would be a breach of the contract for which there would be legal remedies available.

31. In Clarification #1, the County advised that the provisions of the CCRFP bid document and the successful vendor’s pricing would be incorporated in to the contract.

32. In Clarification #1, a potential vendor asked if it would be compensated accordingly if the residue percentage is exceeded. In response the County advised that the vendor is responsible for designating the initial residue percentage with the pricing form – Attachment A.

33. In Clarification #1, the County advised that there is no calculation for the maximum floor value and that the value is to be any value between 0\$/ton to a maximum of

\$17.00/ton. This value is to document the maximum fee if the adjusted average commodity value falls below the ACR threshold.

**C. The FCR Camden Proposal**

34. In response to the Request, on April 13, 2017, FCR Camden submitted its proposal (“Proposal”) to receive, sort, process and market single stream recyclables generated by the County and its participating municipalities.

35. In the Proposal, FCR Camden states that it has over 30 years of experience in providing customized recycling solutions to municipalities.

36. In the Proposal, FCR Camden states that it has been the County’s trusted provider of recycling services since 1993.

37. In the Proposal, FCR Camden states that it will continue to deliver value by performing the requested services with the financial results the County expects.

38. In the Proposal, FCR Camden states that it thoroughly understands the County’s expectations and desires for its recycling programs.

39. In the Proposal, FCR Camden states that it provides a sustainable financial model that will support the County’s long term landfill diversion program.

40. In the Proposal, FCR Camden states that its market size enables it to understand and comply with the demands of the commodities end markets.

41. In the Proposal, FCR Camden states that it is dedicated to providing the same level of service through varying market conditions and over the term of its customer contracts.

42. In the Proposal, FCR Camden states that historically, there have been few instances of load rejection if a load is delivered with more than 8% residue.

43. In the Proposal, FCR Camden states that rejection rates are necessary and that it is the responsibility of the delivering party to remove non-conforming materials, but it does not state any separate line items identifying any potential fees associated with any rejection.

44. In the Proposal, FCR Camden states that composition audits will be performed at least two times per year on a schedule to be agreed upon by the County.

45. In the Proposal, FCR Camden states that Camden County municipal representatives will be invited to observe all composition audits to provide full transparency.

46. In the Proposal, FCR Camden states that it is submitting a maximum costs share which reflects sustainable floor pricing for its commodity outlets.

47. In the Proposal, FCR Camden states that the County and its participating municipalities will not pay more than the specified maximum payment when revenues do not exceed the base threshold regardless of market conditions.

48. In the Proposal, FCR Camden states that “it is very important to consider the financial strength of companies offering floor values to assure the ‘Floor Values’ will actually be available to support the contract if markets become unfavorable.”

49. In the Proposal, FCR Camden states that it will create a paper trail when unacceptable materials are delivered and provide timely feedback to the source of the contaminated load.

50. In the Proposal, FCR Camden states that photos will be available for viewing by the county or municipality via a web based customer portal.

51. In the Proposal, FCR Camden states that in the past few years, market commodity values dropped further and for a longer period than ever before.

52. In the Proposal, FCR Camden states that recyclables which once generated surplus revenue often failed to cover costs.

53. In the Proposal, FCR Camden states that the recycling industry has faced a perfect storm of extremely difficult circumstances.

54. In the Proposal, FCR Camden states that its enduring reputation has allowed it to weather the storm.

55. In the Proposal, FCR Camden states that its pricing proposal is structured as a revenue sharing arrangement.

56. In the Proposal, FCR Camden states that when the average commodity revenue (“ACR”) is above a threshold, FCR Camden will rebate the County and/or its participating municipalities 70% of the excess over the threshold.

57. In the Proposal, FCR Camden states that when the ACR is less than the threshold, FCR Camden will invoice the County and/or its participating municipalities for the difference, but in no case will any payment exceed the floor pricing guarantee.

58. In the Proposal, FCR Camden states that the pricing structure limits the County’s exposure to downturns in commodity prices.

59. In the Proposal, FCR Camden states that the maximum floor value is \$5.00/ton.

**D. The County Awards to FCR Camden**

60. On April 20, 2017, the County, through its Board of Chosen Freeholders, passed Resolution 27 authorizing an award of a contract pursuant to competitive contracting request for proposals #17-10 between the County and FCR Camden for marketing services of single-stream recyclable materials.



61. Resolution 27 states that the contract is to be based upon the unit pricing rates listed in FCR's Proposal dated April 13, 2017.

62. Resolution 27 states that funding is contingent upon the availability of sufficient funds in the County's 2017, 2018, 2019 and 2020 temporary and/or permanent budgets and shall be encumbered at the unit pricing listed in FCR Camden's Proposal dated April 13, 2017.

63. Resolution 27 states that the funding shall not exceed any using department's line item budget.

#### **E. The Master Contract**

64. On May 22, 2017, the County and FCR Camden executed the Master Contract ("Contract").

65. Pursuant to the Contract, the term is for three (3) years commencing on or about May 1, 2017 through April 30, 2020 with two (2) one-year options to renew which may be exercised at the sole discretion of the County.

66. Pursuant to the Contract, FCR Camden agrees to do the required work for either the County or any participating member in strict conformity with the Request for Competitive Contracting Proposals.

67. Pursuant to the Contract, the County shall pay FCR Camden at the unit prices and/or fees submitted by FCR Camden in its Proposal dated April 13, 2017.

68. Pursuant to the Contract, the County shall not exceed any using department's line item in the budget for the purposes of recycling.

69. Pursuant to the Contract, funding is contingent upon the availability and appropriation of sufficient funds in the County's 2017, 2018, 2019 and 2020 temporary and/or permanent budgets.

70. Pursuant to the Contract, it may not be amended, altered or modified in any manner except in writing signed by the parties.

71. Pursuant to the Contract, it constitutes the entire agreement of the parties and there are no side or oral agreements.

**F. FCR Camden Attempts To Re-Write The Contract And Impermissibly Add Additional Costs**

72. On or about July 26, 2019, (“the July 26<sup>th</sup> Notice”) FCR Camden notified the County and the participating members of new procedures and a new protocol to be implemented at the facility effective August 5, 2019.

73. In the July 26<sup>th</sup> Notice, FCR Camden alleges that China’s National Sword and other environmental initiatives have had a materially adverse impact on recycling markets and forced a seismic change in the industry.

74. In the July 26<sup>th</sup> Notice, FCR Camden alleges that it reserved the right to reject materials brought into the facility that had contamination rates higher than 8% and require the customer to remove the contaminated loads

75. In the July 26<sup>th</sup> Notice, FCR Camden states that, effective August 5, 2019, it has adopted a load inspection, notification and rejection program applicable to all inbound loads delivered for processing.

76. Pursuant to the new Inspection, Notification and Rejection Procedures, FCR Camden will first implement a visual inspection process.

77. During the course of a visual inspection, if the observable portions of the load appear likely to contain more than 8% of contaminated material or unacceptable material, the auditor will perform a grid inspection and photograph the load.

78. If, as a result of a grid inspection, the auditor determines that the load contains in excess of 8% of contamination, the County or a participating member will be notified.

79. If as a result of a grid inspection, the auditor determines that the County or a participating member has delivered more than two allegedly contaminated loads within a two week period, it will redirect future loads from the County or a participating member for a Thorough Audit Process (“TAP”).

80. If, as a result of a TAP, a load contains in excess of 8% of contamination, the County or a participating member will be expected to inspect and remove the load within two hours of notification at its expense.

81. In the alternative, if, as a result of a TAP, a load contains in excess of 8% of contamination, the County or a participating member can authorize FCR to dispose of the load at a solid waste facility and agree to pay a \$250.00 handling charge, actual costs and an additional 15% to transport and dispose of the load.

82. In the alternative, if, as a result of a TAP, a load contains in excess of 8% of contamination, the County or a participating member can agree to have FCR Camden accept and process the load and pay a \$75.00/ton surcharge for the entire load. This \$75.00/ton surcharge is 1400% over the \$5.00/ton floor quoted in the Proposal.

83. Pursuant to the new Inspection, Notification and Rejection Procedures, FCR Camden states that if the County or a participating member has three or more loads rejected in a sixty (60) day time period, FCR reserves the right to not accept additional loads unless and until it is satisfied that the County or a participating member will discontinue delivering contaminated loads.

84. Pursuant to the new Inspection, Notification and Rejection Procedures, if the additional fees are not paid within thirty (30) days of invoice, FCR Camden states that it may refuse additional loads from the County or a participating member.

85. Pursuant to the new Inspection, Notification and Rejection Procedures, FCR Camden states that it reserves the right to terminate the contract with the County or a participating member.

**FIRST COUNT**

**FOR DECLARATORY JUDGMENT AGAINST FCR CAMDEN  
THAT ITS PROPOSED INSPECTION PROTOCOL AND  
ADDITIONAL FEES ARE UNLAWFUL**

86. The County repeats and incorporates by reference the previous allegations of the Verified Complaint as if set forth at length herein.

87. The Request states that the proposer is required to provide information regarding the process to be used for the receipt, weighing, of-loading and exiting of municipal vehicles

88. The Request states that the vendor was permitted in Section G to provide any further pertinent data and information not included elsewhere and found necessary by the vendor.

89. The FCR Proposal does not specify any detail regarding the procedures to be employed in the event a load is suspected to contain in excess of 8% of contaminated material.

90. In the Proposal, FCR Camden states that in the past few years, market commodity values dropped further and for a longer period than ever before.

91. In the Proposal, FCR Camden states that recyclables which once generated surplus revenue often failed to cover costs.

92. In the Proposal, FCR Camden states that it is dedicated to providing the same level of service through varying market conditions and over the term of its customer contracts.

93. The County issued two Clarifications in response to questions raised by proposed vendors in connection with the competitive contracting process.

94. In Clarification #1, the County advised that any payment for proposer for residue proposal shall be factored into the ACR consideration.

95. In Clarification #1, a potential vendor asked how the County would assure that the floor pricing offered by a vendor is valid and will be available if the markets are unfavorable. In response the County advised that if the successful vendor does not honor the floor pricing, such action would be a breach of the contract for which there would be legal remedies available.

96. In Clarification #1, a potential vendor asked if it would be compensated accordingly if the residue percentage is exceeded. In response the County advised that the vendor is responsible for designating the initial residue percentage with the pricing form – Attachment A.

97. In the Proposal, FCR Camden states that rejection rates are necessary and that it is the responsibility of the delivering party to remove non-conforming materials, but it does not state any separate line items fees associated with any rejection.

98. In the Proposal, FCR Camden states that it is submitting a maximum costs share which reflects sustainable floor pricing for its commodity outlets.

99. In the Proposal, FCR Camden states that the County and its participating municipalities will not pay more than the specified maximum payment when revenues do not exceed the base threshold regardless of market conditions.

100. In the Proposal, FCR Camden states that when the ACR is less than the threshold, FCR Camden will invoice the County and/or its participating municipalities for the difference, but in no case will any payment exceed the floor pricing guarantee.

101. In the Proposal, FCR Camden states that the pricing structure limits the County's exposure to downturns in commodity prices.

102. In the Proposal, FCR Camden states that the maximum floor value is \$5.00/ton.

103. An actual and justiciable controversy exists between the parties and there is a present need for a declaratory judgment to set forth and determine their respective rights of the County and obligations of FCR Camden with respect to the Contract.

104. The County therefore seeks a declaration pursuant to the New Jersey Declaratory Judgment Act, N.J.S.A. 2A:16-50 to -62 (the "Declaratory Judgment Act"), that any and all actions taken by FCR Camden, including but not limited to the implementation of new inspection procedures and the assessment of new fees are invalid and that FCR Camden be restrained from implementing them.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, based on the preceding allegations, the County respectfully requests that the Court enter judgment in its favor and against FCR Camden awarding the following relief:

- (a) Declaring that the proposed new inspection procedures and fees by FCR Camden are unlawful;
- (b) Permanently enjoining FCR Camden from implementing the new inspection procedure and fees; and
- (c) Granting such other relief as the Court determines to be equitable and just in its discretion, including costs and attorneys' fees.

**SECOND COUNT**

**BREACH OF CONTRACT**

105. The County repeats and incorporates by reference the previous allegations of the Verified Complaint as if set forth at length herein.

106. The Contract between the County and FCR Camden is a valid and enforceable contract.

107. FCR Camden has materially breached the Contract by purporting to implement a new inspection protocol and assess new fees.

108. The County is not in breach of the Contract.

109. For the above reasons, the County is entitled to injunctive relief.

110. Further, as a direct and proximate result of the breach by FCR Camden, the County has been damaged and seeks damages in the form of recovery for payments for recycling services in excess of the Contract rates.

**PRAYER FOR RELIEF**

**WHEREFORE**, based on the preceding allegations, the County respectfully requests that the Court enter judgment in its favor and against FCR Camden awarding the following relief:

- (a) Declaring that the proposed new inspection procedures and fees by FCR Camden are unlawful and in breach of the Contract;
- (b) Damages in the form of fees paid for recycling services in excess of the Contract rates; and
- (c) Granting such other relief as the Court determines to be equitable and just in its discretion, including costs and attorneys' fees.

**THIRD COUNT**

**INJUNCTIVE RELIEF BY TEMPORARY RESTRAINT**

111. The County repeats and incorporates by reference the previous allegations of the Verified Complaint as if set forth at length herein.

112. Pending the outcome of the Court's review of this matter, the County requests that FCR Camden be temporarily restrained from implementing the new inspection procedure and fees. Otherwise, the County will be irreparably harmed by making payments for recycling services that were not anticipated in the budget.

**PRAYER FOR RELIEF**

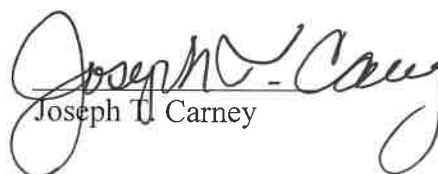
**WHEREFORE**, based on the preceding allegations, the County respectfully requests that the Court enter judgment in its favor and against FCR Camden awarding the following relief:

- (a) Declaring that the proposed new inspection procedures and fees by FCR Camden are unlawful;
- (b) Temporarily enjoining FCR Camden from implementing the new inspection procedure and fees; and
- (c) Granting such other relief as the Court determines to be equitable and just in its discretion, including costs and attorneys' fees.

**BROWN & CONNERY, LLP**  
Attorneys for Plaintiff  
The County of Camden

Dated: August 5, 2019

By:

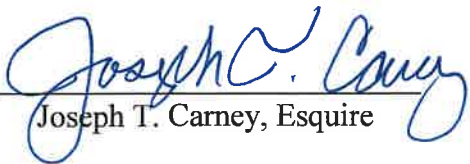
  
Joseph T. Carney



**DESIGNATION OF TRIAL ATTORNEY**

In accordance with R. 4:25-4, William M. Tambussi, Esquire, is hereby designated as trial counsel for Plaintiff in the above-captioned matter.

Dated: August 5, 2019

By:   
Joseph T. Carney, Esquire

**R.4:5-1 CERTIFICATION**

I, Joseph T Carney, Esquire, do hereby certify as follows:


1. To the best of my knowledge, this matter is not the subject of any other action pending in any Court or of any pending arbitration proceeding, and no other action or arbitration proceeding is contemplated.

2. To the best of my knowledge, there are no other parties who should be joined in this litigation at this time. The investigation into this matter has only recently begun and is continuing. Therefore, I reserve the right to amend or supplement this certification as additional information becomes known.

3. I certify that the foregoing statements are true. I am aware that if any of the above statements are willfully false, I am subject to punishment.

**BROWN & CONNERY, LLP**  
Attorneys for Plaintiff,  
The County of Camden

Dated: August 5, 2019

By:   
Joseph T. Carney

**VERIFICATION**

I, Jack Sworaski, of full age, hereby certifies as follows:

1. I am the Director of the Camden County Division of Environmental Affairs.
2. I am authorized to make this Verification on behalf of the County.
3. I have read the foregoing Complaint and I am familiar with the contents thereof.

The facts contained therein are true based upon my personal knowledge and based upon documents and information available to me.

4. I further certify that the statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: August 5, 2019

  
\_\_\_\_\_  
Jack Sworaski