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Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2394-17T2

J. SMENTKOWSKI, INC., a
New Jersey Corporation,

Plaintiff-Appellant,

and

RONALD F. MURTHA,¹ an
Individual taxpayer,

Plaintiff,

v.

GARFIELD CITY, a New Jersey
Municipal Corporation, and
STERLING CARTING, INC., a
New Jersey Limited Liability
Company,

Defendants-Respondents.

Argued April 16, 2018 – Decided May 7, 2018

Before Judges Sabatino, Ostrer and Rose.

On appeal from Superior Court of New Jersey,
Law Division, Bergen County, Docket No.
L-7363-17.

¹ We were advised at oral argument that Murtha, a city taxpayer, has voluntarily dismissed his claims.

Thomas S. Cosma argued the cause for appellant (Connell Foley LLP, attorneys; Thomas S. Cosma, of counsel and on the briefs; Michael Affrunti, on the briefs).

John J. Lavin argued the cause for respondent City of Garfield (Lavin & Associates, PC, attorneys; John J. Lavin, of counsel and on the brief).

Richard D. Trenk argued the cause for respondent Sterling Carting, Inc. (Trenk, DiPasquale, Della Fera & Sodono, PC, attorneys; Richard D. Trenk, of counsel and on the brief; Mark Y. Moon, on the brief).

PER CURIAM

Appellant J. Smentkowski, Inc. ("JSI") was the low bidder on a multi-year procurement by respondent City of Garfield ("the City") for solid waste collection in the municipality. The second lowest bidder, respondent Sterling Carting, Inc. ("Sterling") notified the City that JSI's consent of surety form did not conform to the bid specifications. The City agreed that JSI's bid was materially defective, and awarded the contract to Sterling.

JSI filed an order to show cause in the Law Division seeking to overturn the City's rejection of its bid. The trial court denied JSI's application and upheld the contract award to Sterling. This appeal ensued.

For the reasons that follow, we affirm the trial court's decision. We do so fundamentally because we agree that JSI's consent of surety, which referred to so-called "standard" payment

and performance bonds, materially deviated from the City's detailed bid specifications.

I.

The record reflects the following pertinent chronology of events.

Pursuant to the Local Public Contracts Law, N.J.S.A. 40A:11-1 to -51 ("LPCL"), the City published a request for proposals ("RFP") for the collection and disposal of solid waste and so-called "white goods," for either a three-year or five-year term. The anticipated start date of the contract was November 1, 2017. If the City chose to award a three-year contract, the contract would end on October 31, 2020. If the City awarded a five-year contract, the contract term would conclude on October 31, 2022.

The City's RFP included detailed bid specifications and numerous forms, which were required to be completed and submitted as part of any bidder's response. The bid submissions were due on October 18, 2017 at 10:00 a.m.

Key Provisions in City's Bid Specifications

Section 1.4 of the RFP specifies a list of documents that "shall be submitted" by every bidder by the specified date and time. This list includes Item 6, entitled "Certificate of Surety." Section 1.4 of the RFP further provides, "All of the foregoing

shall be submitted in accordance with the instructions hereinafter contained."

Section 2, the RFP's definitional section, defines the term "[b]id proposal" as "all documents, proposal forms, affidavits, certificates, statements required to be submitted by the bidder at the time of the bid opening." Additionally, Section 2 defines the term "[c]onsent of surety" as "a promissory note guaranteeing that if the contract is awarded, the surety will provide a performance bond."

Section 3.1 of the RFP mandates that "[e]ach document in the bid proposal must be properly completed in accordance with N.J.A.C. 7:26H-6.5.^[2] No bidder shall submit the requested information on any form other than those provided in these bid specifications." (Emphasis added).

Section 4.4 of the RFP sets forth requirements for the necessary performance bond. Section 4.4 provides as follows:

For a three (3) or five (5) year contract the successful bidder shall provide a performance bond issued by a surety in an amount equal to no more than one hundred percent (100%) of the annual value of the contract. The successful bidder shall provide said performance bond to the [City] at such time as the executed Contract is delivered. The performance bond for each succeeding year shall be delivered to the [City] with proof of full payment of

² We discuss, *infra*, the pertinent portions of N.J.A.C. 7:26H-6.5, a Board of Public Utilities ("BPU") regulation.

the premium one hundred twenty (120) days prior to the expiration of the current, bond.

Failure to deliver a performance bond for any year of a multi-year, contract one hundred twenty (120) days prior to the termination of the current bond will constitute a breach of contract and will entitle the [City] to terminate the contract upon the expiration of the current bond. Notwithstanding termination pursuant to this section, the contractor is obligated to fully performs [sic] through the date of termination of the contract and damages shall be assessed in an amount [equal] to the costs incurred by the [City] in re-bidding the contract.

Section 5.4 of the RFP provides that the successful bidder "shall provide rear end containers at various City buildings at the direction and discretion of the Superintendent of Public Works." Section 5.4 thereafter lists the minimum quantity and size requirements for the dumpsters and the exact locations where each dumpster must be placed.

Section 5.18 of the RFP, entitled "Indemnification," specifies that the successful bidder:

shall indemnify and hold harmless the [City] from and against all claims, damages, losses, and expenses including all reasonable expenses incurred by the [City] on any of the aforesaid claims that may result or arise directly or indirectly, from or by reason of the performance of the contract or from any act or omission by the Contractor, its agents, servants, employees or subcontractors and that results in any loss of life or property or in any injury or damage to persons or property.

Consents of Surety

Section 6.1 of the RFP enumerates a checklist of bidding documents, which includes Item 6.7, "Consent of Surety." The City's required consent of surety form states at the top of the page, "(THIS CONSENT OF SURETY FORM IS PART OF THE BID AND MUST BE FILLED OUT AND SUBMITTED WITH THE BID)[.]" The form goes on to state:

In consideration of the promises (the Bid to which this is attached), the undersigned Surety Company, licensed to do business in the State of New Jersey, consents and agrees that if the Contract for which the preceding Bid is made be awarded to the person, firm or corporation making the same, it will become bound as sure[t]y and guarantor for its faithful performance, and will execute a Performance Bond in the form annexed hereto, said Bond to be in an amount equal to one hundred percent (100%) of the Contract price for the term of the Contract subject to being reduced annually to that proportion of the total number of years remaining on the Contract, and to be conditioned so as to indemnify the [City] against loss due to the failure of the Cont[r]actor to meet the stipulations of the Contract, Cont[r]act Documents, and the Bond, and to guarantee payment to all persons performing or furnishing labor or materials for performance of said Contract.

The form must be signed by the surety and by a principal of the bidder.

The consent of surety JSI provided with its October 2017 bid did not track the RFP's language. Instead, it read:

The **Platte River Insurance Company** as Surety, a Corporation organized and existing under the laws of the State of Nebraska and licensed to do business in the State of **New Jersey** hereby consents and agrees that if the accompanying proposal of **[JSI]**

To City of Garfield

For Solid Waste & White Goods Collection

be accepted and contract awarded, the said Platte River Insurance Company will become bound as Surety and will execute standard performance and payment bonds in the amount called for by **[the City]** conditioned for the proper and faithful fulfillment of said contract.

[(All emphasis in original; signature omitted).]

By contrast, the consent of surety that Sterling provided with its October 2017 bid, coincidentally also issued by Platte River, fully comported verbatim with the City's required form.

The City did not receive any requests for clarification about, or objections to, the bid specifications. On October 18, 2017, JSI and Sterling timely submitted sealed bids in response to the RFP. No other bids were received. The bids were unsealed and publicly read on October 18, 2017. JSI was the low bidder.

Five days later, on October 23, 2017, Sterling submitted a protest letter to the City objecting to JSI's bid, alleging that JSI's consent of surety failed to conform to the required form as provided in the bid specifications. Specifically, JSI's consent

of surety did not state that the surety would indemnify the City for loss under the contract and guarantee payments to all persons performing labor or providing materials for the performance of the contract. After reviewing Sterling's bid protest, the City agreed that JSI's bid was non-conforming.

On October 24, 2017, the City adopted Resolution 17-364 awarding the contract to Sterling as the lowest responsible bidder.

The City's resolution stated, in pertinent part:

WHEREAS, N.J.S.A. 40A:11-23.2(b) requires mandatory Bid Compliance with the Submission of Surety Documents and the corresponding certificate; and

WHEREAS, Smentkowski Surety Submission deviated from the specific submission Bid language requirements, resulting in a substantial Bid deviation and the Disqualification of the [JSI] Bid[.]

In an opinion by Judge Christine A. Farrington, the trial court found that JSI's bid submission was non-responsive because the submission failed to adhere to the required consent of surety form, in the language prescribed by the City in its bid specifications. The court additionally found that the City's action was neither arbitrary nor unreasonable.

In November 2017, Sterling commenced work under the contract. This appeal by JSI, which we have accelerated at its request, ensued.³

II.

The overall goal of public bidding statutes is to "guard against favoritism, improvidence, extravagance and corruption" Barrick v. State, 218 N.J. 247, 258 (2014) (quoting Keyes Martin & Co. v. Dir., Div. of Purchase & Prop., 99 N.J. 244, 256 (1985)); see also L. Pucillo & Sons, Inc. v. Mayor & Council of the Borough of New Milford, 73 N.J. 349, 356 (1977) (underscoring the "prophylactic" approach of bidding laws to secure these policy objectives). Public bidding laws are designed "to secure for the taxpayers the benefits of competition and to promote the honesty and integrity of the bidders and the system" In re Protest of the Award of the On-Line Games Prod. & Operation Servs. Contract, 279 N.J. Super. 566, 589 (App. Div. 1995). These laws are to be "construed as nearly as possible with sole reference to the public good." Ibid. (quoting Keyes, 99 N.J. at 256).

With respect to local public contracts that are bid and awarded under the LPCL, the objective "is to secure for the public

³ JSI did not move to stay the award.

the benefits of unfettered competition." Meadowbrook Carting Co. v. Borough of Island Heights & Consol. Waste Servs., Inc., 138 N.J. 307, 313 (1994) (citation omitted); see also Twp. of River Vale v. R.J. Longo Constr. Co., 127 N.J. Super. 207, 215 (Law Div. 1974) (similarly noting the purpose of competitive bidding for local public contracts is the "advancement of the public interest in securing the most economical result by inviting competition in which all bidders are placed on an equal basis," not protection of individual interests of bidders).

Consistent with these principles, the LPCL mandates that publicly advertised contracts be awarded to "the lowest responsible bidder." N.J.S.A. 40A:11-4(a) (emphasis added); Meadowbrook, 138 N.J. at 313 (citations omitted). The Supreme Court has interpreted this requirement to signify that "the contract must be awarded not simply to the lowest bidder, but rather to the lowest bidder that complies with the substantive and procedural requirements in the bid advertisements and specifications." Meadowbrook, 138 N.J. at 313 (citations omitted).

"Strict compliance is required, and a municipality generally is without discretion to accept a defective bid." Id. at 314 (citations omitted). The long-established judicial policy in applying the LPCL is "to curtail the discretion of local

authorities by demanding strict compliance with public bidding guidelines." Ibid. (citation omitted). As Justice Francis observed in Township of Hillside v. Sternin, 25 N.J. 317, 326 (1957), "In this field it is better to leave the door tightly closed than to permit it to be ajar, thus necessitating forevermore in such cases speculation as to whether or not it was purposely left that way." "Public bidders should regard the specifications as requiring the submission of bids on the terms specified." Meadowbrook, 138 N.J. at 324. "Courts should not casually transform the mandatory requirement in [bid] specifications . . . into a polite request." Ibid. (citation omitted).

The present case turns on the materiality of the City's bid specification dictating the form of the consent of surety that had to be submitted with the bid. "It is firmly established in New Jersey that material conditions contained in bidding specifications may not be waived." Terminal Constr. Corp. v. Atlantic Cty. Sewerage Auth., 67 N.J. 403, 411 (1975) (citing Twp. of Hillside, 25 N.J. at 324). Such non-waivability, however, does not apply to "minor or inconsequential conditions." Ibid.

The established two-prong test for evaluating materiality is as follows: (1) "whether the effect of a waiver [of the bid specification] 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 (2) "whether [a deviation] 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." River Vale, 127 N.J. Super. at 216. The Supreme Court in Meadowbrook, 138 N.J. at 315, adopted this materiality test for local government contracts. In the case at bar, the City concluded that JSI's non-conforming consent of surety form was a "material" defect under these legal criteria, and the trial court upheld that determination.

As Judge Farrington aptly recognized, a reviewing court generally uses a deferential standard of review of governmental decisions in bidding cases. A court ordinarily should not overturn a procurement decision unless it finds the decision to be arbitrary, capricious, or unreasonable. On-Line Games, 279 N.J. Super. at 590-92. If a procurement decision is grounded rationally in the record and does not violate the applicable law, it must be upheld. Id. at 590-93. In particular, the standard of review for decisions concerning bid conformity on a local public contract level "is whether the decision was arbitrary, unreasonable or capricious." Id. at 590.

The focus of this case is upon the City's bid specification requiring bidders to submit a particular form of a consent of surety. "This certificate from a surety company, referred to as a consent of surety, assures the public entity that the surety will provide the performance bond [and, where applicable, the payment bond] if the contract is awarded to and signed by the bidder." Meadowbrook, 138 N.J. at 316 (citation omitted). "A consent of surety is a direct undertaking by the bonding company, enforceable by the municipality." Id. at 321. A consent of surety "provides the local government with some assurance at the time of the bid submission that the low bidder will have the capacity to perform the contract and to supply the necessary bonds." Id. at 316 (citations omitted).

A bidder's total failure to submit a consent of surety qualifies as a material defect necessitating a municipality's rejection of its bid. Id. at 321; Albanese v. Machetto, 7 N.J. Super. 188, 190-91 (App. Div. 1950) (deeming a low bidder's failure to comply with bid specifications requiring the submission of a consent of surety a material defect, because that omission implicated the bidder's ability to fulfill its obligations under a trash removal contract); De Sapio Constr., Inc. v. Twp. of Clinton, 276 N.J. Super. 216, 221 (Law Div. 1994) (finding that a low bidder's failure to include a required consent of surety with

its bid deprived the municipality of necessary assurance the contract would be fulfilled). As the Supreme Court has noted, "our courts have held that the ability to secure a proper consent of surety is a consideration that could affect bid calculations." Meadowbrook, 138 N.J. at 316 (citing L. Pucillo & Sons, Inc., 249 N.J. Super. at 547 (noting a failure to submit a required consent of surety threatens the policies underlying competitive-bidding statutes)); De Sapio, 276 N.J. Super. at 220-222 (holding that a "conditional" consent of surety comprised a material defect because it provided the bidder with a competitive advantage over other bidders); see also George Harms Constr. Co. v. Ocean Cty. Sewerage Auth., 163 N.J. Super. 107, 110 (App. Div. 1978) (holding that a "requirement that the surety be licensed to do business in this State was a material condition of the instructions to bidders and not a mere technicality").

As the Court in Meadowbrook observed, "To permit [wholesale] waiver of the consent-of-surety requirement would undermine the stability of the public-bidding process." 138 N.J. at 321. The Court reasoned:

if a low bidder that had failed to submit a consent of surety decided it no longer sought the contract because it had determined that its bid was too low, that bidder could decline to obtain the consent of surety and the performance bond. Without a performance bond,

the bidder cannot be required to enter into and perform the contract.

[Ibid.]

"The Legislature obviously regarded the financial capacity of a bidder to be a material and substantial consideration in the determination of the lowest responsible bidder, as evidenced by its adopting separate provisions within the [LPCL] to provide municipalities with a means of requiring prospective bidders to furnish in advance a statement of their financial capacity." Id. at 322; see N.J.S.A. 40A:11-20 to -22 (citations omitted). Accordingly, the Court held in Meadowbrook that the municipality had misapplied its authority by waiving a consent-of-surety requirement. Id. at 325.

These cases signify that a consent of surety is commonly regarded as a material requirement, incapable of waiver. The bidder must supply it when required to do so by the bid specifications. In the present case, JSI did submit a "Consent of Surety" document, albeit one that did not track the language called for under the City's bid specifications. This is not an instance, as in Meadowbrook, of a bidder's complete omission of a consent of surety. The issue nevertheless remains as to whether JSI's consent of surety was materially defective because of

differences between it and the consent of surety form that the City prescribed in its bid specifications.

As the contracting unit for this solid waste removal procurement, the City is responsible for delineating the form of the consent of surety that must be furnished by prospective bidders. The City has the authority to mandate the precise language of the form, as it so desires, so long as it is not contrary to the applicable regulations.

In this regard, we note the Uniform Bid Specifications for Municipal Solid Waste Collection Contracts, N.J.A.C. 7:26H-6.1 to -6.18, promulgated by the BPU pursuant to N.J.S.A. 48:13A-7.22, provide in relevant part as follows:

For all municipal solid waste collection contracts, advertised in accordance with N.J.S.A. 40A:11-1 et seq., the contracting unit shall prepare, or cause to be prepared bid packages for prospective bidders. All such bid packages shall be prepared in accordance with this subchapter and the Uniform Bid Specification forms located at Appendix A at the end of this subchapter which are incorporated herein by reference. The contracting unit shall be responsible for providing prospective bidders with all forms listed and described in this subchapter that are not specifically provided at Appendix A.

[N.J.A.C. 7:26H-6.4(a) (emphasis added).]

N.J.A.C. 7:26H-6.5(d)(6) provides that bid proposals submitted for local solid waste contracts must contain "[a] consent of surety

stating that the surety company will provide the bidder with a performance bond if the bidder is awarded the contract[.]"

Notably, Appendix A to the BPU's uniform regulations includes a "BIDDING DOCUMENTS CHECKLIST" at Section 6.1, which lists "[c]onsent of surety" as one of the documents that must be included with a bid. N.J.A.C. 7:26H-6 App. A. Section 6.7 of Appendix A, entitled "CONSENT OF SURETY," does not prescribe a statewide form or any form language that must be used by a municipality in its RFP for such contracts. N.J.A.C. 7:26H-6 App. A. Rather, Section 6.7 of Appendix A reads, "[FORM HELD BY THE CONTRACT UNIT][.]" N.J.A.C. 7:26H-6 App. A (emphasis added). This specific reference in the Appendix to consents of surety contrasts with Section 6.4 of the Appendix, which states as to bid guaranties: "BID GUARANTY [FORM SUPPLIED BY CONTRACTOR][.]" N.J.A.C. 7:26H-6 App. A (emphasis added). Thus, the BPU regulations contemplate that the local government's "contract unit," rather than the "contractors" who submit bids, determines the appropriate content of the required consent of surety form.

By further illustration, N.J.A.C. 7:26H-6.5(d)(7), which concerns the bid proposal form, supports this conclusion. This regulation provides that "[t]he form and wording of the bid proposal" be either "identical to or a reasonable approximation of the form and wording in N.J.A.C. 7:26H-6, Appendix A[.]" By

contrast, nothing in the regulations allows such "a reasonable approximation" for a consent of surety form. This distinction further supports respondents' position that the City possessed the authority to insist in its RFP upon certain language in the consent of surety form, so long as the form included an assurance that the surety company would provide the necessary bonds if the bidder were awarded the contract.

N.J.A.C. 7:26H-6.5(d)(2) mandates that "[t]he contracting unit shall not consider a bid proposal unless it contains each of the following items: . . . A completed questionnaire demonstrating that the bidder has the financial ability, experience, capital and equipment necessary to perform the contract. The bidder shall answer each question fully and completely; failure to answer each question completely or to provide any of the information requested shall result in rejection of the bid proposal." (Emphasis added). Here, JSI failed to provide "information requested" by omitting the required language from its consent of surety.

JSI argues that it did not materially deviate from the bid specification because its consent of surety promises to furnish "standard" performance and payment bonds. However, that vague term does not track the specific promises and indemnification obligations set forth in Item 6.7 of the RFP. Indeed, research helpfully supplied to this court by respondents shows there is no

one "standard" form of a performance or payment bond for government contracts in New Jersey.⁴ Moreover, there does not appear to be a singular industry standard for such language.

⁴ See, e.g., N.J.S.A. 2A:44A-31(d) (Construction Lien Law); N.J.S.A. 2A:44-143 (New Jersey Bond Act); N.J.S.A. 2A:44-147 (another portion of the New Jersey Bond Act); N.J.S.A. 2B:14-2 (bond of surrogates); N.J.S.A. 2B:14-10(c) (special deputy surrogates); N.J.S.A. 2C:41-4(b) (civil remedies for racketeering); N.J.S.A. 13:1D-9(u) (powers of the Department of Environmental Protection ("DEP")); N.J.S.A. 18A:18A-25 (bidding under Public Schools Contracts Law); N.J.S.A. 18A:64-68(a) (performance bond or other security in bidding under State College Contracts Law); N.J.S.A. 18A:64A-25.17(a) (performance guaranty and certificate under County College Contracts Law); N.J.S.A. 27:7-31; N.J.S.A. 40:55D-53(a) (subdivision and site plan review and approval under Municipal Land Use Law); N.J.S.A. 58:26-23(e)(8) (contract for water supply privatization); N.J.S.A. 58:27-23(e)(7) (contract for wastewater treatment privatization); N.J.S.A. 58:28-5(d)(8) (contract for water supply services); General Services Administration's Standard Performance Bond Form, 48 C.F.R. § 53.228(b) (2018) (standard performance bond form 25, part of the Federal Acquisition Regulation); N.J.A.C. 5:36-4.1 (Department of Community Affairs' performance surety bond form for development and redevelopment activities); N.J.A.C. 5:36-4.3 (Department of Community Affairs' (performance) standby letter of credit form for development and redevelopment activities); N.J.A.C. 5:43-5.3(b) (Department of Community Affairs' surety bonds under Neighborhood Preservation Balanced Housing Program); N.J.A.C. 6A:23A-21.2(b) (Department of Education's acceptance of bonds under Public School Contracts Law); N.J.A.C. 7:1A-2.17(a)(5)(ii) (DEP's regulation for loan conditions for water supply loan programs); N.J.A.C. 7:1E-4.4(m)(2) (DEP's regulation for financial responsibility for discharges of petroleum and other hazardous substances); N.J.A.C. 7:1G-7.4 (DEP's Worker and Community Right to Know Act regulation for compromise of penalties); N.J.A.C. 7:14A-8.10(a)(6) (DEP's regulation addressing additional requirements for underground injection control program); N.J.A.C. 7:24A-4.2(a)(6)(ii) (DEP's regulation for dam restoration and inland water projects loan program); N.J.A.C. 7:26A-3.4(c) (DEP's regulation for approval of recycling centers

JSI emphasizes that it had previously submitted a consent of surety referring to "standard" bonds when it was awarded an earlier contract by the City, and contends that it is unfair to declare its equivalent submission in this case to be materially non-conforming. We reject this claim of unfairness. The City was not estopped from strictly enforcing the terms of the RFP in this contract cycle once the deviation was called to its attention by Sterling. The application of equitable estoppel to governmental agencies is generally disfavored. See Berg v. Christie, 225 N.J.

for recyclable materials); N.J.A.C. 8:59-8.2(h) (Department of Health and Senior Services' regulation for civil administrative penalty under Worker and Community Right to Know Act); N.J.A.C. 12:41-2.2(b)(5) (Department of Labor and Workforce Development's regulation for application for initial approval of private career schools); N.J.A.C. 16:44-9.1(b)(1) (Department of Transportation's regulation for construction services contracts); N.J.A.C. 19:4-8.2(f)(3) (New Jersey Meadowlands Commission's regulation for site plan parking); N.J.A.C. 19:36-4.5(b)(8) (New Jersey Schools Development Authority's regulation for requests for proposals for design-build contracts); N.J.A.C. 19:38-5.1(b)(1) (New Jersey Schools Development Authority's regulation for procedures for low-bid procurement of construction contracts for school facilities); N.J.A.C. 19:38B-4.1(a)(10) (New Jersey Schools Development Authority's regulation for price and other factors procurement of construction contracts for new school facilities projects); N.J.A.C. 19:38B-7.1(c)(1) (New Jersey Schools Development Authority's regulation for contract approval and execution for new school facilities projects); N.J.A.C. 19:9-2.2(c)(9) (New Jersey Turnpike Authority's regulation for purchases requiring public advertising). These varied statutes and regulations illustrate there is no singular "standard" governmental form for performance or payment bonds.

245, 280 (2016). The strong public policies underlying the LPCL and public bidding case law justify the stringency exercised by the City in this case.

We have duly considered all of JSI's remaining arguments and find they lack sufficient merit to warrant discussion. R. 2:11-3(e)(1)(E).⁵

Affirmed.

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



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⁵ The unpublished opinion cited by JSI in support of its claim of conformity with the consent of surety requirement is unavailing. The opinion is not precedential, see Rule 1:36-3, and, moreover distinguishably involved a consent of surety that did not potentially weaken the level of assurances made to the municipality.