

Unsuccessful Bidder Can Sue School District

by

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The Supreme Court of Missouri recently ruled that an unsuccessful bidder on a construction project had legal standing to sue a school district. This opens the door to future unsuccessful bidders pursuing their grievances in court.

The case is *Byrne & Jones Enterprises, Inc. d/b/a Byrne and Jones Construction v. Monroe City R-1 School District*, 2016 WL 4036760 (Mo. July 26, 2016).

In 2013, ATG Sports, Inc. submitted to the Monroe City R-1 School District unsealed plans and drawings for a proposed new athletic stadium for the high school. ATG Sports also drafted the request for proposals that the school district later used to solicit bids for the construction project.

Per the proposals, the school district sought base bids on the project as well as bids on 13 possible alternatives or enhancements to the project. Byrne & Jones and ATG Sports were the only bidders.

Byrne & Jones submitted the lower base bid. It also submitted the lower total bid factoring in all 13 alternatives.

After the school district decided to move forward with only seven of the thirteen alternatives, ATG Sports' total bid was lower. In January 2014, the school district awarded the contract to ATG Sports.

Two months later, Byrne & Jones filed a declaratory judgment action against the school district alleging that the bidding procedures did not allow all bidders a fair opportunity to compete on equal terms with ATG Sports. Byrne & Jones further alleged that the school district violated the competitive bidding process when it colluded with ATG Sports.

Byrne & Jones sought an injunction and requested an award of its attorney fees and bid preparation costs.

The trial court dismissed the lawsuit. The court decided that under Section 177.086 of Missouri's statutes, a low bidder has no legal standing to challenge the award of a contract to another bidder. Section 177.086 requires a school

district to only consider bids made in accordance with the specifications provided by the district. It further provides that all contracts shall be let to the lowest responsible bidder complying with the bid terms, but the district has the right to reject all bids.

The trial court concluded that the statute is clearly intended to safeguard the interests of the public, not any individual bidder. Therefore, Byrne & Jones did not have any legal standing to proceed with its lawsuit since it only brought the case as an unsuccessful bidder, and not as a representative of the Monroe City R-1 School District taxpayers.

The trial court's decision was consistent with Missouri case law dating back to at least 1910 which supports the proposition that a losing bidder has no legally protectable interest in the outcome of the bidding process when the statute gives the school district authority to reject any and all bids.

This statute has long been considered a barrier to the ability of unsuccessful bidders to challenge the bidding process as an aggrieved party. Instead, challenges routinely were considered viable only if brought as a taxpayer and then only to protect the public interest, not the interest of the unsuccessful bidder.

Byrne & Jones appealed the trial court's decision. The Missouri Supreme Court noted that the United States Court of Appeals for the Eighth Circuit (which includes the federal courts in Missouri) and some Missouri appellate courts have decided that unsuccessful bidders can challenge the award of the contract to another bidder on the basis that they were denied a fair and equal opportunity to compete.

The Missouri Supreme Court concluded that bidders are within the zone of interest that competitive bidding statutes seek to regulate. Thus, an unsuccessful bidder has standing to challenge the award of a public contract to any bidder on grounds that it was denied a fair and equal opportunity to compete in the bidding process.

This conclusion seems to expand beyond the school district statute to other statutes where bidding requirements are in place under Missouri law.

Having concluded that Byrne & Jones had legal standing to proceed with the lawsuit, the Supreme Court next considered whether Bryne & Jones was entitled to any injunctive or monetary relief.

Byrne & Jones did not seek a temporary restraining order to prevent the contract between the school district and ATG Sports from being executed. The Missouri Supreme Court concluded that any request for injunctive relief was moot because the stadium already had been built.

The court also denied the request for costs because Section 177.086.2 did not provide for such recovery, leaving Bryne & Jones with a hollow victory.

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