

Bid Contest Lawsuit Dismissed;  
Contractor Has No Legal Rights

by

James R. Keller

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The Eastern District Court of Appeals for Missouri recently affirmed a trial court's decision to dismiss the lawsuit of an unsuccessful contractor/bidder. In doing so, the appellate court rejected state and federal case law supporting the lawsuit and determined that in the Eastern District of Missouri a contractor has no individual legal rights.

The Eastern District of Missouri covers 26 eastern counties from the Iowa border to Cape Girardeau County.

This result affects every successful and unsuccessful bidder on Missouri public construction contracts located in the Eastern District. The case is *Byrne & Jones Enterprises, Inc. v. Monroe City R-1 School District*, 2014 WL 5847596 (E.D. Mo. Nov. 12, 2014).

The Eastern District's opinion is contrary to case law from Missouri's Western District in a 2013 decision, the Southern District in a 2014 decision, and an Eighth Circuit Court of Appeals 1994 decision.

Byrne & Jones was an unsuccessful bidder on a public works project to build a new athletic stadium at the Monroe City High School. Two companies submitted bids for the project; namely, Byrne & Jones and ATG Sports, Inc., the successful bidder.

Two and a half months after the award, Byrne & Jones filed a lawsuit in the Circuit Court of Monroe County requesting an injunction that the district not enter into a contract with ATG Sports and requesting recovery of bid-preparation costs by Byrne & Jones in connection with the project.

Byrne & Jones alleged that the bidding procedures by the school district did not permit all bidders to compete on equal terms and did not give other bidders a fair opportunity to bid against ATG Sports.

Byrne & Jones further alleged that when the school district awarded the project to ATG Sports, it did not act in good faith or in the best interest of the public, but rather acted in collusion with ATG Sports.

The legal dispute revolved around whether Byrne & Jones had legal standing as an unsuccessful bidder to challenge the award of the contract to ATG Sports. The trial court decided that Byrne & Jones lacked standing and thus dismissed the lawsuit.

On appeal, the Eastern District considered prior decisions from the Western and Southern Districts as well as the Eighth Circuit, all supporting Byrne & Jones' argument that it could maintain this lawsuit for an injunction. Byrne & Jones also cited out-of-state decisions that have allowed an unsuccessful bidder to challenge the bidding process.

The relevant Missouri statute is Section 177.086 RSMo., which sets forth the requirements for a school district's advertising and awarding of contracts for the construction of projects. The statute states in part that the district shall have the right to reject any and all bids. This language became pivotal in the decision of the trial and appellate courts.

Byrne & Jones acknowledged that no Missouri authority exists allowing for recovery of bid-preparation costs. The appellate court concluded that the awarding to an unsuccessful bidder of its pre-preparation costs would only add to the public's costs for the project. This would not protect the public, as the statute had intended.

The Eastern District noted that Byrne & Jones did not assert a contractual right. Instead, it sued to enforce an alleged private right as a participant in the Missouri public-contract bidding process.

The Court of Appeals decided that this position was "untenable" because Section 177.086 was designed to benefit and protect the public, not a bidder. The school district had the legal right to reject any bid.

The appellate court ruled that the statute could allow a taxpayer to bring a lawsuit to protect the rights of the public, but not an individual, unsuccessful bidder to protect its own private rights. The Eastern District disagreed with the Eighth Circuit's conclusion that an unsuccessful bidder that was denied a fair opportunity to bid on a public contract was within the sphere of those protected by the competitive-bidding requirements and thus could maintain a lawsuit.

The Eastern District found a decision from the Western District supporting the lawsuit to be "flawed." The Eastern District relied on prior cases that support the proposition that Byrne & Jones had no legal right to bring this lawsuit, including prior decisions from the Eastern District.

The court noted that if public officials violate any of the standards and obligations imposed upon them in awarding public contracts, the public may

bring a mandamus action. Unfortunately, as the court also noted, a member of the public may lack resources to bring such a lawsuit.

The threat may not be enough to deter an unscrupulous public official. Nevertheless, the court concluded that the “remedy is for the legislature or the Supreme Court to devise.”

James R. Keller is a partner at Herzog Crebs LLP where he concentrates his practice on construction law, complex business disputes, real estate and ADR. He also is an arbitrator and a mediator.