

Supreme Court Reaffirms Rule That Disappointed Bidders Lack Standing To Challenge Award Of Public Contract

On July 27, 2012, the Michigan Supreme Court reaffirmed the longstanding rule in Michigan that a disappointed low bidder on a public contract has no standing to sue in order to challenge the award of a contract to another bidder. In *Cedroni Associates, Inc. v Tomblinson, Harburn Associates, Architects & Planners, Inc.*, 2012 WL 3064005, ___ Mich ____, ___ NW2d ___ (2012), the Supreme Court addressed the specific issue of whether a disappointed low bidder on a public contract had a valid business expectancy for the purpose of sustaining a claim against the architectural firm that recommended the award of the contract to the second lowest bidder.

In *Cedroni Associates, Inc.*, Davison Community Schools, a public school district, entered into a contract with Tomblinson, Harburn for architectural services with regard to a construction project. As part of that contract, the architect agreed to assist the school district with the bid selection process by, among other things, evaluating the bids submitted by contractors and making a recommendation to the school district regarding which contractor should be awarded the project. Based on the architect's recommendation, the school district eventually awarded the project to the second-lowest bidder. Cedroni Associates, Inc., the low bidder, sued Tomblinson, Harburn alleging that the latter improperly interfered with its business expectancy in being awarded the contract.

The Supreme Court began its analysis by reaffirming "the longstanding rule in Michigan that a disappointed low bidder on a public contract has no standing to sue in order to challenge the award of a contract to another bidder." The rule applies even in

those cases in which a municipality has adopted a charter provision that requires it to accept the “lowest responsible bidder.” Charter provisions requiring a municipality to award public contracts to the “lowest responsible bidder,” are not passed for the benefit of the bidder, but rather as protection to the public. The Supreme Court also noted that both the advertisement for bids and the instructions to bidders included in the project manual expressly stated that the school district “reserves the right to accept or reject any and all offers.”

The rule that a disappointed bidder on a public contract has no standing to sue in order to challenge the award of the contract to another bidder is subject to a narrow and limited exception. “The exercise of discretion to accept or reject bids [involving public contracts] will only be controlled by the courts when necessary to prevent fraud, injustice or the violation of a trust.” In the case before the Court, there was no evidence in the record to support any claim that the award of the contract to the second-lowest bidder was the result of fraud, injustice or violation of a trust.

The Supreme Court’s decision in *Cedroni Associates, Inc.* provides substantial protection to municipalities in Michigan from challenges by unsuccessful bidders on public projects. In the absence of fraud, injustice or the violation of a trust, unsuccessful bidders do not have standing to sue the municipality in order to challenge the award of the contract to another bidder. It is important, however, that the municipality adhere to the instructions to bidders and bid specifications in order to assure the integrity of the bid process.