



LEGAL CORNER

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Court Upholds Awarding Authority's Rejection of Low Bidder

In an October 2007 decision, a Massachusetts Superior Court affirmed the power of an awarding authority to set forth detailed and stringent requirements in contract documents in order to achieve project goals. As long as there is a "rational basis" for requiring such prerequisites, an awarding authority has discretion to reject bidders that do not comply with such stringent requirements.

In this case, a redevelopment authority issued an Invitation to Bid, pursuant to Massachusetts General Laws, Chapter 30, Section 39M, for the installation of a synthetic turf athletic field surface at a town park. The Contract Documents required that the field installation contractor meet extensive and detailed experience prerequisites. Specifically, the Contract Documents required an "experienced specialty contractor" to install the turf system. In addition, the Contract Documents required the contractor to have installed at least fifteen similar outdoor turf systems of 50,000 square feet or greater, including at least one synthetic baseball field, within the previous five years.

The plaintiff, a general contractor, submitted the lowest of six bids on the project. The bid, however, did not include any material showing that the general contractor had the type of experience required by the Contract Documents. The awarding authority, realizing that the bid documents lacked this information, contacted the general contractor and requested documentation showing that it had the required experience. In response, the general contractor provided information about another entity, which it asserted it would use as a subcontractor to install the field surface. The general contractor, however, again failed to provide any information demonstrating that

it had the required experience. Therefore, on the recommendation of its project consultant, the redevelopment authority rejected the general contractor's bid and awarded the contract to the next lowest bidder.

Shortly thereafter, the plaintiff general contractor filed a bid protest with the Attorney General's Business and Labor Protection Bureau. After a hearing, the Bureau denied the general contractor's protest. In light of the decision, the plaintiff filed suit in Superior Court, alleging the town acted "arbitrarily and capriciously" by awarding

In ruling on the validity of the contractor's claim, the court addressed whether the awarding authority acted illegally by rejecting the general contractor because it did not meet the authority's strict requirements. The court noted that so long as there is a "rational basis" for detailed and rigid specifications, a court will not step in and disturb an awarding authority's decision.

the contract to another bidder. The general contractor also sought damages from the awarding authority for alleged violations of the Public Bidding Law.

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illegally by rejecting the general contractor because it did not meet the authority's strict requirements. The court noted that so long as there is a "rational basis" for detailed and rigid specifications, a court will not step in and disturb an awarding authority's decision. Therefore, in order to resolve the case, the court had to determine whether the redevelopment authority had a rational reason for requiring such extensive contractor experience in its Contract Documents.

According to the redevelopment authority, it set forth strict experience requirements for two reasons. First, the authority sought to increase the contractor's accountability for the completion of the project in accordance with the Contract Documents. Second, the authority stated that the requirements were intended to increase the likelihood of success of the project. In other words, according to the awarding authority, an experienced contractor would not only complete the project in accordance with the Contract Documents, but would be better suited to complete the project successfully.

The court viewed these reasons as rational, and determined that the experience requirements would further these goals. The court stated that experienced contractors would be familiar with similar Contract Documents and the installation process. In the court's view, such familiarity would ensure adherence to the Contract Documents. In addition, experienced contractors would avoid various mistakes and pitfalls that can

delay this type of project.

The court also stated that the redevelopment authority had a duty to ensure the responsible and efficient use of tax dollars. According to the court, the awarding authority promoted these goals by requiring extensive experience of its turf installer. Since the authority's experience requirements were not irrational, the court ruled against the general contractor.

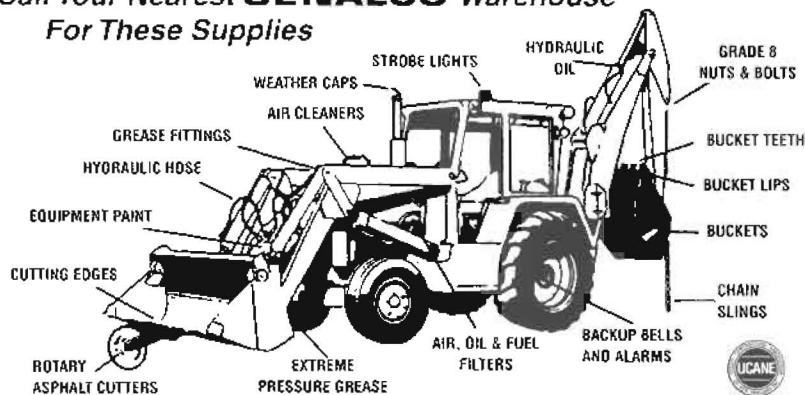
This case illustrates the extensive discretionary powers of an awarding authority. This decision allows an awarding authority to draft Contract Documents that contain stringent contractor requirements. So long as there is a "legitimate reason" for such requirements, an awarding authority acts properly in rejecting contractors that do not comply with rigid contract

specifications. Therefore, contractors should be well aware of contractual requirements when bidding on such a project. If the Contract Documents call for certain prerequisites, a contractor must be able to demonstrate that it complies with the contractual prerequisites.

However, it would seem that this use of such detailed experience requirements by a general contractor could cause rejection of bids by responsible contractors which result in higher costs to the public. Certainly, a general contractor should be able to use a specialty subcontractor to handle specific items so as to provide greater competition and lower costs to the public which in today's economic climate is of utmost importance to any public entity. ■



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