

Is a Contract Formed When a Municipality Accepts a Bid?

Facts:

The Bishop International Airport Authority issued a bid package that included or incorporated all of the documents associated with constructing an air freight handling facility and with bidding on the construction project. The bid package included proposed form American Institute of Architects construction agreements. The package also included a bid form that provided:

The undersigned...agrees to fully perform the work within the time stated and in strict accordance with the proposed [bid documents], including furnishing any and all labor and materials, specified allowances, and to do all of the work required to construct and complete said work in accordance with the [bid document] for the following sum of money.

Plaintiff contractor submitted a bid along with the necessary bid documents. The Board of the Airport Authority passed a unanimous resolution accepting the plaintiff's bid on the project. The resolution indicated that its architectural firm that had prepared the bid documents reviewed the bids and recommended that the plaintiff's bid be accepted. The resolution further provided that staff had reviewed the bid and recommended accepting the bid. According to the resolution, funding was available. The board then accepted the bid and authorized the airport director to execute the necessary construction contracts to carry out and complete the project. The contractor was so advised. One month later, the board rescinded its acceptance.

Question:

Under the facts as presented, was a binding contract created even though the construction agreements were not executed?

Answer According to the Trial Court:

No.

Answer According to the Michigan Court of Appeals:

Yes. The court noted that the essential elements of a validly enforceable contract include an offer made by an offeror (contractor) and acceptance and communication of the acceptance of the offer by the offeree (airport authority). In this particular case, the contractor asserted that 1) the submission of the bid was, in fact, a valid offer, and 2) the resolution of the airport

authority accepting the bid constituted a valid acceptance resulting in a binding contract. The airport authority argued that a binding contract did not exist since the underlying construction agreements contained within the bid package had not been executed by the parties.

The court held that a binding contract had been entered into upon passage of the resolution of the airport authority accepting the bid proposal of the contractor. As a consequence, the airport authority had no legal ability to "rescind" its acceptance.

The court relied heavily upon the facts of the case itself. The bid package contained language which required the contractor to agree to the provisions of the construction agreements upon submission of its bid. The court further found that the airport authority had necessarily agreed to the construction agreements by making them available to bidding contractors and mandating that they be part of the bid documents. The court found that the act of formally executing the construction contracts was not a step that had to be completed before a valid contractual relationship arose between the parties.

Note: This case emphasizes the importance of municipalities to carefully review their bid process and the language in bid documents, even if that process is contracted out to a third party. The best course of practice is to specifically and clearly state in the bid documents that a validly binding contract is not created until all parties execute underlying agreements.

Garrison Company v Bishop International Airport Authority, No. 293415. Nov. 18, 2010 (unpublished). 

This column highlights a recent judicial decision or Michigan Municipal League Legal Defense Fund case that impacts municipalities. The information in this column should not be considered a legal opinion or to constitute legal advice.

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