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1997 Survey of Rhode Island Law: Cases: Public Contracts

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Public Contracts. *H.V. Collins Co. v. Tarro*, 696 A.2d 298 (R.I. 1997). A municipality may consider factors other than the lowest price when selecting the superior bid, and the municipal purchasing statute does not require awarding a municipal contract simply to the lowest responsible bidder who minimally satisfies the criteria in the request for proposal.

In *H.V. Collins Co. v. Tarro*,¹ the Rhode Island Supreme Court held that the defendant, the town of Barrington, was permitted to award a school-building contract to a bidder, other than the lowest bidder, who was the most qualified based upon objective criteria.² The court held that when a public contract has been awarded based upon the fair, honest and reasonable exercise of sound discretion, the courts will not interfere.³

FACTS AND TRAVEL

In 1996, the town of Barrington, Rhode Island, through its school committee, issued a Request for Proposals (RFP) for construction-management services for school renovation and expansion.⁴ The RFP set forth eight criteria that would be used in evaluating the proposals and awarding the contract.⁵ Four proposals were received, including one each from the H. V. Collins Company (Collins) and Gilbane Building Company (Gilbane).⁶ Collins submitted the lowest bid while Gilbane was the third lowest bid. The school committee awarded the contract to Gilbane.⁷ Collins filed suit in Rhode Island Superior Court, alleging violations of sec-

1. 696 A.2d 298 (R.I. 1997).

2. *See id.* at 305.

3. *See id.*

4. *See id.* at 300.

5. *See id.* at 301. The criteria are as follows:

(A) Demonstrated experience in the type of work required. (B) Record of firm in accomplishing work on other, similar projects in required time frame. (C) Quality of work performed previously by the firm for the Town of Barrington, if any. (D) Professional background, experience and expertise of the principals and potential Project Managers. (E) Recent experience showing accuracy of cost estimates. (F) Community relations, including evidence of sensitivity to citizen concerns. (G) Familiarity and experience with a construction management team approach. (H) Basic fees to be charged for the various categories of services.

Id.

6. *See id.* at 300.

7. *See id.*

tion 45-55-5 of the Rhode Island General Laws, Award of Municipal Contracts, and section 16-2-9 of the Barrington Town Charter.⁸ The superior court temporarily restrained the Barrington School Committee from awarding the building contract. Gilbane was permitted to intervene as a party defendant.⁹

After trial, the superior court held that Collins was the lowest competent bidder and Gilbane was not.¹⁰ The trial judge found that all bidders were responsible and qualified, and that there was no evidence of corrupt motivation behind the award of the contract.¹¹ While considerations other than price are relevant, the criteria for awarding a public contract must be objectively measurable and set forth in the invitation to bid, pursuant to section 45-55-5 of the Rhode Island General Laws.¹² The superior court concluded that the school committee acted unreasonably and unfairly, amounting to an abuse of discretion with its heavy reliance on matters extraneous to its own proposal.¹³ The court awarded judgment for Collins and the town of Barrington appealed.¹⁴

BACKGROUND

In *Gilbane Building Co. v. Board of Trustees of State Colleges*,¹⁵ the Rhode Island Supreme Court held that in the absence of a competitive-bidding statute, public officials may exercise discretion in awarding a public-works contract, as long as the officials charged with making the award have not acted corruptly or in bad faith.¹⁶ This standard was later reaffirmed in *Paul Goldman, Inc. v. Burns*.¹⁷

The Rhode Island General Assembly enacted Rhode Island's first municipal-contracts statute in 1992.¹⁸ The Act required cities

8. *See id.*

9. *See id.*

10. *See id.*

11. *See id.* at 301.

12. *See id.*; *see also* R.I. Gen. Laws § 45-55-5(2) (1956) (1991 Reenactment & Supp 1997).

13. *See Collins*, 696 A.2d. at 301.

14. *See id.*

15. 267 A.2d 396 (R.I. 1970).

16. *See id.* at 399.

17. 283 A.2d 673 (R.I. 1971).

18. *See* R.I. Gen. Laws § 45-55-5.

and towns to award public-works contracts in excess of \$10,000 through competitive sealed bidding.¹⁹ The statute provided for the award based upon the lowest bid price or the lowest responsive bid price.²⁰ If the lowest responsive bid price was used as the basis of evaluation for the award of a municipal contract, then the RFP must set forth the objective measurable criteria which will be used.²¹

In *Nelson's Bus, Inc. v. Town of Burrillville*,²² a case that was heard after passage of the Municipal Contracts Act, the Rhode Island Supreme Court held that nothing in the 1992 Act changed the standard of review that had been promulgated by case law. In short, when public officials act reasonably and honestly without corruption or bad faith, the courts will not interfere with this exercise of sound discretion.²³

ANALYSIS AND HOLDING

In *Collins*, the Rhode Island Supreme Court held that the judiciary will interfere with the award of a municipal contract only if the awarding authority acted corruptly or in bad faith, or so arbitrarily as to constitute an abuse of discretion.²⁴ This standard of review permits the awarding authority to exercise reasonable, good-faith discretion and does not bind it unqualifiedly to the lowest bidder.²⁵ Similarly, the municipal-purchasing statute does not preclude factors beyond price when selecting the best or superior bidder.²⁶

In this case, the town of Barrington selected Gilbane as the superior bidder based upon objective, measurable criteria such as relative experience, expertise, qualifications and the quality of the work of the bidders.²⁷ The supreme court held that this criteria was clearly stated in the RFP and was in fact measurable and objective.²⁸ Furthermore, the court noted that it was not necessary

19. R.I. Gen. Laws § 45-55-2 (1956) (1991 Reenactment & Supp. 1997).

20. R.I. Gen. Laws § 45-55-5(1)(a).

21. See R.I. Gen. Laws § 45-5-5(2).

22. 639 A.2d 63 (R.I. 1994).

23. See *id.* at 64.

24. *Collins*, 696 A.2d. at 302.

25. See *id.* at 303.

26. See *id.*

27. See *id.*

28. See *id.*

first to disqualify lower bidders before awarding the contract to the superior bidder.²⁹ The supreme court affirmed its prior holdings by stating that public officials are permitted to exercise discretion in awarding contracts and are not committed solely to the lowest bid price.³⁰

In addition, the town charter allowed the award of municipal contracts to a party other than the lowest bidder if the award was in the public interest.³¹ In *Collins*, the town accepted the proposal from the higher bidder and stated that its reason was based upon experience with Gilbane and its successful prior dealings with the town.³² The supreme court agreed and stated that in accordance with the charter, the school committee based its award on objective, measurable criteria in selecting a bidder who was not simply the lowest in price.³³

Finally, the supreme court noted that the school committee did not abuse its discretion nor act arbitrarily in awarding the construction-management contract to Gilbane.³⁴ In accordance with the town charter and the municipal-contracts statute, the school committee adequately set forth its reasons for selecting Gilbane, the third lowest bidder, in its resolution awarding the construction-management contract to Gilbane.³⁵

CONCLUSION

The school committee published objective, measurable criteria for bids that it evaluated and selected, in accordance with the municipal-contract law and the Barrington Town Charter. The Rhode Island Supreme Court reaffirmed its standard that "when officials in charge of awarding a public work's contract have acted fairly and honestly with reasonable exercise of a sound discretion, their actions shall not be interfered with by the courts."³⁶ Otherwise,

29. *See id.*

30. *See id.*

31. *See id.*

32. *Id.*

33. *See id.*

34. *See id.*

35. *See id.*

36. *Id.* at 305 (quoting *Truk Away of R.I., Inc. v. Macera Bros. of Cranston, Inc.*, 643 A.2d 811, 815 (R.I. 1994)).

every municipal contract would be litigated, placing public officials into a "legalistic straightjacket."³⁷

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37. *Id.* (quoting *Gilbane Bldg. Co. v. Board of Trustees of State Colleges*, 267 A.2d 396, 400 (R.I. 1970)).