

May 22, 2013

New Jersey Court Reaffirms Timely Challenge Requirement of Local Public Contracts Law

The New Jersey Superior Court, Appellate Division, recently reaffirmed that the New Jersey Local Public Contracts Law (the LPCL) requires bidders to file written challenges to bid specifications three days **before** the bids are opened or be precluded from challenging those specifications in a subsequent proceeding related to the bid award.

In an unpublished decision, *Sajo Transport, Inc. v. The Village of Ridgewood*, A-4121-11T3 (App. Div. May 20, 2013), the Appellate Division reviewed the Village of Ridgewood's contract award pursuant to the LPCL. Sajo Transport submitted the low bid in response to Ridgewood's request for proposal (RFP) for landfill disposal of solid waste, which would be transported by Ridgewood's solid waste vehicles. The RFP required that a bidder's landfill site be within a 15-mile radius of the contracting authority's site and requested supporting documentation in the form of MapQuest "driving directions" between the two locations. Sajo's proposal, however, neglected to provide the requested MapQuest directions and instead substituted another website that calculated the distance between the two locations "as the crow flies" – not the over-the-road distance. When Sajo's bid was rejected as nonconforming and the contract awarded to another bidder, Sajo filed an action in lieu of prerogative writs, arguing that it was entitled to award of the contract because it was the low bidder and its facility was within 15 miles of the contracting authority's location (although not pursuant to MapQuest driving directions as specified in the RFP).

The Appellate Division concluded that the 15-mile radius requirement – accompanied by supporting MapQuest driving directions – was directly related to the purpose of the RFP, since Ridgewood's vehicles would need to travel that distance. The Appellate Division therefore dismissed Sajo's complaint with prejudice, holding that Sajo lacked standing to challenge either the 15-mile radius requirement or the MapQuest driving directions requirement, because Sajo had failed to challenge either requirement before the bids were opened. The Appellate Division reiterated that NJSA 40A:11-13 requires:



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Any prospective bidder who wishes to challenge a bid specification shall **file such challenges in writing** with the contracting agent **no less than three business days prior to the opening of the bids.** Challenges filed after that time shall be considered void and having no impact on the contracting unit or the award of a contract.
[emphasis added]

The Appellate Division characterized this provision's function as a "statute of limitations" that "serves to time-bar Sajo's legal theories based upon a challenge to Ridgewood's specifications." The Appellate Division's decision serves as a reminder to companies submitting bids under the LPCL that bid specifications must be carefully scrutinized – and any potential challenges raised with the contracting authority – **before** bids are opened. Failure to do so precludes challenges from being raised after a bid award, and a low bidder can easily find itself shut out of a contract. In many cases, bid proposals are created and submitted in a short time frame, but potential bidders must be vigilant in raising any concerns or challenges to the bid requirements in timely fashion and within the strict time limits set forth in the LPCL or other RFP documents.

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