Supreme Court Confirms That Disappointed Bidders May Not Sue A Municipality Over The Municipality’s Award Of A Bid

The Michigan Supreme Court recently confirmed, and expanded, Michigan’s rule that an entity who submits a bid on a municipal project but who does not receive the award (a "disappointed bidder") may not sue over that award decision. Cedroni Associates, Inc v Tomblinson et al (released 7-27-12, Docket No. 142339). There, a school district hired the Tomblinson firm to provide architectural services and to help evaluate bidders. Cedroni submitted the lowest bid, but the architect from the Tomblinson firm recommended against awarding to Cedroni due to some negative references.

Cedroni sued the Tomblinson firm, alleging that the firm unlawfully interfered with the contract award and interfered with Cedroni’s reasonable business expectancy. The trial court dismissed the action, ruling in favor of the Tomblinson firm. But the Court of Appeals reversed.

The Supreme Court reversed the Court of Appeals and reinstated the trial court’s dismissal – ruling against the disappointed bidder. Relevant parts of the Supreme Court’s ruling are set out below:

- The Supreme Court reaffirmed the principle that disappointed bidders on public projects have no reasonable business expectancy in being awarded a contract – even if they are the lowest bidder.
- The longstanding rule in Michigan is that a disappointed low bidder on a public contract has no standing to sue to challenge the award of a contract to another bidder.
- The lowest bidder under a contract a municipality proposes to award, whose bid has been rejected, has no right to recover profits which it might have made had its bid been accepted.
- This is so even if the municipality has a Charter that requires the bid be awarded to the lowest responsible bidder.
The Court’s decision in *Cedroni* extends the disappointed bidder rule beyond traditional suits against a municipality for awarding a bid to someone other than the lowest bidder. *Cedroni* actually says that the disappointed bidder rule protects municipalities from other claims too – such as the tortious interference claim raised in *Cedroni*. And it protects agents of municipalities, such as architects. It also says disappointed bidders have no reasonable expectation that they will get an award – even if they are the lowest bidder. So this decision protects both the municipality and agents helping the municipality with the bid process (e.g., engineering firms, designer firms, architectural firms).

If you have questions about the *Cedroni* decision, disappointed bidder claims, or the public bidding and awarding process, please contact Anne Seurynck (616.726.2240) of the Foster Swift Municipal Practice Group.