



Lowest possible bidder must receive contract per Court of Appeals

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On June 9th, the NYS Court of Appeals issued a decision regarding the award of competitively bid contracts. In the matter of AAA Carting and Rubbish Removal, Inc. v Town of Southeast, the court held that such contracts are to be awarded to the lowest responsible bidder as required by Â§103 of the General Municipal Law.

The court ruled that a contract must be awarded by the town of Southeast to the lowest responsible bidder. The court rejected the town's attempt to award a waste removal contract to the second lowest bidder where both the lowest and second lowest bidders were deemed by the town to be "responsible." The town attempted to award the contract to the second lowest bidder because it had determined that bidder to be "more responsible" than the lowest. The town based its determination on such factors as safety, professionalism and the availability of spare vehicles, which led the town to conclude that the second lowest bidder would provide a higher level of service, albeit at a higher monthly cost.

In ruling as it did, the court held that the only basis upon which a town could deny a contract to the lowest bidder was to find that bidder to be non-responsible.

As the court said, "absent a finding of lack of responsibility, there is no authority to support the town board's rejection of AAA's bid for one that is considered more responsible."

While the court did recognize the fact that the town enjoyed a degree of flexibility and discretion in determining the award of a contract, it could not allow the acceptance of a higher bid based on what it characterized as subjective criteria that would negate the primary purposes of competitive bidding statutes and circumvent the open bidding process. The court further noted that the town had the ability to reject all bids and restart the bidding process incorporating any additional requirements that it might wish to consider in the award of the contract.

As a result of the court's ruling in AAA Carting and Rubbish Removal, public entities awarding competitively bid contracts must carefully prepare all bid documents to identify all factors to be considered in the award of the contract and after the bids are opened, award the contract to the lowest bidder unless that bidder is found to be non-responsible or the entity rejects all bids.

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