

GOVERNMENT CONTRACTING

Government Contracting: Public Bidding

*American Engineering & Development Corp. v.
Town of Highland Beach,*
20 So. 3d 1000 (Fla. 4th Dist. App. 2009)

A public construction contract that is granted on the basis of price must be awarded to the lowest responsive bidder. A responsive bidder is one who submits all information required by the bid solicitation's specifications.

FACTS AND PROCEDURAL HISTORY

American Engineering and Development Corporation (American Engineering) bid on a construction contract for the Town of Highland Beach (Town). Although American Engineering placed the lowest bid, the Town decided to contract with the next-lowest bidder because American Engineering did not comply with all of the bid solicitation's requirements.

American Engineering sought an injunction to prohibit the Town from proceeding with the contract. The trial court denied relief. The Fourth District Court of Appeal affirmed, holding an injunction was not warranted because American Engineering could not show it would be likely to succeed on the merits of its case.

ANALYSIS

Under Florida Statutes Section 255.20(1)(d)(1) (2009), if a public construction contract is given based upon price, it "must be awarded to the lowest qualified and responsive bidder." Using definitions found in the statute, the court determined that a bidder must be responsible—fully able to perform the contract requirements—and the bid must be responsive. A responsive bid is one that "conforms in all material aspects to the solicitation." *Am. Engr. & Dev. Corp.*, 20 So. 3d at 1000–1001 (quoting Fla. Stat. § 255.248(7)).

The Fourth District Court of Appeal distinguished this case from *City of Sweetwater v. Solo Construction Corp.*, 823 So. 2d 798

(Fla. 3d Dist. App. 2002). The city in that case attempted to determine the “most responsible” bidder although each bidding company had complied with every bid specification. American Engineering’s bid did not meet the terms of the solicitation because it did not provide a list of previously performed projects, including its prime contractor contracts, as requested by the solicitation. Therefore, the Town was permitted to contract with the next-lowest responsive bidder.

SIGNIFICANCE

American Engineering & Development Corp. clarifies the meaning of “lowest qualified and responsive bidder” as it applies to public construction contracts. The contract will be awarded to the lowest responsible bidder who has complied with each specification of the bid solicitation.

RESEARCH REFERENCE

- 43 Fla. Jur. 2d *Public Works and Contracts* § 26 (2009).

Stacey L. Rowan

Government Contracting: Public Bidding

*Dealer Tag Agency, Inc. v. First Hillsborough County
Auto Tag Agency, Inc.,*
14 So. 3d 1238 (Fla. 2d Dist. App. 2009)

Where a constitutional entity is authorized to perform the duty of an executive agency pursuant to an express agency relationship, the constitutional entity is not subject to the same procedural requirements that would apply to the executive agency in the regulation of bid proposals and contesting bid awards pursuant to Florida Statutes Chapters 287 and 120.

FACTS AND PROCEDURAL HISTORY

The State of Florida Department of Highway Safety and Motor Vehicles (DHSMV) authorized the Hillsborough County Tax Collector’s Office (Tax Collector) to act as its agent in issuing vehicle license plates and registrations. The Tax Collector, in turn, sought to delegate that function and issued a request for bid pro-

posals. Plaintiff, First Hillsborough County Auto Tag Agency, Inc., and Defendant, Dealer Tag Agency, Inc., submitted bid proposals. Defendant was awarded the bid. Plaintiff sought to protest the award to Defendant, but was informed by the Tax Collector that no protest procedures were in place. Plaintiff subsequently filed suit in the Circuit Court for Hillsborough County, alleging that the Tax Collector's request for bid proposals did not comply with Florida Statutes Chapters 287 and 120. The Circuit Court found that the Tax Collector failed to comply with Chapters 287 and 120 and, accordingly, granted summary judgment for Plaintiff. Defendant appealed to the Second District Court of Appeal, and the Second District reversed the Circuit Court.

ANALYSIS

The Second District held that the Tax Collector's request for bid proposals was not governed by Chapters 287 and 120 and, therefore, the ensuing bid award was not invalid. Plaintiff's theory that Chapters 287 and 120 govern the request for bid proposals was predicated on the fact that Florida Statutes Section 320.03 describes the Tax Collector as an "authorized agent" of DHSMV, which is an executive agency. Plaintiff argued that, because of this agency relationship, the Tax Collector is an executive agency and, accordingly, Chapters 287 and 120 govern the Tax Collector's request for bid proposals.

The Second District rejected Plaintiff's argument, reasoning that, irrespective of the agency relationship between DHSMV and the Tax Collector, the Tax Collector is a constitutional entity created under Article VIII, Section 1(d) of the Florida Constitution. "Because the Tax Collector is a constitutional entity and not a 'state agency,' the provisions of Chapter[s] 287 and 120 do not apply to that office." *Dealer Tag Agency, Inc.*, 14 So. 3d at 1240. Because chapters 287 and 120 do not apply to constitutional entities, the Tax Collector is not subject to the same procedural requirements that apply to administrative agencies when requesting bid proposals. Therefore, the Tax Collector's failure to comply with Chapters 287 and 120 did not invalidate the bid award to Defendant.

SIGNIFICANCE

This case refuses to provide unsuccessful bidders with a procedural remedy to contest bid awards under Chapters 287 and 120 based on the distinction between constitutional entities and executive agencies. Because the constitutional entity is effectively standing in the shoes of the executive agency pursuant to an express agency relationship, this distinction seems improper. Whereas the executive agency would be bound to comply with Chapters 287 and 120, thus providing unsuccessful bidders with a remedy to contest bid awards, this remedy is denied where the executive agency delegates that function to a constitutional entity.

RESEARCH REFERENCE

- 43 Fla. Jur. 2d *Public Works & Contracts* §§ 13, 35 (2007 & Supp. 2009).

Charles E. Simpson