

## Rejection's a Bear- Particularly in Construction



As I read through this weeks cases published in [Virginia Lawyers Weekly](#), I came across a case posing an interesting question. The question is, "If your bid is rejected along with everyone else's, can you complain?" The short answer set out by the [Rockingham County, Virginia](#) Circuit Court is "No." In the case of [General Excavation v.](#)

[City of Harrisonburg](#) the Court looked at the Virginia Public Procurement Act's bid protest provisions in Va. Code [2.2-4360](#) and [2.2-4364\(C\)](#) in the context of General Excavation's protest of the City's failure to award it (or anyone else for that matter) the contract on which it was the low bidder. The controlling section of the statute allows a challenge to the award or proposed award of a contract.

In defending the action, the City of Harrisonburg argued that, because the Procurement Act waived some of the city's [sovereign immunity](#), it must be read strictly. The city further argued (somewhat ironically) that, because no award of the contract was given or even proposed, General Excavation could not bring suit because it would not be challenging the "proposed award or award" of a contract. Not surprisingly, the Rockingham County court held with the City and strictly construed the statute against General Excavation in finding that General Excavation did not have the standing necessary to bring suit under the statute.

In sum, if you, as a contractor, bid on a contract and no award is given to *anyone* bidding on the project, the Virginia courts will not hear your cries. The General Excavation decision also teaches the lesson that contractors are very much at the mercy of the governmental entities to whom they bid their services. In another instance proving that "[Murphy was an optimist](#)," a lack of funds or even a whim by city officials resulting in a total failure to award a contract on a publicly announced project will result in a loss of the contract by those construction companies that bid the job and a total lack of remedy for those entities.

Remember, even in this economy, government projects are not the golden ticket to profitability. Low bid rules and the [subsequent low profit margins](#), along with issues like those in this case, require that a contractor or subcontractor carefully evaluate each and every public request for bid before diving into the government contracting pool.

Please check out my [Construction Law Musings Blog](#) for more on Virginia construction law and other topics.

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