

Best Value Concepts Still Require Award to the Lowest Bidder Under Virginia's Competitive Sealed Bidding Process For Public Service Contracts

Last week, the Supreme Court of Virginia concluded that the Virginia Public Procurement Act requires contracts for professional services to be awarded to the lowest responsible and responsive bidder, even if the public offeror's solicitation includes "best value" concepts.

The case centered on a "Best Value Invitation For Bid" for custodial services that in which the offeror included "best value concepts" so it could consider factors in addition to price "to select the most advantageous offer" from among the bidders. "Best value," as used in the Procurement Act, means "the overall combination of quality, price, and various elements of required services that in total are optimal relative to a public body's needs." After application of the best value factors to the various bids, the offeror concluded that the contract should be awarded to a bidder who was not the lowest responsive and responsible bidder.

In reviewing the trial court's dismissal of the lowest bidder's challenge to the offeror's failure to award the contract to the lowest bidder, the Supreme Court found that "best value" concepts did not change the fundamental requirement for competitive sealed bidding that the contract must be awarded to the lowest responsive and responsible bidder. Noting that the Procurement Act does exempt certain types of contracts from the competitive process, the Court concluded that the School Board's service contract did not fall within any of those exception. As a result, the Court held that "under the plain language of the Act, the [offeror] was required to award the contract to the lowest responsive and responsible bidder."

The Supreme Court specifically rejected the offeror's argument that "its utilization of best value concepts permitted it to award the contract to the bidder it considered to provide the best value rather than the bidder with the lowest price who was responsive and responsible." In doing so, the Court confirmed that "best value concepts" described in a solicitation do not create a new method of procurement for those goods and services the Procurement Act requires to be obtained through competitive sealed bidding.

The case is *Professional Building Maintenance Corporation v. School Board of the County of Spotsylvania*, Record No. 110410 (April 20, 2012). The construction lawyers of Hirschler Fleischer represented the bidder. Additional information may be obtained by contacting Chandra Lantz at clantz@hf-law.com or 804.771.9586.

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