

DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

Baxter's Asphalt and Concrete, Inc. v. Department of Transportation
and Solomon Construction Company of Quincy

475 So. 2d 1284 (Fla. 1st DCA 1985) · No. No. AZ-110 · Decided September 17, 1985

SUMMARY

The Florida First District Court of Appeal affirmed the Department of Transportation's rejection of Baxter's Asphalt and Concrete, Inc.'s low bid for a road construction project. The court held that Baxter's nonresponsibility was supported by competent substantial evidence based on its history of delayed performance, even though the agency and hearing officer used different dates for assessing responsibility. The court also upheld the agency's discretion to reject the bid and award the contract to the second-lowest bidder.

CASE DETAILS

COURT	District Court of Appeal of Florida, First District
WRITING FOR THE COURT	Mills; Nimmons; Pearson, Tillman (Ret.), Associate Judge
JURISDICTION	Florida
DECIDED	September 17, 1985
DOCKET	No. AZ-110
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from final agency action rejecting Baxter's low bid as nonresponsible and awarding the road-construction contract to the second-lowest bidder.
STANDARD OF REVIEW	The court reviewed the agency's factual determination for competent, substantial evidence and its discretionary bid decision for arbitrariness, capriciousness, or lack of facts reasonably tending to support the action. The court also gave DOT broad discretion in awarding public contracts to responsible bidders.
PRECEDENTIAL VALUE	Published Florida District Court of Appeal opinion; precedential within the scope of the court's authority.
PARTIES	Baxter's Asphalt and Concrete, Inc. v. Department of Transportation, Solomon Construction Company of Quincy

TOPICS

bid protests government contracts agency adjudication judicial review of agency action
administrative law

PRACTICE AREAS

administrative law government contracts public procurement appellate procedure

QUESTIONS PRESENTED

1. Whether DOT was required to determine Baxter's responsibility as of the administrative hearing rather than as of the date DOT posted its intended action.
2. Whether DOT's finding that Baxter was nonresponsible as of October 10, 1983 was supported by competent, substantial evidence even though the hearing officer did not make a separate finding of responsibility as of that date.
3. Whether DOT abused its discretion by rejecting Baxter's bid under the responsible-bidder standard.
4. Whether DOT could rely on responsibility and other-work criteria that had not been adopted as formal administrative rules.
5. Whether the appeal was moot because the contract had been awarded to Solomon and construction had begun.

HOLDINGS

1. The court did not need to decide whether DOT erred in fixing the responsibility date before the hearing because Baxter was found nonresponsible both as of the hearing date and as of October 10, 1983, and the finding at either time was supported by competent, substantial evidence.
2. DOT properly found Baxter nonresponsible because its history of late starts and late finishes, despite its available resources, demonstrated performance and management deficiencies relevant to its ability to perform the contract.
3. DOT did not abuse its discretion because its final order adequately explained the factual basis for finding Baxter nonresponsible and the record contained more than adequate evidence supporting that determination.
4. The absence of a formally adopted rule defining responsibility or specifying the relevant time frame did not preclude DOT from relying on the responsible-bidder standard in this case, because DOT adequately explained the grounds for its decision in its final order.
5. The administrative hearing required consideration of changed circumstances and a rational final order, but it did not require DOT to treat subsequent improvements in Baxter's performance as curing the deficiencies supporting the earlier nonresponsibility determination or as giving Baxter a competitive advantage over other bidders.

KEY QUOTATIONS

"'Responsible' has been judicially defined to include such factors as "... degree of experience ... reputation for performance ... outstanding obligations ... integrity ... as well as other matters which might influence the ability to perform the contract ...,"" (475 So. 2d at 1286)

"The facts and figures were considered anew providing Baxter's with the de novo hearing mandated by Chapter 120." (475 So. 2d at 1288)

"Because there is more than adequate evidence to support a finding of nonresponsibility, the final order of the agency is affirmed." (475 So. 2d at 1288)

FACTUAL BACKGROUND

Baxter's was the low bidder for a DOT road-construction project on I-10 in Leon County. DOT relied on Baxter's delays and performance history on several other contracts to determine that Baxter was not a responsible bidder and rejected its bid in favor of Solomon, the second-lowest bidder. The administrative record showed that Baxter had repeatedly started and completed jobs late despite possessing the financial resources, equipment, manpower, and expertise to perform them.

PROCEDURAL HISTORY

After the Florida Department of Transportation announced its intent to reject Baxter's bid, Baxter requested an administrative hearing under section 120.57(1), Florida Statutes. The hearing officer found that Baxter had performance deficiencies but had the resources to perform the contract and recommended awarding the bid to Solomon. DOT rejected or modified portions of that recommendation, found Baxter nonresponsive as of October 10, 1983, and awarded the contract to Solomon. Baxter appealed under section 120.68; the court declined to dismiss the appeal as moot and affirmed the final agency order.

DISPOSITION

affirmed

CASES CITED

- Willis v. Hathaway, 95 Fla. 608, 117 So. 89 (1929)
- Florida Cities Water Co. v. Public Service Commission, 384 So. 2d 1280 (Fla. 1980)
- E.M. Watkins & Co. v. Board of Regents, 414 So. 2d 583 (Fla. 1st DCA 1982)
- Capeletti Brothers v. Department of General Services, 432 So. 2d 1359 (Fla. 1st DCA 1983)
- Liberty County v. Baxter's Asphalt and Concrete, 421 So. 2d 505 (Fla. 1982)
- Couch Construction Co. v. Department of Transportation, 361 So. 2d 172 (Fla. 1st DCA 1978)
- McDonald v. Department of Banking, 346 So. 2d 596 (Fla. 1st DCA 1979)