

SUPREME COURT OF NORTH DAKOTA

Baukol Builders, Inc. v. County of Grand Forks

2008 ND 116 (N.D. 2008) · No. 20060120 · Decided June 9, 2008

SUMMARY

The Supreme Court of North Dakota affirmed the dismissal of Baukol Builders' challenge to Grand Forks County's award of a public construction contract to a higher-dollar bidder. The court held that the completion date was a stated bidding criterion and that the applicable competitive-bidding statutes permitted the County to consider factors beyond the lowest dollar bid. The court also upheld the denial of Baukol Builders' post-trial motions and request for attorney fees.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Dale V. Sandstrom, Justice; Dale V. Sandstrom; Daniel J. Crothers; Mary Muehlen Maring; Allan L. Schmalenberger, District Judge; Gerald W. VandeWalle, Chief Justice
JURISDICTION	North Dakota
DECIDED	June 9, 2008
DOCKET	20060120
DISPOSITION	affirmed
PROCEDURAL POSTURE	Baukol Builders appealed from a district court judgment dismissing its action for injunctive and declaratory relief concerning the County's award of a public-improvement construction contract to another bidder, and from orders denying its post-trial motions and attorney-fee request.
STANDARD OF REVIEW	Statutory interpretation is reviewed de novo. Factual findings are reviewed under the clearly erroneous standard. A ruling on a motion for a new trial based on newly discovered evidence is reviewed for abuse of discretion. Whether the County abused its discretion in awarding the contract was reviewed for error or abuse of discretion under the applicable competitive-bidding standards.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential.
PARTIES	Baukol Builders, Inc. v. County of Grand Forks

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QUESTIONS PRESENTED

1. Whether Baukol Builders was barred from challenging the County's failure to publish the bid notice at least twenty-one days before opening bids after submitting a timely bid.
2. Whether the County used unstated or unwritten criteria by considering proposed completion dates, anticipated prisoner-housing revenue, and interest savings in awarding the contract.
3. Whether N.D.C.C. §§ 48-01.1-02 and 48-01.1-07 authorized the County to exercise discretion in selecting the lowest responsible and lowest and best bidder rather than the lowest dollar bidder.
4. Whether the County abused its discretion or acted arbitrarily, unreasonably, capriciously, fraudulently, or collusively in awarding the contract to Construction Engineers.
5. Whether the district court abused its discretion by denying Baukol Builders' post-trial motions based on allegedly newly discovered evidence.
6. Whether Baukol Builders was entitled to attorney fees under N.D.C.C. § 28-26-31 or the inherent-power doctrine recognized in *Chambers v. NASCO, Inc.*

HOLDINGS

1. A bidder that submitted a timely bid and was not shown to have been harmed by the early opening of bids could not challenge the County's failure to comply with the statutory twenty-one-day publication period.
2. The County did not use unstated or unwritten criteria because the bid documents expressly required bidders to state their proposed completion dates, making completion time a stated item of competition; consideration of the resulting revenue and interest implications was necessarily related to that stated criterion.
3. N.D.C.C. §§ 48-01.1-02 and 48-01.1-07, construed together, authorized a public entity to exercise some discretion in awarding a contract to the lowest responsible and lowest and best bidder; they did not require selection of the lowest dollar bidder.
4. The County did not abuse its discretion or act arbitrarily, unreasonably, or capriciously in awarding the contract to Construction Engineers.
5. The district court did not abuse its discretion in denying the motions for a new trial and renewed post-trial relief based on allegedly newly discovered evidence.
6. Baukol Builders was not entitled to attorney fees under N.D.C.C. § 28-26-31 or *Chambers v. NASCO, Inc.*, because the County acted in good faith and there was no qualifying bad-faith conduct.

KEY QUOTATIONS

“We therefore hold the district court did not err in construing the applicable competitive bidding statutes to authorize a governing body to exercise some discretion in awarding a public improvement construction contract to the lowest responsible bidder.” (¶ 27)

“We affirm the judgment and the orders denying Baukol Builders' post-trial motions.” (¶ 37)

FACTUAL BACKGROUND

Grand Forks County solicited bids for the exterior shell of a new regional correctional center. Baukol Builders submitted the lowest dollar bid, \$3,666,337, with a July 31, 2006 completion date; Construction Engineers submitted a \$3,700,000 bid with a 270-day completion date that the County calculated as May 7, 2006. The bid documents required bidders to propose completion dates, and the County considered the earlier completion date, anticipated revenue from housing federal prisoners, and interest savings before awarding the contract to Construction Engineers. Baukol Builders challenged the award, asserting that the County used unstated criteria and violated North Dakota's competitive-bidding statutes.

PROCEDURAL HISTORY

Grand Forks County awarded the correctional-center construction contract to Construction Engineers, whose dollar bid was higher but whose proposed completion date was earlier than Baukol Builders' bid. The district court denied Baukol Builders' request for a temporary restraining order, held a trial, dismissed the action, and later denied motions for a new trial based on allegedly newly discovered evidence and denied attorney fees. The Supreme Court granted a temporary remand for consideration of the post-trial motions and then affirmed the judgment and orders.

DISPOSITION

affirmed

CASES CITED

- Quist v. Best W. Int'l, Inc., 354 N.W.2d 656, 664-65 (N.D. 1984)
- Friehe v. City of Edgeley, 317 N.W.2d 818, 819-20 (N.D. 1982)
- Mini Mart, Inc. v. City of Minot, 347 N.W.2d 131, 133, 141 (N.D. 1984)
- Danzl v. City of Bismarck, 451 N.W.2d 127, 128, 130-32 (N.D. 1990)
- Becker Elec., Inc. v. City of Bismarck, 469 N.W.2d 159, 162 (N.D. 1991)
- In re P.F., 2008 ND 37, ¶ 11, 744 N.W.2d 724
- Estate of Elken, 2007 ND 107, ¶ 7, 735 N.W.2d 842
- Chaffee v. Crowley, 49 N.D. 111, 114, 190 N.W. 308 (1922)
- Ellingson v. Cherry Lake Sch. Dist., 55 N.D. 141, 148-49, 212 N.W. 773, 775-76 (1927)
- Roe v. Doe, 2002 ND 136, ¶ 12, 649 N.W.2d 566
- Edinger v. Governing Auth. of Stutsman County Corr. Ctr., 2005 ND 79, ¶ 13, 695 N.W.2d 447

- Johnson v. Johnson, 2001 ND 109, ¶ 6, 627 N.W.2d 779
- Keyes v. Amundson, 391 N.W.2d 602, 604 (N.D. 1986)
- Bertsch v. Bertsch, 2007 ND 168, ¶ 10, 740 N.W.2d 388
- Danzl v. Heidinger, 2004 ND 74, ¶ 6, 677 N.W.2d 924
- Chambers v. NASCO, Inc., 501 U.S. 32, 35 (1991)

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