

BUSINESS & FACILITIES UPDATE

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Lowest Responsible Bidder May Recover its Bid Preparation Costs Under a Promissory Estoppel Theory If the Public Works Contract is Wrongfully Awarded to a Competing Contractor.

In February 2015, the California Department of Corrections and Rehabilitation (“CDCR”) published an invitation for bids for a heating, ventilation, and air conditioning system project at Ironwood prison (the “Project”). Five companies submitted bids to construct the Project.

In May 2015, CDCR awarded the contract for the Project to Hensel Phelps Construction Co. (“HP”) because HP was the lowest bidder with a bid amount of \$88 million. CDCR released a list of bidders that showed West Coast Air Conditioning Co. (“West Coast”) was the next lowest bidder with a bid of \$98 million.

Shortly thereafter, West Coast filed a lawsuit against CDCR and HP seeking to void CDCR’s contract award to HP. West Coast argued HP’s bid had mathematical and typographical mistakes and failed to properly list the license numbers of 17 subcontractors. According to West Coast, these defects gave HP an unfair advantage over its competitors. West Coast sought, among other things, reimbursement of its bid preparation costs and interest in the stipulated amount of \$250,000.

The trial court agreed with West Coast’s arguments and set aside CDCR’s contract award to HP. The court found the errors in HP’s bid were material to the bid price and, as a result, HP’s bid was nonresponsive as a matter of law. Although the court ordered HP to stop performing any additional work on the Project, the court declined to order CDCR to award West Coast the contract for the Project.

Subsequently, a trial court held a hearing to determine whether West Coast was entitled to recover its \$250,000 bid preparation costs under a “promissory estoppel” theory. After West Coast proved it was the lowest responsible bidder, the trial court awarded West Coast the stipulated sum of \$250,000. CDCR appealed.

On appeal, CDCR argued West Coast was not entitled to recover its bid preparation costs because West Coast had obtained “effective” relief when the court ordered HP to cease further work on the Project. The Court of Appeal rejected CDCR’s argument. In doing so, the Court relied on the California Supreme Court’s decision in *Kajima/Ray Wilson v. Los Angeles County Metropolitan Transportation Authority* (2000) 23 Cal.4th 305. In *Kajima*, the California Supreme Court held monetary damages are generally not available in the “disappointed bidder”

context unless it is possible to both set aside the misawarded contract *and* to award the contract instead to the lowest responsible bidder. However, in this case, the trial court did not order CDCR to award the contract for the Project to West Coast. “We conclude the issuance of a permanent injunction in favor of West Coast, the lowest responsible bidder, without *either* an award of the public works contract to it *or* an award of damages equal to its bid preparation costs, would result in an adequate remedy to West Coast. Indeed, West Coast prepared its bid and incurred \$250,000 in costs in reliance on CDCR’s representation that if a contract was awarded, which turned out to be the case, it would be to the lowest responsible bidder, which turned out *not* to be the case.”

West Coast Air Conditioning Company, Inc. v. California Department of Corrections and Rehabilitation (2018) __Cal.App.5th __.

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