

Municipalities may be violating Florida law with some contract awards

By LYLE JOHNSON

Florida courts have consistently held that contracts should be awarded to the “lowest *responsible* bidder.” Price matters, but the bidder must also demonstrate that it is responsible, and qualified to perform the work.

“Responsible” has been judicially defined in Florida to include such factors as degree of experience, reputation, past performance, outstanding obligations, integrity, as well as other matters that might influence the ability to perform the contract. As a result, courts have upheld the right of government entities to award contracts to bidders who are not the lowest bidders.

In a recent legal opinion, prominent Tallahassee attorney Randall Denker wrote “Other factors have been upheld by courts to be legitimate reasons for accepting or rejecting bids. For example, in the case of *GTech Corporation v Florida Department of the Lottery*, 737 So.2d615 (Fla. 1st DCA 1999), the government awarded a contract where price was only 20 percent of the total 100 points which could be awarded. The other 80 points included such factors as ‘experience in lottery operations, the technical specifications of the proposed systems, the operational and security features of the systems, and the marketing features. As a part of the evaluation, the committee also conducted on-site visits to allow the respondents to demonstrate their systems.’ The rejected bidder challenged the selection criteria but the court upheld the government’s assessment methodology.”

Although counties around Florida have different local laws delineating their bid processes, they must all comply with state law, which takes precedence. State law requires that a range of factors be taken into account so that the “best value” can be received for taxpayer dollars. Section 287.01 (4), Florida Statutes, defines “best value” as “the highest overall value to the state based on objective factors that include, *but are not limited to, price, quality,*

JOHNSON

From Page 14

design, and workmanship.”

“Price is always important in any bid process,” Denker concluded. “But the vendor must also demonstrate that its proposal is responsive to the bid solicitation and that the vendor is a responsible bidder in terms of providing an acceptable quality of service. Simply submitting the lowest bid is not sufficient to meet the requirements of Florida law.”

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