

Bid Challenges

Standing to Protest

In order to challenge the bid award, a party must have standing - defined as the legally recognized ability to do so. Generally, two classes of individuals will seek to challenge a bid award. The first class consists of taxpaying residents of the public authority which awarded the bid; i.e., residents of a school district, municipality, county or state.

The second class consists of the “disappointed contractors” who submitted bids, but were not awarded the contract. These may be low bidders whose low bids were not deemed responsive or nonlow bidders who feel the low bidder submitted a nonresponsive bid.

States almost uniformly allow a taxpayer to bring an action against the public authority challenging the award of a bid on the grounds that the competitive bidding laws were violated. This includes a disappointed contractor (or one of its employees) who is also a taxpaying resident of the appropriate public authority, but standing is granted only if the contractor can satisfy the taxpayer requirement.

States are split over the issue of whether a disappointed bidder who is not a taxpaying resident of the public authority letting the bid has standing to challenge the award. Generally, these suits are for equitable relief. That is, the party challenging the bid award is not seeking money damages but rather, a court order that the public authority must award the bid to the lowest responsive and responsible contractor.

Iowa courts have held such a bidder does not have standing to challenge an award on the grounds the bidding statutes requiring the bid to be awarded to the lowest responsive and responsible bidder are enacted to protect the taxpayers – not a particular contractor.²²

As stated above, a disappointed contractor may have standing to seek an injunction to prevent the owner from *awarding* the contract where the bidding laws have been violated.²³ However, the contractor may not bring an action against the public authority for money damages even if the public authority wrongfully awarded the bid to another contractor or did not fairly let the bid.

While a contractor may not force a public agency to award it the bid, statutory public contracting provisions reserve the awarding authority the right to reject all bids; e.g., Iowa Code Section 26.10 (cities); Iowa Code Section 331.341 (counties other than roads); and Iowa Code Section 262.34 (Board of Regents); and Iowa Code Section 73A.18 (Schools).

Accordingly, a public agency can reject all bids and re-let the project. It has been suggested this power cannot be exercised arbitrarily or capriciously or to steer a contract away from one party or toward another.²⁴

²² *Garling Constr. v. City of Shellsberg*, 641 N.W.2d 522 (Iowa 2002).

²³ *Id.*

²⁴ *Dickinson Co., Inc. v. City of Des Moines*, 347 N.W.2d 436 (Iowa Ct. App. 1984).