



THOMPSON HINE

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CONSTRUCTION UPDATE

Wrongfully Rejected Bidders May Recover Monetary Damages From a Public Authority

Following the Ohio Supreme Court's decision in *Cementech v. Fairlawn*, 109 Ohio St.3d 475, there has been much debate over whether a disappointed bidder on a public project is entitled to recover monetary damages from the public authority if the bidder is wrongfully rejected or wrongfully denied a contract.

On July 21, the Ohio Supreme Court issued its long-awaited decision clarifying its decision in *Cementech*, affirming the Tenth District Court of Appeals' decision that "when a rejected bidder establishes that a public authority violated state competitive-bidding laws in awarding a public-improvement contract, that bidder may recover reasonable bid-preparation costs as damages if that bidder promptly sought, but was denied, injunctive relief and it is later determined that the bidder was wrongfully rejected and injunctive relief is no longer available." In *Meccon, Inc. v. Univ. of Akron*, 2010-Ohio-3297, the Supreme Court in a unanimous decision reasoned that precluding a rejected bidder from recovering bid preparation costs would deny it any "remedy for a public authority's wrongful conduct." The court stated that allowing such a recovery "seems best calculated to strike a balance between ... ameliorating the damages sustained ... and deterring the public authority from violations of the competitive-bidding law."

While this is a decision that clarifies bid protest law in Ohio, disappointed bidders must keep in mind that the recovery of monetary damages is not something that is automatic. Bidders must continue to promptly seek injunctive relief in order to avoid "the damages that would otherwise flow from the ... wrongful conduct." It is only when such relief is "erroneously denied" that bidders would be entitled to recover reasonable monetary damages.

FOR MORE INFORMATION

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