

1993 WL 482943

United States District Court, E.D. Pennsylvania.

Martin HARRIS, Jesse Kithcart, Johnny Grant, Randall Cummings, Evelyn Lingham, Thomas Cotton, Larry Hines and Michael MOBELY,

v.

Theodore LEVINE, in his official capacity as Commissioner of the of Human of the City of Philadelphia, Albert F. Campbell, Rosita Saez–Achilla, Genece E. Brinkley, Esq., Rev. Paul M. Washington, M. Mark Mendel, Esq., Hon. Stanley Kubacki, Mamie Faines, each in his or her official capacity as a member of the Board of Trustees of the Philadelphia Prison System, J. Patrick Gallagher, in his official capacity as Superintendent of the Philadelphia Prison System, Harry E. Moore, in his official capacity as Warden for Holmesburg Prison, Wilhelmina Speech, in her official capacity as Warden of the Detention Center Press Grooms, in his official capacity as Warden of the House of Corrections, Raymond E. Shipman, in his official capacity as Managing Director in the City of Philadelphia, Hon. Edward G. Rendell, in his official capacity as Mayor of the City of Philadelphia, and The City of Philadelphia.

No. CIV. A. 82–1847. | Nov. 22, 1993.

Opinion

MEMORANDUM AND ORDER

SHAPIRO

*1 Before the court is the Motion of Barclay White, Inc. (“Barclay White”) for Leave To Intervene and for Injunctive Relief with Respect to the Award of Contract Package No. 4671 for the Criminal Justice Center (“Motion To Intervene”). Barclay White seeks to intervene as of right under F.R.C.P. 24(a)(2) for the limited purpose of seeking an order disapproving the City of Philadelphia’s award of a construction contract to R.M. Shoemaker, Inc. (“Shoemaker”). This contract is presently before the court for approval pursuant to the Consent Order of March 11, 1991 and Paragraph 4.01 of the Trust Indenture between the Philadelphia Municipal Authority and First Fidelity Bank, N.A., successor trustee to Corestates Bank, N.A., that secures the Justice Lease Revenue Bonds (1991 Series A, B, and C) issued to finance the Detention Facility and the Criminal Justice

Center (“Trust Indenture”). Paragraph 4.01 of the Trust Indenture states that “all contracts for the construction of the Detention Facility and the Criminal Justice Center, and any change orders which increase the total project budget for the Detention Facility and the Criminal Justice Center, must be approved by the U.S. District Court for the Eastern District of Pennsylvania prior to their award.”

Barclay White, the next lowest bidder after Shoemaker, objects to the award of the contract to Shoemaker on two grounds. First, Barclay White contends that Shoemaker’s bid should have been rejected by the City of Philadelphia (“City”) as non-responsive because the bid did not comply with the Specifications and Instructions to Bidders included in the contract package. Motion to Intervene ¶ 9. Second, Barclay White contends that the City should have determined Shoemaker’s bid to be non-responsive because of the bid’s failure to meet anti-discrimination goals set by the City, and the City’s Minority Business Enterprise Counsel allegedly conducted an improper or insufficient investigation of the bid before finding that Shoemaker did not engage in discriminatory practices. Motion to Intervene ¶ 11.

A party is entitled to intervene as of right under Rule 24(a)(2) if “(1) the application for intervention is timely; (2) the applicant has a sufficient interest in the litigation; (3) the interest may be affected or impaired, as a practical matter by the disposition of the action; and (4) the interest is not adequately represented by an existing party in the litigation.” *Harris v. Reeves*, 946 F.2d 214, 219 (3rd Cir.1991), *cert. denied sub. nom. Abraham v. Harris*, 112 S.Ct. 1516 (1992) (hereinafter *Harris II*). An individual must meet each of the four criteria in order to intervene as of right. *Id.*

Although the sufficiency of the interest is determined by federal law, the scope of Barclay White’s interest is a question of state law. *See, e.g., Harris II*, 946 F.2d at 219; *Olden v. Hagerstown Cash Register, Inc.*, 619 F.2d 271, 273 (3d Cir.1980); *Odgen Allied Services, Inc. v. City of Philadelphia*, 1992 WL 223802 at *2 (E.D. Pa., 1992) (Shapiro, J.). Pennsylvania law requires that certain public contracts be awarded after competitive bidding to the lowest responsive and responsible bidder. Barclay White contends it has a sufficient interest to intervene in this litigation because of its interest in having the contract awarded to the lowest responsive and responsible bidder both as a taxpayer of the Commonwealth of Pennsylvania and the City of Philadelphia and as a bidder for the contract presently before the court for approval. Motion to Intervene ¶ 13; Memorandum of Law in Support of Barclay White’s Motion to Intervene at 5.

*2 A disappointed bidder does not have standing to challenge the award of a public contract under

Harris v. Levine, Not Reported in F.Supp. (1993)

Pennsylvania law. *Odgen Allied Services*, 1992 WL 223802 at *2. Barclay White's only interest in the present litigation under state law is as a taxpayer. Where the subject matter of the action is the award of a city contract and a disappointed bidder would have only an action as a taxpayer to vindicate the public's right, this interest is not sufficient to warrant intervention under Rule 24(a)(2). *See id.* at *2-*3.

In the present case, the subject matter of the action is not even the award of a contract, but the administration of a consent decree to reduce overcrowding in the City's prisons. The court's intention in approving or disapproving contracts under the Trust Indenture is not to decide responsive, responsible bidders under municipal contract law but to approve or disapprove contracts the City proposes to award based on the court's understanding of the efficient, expeditious expenditure of bond funds to implement the court's consent order. Barclay White's interest is even further removed from the subject matter of the action than the interest of the proposed intervenor in *Odgen*. Barclay White has therefore not asserted an interest in the present litigation sufficient to warrant intervention under Rule 24(a)(2).

Because Barclay White has not asserted a sufficient interest in the present action to warrant intervention under Rule 24(a)(2), the court will deny Barclay White's motion to intervene. An appropriate order follows.

ORDER

AND NOW, this day of November, 1993, it is ORDERED that the Motion of Barclay White, Inc. for Leave To Intervene and for Injunctive Relief with Respect to the Award of Contract Package No. 4671 for the Criminal Justice Center is DENIED.

Parallel Citations

27 Fed.R.Serv.3d 1377