

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2796-20**

EPIC MANAGEMENT, INC.,

Plaintiff-Appellant,

v.

**BOROUGH OF SHIP BOTTOM,
and J.H. WILLIAMS
ENTERPRISES, INC.,**

Defendants-Respondents.

Argued April 4, 2022 – Decided April 12, 2022

Before Judges Fisher and Berdote Byrne.

On appeal from the Superior Court of New Jersey, Law Division, Ocean County, Docket No. L-0683-21.

George E. Pallas argued the cause for appellant (Cohen Seglias Pallas Greenhall & Furman, PC, attorneys; George E. Pallas and Matthew L. Erlanger, on the briefs).

Jerry J. Dasti argued the cause for respondent Borough of Ship Bottom (Dasti, Murphy, McGuckin, Ulaky, Koutsouris & Connors, attorneys; Jerry J. Dasti, of counsel and on the brief).

Daniella Gordon argued the cause for respondent J.H. Williams Enterprises, Inc. (Armstrong Teasdale, LLP, attorneys; Daniella Gordon, on the brief).

PER CURIAM

In this appeal, we consider whether the Borough of Ship Bottom's award of a public works municipal building construction project to the lowest bidder, J.H. Williams Enterprises, should be reversed because of alleged defects in the bid. As the bid submitted by J.H. Williams did not violate the Local Public Contracts Law and the information Williams failed to supply in the bid was non-material and waivable by the Borough, we discern no reason to disturb the well-reasoned decision of Judge Robert E. Brenner.

The Borough issued an advertisement for bids for the construction of a new municipal court building on December 8, 2020. The instructions accompanying the advertisement instructed bidders to fill in all the blank spaces on the bid form and cautioned that any omissions may cause bids to be rejected as non-compliant with the law or bidding instructions. Additionally, the Borough required each bidder to submit a "mandatory list of subcontractor" form. That form stated "[e]ach bidder shall complete and submit this form with its bid in accordance with N.J.S.A. 40A:11-16." The form provided blank spaces

for the names, addresses, and telephone numbers of subcontractors. It also had blank spaces for subcontractor pricing information.

On January 20, 2021, the Borough opened the bids and learned J.H. Williams had submitted the lowest bid. Plaintiff Epic Management, Inc. submitted the next lowest bid. On appeal of a declaratory judgment rejecting its contentions, Epic claims Williams' bid violated Local Public Contracts Law and was materially defective because it failed to include the electrical subcontractor's: 1) full name, 2) address and telephone number, and 3) pricing information.

The Local Public Contracts Law ("LPCL"), N.J.S.A. 40A:11-1 to 60 was created to ensure a fair, public, and competitive bidding process for the taxpayer's benefit. See generally, N.J.S.A. 40A:11-2(23). Indeed, "the statutes authorizing competitive bidding accomplish that purpose by promoting competition on an equal footing and guarding against 'favoritism, improvidence, extravagance, and corruption.'" Meadowbrook Carting Co. v. Borough of Island Heights & Consol. Waste Servs., 138 N.J. 307, 313 (1994) (quoting Twp. of Hillside v. Sternin, 25 N.J. 317, 322 (1957)). A public contract must be awarded "not simply to the lowest bidder, but the lowest bidder that complies with the substantive and procedural requirements in the bid advertisements and

specifications." Ibid. (citing Hillside, 25 N.J. at 324). If the bid does not satisfy the law, a public entity generally does not have the discretion to waive the defect.

Although the law requires "strict compliance," certain non-material defects may be cured or waived by the solicitor of the bid. Id. at 314-15 (citing River Vale v. R.J. Constr. Co., 127 N.J. Super. 207, 216 (Law Div. 1974)). We apply a two-prong test to determine whether alleged defects in a bid are substantial and therefore non-waivable. The first is whether waiver would deprive the municipality of its assurances the awarded contract will be adhered to, performed, and guaranteed to meet the specifications. Id. at 315. Secondly, we consider whether waiver of a bid defect would adversely affect competitive bidding by placing the bidder in a position of advantage over other bidders or otherwise negatively affect competitive bidding. River Vale, 127 N.J. Super. at 216.

In reviewing the trial court's rulings of law, and the issues of applicability, validity, or interpretation stemming therefrom, we review the trial court's legal conclusions de novo. See In re Ridgefield Park Bd. of Educ., 244 N.J. 1, 17 (2020). A "trial court's interpretation of the law and the consequences that flow from established facts are not entitled to any special deference." Rowe v. Bell

& Gossett Co., 239 N.J. 531, 552 (2019) (quoting Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

Our role in reviewing allegations of a defective bid pursuant to the LPCL has heightened importance given the public interest underlying the statutory scheme. In re Jasper Seating Co. Inc., 406 N.J. Super. 213, 227 (App. Div. 2009); Marvec Constr. Corp. v. Twp. of Belleville, 254 N.J. Super. 282, 288 (Law Div. 1992) ("The function of this [c]ourt is to preserve the integrity of the competitive bidding process and to prevent the misapplication of public funds.").

Firstly, Epic errs in claiming Williams failed to name a required electrical subcontractor, a material defect rendering the bid non-responsive pursuant to N.J.S.A. 40A:11-23.2. The undisputed record demonstrates, and the parties concede, Williams named "G&G Electric" on the bid forms. Reversal based on the failure to name a necessary subcontractor is not warranted under these facts.

Epic next argues the moniker "G & G Electric" lacks sufficient specificity to identify the correct electrical subcontractor because the name could refer to one of three different electrical contractors registered to do business in New Jersey. It argues that lack of specificity, coupled with the failure to provide an address and telephone number for the contractor, caused sufficient confusion

such that the Borough could not determine, at the bid opening process, the intended subcontractor. That argument likewise fails. There was only one electrical subcontractor with "G&G Electric" in its name -- G&G Electrical Contractors Inc. -- eligible to perform electrical work on public works projects in New Jersey. As such, there could have been no confusion regardless of the incomplete name.

The LPCL does not require a bidder to provide the address and telephone number of an identified subcontractor. Notably absent from N.J.S.A. 40A:11-16 and N.J.S.A. 40A:11-23.2 is any such requirement. Accordingly, there is no lack of conformity with the statute for failure to provide this information. Additionally, the law safeguards against the after-bid substitution of a similarly named, new subcontractor. Proof of the registration pursuant to the Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 to –56.57, must be provided prior to issuance of the award. N.J.S.A. 34:11-56.51. G&G Electrical Contracting is registered pursuant to the Public Works Contractor Registration Act. If Williams failed to provide that proof to the Borough, the award would not have been conferred to it. There was no risk of post bid negotiations undermining the competitive bidding process by substituting a similarly named electrical subcontractor. Pursuant to River Vale the defect was not material and

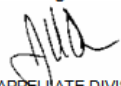
was waivable by the Borough, as was the lack of an address and phone number for the electric subcontractor in the bid, neither of which are necessary pursuant to the LPCL.

Finally, Epic argues the lack of the required pricing information for G&G Electric created a non-waivable defect in William's bid. Although the LPCL does not require pricing information where there is only one contractor listed pursuant to N.J.S.A. 40A:11-16(a)(2)(b), as was the case here, the Borough was free to impose additional bidding requirements not mandated by the minimum standards of the statute. See also, Clyde N. Lattimer & Son Constr. Co. Inc., v. Twp. of Monroe Util. Auth., 370 N.J. Super. 130, 137 (App. Div. 2004). Because these were additional standards imposed by the Borough, the defect was not material and was waivable.

Epic failed to demonstrate a violation of the LPCL or a non-waivable, material defect in William's bid. We affirm the order under review for these reasons and substantially for the reasons set forth in the thorough and well-reasoned, oral decision of Judge Robert E. Brenner.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION