

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NORTHEAST INDUSTRIAL SERVICES CORP. : CIVIL ACTION
: :
v. : :
: :
PAUL HOH, EMILY RICHARDSON, VINCENT :
GAGLIARDO, JR., JOSEPH EPPIHIMER, :
CHARLES KNOLL, JOHN ULRICH, MICHAEL :
FIUCCI and CITY OF READING : NO. 99-3078

MEMORANDUM AND ORDER

Fullam, Sr. J. October , 1999

Plaintiff was the low bidder on a demolition project for the City of Reading. The project was to be paid for, at least in substantial part, by federal funds provided the Department of Housing and Urban Development. Executive officials of the City of Reading determined that plaintiff was the lowest responsible bidder, and recommended award of the contract to plaintiff. The next lowest bidder, however, invoked a provision in the city charter of the City of Reading giving preference to firms located within the city limits, so long as the bid differential did not exceed ten percent. Plaintiff is not located within the city limits of Reading.

But, since federal funds were involved, HUD regulations mandated an award to the lowest responsible bidder, regardless of location. For that reason, executive officials of the City of Reading, and the city solicitor, all recommended to the Reading City Council that plaintiff be granted the contract. A majority

of the members of city council, however, were of the view that plaintiff had not properly conducted some private demolition work within the city limits, and had not properly maintained certain real estate owned by plaintiff within the city. The city council therefore awarded the contract in question to the second lowest bidder, on the theory that plaintiff was not "responsible."

At that point, plaintiff brought suit in this court, seeking an immediate injunction against award of the contract to any firm other than plaintiff (Civil Action 98-2316).

Concurrently, plaintiff pursued its available administrative remedies, including a protest to HUD. The parties agreed to withhold award of the contract until HUD had made its final decision. In due course, HUD ruled in favor of the plaintiff, and plaintiff was awarded the contract on August 26, 1998, and completed its work on or about November 6, 1998. In the meantime, the parties had reported to this Court that they had amicably resolved their dispute in Civil Action 98-2316, and, on September 23, 1998, that action was dismissed with prejudice, pursuant to Local Rule 41.1(b).

The present case began with the filing of a complaint on June 17, 1999. Plaintiff seeks to recover damages from the City of Reading and various officials of that municipality, on the theory that the events recited above demonstrate violations of plaintiff's right to due process and equal protection, under

both the United States Constitution and the Constitution of Pennsylvania, and also give rise to state-law claims for interference with prospective contractual advantage. Defendants have filed a motion to dismiss.

It is clear that plaintiff cannot succeed in this lawsuit. In the first place, although not mentioned by any of the parties, this suit is barred by res judicata. All of the claims asserted in the present complaint were, or could have been, asserted in Civil Action 98-2316. The final judgment entered in that case on September 23, 1998 stands as a complete bar to the present lawsuit.

Disregarding the res judicata problem, for the sake of argument, plaintiff had no cognizable property interest in the prospective award of a contract which could give rise to a §1983 claim. See Independent Enterprises, Inc. v. Pittsburgh Water and Sewer Authority, 103 F.3d 1165 (3d Cir. 1997) ("Statutes requiring the award of public contracts to the lowest bidder exist only for the benefit of taxpayers, and only taxpayers suffer a legally cognizable injury from a violation of the statute that entitles them to bring suit." Id. at 1178); Ray Angelini, Inc. v. City of Philadelphia, et al., 984 F.Supp. 873 (E.D.Pa. 1997); R.S. Noonan, Inc. v. School District of the City of York, 162 A.2d 623, (1960).

Plaintiff can have no valid equal protection claim,

since no racial, ethnic, gender or religious discrimination is involved. Since due process and equal protection claims under the Pennsylvania Constitution are identical to those arising under the Federal Constitution, plaintiff has no valid claims under either constitution. In addition, all of the individual defendants are plainly entitled to qualified immunity with respect to the constitutional claims, and to absolute immunity with respect to any lingering state-law claims.

This action will be dismissed, with prejudice.

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ORDER

AND NOW, this day of October, 1999, IT IS ORDERED:

1. Defendants' Motion to Dismiss is GRANTED.
2. This action is DISMISSED, in its entirety, WITH

PREJUDICE.

John P. Fullam, Sr. J.