



## Protesting Bidder Must Timely File Suit for Injunctive Relief Once Grounds for Bid Rejection Become Known

*Geosport Lighting Sys. v. City of Bossier*, 53,869 (La. App. 2 Cir. 4/14/21), 318 So.3d 1077, writs denied, 21-0662 (La. 9/7/21), 324 So.3d 91, 97.

An aggrieved bidder filed suit following the rejection of its bid by a public entity. That bidder, Geosport Lighting Systems, LLC, submitted the lowest bid on a lighting project solicited by the City of Bossier. The bid documents specified the use of either a certain brand of lights manufactured by Musco Sports Lighting, LLC, a direct competitor of Geosport, or a product that met or exceeded the standards of that particular brand. The bid documents also required that any bidder not using Musco lights had to submit a revised electrical-distribution plan signed by a licensed Louisiana electrical bidder.

On Aug. 23, 2019, the City's purchasing agent informed Geosport by letter that its bid was nonresponsive due to failure to furnish a revised electrical-distribution plan. On Aug. 27, 2019, two working days later, Geosport gave notice to the City that it was protesting that determination, and further claimed that the City had found Geosport to be both nonresponsive and nonresponsible, entitling Geosport to an informal hearing under La. R.S. 38:2212(X).

The City rejected the request for an informal hearing the next day and also notified Geosport that it intended to proceed with the next lowest bidder — Musco. On Aug. 30, 2019, Geosport sent another letter requesting an informal hearing, which was also rejected. On Sept. 4, 2019, the City awarded the contract to Musco. On

Sept. 10, 2019, Geosport filed suit against the City for injunctive relief, alleging, among other things, that requiring a revised electrical-distribution plan was an invalid “pay to play” provision. (Geosport subsequently filed an amended petition supplementing its allegations and adding Musco as an additional defendant.)

The City responded with peremptory exceptions of no cause of action and prescription, arguing that Geosport's claims were prescribed and/or waived due to Geosport's failure to raise its complaints regarding the violation of the Public Bid Law at any time prior to or during the bidding process, and that its claims generally were not timely asserted. The trial court granted the exceptions.

On appeal, the 2nd Circuit reversed. The 2nd Circuit noted that the Public Bid Law contains no time limits for seeking injunctive relief, and that instead timeliness continues to be governed by the Louisiana Supreme Court's pronouncements in *Airline Const. Co., Inc. v. Ascension Parish Bd.*, 568 So.2d 1029 (La. 1990). There, the Supreme Court held that an unsuccessful bidder seeking injunctive relief must promptly file suit once the grounds for attacking the wrongful award are “known or knowable” to the bidder.

Applying that principle to the case before it, the 2nd Circuit found that it was not until Geosport's bid was actually rejected that the company became aware that the City was violating the Public Bid Law in awarding the contract. The court noted that Geosport timely protested and filed its suit for injunctive relief prior to the full execution of the contract and before Musco had commenced any work. As such, the court concluded that Geosport's petition for injunctive relief was timely, as was its cause of action for same, and further, that its right to an informal hearing under La. R.S. 38:2212 (X) was not waived.

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