

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

No. 87-665  
87-780

DEPARTMENT OF LABOR AND INDUSTRIES

vs.

TOWN OF PEPPERELL & another

(and a companion case).

MEMORANDUM AND ORDER UNDER RULE 1:28

These cases come to us on the Department of Labor and Industries' (department) appeal from a summary judgment dismissing the department's action against the town of Pepperell and Raymond L. Blood and on the town's appeal from an order of a single justice of this court allowing the department's motion to docket its appeal late. The substantive dispute involves the award of a contract by the town to Blood, doing business as Pepperell Trucking Company, for the operation of the town's landfill.

1. The first issue is whether the landfill operation constitutes a "public work" so as to bring the award of the contract within the bidding requirements provided in G. L. c. 30, § 39M. The question is one of law. Salem Bldg. Supply Co. v. J.B.L. Constr. Co., 10 Mass. App. Ct. 360, 361 (1980). "[Section] 39M is designed to obtain the lowest price that competition among reasonable bidders can secure for contracts involving the actual

physical 'construction' (including reconstruction, alteration, maintenance, remodeling or repair) of public buildings and improvements on land owned by the Commonwealth or one of its subdivisions, and contracts for the materials that typically go into such construction projects." Andover Consultants, Inc. v. Lawrence, 10 Mass. App. Ct. 156, 160 (1980). A reading of the bid specifications and the contract supports the judge's conclusion that the landfill operation is a public work within the meaning of the statute. Among the tasks assigned to the contractor in this project were the removal of waste materials and rubbish, grading, erosion control, site access maintenance and other forms of improvement and maintenance of the town's land.

2. General Laws c. 30, § 39M(a), as amended through St. 1985, c. 507, requires that contracts for public works be awarded to the "lowest responsible and eligible bidder." Such a bidder is defined as one who meets several statutory requirements. The only condition involved in this case is that the bidder must "obtain[ ] within ten days of the notification of contract award the security by bond [covering suppliers of labor and materials] required under section twenty-nine of chapter one hundred and forty-nine." G. L. c. 30, § 39M(c)(4). It is undisputed that Blood did not furnish such a bond (with the consent of the town) until forty-two days after the contract award. The department argues that the

statutory bond requirement must be strictly adhered to, so that Blood failed to qualify as the lowest responsible and eligible bidder. The town contends, and the judge so found, that no purpose of the statute has been frustrated in the circumstances.

"The general rule in this Commonwealth is that failure to adhere to statutory bidding requirements makes void a contract entered into without such compliance." Phipps Prods. Corp. v. Massachusetts Bay Transp. Authy., 387 Mass. 687, 691 (1982). The rule has been consistently followed "even where no harm to the public authority was shown; where the violation benefited the public; and where there was no showing of bad faith or corruption" (citations omitted). Id. at 692, and cases cited. "[T]he public interest in adherence to statutory bidding procedures overrides any equitable considerations." Id. at 693. Here, Blood failed to satisfy a statutory requirement that he furnish a security bond within ten days of notification of the contract award. The bond was essential to his qualification as the lowest eligible and responsible bidder. It matters not that the bond was to be supplied after notice of the award. "Bidder prequalification is no mere formality; it is a cornerstone of the competitive bidding statute. The good faith [of Blood and the town] is insufficient to overcome this substantial deviation from the statutory requirement." Modern Continental

Constr. Co. v. Lowell, 391 Mass. 829, 840 (1984). See J. D'Amico, Inc. v. Worcester, 19 Mass. App. Ct. 112, 115-116 (1984). Contrast Chick's Constr. Co. v. Wachusett Regional High Sch. Dist. Sch. Comm., 343 Mass. 38, 41-42 (1961); J.J. & V. Constr. Corp. v. Commissioner of Pub. Works of Fall River, 5 Mass. App. Ct. 391, 392 (1977).

3. There was no abuse of discretion by the single justice in allowing the department to docket its appeal late pursuant to Mass.R.A.P. 10(a)(3), as amended, 378 Mass. 937 (1979).

4. The judgment is reversed, and a new judgment is to be entered in the Superior Court, consistent with this memorandum and order, for the department. The order of the single justice is affirmed.

So ordered.

By the Court (Brown, Kaplan & Warner, JJ.),

*Nancy Turchi Foley*  
Clerk

Entered: May 23, 1988.