

DOCKET NO.: DBD-CV25-6054975-S

ALL STATE CONSTRUCTION, INC.

V.

TOWN OF NEWTOWN AND
PAVARINI NORTHEAST
CONSTRUCTION CO., LLC

SUPERIOR COURT
OFFICE OF THE CLERK

J. D. OF DANBURY

2026 FEB 17 A 11:57

AT DANBURY

STATE OF CONNECTICUT

FEBRUARY 17, 2026

MEMORANDUM OF DECISION

The Nature of the Proceedings

In January of 2025, Newtown¹, Connecticut issued a request for proposals seeking bids from contractors for a municipal project known as Newtown Community Center Pool HVAC Dehumidification Project 2025-07. All State Construction, Inc.² and Pavarini Northeast Construction Co., LLC³ were two of the four contractors who bid the job. Newtown selected Pavarini. With its June 16, 2025 Verified Complaint for Injunctive Relief (#100.31), All State seeks an order⁴ from this court prohibiting Newtown from awarding the job to Pavarini. With its June 26, 2025 Motion to Dismiss,⁵ (#103.00), Newtown challenges All State's standing to bring

¹ Defendant Newtown, a municipal corporation is hereinafter referred to as "Newtown".

² Hereinafter, "All State".

³ Hereinafter, "Pavarini". Pavarini, a named defendant, has not appeared in this action.

⁴ All State's complaint alleges Newtown "has no lawful right" to award the contract to Pavarini (¶37) and "must award the contract to the Lowest Responsible Bidder" (All State) (¶39). All State further alleges that it is acting as a "private attorney general" to vindicate the public's interest in the integrity of the public bidding process (¶44).

⁵ In its post-trial memorandum (#133.00, pp 14-15), Newtown argues that even if All State establishes standing, this court cannot grant relief in the form of an order compelling Newtown to award the contract to All State. In light of the court's conclusion that the motion to dismiss must be granted, this court does not reach that issue.

this action and as an extension thereof, this court's subject matter jurisdiction to entertain All State's prayer for relief.⁶

For the reasons explained below, Newtown's motion to dismiss is granted.

Facts

All State and Newtown entered into a stipulation of facts (#109.00) and agreed the evidence introduced through their respective witnesses and exhibits at the August 19, 2025 evidentiary hearing could be considered by the court in connection with All State's application and Newtown's motion. Based on all the foregoing and this court's determination of the credibility of the witnesses, the court finds the additional following facts.

For more than fifty years, All State has been in the business of providing mechanical, heavy mechanical and HVAC utility services in both the public and private sectors. All State's first witness was Marc Pare, its chief executive officer and an owner of the business who credibly testified that approximately 80 percent of All State's business is for public sector clients, including municipal and federal projects, most of which is obtained via a public bidding process. For All State, the Newtown dehumidification project was, compared to its other work and jobs, on the smaller side but one All State did frequently. Mr. Pare gets directly involved in the bidding process only "occasionally" as All State has estimators who report to managers who in turn report to him. It is the estimators who reach out to potential subcontractors and suppliers for information and data, such as prices, which get fed into All State's process that determines its ultimate bid for a job.

Marc Pare did not review All State's bid before it was submitted. Marc Pare testified that the All State individual primarily responsible for preparing its bid for the job was a service manager

⁶ This court has reviewed and considered all of the memoranda of law filed by the parties in connection with the motion to dismiss and post-hearing.

named Jared Lockhart. Estimators reporting to Jared Lockhart included Joe Strollo and John Miller. If Jared Lockhart had questions while preparing the bid, he would go to Marc Pare. Jared Lockhart was All State's second witness. He testified that his role was to "do a high level overview upon the completion of our submission . . ." He did not personally complete All State's bid but did review it once it was compiled.

In 2019 Newtown built a community center which includes a swimming pool. The facility is the site of multiple other activities. At an unspecified point in time, Newtown concluded the splash pool area for kids at the center was too humid. Thereafter, with the benefit of consultations with engineers, Newtown decided to install an additional dehumidification unit on the roof to solve the problem. Newtown, in consultation with engineers, decided the 2019 design and installation did not adequately do the job.

Newtown employs a multi-layered system for the consideration, authorization and bidding of public projects. For the project in dispute here, that process also included a public referendum.

Newtown's witness, Ms. Kerri Mubarek is the town's Purchasing Director⁷ and one of at least (excluding external consultants such as engineers) ten municipal officials (some employed, some appointed, some elected) who play a role in Newtown's public bidding process. That process includes the Finance Director, the First Selectman and the Public Building and Site Commission. Ms. Mubarek testified that Newtown reached out to approximately fifteen different contractors about this project. It is undisputed that prior to this project, Newtown had never done business with either All State or Pavarini.

Newtown's request for proposals ("RFP") (Ex. A) was released on January 24, 2025. Section⁷ of the RFP set forth the timeline of the steps in the process which would be followed.

⁷ She is also the purchasing director for the Newtown Board of Education

Those steps included in the pre-submission stage, a mandatory walk through for all contractors interested in bidding, the date by which potential bidders could submit questions and the date by which Newtown would answer all contractors' questions (posting and sharing the answers with all contractors). Following the submission of bids, the process also included interviews with contractors under consideration (both All State and Pavarini received interviews). Each of the events set forth in the RFP timeline occurred.

All State and Pavarini timely submitted bids in response to the RFP. All State bid \$1,446,000, the lowest price bid received by Newtown. Pavarini bid \$1,649,074, the second lowest price bid received by Newtown. The RFP required – at both pages 10 and 11 – that any potential bidder “list any exceptions to the specifications and include a bulleted detailed breakdown of work included.” All State’s bid (Ex. B) listed no exceptions. All State inserted N/A on both pages 10 and 11.

Newtown’s RFP (Ex. A) included drawings and specifications contemplating the use of a dehumidification unit manufactured by Dectron. All State’s bid included the use of a dehumidification unit manufactured by Seresco. While Seresco and Dectron are owned by the same parent company, their respective dehumidification units are not identical. The Seresco unit employs a compressor wall technology. The Dectron unit employs a direct expansion evaporator coil. In its preparation to put the project out to bid, Newtown sought and obtained input and recommendations from consultants, including engineers. Specifically, Newtown turned to Marchetti Engineering. Marchetti Engineering in turn relied upon a self-employed mechanical engineer named Allen Adriani as a sub-consultant.

Mr. Adriani testified that the dehumidification unit is the main component of the dehumidification system. He further testified that he assessed both the Seresco and Dectron units,

ultimately concluding (and so advising Newtown) that the Seresco unit would not do the job. It would not, in his professional judgment, remove all the humidity. His earlier consideration of Seresco included references in his specifications to the compressor wall technology, references which were not deleted from the RFP before it was published. Mr. Adriani said such inclusion was inadvertent.

Newtown's RFP, at page 2 states: "The Purchasing Authority of the Town of Newtown reserves the right to accept or reject any or all options, or proposals; to waive any technicality in any proposal or part thereof, and to accept any proposal deemed to be in the best interest of the Town of Newtown. At p. 6 the RFP states: "The Town reserves the right to reject any and all proposals received in response to this solicitation." and at page 16: **"AFTER REVIEW OF ALL FACTORS, TERMS AND CONDITIONS, INCLUDING PRICE, THE PURCHASING AUTHORITY OF THE TOWN OF NEWTOWN RESERVES THE RIGHT TO REJECT ANY AND ALL BIDS . . . OR WAIVE DEFECTS IN SAME, OR ACCEPT ANY PROPOSAL DEEMED TO BE IN THE BEST INTEREST OF THE TOWN OF NEWTOWN."** (Emphasis in original)

Potential bidders were also on notice that the contract would be awarded not to the lowest bidder but to "the Lowest Responsible Bidder", a term defined on page 18 of the RFP as the lowest of the bidders ". . . who possesses without limitation, the skill, ability, expertise, experience, qualifications and integrity necessary for the faithful performance of the Work, as determined by the Town of Newtown."

Newtown's RFP did not prohibit bidders from including exceptions. The RFP did require that exceptions be specified. It also included references to the possibility of exceptions on page 27 where it states "No protest regarding the validity of or appropriateness of the specifications or

of the Request for Proposal will be considered unless the protest is filed in writing with the Purchasing Authority prior to the closing date for the bids. All bid proposals rendered shall be considered meeting the included specifications unless exceptions are noted on a separate page dated and signed by the bidder.” Here no protest was filed by All State with the Purchasing Authority prior to the closing date for exceptions.

All State did not overlook or misunderstand the RFP provisions regarding exceptions. All State, in the testimony of Mr. Pare, intentionally did not note any exceptions because that is its approach to the subject. Mr. Pare testified “I mean, typically, we would never put an exception on a bid. If you put an exception, typically, that means you’re not – you’re basically excluding a scope from the project that is identified. So, when you’re doing that, it’s – essentially, it’s – you’re not going to get the project if you do that in our experience.” All State did assure Newtown – before Newtown issued its May 21, 2025 intention to award the contract to Pavarini (Ex. R) – that All State would use the Dectron unit (Ex. J).

Newtown’s witnesses all testified that the inclusion of exceptions would not have automatically disqualified a bidder. It would have triggered a discussion. The court found such testimony credible and consistent with the RFP’s provisions. Newtown’s witnesses Mubarek and Arthur Norton, the Chairman of the Public Building and Site Commission characterized All State’s handling of the Seresco vs. Dectron exception issue as a “disappointment” and not “transparent” (Mubarek) and not “forthright” (Mubarek and Norton). On the basis of the witnesses’ demeanor and verbal emphasis employed, this court concluded that in the minds of those witnesses, the manner in which All State handled the matter caused them to question All State’s integrity. Witness Adriani did not go that far. Additional facts are set forth below as necessary. This decision does not contain a summary of the totality of each witness’s testimony. However, this

court did review and consider all of their testimony and all of the documents admitted as full exhibits, whether mentioned individually herein or not.

Governing Law

“[A] motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court.” (Internal quotation marks omitted.) *Fay v. Merrill*, 336 Conn. 432, 445, 246 A.3d 970 (2020). “A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction.” (Internal quotations marks omitted.) *MacDermid, Inc. v. Leonetti*, 310 Conn. 616, 626, 79 A.3d 60 (2013).

The issue of standing implicates subject matter jurisdiction and its absence is therefore a basis for granting a motion to dismiss. All State has acknowledged it bears the burden of proving the court’s jurisdiction (#106.00, p.9). The general rule is that “an unsuccessful bidder on a municipal contract has no standing to challenge a bid.” *Good Earth Tree Care, Inc. v. Town of Fairfield*, 151 Conn. App. 680, 685 (2014). That rule reflects settled Connecticut law that a bid is no more than a binding offer to enter into a contract and one which is not enforceable until an acceptance of said offer has occurred. See, *John J. Brennan Construction Corporation, Inc. v. City of Shelton, et. al.*, 187 Conn. 695 (1982). Municipal bidding laws exist to protect taxpayers, not bidders. *John J. Brennan*, 187 Conn. at 702.

Newtown admits these general principles are not absolute and that exceptions exist (#104.00, p. 11). Our Supreme Court has recognized that these general rules should not prevent judicial review of meritorious claims which can properly vindicate the public’s interest in preventing the granting of contracts through “arbitrary or capricious action”. *Ardmare Construction Company, Inc. v. Freedman* 191 Conn. 497, 504 (1983). Under *Ardmare*, an

unsuccessful bidder, as a “private attorney general” enjoys standing where “. . . fraud, corruption or acts undermining the objective and integrity of the bidding process” exists. *Ardmare* 191 Conn. at 504-505.

In applying these principles, trial courts are instructed to extend substantial deference to municipal officials. See, *Spiniello Construction Company v. Town of Manchester*, 189 Conn. 539, 544 (1983). “An honest exercise of discretion by a municipality which has reserved such a right will not be disturbed by the courts so long as its officials observe good faith and accord all bidders just consideration in accordance with the purpose of competitive bidding.”

Discussion

All State’s challenge to Newtown’s decision to award the project to Pavarini has raised legitimate issues meriting serious consideration. It is not a frivolous application. Newtown’s process was not perfect. Perfection is not, however, the standard. This court agrees with All State’s argument that Newtown’s invocation of its right to reject any and all bids as discussed above, cannot become an absolute cover under which a municipality can blanket its power to do as it pleases. *Spiniello* requires from public officials not perfection but the “honest exercise of discretion” and that they discharge their public responsibilities in “good faith” and accord all bidders “just consideration in accordance with the purpose of competitive bidding”. Based on this court’s review of the entire record, Newtown has satisfied that standard.

This court saw no evidence of a tilted playing field which benefitted one bidder while harming another. There was no evidence of any prior relationship between Newtown and either All State or Pavarini so Newtown’s actions cannot be challenged as a reflection of any desire to reward one or punish the other for prior experiences. There was no evidence that the process was

taken over by any one individual or entity. To the contrary, Newtown's process involved multiple layers of municipal review involving quite a few people.

To a substantial extent, the foregoing conclusions by this court rest on its assessment of the credibility of the witnesses. Much of All State's arguments rest on an implicit or explicit premise that the court should reject the testimony of Newtown's witnesses as not credible. For example, All State's argument that had it listed the Seresco unit as an exception it would have been rejected out of hand by Newtown is contradicted by the testimony of the defense witnesses. This court found their testimony on that point credible. Moreover, their testimony is consistent with the RFP form itself which explicitly permitted exceptions to be noted.

A related argument by All State is that the assurances it eventually gave Newtown that it would use the Dectron unit, coupled with its noticeably lower price, establish the bad faith required by the appellate authorities cited above, thereby satisfying the standing requirement and All State's burden of proof on its application. All State's argument in this regard ultimately failed to convince this court because this court sincerely believes the deference it must extend municipal officials under our binding precedents provide just enough support for Newtown's position. This deference is not just an exercise in humility, an appropriate sentiment for the trial court. It is based on sound public policy. If the door of the courthouse is too easily opened to judicial review of municipal bidding decisions, disgruntled bidders shall flood the docket and public projects will be delayed. This court concludes Newtown has proven compliance with the letter and spirit of the public interests protected by bidding rules.

Put differently, this court may not appoint itself as a member of the Public Building and Site Commission or substitute its opinion for that of the Director of Purchasing. The price difference between Pavarini and All State is not de minimis in this court's view. But this court's

opinion is not the overriding factor. The testimony of Newtown's witnesses Mubarek and Norton clearly established, at a minimum, an uneasiness or discomfort with the idea of using All State given their view of what All State did or did not say and when (as well as how) it chose to speak up or remain silent. Surprisingly to this court, Mr. Norton's testimony discredited or devalued the price differential between the bidders. This court has no difficulty imagining that there may be many Newtown residents who could have and would have reached a different conclusion. But these cases are not subject to referenda. Newtown has chosen to invest authority and discretion in its officials. Given the deference required by the appellate authorities cited above, this court cannot conclude that Newtown's decision to proceed as it did violates Connecticut law.

A third argument advanced by All State is that the inclusion in the specifications of the references to compressor wall technology (and that no bidder sought an exception to that language) infected the bidding process requiring, if not an outright award to All State, at least a new round of bidding. Respectfully, this argument is unpersuasive. First, the chronology and testimony at the hearing established that this issue was not even discovered until after the announcement of the bid award. Second, to acknowledge that Newtown could have decided to re-do the bidding after expunging all references to compressor wall technology is not the same as establishing that Newtown was required to do so. Lastly, this court found the testimony of witness Adriani that the inclusion of the words was no more than an oversight both credible and persuasive.

Another substantive argument advanced by All State is that the totality of circumstances establish that in specifying the Dectron unit as it did, Newtown engaged in an unlawful sole source procurement bid, in violation of the law. In *Unisys Corporation v. Department of Labor*, 220 Conn. 689 (1991) the Supreme Court held that a non-bidder (Unisys) was entitled to an evidentiary hearing before the trial court could conclude Unisys lacked standing to challenge the defendant's

intention to award a public contract to bidder IBM. The Supreme Court noted that plaintiff Unisys and defendant IBM were competitors who both provided computer equipment and software. The request for proposals challenged by Unisys explicitly contained not only specifications unique to IBM but actually said, in part, that the bidding authority was seeking “. . . system support to convert Unisys application onto the IBM platform” *Unisys Corporation*, 220 Conn. at 690, fn 1. Against that factual background the Supreme Court, citing New York precedents, added: “However, an objectionable and invalidating element is introduced when specifications are drawn to the advantage of one manufacturer not for any reason in the public interest but, rather, to insure the award of the contract to that particular manufacturer.”

The facts of this case are so dissimilar from Unisys that labeling it as distinguishable precedent is a gross understatement. Here, neither bidder – All State nor Pavarini – was the manufacturer of the Dectron unit listed in the request for approval. Moreover, all bidders were at liberty to list an exception (and provide support for such advice). In other words, the bidding was not drawn to the advantage of one bidder to ensure the award to a particular vendor. *Unisys*, 220 Conn. at 696.

All State introduced testimony that its decision to include the Seresco unit in its bid was no more than “carrying a number” and that this carrying of a number would not automatically mean its final package (if awarded the project) couldn’t include the Dectron unit. This court believes that these sincere arguments by All State actually highlight the crux of the tension between All State and Newtown but miss a crucial fact. In its posttrial memorandum (#112.00, p. 8) All State argues that either the Dectron requirement was an unlawful sole source procurement or if exceptions were permitted (as Newtown argues) then Newtown’s basis for not picking the lowest bid cannot stand. “Either way, All State wins” plaintiff concludes succinctly.

All State's analysis omits (as perhaps it must) that for Newtown it was not simply about carrying a number. Put differently, All State narrowly focusses on "what" happened – or what could have happened. Newtown's witnesses made clear with their testimony that Newtown also dearly cared as to "how" it happened. Newtown made an assessment of how All State went about the business of responding to the request for proposals (as well as the substance or the "what") and concluded it did not want to do business with All State. As noted on page 11 hereof, that was not the only possible conclusion for Newtown to reach. Less severe (or more forgiving) options were equally available given the discretion afforded Newtown under its request for proposals. In the court's view, the conclusion Newtown reached, the piece All State overlooks, can only be set aside if the court substitutes its judgment for that of Newtown's officials. On this record, the court declines to do so.

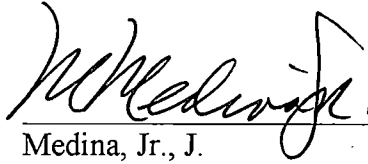
All State's remaining argument, that Newtown violated section 350-6 of its municipal code (Ex. K) does not counsel a different result. Given that Newtown proceeded with a sealed bid under sections 350-3 and 350-4 renders, section 350-6 not applicable.

Conclusion

All State was not a confused bidder. It was not misled by the request for proposal. It made a conscious decision, consistent with its approach on other public bids, to not list any exceptions. Perhaps on another job or in another town, that decision would not have had the same effect as what occurred in Newtown. Newtown, on the other hand, concluded that All State's actions and inactions made it an unqualified bidder. The terms of the request for proposals were expansive enough to permit Newtown to make that judgment call. Newtown's decision to exercise its discretion to spend more money on a bidder with which it had no discomfort did not violate Spiniello. Newtown's decision to specifically include the Dectron unit did not violate Unisys.

This court concludes All State has not proven that the facts here qualify as an exception to the general rule of *Good Earth Tree Care, Inc. v. Town of Fairfield*, 151 Conn. App. 680 (2014). Accordingly, All State, as an unsuccessful bidder, lacks standing to provide this court with subject matter jurisdiction.

Newtown's motion to dismiss is granted.


Medina, Jr., J.