Bowditch Secures Bid Protest Victory After Awarding Authority Withdraws Subcontractor Disqualification

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Bowditch recently secured a favorable resolution for a subcontractor in a construction bid protest before the Massachusetts Attorney General's Bid Unit.

The protest challenged an awarding authority's decision to disqualify Bowditch's client from bidding on a filed sub-bid trade for a public construction project. The disqualification was based on reference scoring that Bowditch contended lacked sufficient transparency and prevented meaningful review of whether the evaluation had been conducted fairly and consistently.

Bowditch argued that the subcontractor had satisfied the key substantive prequalification requirements, including management experience, capacity, bonding, certification, and other mandatory criteria. The protest further asserted that the disqualification rested on undisclosed adverse reference information, without adequate identification of the projects, comments, criteria, or factual basis used to support the negative scores.

Shortly after Bowditch filed the protest, the awarding authority agreed to withdraw the disqualification and include Bowditch's client among the filed sub-bidders eligible to receive the request for bid. As a result, the relief sought through the protest was resolved, and the protest was withdrawn without prejudice.

TAKEAWAY

The result underscores the importance of transparency and consistency in subcontractor prequalification decisions. While awarding authorities have discretion in evaluating qualifications, that discretion must be exercised in a manner that allows contractors to understand and, where appropriate, challenge the basis for a disqualification that would otherwise prevent them from competing for public work.

The Bowditch team was led by Matt Madden and Michael Sams.

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