



CASE REPORT

PUBLIC WORKS PROJECTS — BIDDING IRREGULARITIES — UNTIMELY SUBMISSION OF BIDS. A municipal corporation may, under appropriate circumstances, accept a marginally late bid in order to secure the lowest possible contract price. **Quinn Constr. Co, LLC v. King County Fire Protection Dist. No. 26, No. 47148-1-I (March 11, 2002).**

I. Facts. King County Fire Protection District No. 26 solicited bids for construction of a new facility. The District's written invitation to bid required submission of all bids at a designated time and place, but also specifically reserved the District's right to waive bidding "irregularities and informalities" if necessary to accept the bid deemed most consistent with the District's interests. Quinn Construction timely submitted its bid responsive to the District's advertisement, while Korsmo — a competing firm — submitted its bid 5-10 seconds late. The District accepted Korsmo's tardy bid over Quinn's protest, and ultimately awarded the contract to Korsmo as the lowest bidder.

Quinn sued the District in superior court, requesting a preliminary injunction prohibiting the District from accepting Korsmo's bid. The superior court ruled in the District's favor, and Quinn appealed.

II. Applicable Law and Analysis. On appeal, Division One of the Washington Court of Appeals affirmed the lower court's decision concerning the bidding issues. Under established Washington precedent, "a municipal authority may award a contract to a low bidder whose bid fails to conform with formal requirements, so long as any irregularities in the bidding process are not material." Noting that a bidding irregularity is material under this test only where it gives the nonconforming party a substantial advantage over the other bidders, the Court of Appeals held that Korsmo's 5-10 second delay in submitting its bid did not provide it with an unfair advantage over Quinn. The Court also reasoned that Quinn's claims failed under the District's own bidding instructions, which explicitly reserved the District's right to waive informalities and irregularities in the interest of securing the most qualified bid.

III. Conclusion. The *Quinn* decision was not formally reported and thus does not represent controlling precedent for other Washington courts. The opinion indicates, however, the judiciary's view that a tardy bid is not a material irregularity in the bidding process. Cities may accordingly grant public works contracts to the low bidder even where its bid is submitted late. To ensure municipal discretion in this area, cities should include an explicit disclaimer in their bidding advertisements reserving the right to disregard irregularities in the bidding process where deemed necessary to secure the most suitable bid.