

ELLIS CONSTRUCTION, INC.

v.

TOWN OF FARMINGDALE

Submitted on Briefs May 31, 2018
Decided June 12, 2018

Panel: SAUFLEY, C.J., and ALEXANDER, GORMAN, JABAR, HJELM, and HUMPHREY, JJ.

MEMORANDUM OF DECISION

Ellis Construction, Inc., appeals from a judgment of the Superior Court (Kennebec County, *Stokes, J.*) affirming the Town of Farmingdale Select Board's decision to reject Ellis's bids for the Town's roadside mowing and sewer maintenance contracts. *See* M.R. Civ. P. 80B. Contrary to Ellis's assertion, the Select Board did not err when it rejected Ellis's bids for both contracts.¹ The ordinance, reviewed de novo with deference to the Select Board's characterizations of the ordinance, *see Bryant v. Town of Wiscasset*, 2017 ME 234, ¶ 12, 176 A.3d 176, provides the Select Board with discretion to reject any bid. *See Farmingdale, Me., Code* § 2-201(2)(A) (June 28, 2014).

¹ Ellis also argued that it was deprived of due process during the Select Board proceeding conducted pursuant to the court's remand for further findings. "[A] necessary predicate for [a due process claim] is a cognizable property interest." *See Carroll F. Look Constr. Co. v. Town of Beals*, 2002 ME 128, ¶ 11, 802 A.2d 994. We have held that "disappointed bidders do not have a property interest unless the applicable law or regulation mandated that the contracting body accept the bid and gave it no discretion whatsoever to reject the bid." *Id.* ¶ 16. Because the ordinance does not mandate that the Select Board accept Ellis's bids, Ellis has not demonstrated a property interest and thus its due process argument fails.

Ellis also contends that the court erred when it remanded the case to the Select Board “to state the factual reasons for its decision . . . to reject [Ellis’s] bids” while retaining jurisdiction. *See* M.R. Civ. P. 80B(m). Even if this was an error, the error was harmless. *See* M.R. Civ. P. 61. Because the ordinance provides the Select Board with discretion to reject any bid, *see* Farmingdale, Me., Code § 2-201(2)(A), and because the proceeding on remand was limited to having the Select Board articulate its reasons for rejecting Ellis’s bids, the remand and retention of jurisdiction in this case did not affect the outcome of the case. *See Thorndike v. Lisio*, 2017 ME 14, ¶ 20, 154 A.3d 624.

The entry is:

Judgment affirmed.

Walter F. McKee, Esq., and Matthew D. Morgan, Esq., McKee Law, LLC, P.A., Augusta, for appellant Ellis Construction, Inc.

Mary A. Denison, Esq., Lake and Denison, Winthrop, for appellee Town of Farmingdale