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SC Court of Appeals

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Subject: EXHIBIT 3 -- PETITION FOR REHEARING 2026-000049 25TH Ave. Llc. v. Carol Ann Honeycutt
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Sloan v. Greenville County

670 S.E.2d 663, 380 S.C. 528, 2009 S.C. App. LEXIS 90

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DecidedJanuary 7, 2009

Docket4449

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Sloan v. Greenville County, 670 S.E.2d 663, 380 S.C. 528, 2009 S.C. App. LEXIS 90 (S.C. Ct. App. 2009).

Pincite

Opinion

PIEPER, J.:

Greenville County appeals the trial court's order striking down a portion of the previous county procurement code for being inconsistent with Section 11-35-50 of the South Carolina Code (2007). We vacate the trial court's order and dismiss this case as moot.

FACTS

The relevant facts of this case are largely undisputed. The trial court consolidated four cases by Edward A. Sloan (Sloan) challenging procurements made by Greenville County (County) between August 2002 and March 2004, which utilized the competitive sealed proposal (Proposal) procurement method rather than the competitive sealed bidding (Bidding) method. The gravamen of Sloan's action was to declare sections of the former Greenville County Procurement Code (GCPC) unlawful for allowing the determination to use Proposals as an alternative to the preferred procurement method of Bidding •without *532 memorializing or justifying the decision in writing, regardless of whether the GCPC includes such a writing requirement.

The previous GCPC provided in part as follows:

§ 7-304 Methods of Source Selection.

Unless otherwise required by law, all County contracts shall be awarded by competitive sealed bidding, pursuant to § 7-305 (Competitive Sealed Bidding), except as provided herein:

(2) Section 7-307 (Competitive Sealed Proposals).

§ 7-305 Competitive Sealed Bidding.

(1) *Conditions for Use.* Contracts amounting to \$25,000 or more shall be awarded by competitive bidding except as otherwise provided in § 7-304 (Methods of Source Selection).

§ 7-307 Competitive Sealed Proposals.

(1) *Conditions for use.* When the Purchasing Manager determines that the use of competitive sealed bidding is either not practicable or not advantageous to the County, a contract may be entered into by use of the competitive sealed proposals method.

Unlike the South Carolina Procurement Code or the South Carolina Local Model Procurement Code, the GCPC did not require the procurement officer's determination to use Proposals rather than Bidding to be in writing.

Section 11-35-50 of the South Carolina Code (2007) states in part as follows:

Political subdivisions required to develop and adopt procurement laws.

All political subdivisions of the State shall adopt ordinances or procedures embodying sound principles of appropriately competitive procurement no later than July 1, 1983. The Budget and Control Board, in cooperation with the Procurement Policy Committee and subdivisions concerned, shall create a task force to draft model ordinances, regula *533 tions, and manuals for consideration by the political subdivisions

S.C.Code Ann. § 11-35-50 (2007).

On November 18, 2004, the parties stipulated to consolidation of all four claims to be decided on the following two issues:

(1) Whether the County's Procurement Code requires a written determination in order for the County to use the [Proposal] procurement method, and by extension, whether the lack of a written determination for these projects in which the County used the [Proposal] method violated the County's procurement Code; and

(2) If the County's Procurement Code does not require a written determination in order to use the [Proposal] procurement method, does it violate State law, and in particular, South Carolina Code Ann. § 11-35-50?

After the trial court hearing on December 3, 2004, but before the order was issued on January 8, 2007, the County amended the GCPC on October 17, 2006. The new GCPC section titled "Methods of Source Selection" now reads in part as follows:

Unless otherwise required by law, all County contracts amounting to \$25,000 or more shall be awarded by competitive sealed bidding, pursuant to § 3-202 (Competitive Sealed Bidding), or by competitive sealed proposals, pursuant to § 3-204 (Competitive Sealed Proposals), whichever is determined to be more advantageous to the County_____

As such, the amended GCPC differs from the previous version because, among other things, it now has two equally preferred methods of procurement for source selection, Bidding and Proposals.

On January 8, 2007, the trial court found that the claims were moot on the basis that all of the contracts involved were either completed or cancelled; however, citing the public interest exception to the mootness doctrine, the trial court proceeded to rule on whether the former GCPC embodied sound principles of appropriately competitive procurement by not requiring a determination to be in writing before using the Proposal method rather than the preferred method of Bidding. The court concluded that the former version of the GCPC did *534 not "embody sound principles of appropriately competitive" procurement because it failed to require a determination in writing before the use of Proposals rather than the preferred method of Bidding. This appeal followed.

ISSUES ON APPEAL

I. Did the Greenville County Procurement Code violate § 11-35-50 when the GCPC's sealed proposal

method of procurement set forth a procedure that even the plaintiff acknowledged was appropriately competitive, but did not require a written determination to document why this method was chosen?

II. Whether the trial court was correct to decide the issue above “for future guidance” under the public importance exception to mootness, when the preference for sealed bids that necessarily forms the basis of the written determination requirement no longer exists?

STANDARD OF REVIEW

“A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue.” *Doe v. South Carolina Med. Malpractice Liab. Joint Underwriting Ass’n*, 347 S.C. 642, 645, [557 S.E.2d 670](#), 672 (2001) (internal citation omitted). To make this determination, an appellate court must look to the essential character of the cause of action. *Barnacle Broad., Inc. v. Baker Broad., Inc.*, 343 S.C. 140, 146, [538 S.E.2d 672](#), 675 (Ct.App.2000). The character of the action is generally ascertained from the body of the complaint, but when necessary, resort may also be had to the prayer for relief and any other facts and circumstances which throw light upon the main purpose of the action. *Lowcountry Open Land Trust v. Charleston S. Univ.*, 376 S.C. 399, 406, [656 S.E.2d 775](#), 779 (Ct.App.2008). The