This opinion is nonprecedential except as provided by Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1099

OTI, Inc.,
Relator,

vs.

Ramsey County,
Respondent.

Filed March 29, 2021
Appeal dismissed
Frisch, Judge

Ramsey County Finance

Rory C. Mattson, Messerli & Kramer P.A., Minneapolis, Minnesota (for relator)

John J. Choi, Ramsey County Attorney, Robert B. Roche, Lindsey Millard, Assistant County Attorneys, St. Paul, Minnesota (for respondent)

Considered and decided by Florey, Presiding Judge; Reilly, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

This certiorari appeal follows a final determination by the county that it did not violate prevailing-wage laws in the procurement or award of public contracts involving yard-waste management and hauling. The county moved to dismiss the appeal for lack of subject-matter jurisdiction. Because Minnesota law unambiguously provides for original jurisdiction over such an action in the district court, we grant the county's motion and dismiss the appeal for lack of subject-matter jurisdiction.

FACTS

This case arises from a dispute between relator OTI, Inc. and respondent Ramsey County regarding the county's application of a prevailing-wage ordinance to two contracts. In March 2019, the county issued a request for bids (RFB) for a contract to manage yard waste collected at its Midway and Summit Hill collection sites. The RFB specified that "[b]ids are being taken for a per ton rate for combined transportation and disposal of yard waste and a per hour rate for site work (pushing up piles, etc.)." In relevant part, the RFB required all contractors and subcontractors to conform to Ramsey County's prevailing-wage ordinance. *See* Ramsey County, Minn., Prevailing Wage Ordinance 2013-329 §§ 1-3 (Dec. 3, 2013) (PWO or prevailing-wage ordinance).

OTI and a competitor, Utmost Compost, LLC, bid on the contract. The county awarded the contract to Utmost. Utmost then subcontracted with Augie's Trucking for trucking services.

In October 2019, the county issued another RFB to manage yard waste at five collection sites not covered by the first contract. This RFB was essentially identical to the previous RFB. OTI bid again, but the county awarded the contract to Augie's Trucking.

After OTI lost the second bid, it began corresponding with the county, arguing that the county misapplied the prevailing-wage ordinance. It also argued that the county failed to enforce the prevailing-wage ordinance against Utmost and Augie's, allowing them to pay less than the prevailing wage and to avoid submitting mandatory reports.

The county denied that it misapplied the prevailing-wage ordinance, explaining that the ordinance applied to the labor associated with the loading and transportation of yard waste off-site, not to the site work, and that the contracts required the contractors to pay the state prevailing wage for the transportation work. The county also indicated that reports from Utmost had been submitted and were up to date and that it was looking into OTI's concerns regarding rental reports.

The county nevertheless undertook a formal bid protest review process to respond to OTI's concerns. At the end of this process, the county determined that "the County's solicitation process was completed accurately and consistent with laws, rules, policies and procedures" and that it correctly applied the state and county prevailing-wage laws.

OTI appealed the determination to the county's chief financial officer (CFO), arguing that (1) the county improperly awarded the contracts to Utmost and Augie's, who underbid OTI by failing to incorporate the prevailing wage into their bids, and (2) the county failed to enforce the prevailing-wage ordinance against Utmost and Augie's. OTI asked the CFO to rescind the two contracts and enforce the ordinance. The CFO reviewed the record and law and affirmed the county's original determination in his final decision.

OTI petitioned this court for certiorari review. The county moved to dismiss the appeal for lack of subject-matter jurisdiction.

DECISION

"Subject matter jurisdiction is the authority of the court to hear the type of dispute at issue and to grant the type of relief sought." *County of Washington v. City of Oak Park Heights*, 818 N.W.2d 533, 538 (Minn. 2012). "Minnesota courts have consistently recognized that statutory requirements limiting a court's jurisdiction are threshold requirements that must be complied with before a court can exercise jurisdiction." *Irwin v. Goodno*, 686 N.W.2d 878, 880 (Minn. App. 2004). "When a party challenges the subject-matter jurisdiction of the court, the court must examine whether it has the authority to hear the type of dispute and to grant the type of relief sought." *Williams v. Smith*, 820 N.W.2d 807, 812-13 (Minn. 2012). "Without subject-matter jurisdiction, we must dismiss the claim." *Id.* at 813.

The parties dispute whether the Minnesota Uniform Municipal Contracting Law (the UMCL), Minn. Stat. § 471.345 (2020), applies here. Pursuant to Minn. Stat. § 471.345, subd. 21(a), "Original jurisdiction is granted to the district court over any action seeking legal, equitable, or declaratory relief arising under or based upon the alleged violation of any law or ordinance governing public procurement requirements, public procurement procedures, or the award of any public contract."

The county argues that, pursuant to the UMCL, we lack subject-matter jurisdiction over this dispute because OTI's claim hinges on the county's application of the prevailing-wage ordinance to the yard-waste contracts, meaning it is a dispute "arising under or based upon" the county's alleged violation of an ordinance governing public procurement requirements. OTI responds that the ordinance is "a law for the protection of workers, to be applied any time workers are deprived of fair wages—regardless of the context," not a law governing public procurement requirements or procedures. OTI further argues in this appeal that its claim focuses on the county's failure to equally apply and enforce its prevailing-wage ordinance, not the county's procurement process or award of the contracts. OTI finally argues that the contracts at issue are not "contracts" within the meaning of the UMCL, so the statutory jurisdictional provision does not apply.

We disagree first with OTI's interpretation of the prevailing-wage ordinance as unrelated to public procurement requirements. The unambiguous language of the ordinance provides for its application to the county's "solicitations for bids on contracts for the purchase of labor and materials" and requires that "the hourly wages paid to workers on Projects and for Services . . . not be less than the prevailing hourly wage rates established by [Minnesota law]." PWO § 1.B(1), (3). Furthermore, the "Ordinance applies to all contracts with Covered Persons in which the County is a contracting party." PWO § 3.A. Covered persons include only entities "contracting directly with the County . . . or subcontracting to perform all or part of the work." PWO § 2.A(5). Contrary to OTI's argument that the ordinance protects all workers, the unambiguous language in the ordinance provides for its application only to wages paid to workers under the county's contracts for projects and services. The ordinance requires that workers under those public contracts be paid the prevailing wage, so it is an "ordinance governing public procurement requirements." Minn. Stat. § 471.345, subd. 21(a).

The ordinance also provides that the "requirements and obligations contained in this Ordinance are . . . incorporated into the bid specifications and requests for bids . . . and are material and binding terms and conditions of all contracts and subcontracts for Projects and Services." PWO § 3.A(7). By its express and unambiguous terms, the ordinance requires that the county incorporate the requirements of the prevailing-wage ordinance in its RFBs.

Stated differently, the ordinance unambiguously sets forth requirements in the public procurement procedures.

We are also not persuaded by OTI's argument that this action does not arise from the procurement process. OTI essentially argues that its real complaint is that the county is not enforcing the prevailing-wage ordinance in the *performance* of the contracts, not that it failed to follow the ordinance in the procurement process, and that its complaints about the performance of the contracts are not subject to the jurisdictional limitations set forth in the UMCL.

The manner in which OTI casts its claim is irrelevant to the question of subject-matter jurisdiction. "The characterization of a claim in a complaint does not change the jurisdictional analysis." *Williams v. Bd. of Regents of Univ. of Minn.*, 763 N.W.2d 646, 651 (Minn. App. 2009). We determine whether jurisdiction lies by examining the factual substance of the claims to understand how the aggrieved party claims to have been harmed and the relief sought. *See generally Willis v. County of Sherburne*, 555 N.W.2d 277, 280-82 (Minn. 1996).

Here, the essence of OTI's action relates to the procurement process. OTI alleges that the county is failing to equally enforce the prevailing-wage ordinance. That claim arises from OTI's original arguments to the county that it *awarded* the contracts to Utmost and Augie's without requiring them to submit bids incorporating the prevailing wage as required by the ordinance. OTI argues that this failure to enforce the ordinance *in the bidding process* caused OTI to lose those bids. OTI's own filings underscore the essence of its claim. In its statement of the case to this court, OTI states that "[t]he County's unequal application of prevailing wage requirements enabled Utmost to *successfully underbid OTI and is the proximate cause of OTI's damages from losing the Midway/Summit contract that it previously held.*" (Emphasis added.) OTI further states that "[b]y letter dated April 3, 2020, the County denied OTI's *protests to the County's procurement process* . . . ." (Emphasis added.)

Not surprisingly, the county's review of OTI's complaint and its ultimate decision focused on whether the county properly applied the ordinance in the bidding process, and the county concluded that it did comply with the ordinance. That is the decision from which OTI now seeks certiorari review. OTI's original complaints, the county's decision, and OTI's petition for certiorari review of that decision all show that this dispute is based on allegations that the county violated the prevailing-wage ordinance in the public procurement process. In other words, this is a dispute "arising under or based upon the alleged violation of . . . [an] ordinance governing public procurement requirements [and] public procurement procedures." Minn. Stat. § 471.345, subd. 21(a). Original jurisdiction over such a dispute lies in the district court. *Id.*

Finally, we disagree with OTI's argument that the contracts are not "contracts" within the meaning of the UMCL. "A 'contract' means an agreement entered into by a municipality for the sale or purchase of supplies, materials, equipment or the rental thereof, or the construction, alteration, repair or maintenance of real or personal property." Minn. Stat. § 471.345, subd. 2. OTI argues that the yard-waste contracts are for operational services to help the county carry on the business of the sites (collecting and repurposing or disposing of customers' yard waste), not for the repair or maintenance of those sites. OTI's argument fails on the face of the RFBs, which both described the site work as including "the hourly loader work assigned to keep[] the sites *maintained* and operating efficiently." (Emphasis added.) This maintenance included "1. As assigned, push up piles of materials including leaves/grass, brush, finished compost, and wood mulch . . . . 2. Stockpile and haul finished compost . . . . 3. Form windrows to specification from incoming leaves . . . . [and] 4. *Repair* site surfaces (potholes, etc.) with loader." (Emphasis added.) These contracts include the repair and maintenance of the yard-waste sites, the county's real property, so they meet the definition of "contract" within the UMCL.

This dispute is governed by Minn. Stat. § 471.345, subd. 21(a), which confers jurisdiction in the district court. We grant the county's motion to dismiss for lack of subject-matter jurisdiction. Because we lack subject-matter jurisdiction, we do not address the substantive claims set forth in the petition.

Appeal dismissed.