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Clerk of Circuit Court
Brown County, WI
2025CV001746

STATE OF WISCONSIN

CIRCUIT COURT

BROWN COUNTY

MIRON CONSTRUCTION CO., INC.,

Plaintiff,

v.

Case No. 2025 CV 1746

CITY OF GREEN BAY,

Case Codes: 30701, 30704

and

8PINE INC.,

Defendants.

**CITY OF GREEN BAY'S BRIEF IN OPPOSITION TO MOTION FOR TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

INTRODUCTION

Plaintiff Miron Construction Co., Inc. (“Miron”) seeks to enlist this Court as a super-bid reviewer to halt a municipal contracting process based on a hyper-technical disagreement over bid formality resulting from a bidder’s submission of addenda acknowledgements 38 minutes after bid closing. Wisconsin law does not permit judicial intervention under these circumstances.

The City of Green Bay (“City”) acted squarely within its statutory authority and well-established discretion when it evaluated bids for the Parks 8-25 Leicht Memorial Park Pavilion Project (“Project”). The alleged bid defect on which Miron relies does not affect price or competition, and was reasonably deemed waivable under the bidding documents and the discretion afforded the City. Miron cannot demonstrate a likelihood of success on the merits or irreparable

harm. Nor does the requested injunction preserve the status quo – it disrupts it and undermines the public interest. The Court should dissolve the temporary restraining order and deny the motion.

STATEMENT OF RELEVANT FACTS

The Project included construction of a new pavilion and associated site improvements at Leicht Memorial Park. The City issued a Notice to Contractors for the Project and expressly reserved the right to reject any bids and to waive informalities or irregularities in the bidding process. The Notice to Contractors provided, in relevant part: “The City of Green Bay, Wisconsin reserves the right to reject any or all bids and to waive any informalities in bidding.” (Affidavit of Trista Hobbs (“Hobbs Aff.”) ¶ 6.) The Instruction to Bidders also reserved the City’s discretion to waive technical irregularities such as the one about which Miron complains: “The City further reserves the right to reject any and all proposals, to waive technicalities, to re-advertise for bids, or to proceed to do the work otherwise, if in the judgment of the Redevelopment Authority, the best interest of the City will be served thereby.” (Id.) This reservation of discretion is broad, unqualified, and consistent with Wisconsin’s public bidding law. The City issued four addenda to the bidding documents which bidders were instructed to acknowledge. Nothing in the contract documents for the Project stated that a failure by a bidder to acknowledge addenda would require rejection by the City of a bid. (Id. ¶ 7.)

Bids were publicly opened on December 4, 2025. 8Pine Inc. (“8Pine”) did not include executed acknowledgments of each addendum before the time bids were opened. While 8Pine did not submit the signed addenda acknowledgements with its bid, 8Pine did submit the other necessary, bid documents, including a bid bond, disclosure of ownership, and affidavit of

compliance. (Id. ¶ 11.) Less than an hour after the scheduled 2:00 pm bid opening,¹ at 2:38 pm on December 4, 2025, the City received email correspondence 8Pine transmitting 8Pine's signed addenda acknowledgements. (Id. ¶ 10.)

City staff and the Project Architect/Engineer then evaluated the bids for overall responsiveness and responsibility. This was in line with the City's typical practice, as the City often receives the signed addenda acknowledgements after bid opening. (Id. ¶ 13.) The City has historically waived the informality of submitting signed addenda acknowledgements after the opening of bids. (Id. ¶ 14.) Contractors submitting a bid through the electronic bidding service used by the City must first download any addenda before entering a bid. (Id. ¶ 13.)

Following review, the City determined that 8Pine's bid reflected awareness of the Project scope and pricing requirements and that any omission identified by Miron did not affect price, quality, quantity, or competitive standing. (Id. ¶ 12.)

Time is of the essence for the Project. The Project is funded from Tax Incremental District ("TID") #5. The maximum life for this TID is December 21, 2026. (Id. ¶ 16.) This means that all Project expenses must be paid, and note merely incurred, by December 21, 2026. (Id.) Because the contractor must be paid by that date, work on the Project would need to be completed before that time, likely by the end of November 2026, to ensure timely payment. (Id.)

LEGAL STANDARD

A circuit court may only issue a temporary injunction if the movant demonstrates all four of the following criteria: "(1) the movant is likely to suffer irreparable harm if an injunction is not issued, (2) the movant has no other adequate remedy at law, (3) an injunction is necessary to

¹ Or, only 18 minutes later according Miron's allegation that the bid opening process did not begin until 2:20 pm. (Compl. ¶ 35.)

preserve the status quo, and (4) the movant has a reasonable probability of success on the merits.”

Gahl on behalf of Zingsheim v. Aurora Health Care, Inc., 2023 WI 35, ¶ 17, 989 N.W.2d 561 (citing *Service Employees Int'l Union, Local 1 v. Vos.*, 2020 WI 67, ¶ 93, 393 Wis. 2d 38, 946 N.W.2d 35). The grant or denial of a temporary injunction is a matter of discretion for the circuit court. *Milwaukee Deputy Sheriffs' Ass'n v. Milwaukee County*, 2016 WI App 56, ¶ 20, 370 Wis.2d 644, 883 N.W.2d 154. As to the exercise of that discretion, the Supreme Court has cautioned: “[i]njunctions, whether temporary or permanent, are not to be issued lightly. The cause must be substantial.” *Werner v. A. L. Grootemaat & Sons, Inc.*, 80 Wis. 2d 513, 520, 259 N.W.2d 310 (1977).

ARGUMENT

I. MIRON FAILS TO ESTABLISH A REASONABLE PROBABILITY OF SUCCESS ON THE MERITS.

A. The City Properly Concluded that 8Pine Submitted a Responsive Bid.

Miron contends that 8Pine’s submission of the signed addenda acknowledgements 38 minutes after bid opening began invalidates 8Pine’s bid as unresponsive. In support, Miron mistakenly – and solely – relies upon *Andrews Construction, Inc. v. Town of Levis*, a case in which the contractor failed to submit a bidder’s certificate required by Wis. Stat. § 66.0901(7). 2006 WI App 180, 296 Wis. 2d 89, 722 N.W.2d 389. In *Andrews*, the bidder failed to submit “any statement that arguably makes the assurances required by Wis. Stat. § 66.0901(7).” 2006 WI App 180, ¶ 12. Because there was “complete noncompliance with the statutory requirement,” the court found that the bidder did not substantially comply, as “there was *no* compliance.” *Id.*, ¶¶ 12, 15.

Here, 8Pine’s submissions satisfied all the requirements of the City’s Instruction to Bidders as well as the requirements of Wis. Stat. § 66.0901(7). To bid on the Project, 8Pine had to

download all the addenda. 8Pine did submit the executed acknowledgements of the addenda immediately after bid opening, and the City considered it as is it typically does. In submitting its proposal, 8Pine certified it was fully informed in respect to the preparation and content of the bid and all the pertinent circumstances of the bid. This certification is plainly sufficient to meet the requirements of Wis. Stat. § 66.0901(7). At a minimum, the Court should conclude that 8Pine's certification and submission of the executed addenda acknowledgements immediately following bid opening constituted substantial compliance with the bidder-certificate statute, Wis. Stat. § 66.0901(7). *See Luebke v. City of Watertown*, 230 Wis. 512, 522, 284 N.W.2d 519 (1939).

Courts have repeatedly rejected attempts by disappointed bidders to weaponize technical omissions to overturn municipal decisions. In *Power Sys. Analysis, Inc. v. City of Bloomer*, the Court of Appeals held that a city had the discretion to accept as responsive a bid that was received *after* the city had opened the bids. 197 Wis. 2d 817, 820, 541 N.W.2d 214 (Ct. App. 1995). The court in *City of Bloomer* reasoned that the city's acceptance of the late bid was within its discretionary powers. *Id.* at 824. In reaching this conclusion, the court noted that statutory bidding provisions must be "read in light of the reason for their enactment, lest they be applied where they were not intended to operate and thus deny authorities the ability to deal with problems in a sensible, practical way." *Id.* at 825 (citing *Waste Management, Inc. v. Wisconsin Solid Waste Recycling Auth.*, 84 Wis.2d 462, 470, 267 N.W.2d 659, 663–64 (1978)).

B. The City Acted Within its Broad Discretion.

Municipalities enjoy "a wide discretion" in deciding to whom a contract should be awarded. *Aqua-Tech, Inc. v. Como Lake Prot. & Rehab. Dist.*, 71 Wis. 2d 541, 550, 239 N.W.2d 25 (1976). Given this discretion, courts are reluctant to question a municipality's exercise of its discretion, as the Wisconsin Supreme Court has observed that Wisconsin case law demonstrates:

... a reluctance on the part of the judiciary to interfere with the discretion which is vested in a public bidding authority. This reluctance is based primarily on the principle that statutory bid requirements are intended for the benefit and protection of the public and not of the individual bidder and that the lowest bidder has no fixed, absolute right to the contract.

Id. (citations omitted). As a result, courts reviewing the bidding authority's discretionary act will only intervene if the action is arbitrary or unreasonable. *D.M.K., Inc. v. Town of Pittsfield*, 2006 WI App 40, ¶ 14, 290 Wis. 2d 474, 711 N.W.2d 672 (citation omitted).

Miron does not allege arbitrary or unreasonable conduct. Instead, it challenges the City's judgment regarding the materiality of a bid irregularity. That is precisely the type of discretionary determination courts decline to second guess. Miron's requested relief would require this Court to independently re-evaluate bid submissions and override municipal judgment. Wisconsin law does not permit courts to act as bid review committees. Absent illegality or abuse of discretion, which Miron has neither alleged or shown, the City's determination must stand.

II. MIRON HAS NOT ESTABLISHED IRREPARABLE HARM.

While Miron purports to act in the public interest by suing the City, it also claims that it risks suffering irreparable harm based on the potential extinguishment of a "valuable business interest." (Pl.'s Br. at 6.) The case Miron cites on a disappointed bidder's "valuable business interest at stake" had nothing to do with establishing irreparable harm, but only a stake in the litigation for purposes of standing. *See PRN Associates LLC v. State, Dept. of Admin*, 2009 WI 53, ¶ 35, 317 Wis. 2d 656, 766 N.W.2d 559. Miron cannot establish irreparable harm.

III. THE RELIEF MIRON REQUESTS WOULD DISRUPT RATHER THAN PRESERVE THE STATUS QUO AND HARM THE PUBLIC INTEREST.

The status quo is the City's ongoing legislative and administrative consideration of the Project. Enjoining that process would interfere with municipal governance. It would delay – and

in fact even jeopardize, given the Project's perishable TID funding – a public infrastructure project. This would only disserve taxpayers. Courts must exercise restraint before halting governmental decision-making absent a clear violation of law. Miron's motion elevates bidder dissatisfaction over the public interest in efficient, timely completion of public works. Equity does not favor such an outcome.

CONCLUSION

Miron has failed to meet its burden for extraordinary injunctive relief. The City of Green Bay respectfully requests that the Court dissolve the temporary restraining order and deny Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction in its entirety.

Dated this 12th day of January, 2026.

GODFREY & KAHN, S.C.

By: *Electronically signed by Jonathan T. Smies*
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