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# Solid Waste Management/Bidding: Indiana Appellate Court Addresses Challenge to Waste Disposal Services Contract Amendment

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An Indiana appellate court reversed a lower court holding the City of Indianapolis ("City of Indianapolis") was in violation of Indiana law. See *Graphic Packaging Int'l, Inc. v. City of Indianapolis*, 2016 WL 742691 (Ind. Ct. App. 2016).

The City of Indianapolis amended a contract with the company that provides city residents with waste disposal.

Recycling companies and a city resident challenged the validity of the amendment. The court held Indianapolis improperly amended the waste disposal contract to award the company the opportunity to construct a waste facility without holding a bidding process.

In 1985 Indianapolis entered into a waste disposal contract with Masburn, Inc., the predecessor of Covanta Indianapolis ("Covanta") for the disposal of solid waste through waste-to-energy incineration technology. Covanta agreed (in this original contract) to receive and dispose of all acceptable solid waste provided to it by the City. The company was tasked to design, construct, own and maintain the facility for this service.

Indianapolis in 2014 approved an amendment to the contract. However, the board did not hold either a public meeting or conduct a public bidding process. The amendment stated in part that Covanta was "entitled to design, construct, and operate an advanced material recovery center for the recovery of certain material from the waste stream that may be suitable for recycling; and that Covanta has exclusive right to the City's waste for another ten years."

Graphic Packaging and Rock-Tenn are corporations engaged in the business of manufacturing and selling paperboard and folding carton. These recycling companies purchase recycled products to manufacture their products.

Graphic Packaging International, Rock-Tenn Converting Co. and Cathy Weinmann brought suit against the City challenging the validity of the amendment and the procedure by which it was awarded. The City filed a motion to dismiss and a motion for summary judgment which the trial court awarded in its favor.

The trial court found that none of the plaintiffs had standing. Further, the Court held that even if the plaintiff had standing, the City was not required by the Waste Disposal Statute, or Indiana law, to engage

in competitive bidding. The Waste Disposal Statute states that an action to contest the validity of a contract awarded or the procedure by which it was awarded must be brought within thirty days following the award of the contract. The Plaintiffs appealed the trial court's decision.

Graphic Packaging and Rock-Tenn argued that the facility that Covanta was to "design, construct, and operate" reduced the amount of material in the market that met their needs, because it contaminated the recyclable material. This contamination was a result of 'dirty recycling.' The term refers to consumers placing all trash and all recyclables into the same collection containers.

The materials are then sorted at the Covanta facility.

Graphic Packaging and Rock-Tenn argued this type of recycling reduced the rate of recycled material suitable for their use. Rock-Tenn further argued that it would have potentially bid or responded to the request for proposal for the recyclables recovery facility if public bidding procedures had been followed.

They argued that the "public standing doctrine as citizens and taxpayers who are challenging the approval of a contract in violation of the public's right to participate in the process, which right is created by the Waste Disposal Statute", provided them standing to sue.

Indianapolis argued it was not required to engage in a bidding process. It stated the amendment did not fall under the Indiana Statute requiring a bidding process. The City reasoned that the contract was not a construction contract, but merely a waste disposal service contract, and therefore not required by statute to hold a public bidding. It further argued that even though the case involves matters of public interest, the plaintiffs did not have standing to bring the lawsuit, and even if the plaintiff had standing they did not have a cause of action.

The appellate court held that Plaintiffs had standing under the public standing doctrine, had a cause of action under the Waste Disposal Statute, and that the City did not comply with the procedural process and was therefore in violation of Indiana statute. The public standing doctrine applies in cases of public interest and in cases that involve the enforcement of a public right. The doctrine does require the plaintiff to have an interest in the outcome of the case different from the general public. *State ex rel. Cittadine v. Ind. Dep't of Trans.*, 790 N.E.2d 978, 980 (Ind. 2003).

The court ruled that the plaintiff had a cause of action under the Waste Disposal Statute, because its plain language clearly states there could be an "action to contest the validity of a contract awarded or the procedure by which it was awarded."

Indiana, by statute, was held to require that contracts be entered into in accordance with the public bidding, request for proposal and public notice provisions. Ind. Code § 36-9-31-4(a) (2006). The court ruled that the City was required by statute to have a bidding process, because the amendment required the construction of the waste facility, and was not merely a waste disposal contract.

The court reasoned that as a matter of public policy, the Waste Disposal Statute provided transparency and a public process that allows competition and public review. Therefore, the plaintiffs had standing and a cause of action to bring this lawsuit. Without a bidding process, the City was in violation of Indiana statute, and the Plaintiffs were entitled to summary judgement in their favor.

[A copy of the decision can be downloaded here.](#)