

## A losing bidder has no standing to challenge the state's contract bidding process.

7. December 2011 By Kristina Araya

In a unanimous opinion, the Court of Appeals held that a losing bidder has no standing to challenge the state's contract bidding process in *Groves v. Department of Corrections*, No. 302640. In *Groves*, the plaintiffs, one of the companies who unsuccessfully submitted a bid to the Department of Corrections for an installation and maintenance contract, alleged that the state engaged in fraudulent activity that gave an unfair advantage to the winning bidder. The plaintiffs maintained that they had the requisite standing through several different sources, including common law principles of taxpayer standing, a Michigan statute, and a Michigan court rule. The plaintiffs also argued that the unfair bidding process violated their constitutional rights.

The Court of Appeals disagreed, finding that the plaintiffs lacked standing. The court held that taxpayer standing was inappropriate because a bidder has no expectancy in the contract. Since the plaintiffs failed to properly plead fraud on the part of the state, the court also found that there was no harm to the general public.

The court further held that statutory standing was inappropriate because the relevant statute, MCL 600.2041(3), only applies to an action to prevent the illegal expenditure of state funds or to test the constitutionality of a related statute. Since the court found that the plaintiffs' case did neither, there was no statutory standing. The court also rejected standing under MCR 2.605, finding that plaintiffs had suffered no cognizable injury and therefore there was no actual controversy.

Finally, the court rejected the plaintiffs' argument that they stated a cause of action under the Michigan Constitution. The Article I, Section 17 of the Michigan Constitution provides that all individuals and firms have the right to fair and just treatment in the course of legislative and executive investigations. The plaintiffs argued that they were unfairly treated and that the bidding process constitutes an investigation. The Court of Appeals disagreed, finding that the bidding process did not constitute an investigation, and therefore the fair and just treatment clause did not apply.