

Contractor wins \$550K in suit against Wayne State

Company was cut from more work without due process

By Douglas Levy

In late 2009, the owner of a flooring contracting firm found out that his longtime client, Wayne State University, had debarred the firm from doing business with the school for three years.

He found out about it at an open-to-the-public bidding session, in front of his competitors.

And he had no idea why the school made that decision.

At a subsequent formal debarment process, the school alleged that Contract Design Group Inc. had violated the state's Prevailing Wage and Projects Act, according to whistleblowers from a competing firm.

Don W. Blevins, who represented CDG, said that his client's due process rights were violated because CDG did not have a chance to respond properly to the allegations. Further, he said that WSU never investigated the whistleblowers' accusations.

In addition, Blevins said that CDG's debarment caused the firm's reputation to be damaged. The school posted the debarment and the reasons for it on its website, he added.

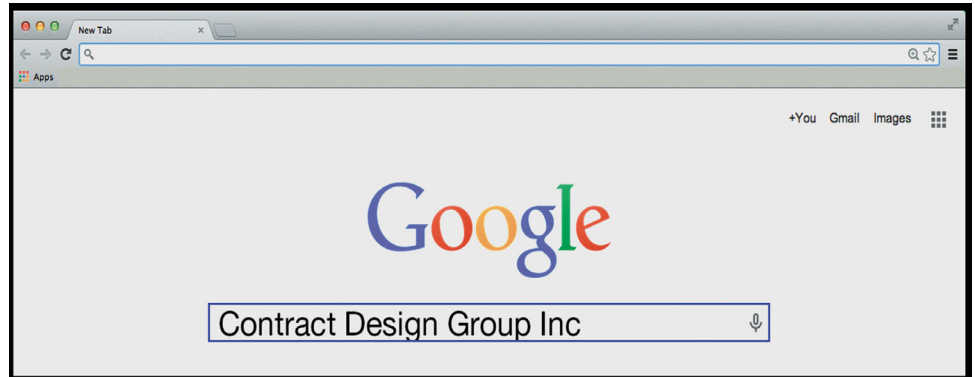
"Not only did [CDG] and [owner] Robert Murray lose the opportunity to do business with the university, but they were left to explain to customers why Wayne State debarred them, because ... it was just a matter of a Google search, and their competition was spreading the word of the Google search," Blevins said.

"When something like that happens, your explanation is seldom satisfactory. It's seldom good enough to say, 'Yeah, they debarred me, but they didn't give me adequate due process.' The bell could not be unring."

At a federal trial in Detroit, a jury determined that the school breached its contract with CDG and violated plaintiffs' due process rights, and awarded \$550,000.

A Verdicts & Settlements report on *Contract Design Group Inc. v. Wayne State University* can be found on page 8.

Blevins and co-counsel David M. Zack, both of McAlpine PC in Auburn Hills, said that two judges in the case had two different rulings on which due process the school should have followed.



"IT WAS JUST A MATTER OF A GOOGLE SEARCH, AND THEIR COMPETITION WAS SPREADING THE WORD OF THE GOOGLE SEARCH," BLEVINS SAID.

First, Judge Victoria A. Roberts ruled that the U.S. Constitution set the standard for due process. Blevins said that under this ruling, WSU would have been required to provide an impartial decision maker to allow CDG to record the hearing and to be represented by counsel in the hearing — similar to what's expected in a court of law.

When Roberts stepped down from the trial to take another assignment, Judge Gershwin A. Drain was assigned. On the last day of trial, Drain agreed with WSU's position that the school simply needed to demonstrate that it followed its own debarment policy — regardless of what it was — before debarring CDG.

Blevins and Zack said WSU claimed that the plaintiffs were given adequate due process, as WSU told CDG the school would be debarring the firm because of contract actions.

But Blevins said that the school's debarment policy required notice for the basis of the debarment, "and we argued that there had not been notice; in fact, we argued that CDG was effectively debarred even before there was a hearing."

Blevins said the plaintiffs also had to prove that not only was CDG deprived of due process, but if CDG had gone through WSU's due process, it would not have been debarred.

"One of our big hurdles was the university saying, 'Even if we hadn't debarred you, we had a right not to place any orders with you. You can't prove we would have placed any orders ... so you can't prove any damages,'" he said. "That was a real challenge. It was putting the victim on trial."

So Blevins and Zack said that they

needed to relay to the jury that the lack of due process and CDG's loss of reputation constituted damages.

"I wanted to show through the evidence and through the arguments what it would have felt like if [the jurors] had been wrongly accused of something and had never been given an opportunity to even know what the accusation was," Blevins said.

"And Wayne State was CDG's most important customer for 20 years, and then all of a sudden not only to be told you're not getting any more orders, but to be told, 'We're not going to tell you *why* you're not getting any more orders and we're going to place on the Internet that you're a bad person.'"

Blevins added that plaintiffs' expert, an accountant, estimated that over time CDG had lost more than \$1 million in business and another \$1 million in lost enterprise value of the business.

The jury awarded half those amounts. Blevins said that because WSU debarred CDG during the 2009 recession, "we were left with the reality that an alternative explanation for this, on some level, could have been just an overall reduction in business."

Detroit attorney John M. Sier, who represented WSU, said that the defendants are in the process of filing post-trial motions. He could not discuss what motions would be filed or whether the verdict would be appealed.

If you would like to comment on this story, please contact Douglas Levy at (248) 865-3107 or douglas.levy@mi.lawyersweekly.com.

Verdicts & Settlements

Contractor: debarment violated due process

Plaintiffs not given chance to respond

\$550,000

Plaintiffs Contract Design Group and Robert Murray had performed contracting work for defendant Wayne State University for 22 years. Plaintiffs asserted that in 2009, competitors told WSU that CDG had been acting in violation of the state's Prevailing Wage and Projects Act, and had falsified its records to suggest the firm was not in violation.

Plaintiffs further contended that WSU took that information and combined it with knowledge that CDG had been providing carpeting to the school on a lump-sum, fixed-price basis, when WSU had a contract in place that suggested that CDG should provide carpeting on a time-and-material basis.

In 2009, CDG received notice of an opportunity to bid on a project at WSU. Murray went to the project site to tour it with the other bidding contractors. WSU then conducted a public opening process to award the job and opened all of the bids except for CDG's. When Murray asked why, WSU responded that CDG had been debarred but did not state a reason.

Some time afterward, WSU conducted a formal debarment process and posted its conclusion to its website. CDG was debarred for three years, the maximum penalty under the school's debarment policy.

Plaintiffs argued that CDG and Murray had been deprived of their due process rights, because the school announced that CDG had been debarred before conducting a formal hearing and



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allowing plaintiffs to respond.

In addition, plaintiffs asserted that they lost business, suffered lost-enterprise value of the business, and had their reputation damaged because of the debarment.

Plaintiffs' expert, an accountant, compared the volume of orders CDG had received from WSU and other clients before and after the debarment, and opined that CDG had lost significant business. In addition, a state witness testified to investigating the claim that CDG was violating the Prevailing



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Wage and Projects Act, and said that that CDG had not violated it.

Defendants contended that plaintiffs were given adequate due process, as WSU told CDG it would be debarring the firm because of contract actions. Plaintiffs argued that WSU did not specify what contract actions were the basis of the debarment.

A federal jury in Detroit determined that defendants violated plaintiffs' due process rights and breached the contract between the parties, and awarded \$550,000.

Type of action: Breach of contract, constitutional due process, interference with business relations based upon defamation

Type of injuries: Emotional and financial

Name of case: *Contract Design Group Inc. v. Wayne State University*

Court/Case no./Date: U.S. District Court, Eastern District of Michigan; 2:10-cv-14702; April 22, 2014

Tried before: Jury

Name of judge: Gershwin A. Drain

Demand: \$2 million

Highest offer: \$60,000

Verdict amount: \$550,000

Most helpful expert: Ted Funke, accountant, Troy

Attorneys for plaintiff: Don W. Blevins, David M. Zack

Attorneys for defendant: John M. Sier, Edward J. Wloszek III