

## District can hire firms without bidding

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A Superior Court judge has ruled against a contractor who had challenged the legality of decisions by Los Alamitos Unified to award more than \$100 million in no-bid construction contracts.

Lawyers for Stan Howard of Howard Contracting said they would ask for a new trial and appeal the case if necessary.

And Robert Stern, the former president of the Center for Governmental Studies in Los Angeles, said he hoped the Legislature would take action to stop schools from using a legal loophole to give work to companies without competitive bidding.

"This is not the American way," Stern said. "The American way is to have free enterprise and competition."

The case revolved around Los Alamitos Unified's use of complex agreements known as lease-leaseback contracts.

A growing number of California schools have used these contracts in recent years, saying they allow them to avoid searching for firms that could do the work for less money.

Lawyers for contractors, including Howard, say the schools are manipulating the intent of a 50-year-old law and using ambiguities in the language to hire favored contractors. State law has long required that schools and other municipalities use competitive bidding, which leads to lower prices by getting companies to compete.

Roughly 18 percent of all school construction projects in the past five years were arranged using lease-leasebacks, according to state records. The contracts involve schools leasing a property to a developer and then subleasing it back.

Superintendent Sherry Kropp hailed the judge's ruling, saying it vindicated the district's decisions.

"As a fiduciary of public funds, the District and its staff have always guardedly and carefully studied the best and most efficient way to ensure that public money is spent to bring the best possible facilities to the students," she wrote in a news release.

Kropp called the lease-leaseback agreements "a significant planning tool" that had allowed Los Alamitos to quickly complete modernization projects at seven or more schools.

In his decision to throw out Howard's case, Superior Court Judge Randell L. Wilkinson ruled that even if Los Alamitos Unified was paying too much to a company selected without competitive bidding, Howard's lawyers had not shown why that was wrong.

Wilkinson also said that Howard had not provided evidence to support his claim that the school had selected Byrom-Davey, a contractor based in San Diego County, because of improper favoritism and conflicts of interest.

Howard's lawyers had detailed how the district had given tens of millions of dollars in no-bid contracts to another firm called West Coast Air Conditioning after it gave \$25,000 to a bond election campaign. West Coast also donated \$2,500 to a party for the school's staff.

But the judge said there was no evidence that Byrom-Davey executives had given similar gifts or contributions.

Paul Mahoney, a lawyer for Howard, said he believed there were errors in the judge's decision. Another judge had been presiding over the case until it was abruptly switched to Wilkinson this month.

"The court is essentially saying that school districts can waste money and taxpayers such as Howard cannot contest it," Mahoney said. "If that holds up, residents of Los Alamitos Unified School District should really be worried."

The lease-leaseback deals have rewarded a small group of companies that have aggressively promoted them to schools at conferences, while leaving out other firms qualified for the work.

Howard, a Los Alamitos resident who has bid on dozens of school construction jobs, said he learned the school was hiring contractors when he noticed West Coast Air trucks parked next to Los Alamitos High School.

He had wanted to stop the no-bid contracts with West Coast Air. The school district, however, had already filed numerous preemptive lawsuits against residents to prevent such challenges.

Lawyers working for the schools recommend such lawsuits, known as validation actions, because they know there could be opposition to the no-bid contracts by taxpayers or contractors who did not get to bid for the work.

In these unusual lawsuits, the district ordered anyone disagreeing with its decision to hire West Coast Air to quickly show up in court with a lawyer. When no one appeared, the school had the judge sign an order declaring the deals with West Coast to be legal.

Judge Wilkinson had signed one of these orders for the school district in 2009.

