

{¶2} This matter concerns a project to relocate and replace the baggage handling system at the Port Columbus International Airport ("CMH"). In response to the events of September 11, 2001, airlines began screening each and every bag coming through airports. The baggage handling system in place at CMH consisted of large screening equipment that was located inside a narrow, linear lobby. This arrangement apparently caused inefficient disruptions in the flow of patrons through CMH. As a result, the Airport, as the operator of CMH, began discussing options for relocating the equipment. Designs developed over the years, but funding was apparently always a problem.

{¶3} Funding eventually became available through the American Recovery and Reinvestment Act ("stimulus funds"). In order to receive the stimulus funds, the Airport had to first demonstrate the need for the project to the Transportation Security Administration ("TSA") by performing a cost-benefit analysis of the savings associated with its design. It overcame this hurdle by demonstrating that the annual operating costs to TSA would be reduced from \$3.7 million to an estimated \$1.5 million.

{¶4} Under the new design, new equipment would be purchased, old equipment would be refurbished, and the integration and installation of the equipment would take the screening process entirely behind the scenes. The total cost was estimated at \$55 million. Approximately \$35 million of the \$55 million was expected to be reimbursed by TSA with stimulus funds. In order to qualify for the stimulus funds, however, strict deadlines needed to be met, and paperwork needed to be timely submitted and properly supported.

{¶5} The Airport split the design into two distinct, but highly interdependent, projects. The first project called for the construction of two new buildings to be located

behind the main terminal at CMH. The second project called for the installation of the new, automated baggage handling system inside the newly constructed buildings ("BHS project"). The process and analysis performed by the Airport in investigating and awarding the BHS project is what forms the factual backdrop of this dispute.

{¶6} In April 2010, the Airport began advertising for bids with respect to the BHS project. On April 28, 2010, it conducted a pre-bid meeting, during which prospective bidders were permitted to tour the premises and ask questions. The Airport made available bidding documents, including: advertisement pages, specifications and drawings, bid forms, general conditions, specific conditions, and questionnaires for prospective contractors and subcontractors. These bidding documents indicated that the BHS project would be awarded to the lowest responsive and responsible bidder, in accordance with R.C. 9.312. Prospective bidders were given until May 5, 2010 to pose questions regarding the BHS project. Additionally, the bidding documents set a deadline of May 13, 2010 for the submission of any bids.

{¶7} The Airport received six bids before the deadline. Glidepath's bid was for \$13,674,797 and was the lowest bid submitted. In fact, Glidepath's bid was \$694,840 lower than the next lowest bid, which was submitted by Jervis B. Webb Company. In addition to having the lowest bid, Glidepath was also deemed to have been responsive in all material respects to the specifications of the bidding documents. Thus, the issue then became whether Glidepath was a "responsible" bidder in accordance with R.C. 9.312. An 11-member evaluation committee investigated this issue. Eventually, the committee determined that Glidepath was not a responsible bidder and recommended that the Airport reject Glidepath's bid on that basis. The Airport's Chief Executive Officer, Elaine

Roberts, agreed with this recommendation. On June 4, 2010, the Airport notified Glidepath that it intended to reject Glidepath's bid and provided reasons in support.

{¶8} Glidepath requested a bid protest meeting in accordance with R.C. 9.312. The Airport obliged and conducted such a meeting on June 16, 2010 ("first protest meeting"). During the first protest meeting, Glidepath presented information refuting the reasons that the Airport found it to be non-responsible. After the meeting, the evaluation committee reconvened and conducted further investigations into Glidepath's responsibility. On June 29, 2010, the Airport again determined that Glidepath was not a responsible bidder. It again notified Glidepath that it intended to reject Glidepath's bid on that basis. As a result, that same date, Glidepath filed the instant lawsuit to enjoin the Airport from rejecting its bid and awarding the BHS project to another bidder. Glidepath's verified complaint sought a temporary restraining order, a preliminary and permanent injunction, a writ of mandamus, and damages for its bid preparation costs.

{¶9} The parties agreed to participate in another bid protest meeting, and the trial court consequently overruled Glidepath's motion for a temporary restraining order. The second protest meeting occurred on July 7, 2010 ("second protest meeting"). Glidepath again presented information regarding its responsibility. Following the second protest meeting, the evaluation committee met again, reviewed Glidepath's information again, and again reached the same conclusion they had on two prior occasions. Glidepath renewed its motion for a temporary restraining order.

{¶10} The trial court consolidated Glidepath's requests for a temporary restraining order, for preliminary and permanent injunctive relief, for a writ of mandamus, and for bid preparation costs. The consolidated matter came before the court for a final hearing on July 15, and July 16, 2010. The trial court denied Glidepath's claims in a decision and

entry filed on July 22, 2010. Glidepath has timely appealed and raises the following assignments of error:

ASSIGNMENT OF ERROR #1 – The Trial Court Erred by Holding that the Airport Did Not Abuse its Discretion by Using Unannounced Standards to Reach the Decision that Glidepath Was a Non-Responsible Bidder Within the Meaning of R.C. 9.312.

ASSIGNMENT OF ERROR #2 – The Trial Court Erred in Holding that the Airport Did Not Abuse Its Discretion in Misapplying the Standards that it did Announce to Reach the Decision that Glidepath Was a Non-Responsible Bidder Within the Meaning of R.C. 9.312.

ASSIGNMENT OF ERROR #3 – The Trial Court Erred by Dismissing Glidepath's Claim for Bid Preparation Costs Without Consideration of the *Meccon* Decision.

ASSIGNMENT OF ERROR #4 – The Trial Court Erred in Finding that a Performance Bond Was Not Sufficient Evidence of Financial Responsibility Pursuant to R.C. 9.312.

{¶11} The first, second and third assignments of error are interrelated and will be addressed together. We will then address Glidepath's fourth assignment of error.

{¶12} In its first three assignments of error, Glidepath argues that it is entitled to recover the reasonable bid preparation costs associated with the BHS project.¹ In support, it cites *Meccon, Inc. v. Univ. of Akron*, 126 Ohio St.3d 231, 2010-Ohio-3297, in which the Supreme Court of Ohio held:

* * * [R]easonable bid-preparation costs may be recovered if the rejected bidder promptly sought but was denied a timely injunction to suspend the public-improvement project pending resolution of the dispute and a court later determines that the bidder was wrongfully rejected by the public authority but injunctive relief is no longer available * * *.

¹ Because the construction on the BHS project proceeded through the pendency of this litigation, any claims for injunctive relief are now moot. See *State ex rel. Gaylor, Inc. v. Goodenow*, 125 Ohio St.3d 407, 2010-Ohio-1844. Glidepath concedes as much and has limited the scope of this appeal to issues regarding its bid-preparation costs claim.

Id. at ¶1. As *Meccon* relates herein, the issue before this court is whether Glidepath was wrongfully rejected by the Airport with respect to the BHS project.

{¶13} A public authority has considerable discretion in evaluating bidders and awarding contracts under Ohio's competitive bidding laws. *Cedar Bay Constr., Inc. v. Fremont* (1990), 50 Ohio St.3d 19, 21. Courts are not vested with this discretion and must not substitute their judgment for that of a public authority in evaluating bidders and awarding contracts. Id., quoting *Altschul v. Springfield* (1933), 48 Ohio App. 356, 362; see also *State ex rel. Associated Builders & Contrs. of Cent. Ohio v. Franklin Cty. Bd. of Comms.*, 125 Ohio St.3d 112, 2010-Ohio-1199, ¶22. Further, appellate courts have no authority to make credibility determinations in such matters. *Cleveland Constr., Inc. v. Ohio Dept. of Adm. Servs., Gen. Serv. Adm.* (1997), 121 Ohio App.3d 372, 385. Instead, courts must presume "that the public authority performed its duties in a regular and lawful manner." *Associated Builders* at ¶24, citing *Cedar Bay* at 21; see also *BFI Waste Sys. v. Garfield Hts.* (1994), 94 Ohio App.3d 62. A public authority's decision to award a contract will be upheld as long as it has not abused its discretion. *Cedar Bay* at 21, quoting *Altschul* at 362.

{¶14} An abuse of discretion "connotes more than an error of law or of judgment; it implies an unreasonable, arbitrary or unconscionable attitude[.]" *Dayton ex rel. Scandrick v. McGee* (1981), 67 Ohio St.2d 356, 359. A public authority does not abuse its discretion as long as it exercises "will, judgment, or reason" in awarding a contract to a bidder. *Associated Builders* at ¶24, citing *Scandrick* at 360.

{¶15} The bidding documents provide, and the parties agree, that R.C. 9.312 controls the competitive bidding process underlying this matter. Under this statute,

competitively bid contracts must be awarded to the "lowest responsive and responsible bidder." R.C. 9.312(C). Again, two of these components are undisputed in this matter. That is, Glidepath was the lowest bidder, and it was a responsive bidder. The sole issue before the Airport, therefore, was whether Glidepath was a responsible bidder.

{¶16} R.C. 9.312(A) establishes the criteria a public authority must consider when making a responsibility determination under R.C. 9.312(C). Specifically, a public authority shall consider "the experience of the bidder, the bidder's financial condition, conduct and performance on previous contracts, facilities, management skills, and ability to execute the contract properly." R.C. 9.312(A). These criteria relate to a bidder's ability and capacity to perform the work, the timeliness and quality of its former work, and the equipment, facilities and overall resources available to the bidder. *Steingass Mechanical Contracting, Inc. v. Warrensville Hts. Bd. of Edn.*, 151 Ohio App.3d 321, 2003-Ohio-28, ¶14, quoting *Hudson v. Bd. of Edn. of Wheelersburg Rural School Dist.* (1931), 41 Ohio App. 402, 407. Inherent within a responsibility determination is the need for a public authority to make qualitative determinations with respect to bidders. See *Scandrick* at 357; see also *Campbell Contracting Co. v. Ravenna* (Dec. 4, 1994), 11th Dist. No. 93-P-0044; see also *Cleveland Constr.* at 388, citing *Wilson Bennett, Inc. v. Greater Cleveland Regional Transit Auth.* (1990), 67 Ohio App.3d 812. Indeed, considerations besides cost frequently influence a public authority's decision to award a competitively bid contract. *Cedar Bay* at 21; see also *Davison Electric v. Bd. of Belmont Cty. Commrs.* (Aug. 27, 1998), 7th Dist. No. 96 BA 32; see also *L.P. Cavett Co. v. Bd. of Twp. Trustees* (July 30, 2001), 12th Dist. No. CA2000-08-010.

{¶17} In the first three assignments of error, Glidepath argues that the Airport abused its discretion in reaching its responsibility determination. It argues that the Airport

either applied unannounced criteria or misapplied the criteria it did announce in the bidding documents. As a result, Glidepath argues that it was wrongfully rejected by the Airport and is therefore entitled to recover its bid preparation costs. The issue presented, therefore, is whether the Airport wrongfully rejected Glidepath's bid by either applying unannounced criteria or misapplying the criteria it did announce.

{¶18} With respect to unannounced criteria, Glidepath argues that the Airport was required to announce specific standards demonstrating how the responsibility criteria of R.C. 9.312(A) would be analyzed. Absent such standards, Glidepath argues that it had no notice of how the Airport intended to review the information Glidepath submitted. The logical basis of this challenge, therefore, regards the specificity of the responsibility criteria espoused in R.C. 9.312(A).

{¶19} In support of Glidepath's arguments, it cites *Scandrick* and *Ohio Asphalt Paving, Inc. v. Bd. of Commrs. of Coshocton Cty.* (S.D. Ohio 2005), 2005 U.S. Dist. LEXIS 12033, 2005 WL 1421952. However, each of these cases analyzed supplemental criteria nowhere mentioned in the applicable statute. See *Scandrick* at 357; *Ohio Asphalt*, 2005 U.S. Dist. LEXIS 12033, *2, 2005 WL 1421952, *1. Further, the supplemental criteria were unrelated to the bidder's ability to perform the contract. See *Scandrick* at 358 ("[I]t was acknowledged that both bidders were capable of performing the contract in an acceptable manner."). While it might make sense to alert bidders of standards for supplemental criteria unrelated to performance, we are not presented with those circumstances herein. Rather, in the instant matter, the criteria mirror those of R.C. 9.312(A) and relate to Glidepath's ability to perform the contract. See *Cleveland Constr.* at 385; see also *Steingass* at ¶14, quoting *Hudson* at 407.

{¶20} Consequently, we reject Glidepath's argument that the Airport was required to announce specific standards for the responsibility criteria listed in R.C. 9.312(A). Our court has reached a similar holding in the past. See *Cleveland Constr.* at 394 (rejecting a constitutional vagueness challenge to R.C. 9.312 after finding that the criteria were "announced, clear and reasonable"). A holding to the contrary would impede upon the wide discretion afforded to a public authority under R.C. 9.312. If more specificity is sought, then Glidepath should direct its purported concerns to the legislature. As it stands, however, we reject Glidepath's argument that the Airport applied unannounced criteria in determining that it was not a responsible bidder.

{¶21} Glidepath also argues that the Airport misapplied the criteria it did announce in the bidding documents. It argues that the Airport's investigation and analyses were fundamentally flawed, which amounted to an abuse of discretion.

{¶22} Based upon the record before us, the Airport thrice determined that Glidepath was not a responsible bidder and cited reasons in support. These determinations were based upon Glidepath's financial condition, its conduct and performance on prior contracts, and its management skills.

{¶23} As the director of finance and audit services for the Airport, Terrence Bush was a member of the evaluation committee and was primarily responsible for analyzing Glidepath's financial condition. In support of its bid, Glidepath submitted an internally generated income statement for the year ending on March 31, 2010, and a balance sheet in support. Glidepath also submitted special purpose audited financial statements for the years ending on March 31, 2008 and March 31, 2009. Four pages of these special purpose audits were inexplicably omitted but were eventually provided upon the Airport's request. According to Bush, special purpose audits are less reliable than independently

audited financial statements because they are performed in accordance with the policies and procedures of the company's board, rather than those established by a public oversight board. Bush also indicated that special purpose audits are more limited in scope and are subject to less scrutiny than independently audited financial statements.

{¶24} Nevertheless, the financial statements revealed net income after taxes of \$759,643 in 2008, \$917,873 in 2009, and approximately \$1.044 million in 2010. Bush expressed concern over an unbilled receivable in the amount of \$2.738 million. According to Bush, if Glidepath experienced difficulties collecting some portion of this unbilled receivable, then Glidepath's overall profitability would be significantly impacted. Bush also believed that Glidepath had insufficient cash on hand to serve as a buffer in the event Glidepath experienced such difficulties.

{¶25} In addition to the concerns over the financial statements, Bush also took issue with the information contained in Glidepath's Dun & Bradstreet Report ("D&B Report").² Based upon the information contained therein, Bush was concerned about Glidepath's ability to timely pay its subcontractors. The D&B Report showed that Glidepath had been submitting payments 24 days beyond the time agreed to amongst Glidepath and its subcontractors, or 24 days "beyond term." Subsequent D&B Reports demonstrated improvement to 15 days beyond term, 5 days beyond term, and then 8 days beyond term. According to the Airport, any delays in construction on the BHS project could potentially place at risk \$35 million of the \$55 million in funding.

² According to the record, "Dun & Bradstreet is: (1) an agency furnishing subscribers with information as to the financial standing and credit rating of businesses;" [Webster's New World College Dictionary, (2010)]; and/or "(2) a major source of information for businesses on credit, risk management, supply management, and sales and marketing; the firm maintains a corporate database for use by clients." [American Heritage Dictionary of Business Terms (2010)].

{¶26} The D&B Reports also provided a "financial stress national percentile," or an evaluation of Glidepath's relative financial risk. The evaluation was scaled from 1 to 100, while a score of 1 indicated the highest risk and 100 indicated the lowest risk. In its first D&B Report, Glidepath was rated as a 2, or among the riskiest of companies with respect to finances. A subsequent D&B Report showed that Glidepath's financial stress national percentile had improved to 6.

{¶27} In addition to the concerns Bush had with Glidepath's financial statements and its D&B Reports, Bush also believed Glidepath misrepresented its financial information during the first protest meeting. Specifically, Glidepath reported a cash balance that included checks that had been written but had not yet been cashed. According to Bush, such a procedure paints a more favorable financial picture than is truly accurate and, consequently, is not tolerated amongst financial professionals. As a result, Bush thereafter became skeptical of Glidepath's explanations regarding its financial condition. According to Bush, the Airport had never voluntarily contracted with a company in as poor financial condition as Glidepath.

{¶28} With respect to project management, the Airport's bidding documents required a bidder's project manager to have experience in at least three prior projects of similar size and complexity. In its bid, Glidepath named Ryan LeForce as its project manager. According to the Airport, LeForce lacked the minimum qualifications required under the bidding documents. While Glidepath's bid listed three or four projects as LeForce's prior experience, two of these projects were discounted because LeForce merely served as an assistant on one of the projects, and another project was more limited in complexity than the Airport's BHS project.

{¶29} As the project manager overseeing the BHS project, Stacy Heaton was a member of the Airport's evaluation committee. She performed reference checks before the first bid protest meeting. In performing these reference checks, Heaton received comments that were "on-the-record" and "off-the-record." According to Heaton, references provided off-the-record comments because Glidepath allegedly had a litigious reputation. However, she had no knowledge of facts supporting this alleged reputation. Nevertheless, Heaton acknowledged that these off-the-record comments played a role in her analysis.

{¶30} The evaluation committee met on June 1, 2010 to discuss the results of the investigation. A meeting recap indicated that Heaton's reference check revealed no good references. According to Heaton, however, this was an inaccurate assessment of her investigation. She clarified that none of the references caused her concern. Heaton explained that the inaccurate statement from the meeting recap was supposed to have been corrected but apparently never was.

{¶31} On June 1, 2010, the evaluation committee submitted a memorandum to Roberts outlining its findings. According to the memorandum, the off-the-record comments regarded Glidepath's inability to provide proper documentation, its inexperienced project managers, the relatively high turnover of its project managers, and a general lack of support for project managers from Glidepath's home office. Again, this memorandum recommended Glidepath be rejected as non-responsible.

{¶32} Leading up to the first protest meeting, the Airport provided Glidepath with the names of the individuals who had provided off-the-record comments. One of these individuals, Roddy Boggus, had previously indicated that he intended to crucify Glidepath in order to save his own reputation. This information was conveyed to the Airport during

the first bid protest meeting. Glidepath also presented information from references generally demonstrating that Glidepath had performed well on prior projects.

{¶33} Following the first bid protest meeting, Larry Spysinski, the Airport's vice president of planning and construction, again contacted Glidepath's references to inquire about Glidepath's project management and performance on prior contracts. Spysinski was Heaton's supervisor and was a member of the evaluation committee. In his investigation, Spysinski contacted references from projects recently completed in Reno and in Nashville. The information obtained by Spysinski was substantially similar to that obtained by Heaton. While the references had no problems with Glidepath's end product, the process for getting there was a different story. Glidepath served as subcontractors on the projects, rather than general contractors. The general contractors generally had to help manage Glidepath's schedule and encourage it to meet its deadlines. The consensus amongst the references was that Glidepath's project managers were inexperienced, could not communicate properly, could not maintain proper invoices and documentation, and could not effectively anticipate the progression of the projects. References also expressed concerns over the lack of support provided by Glidepath's upper management when issues arose during the Reno and Nashville projects.

{¶34} Not surprisingly, Glidepath had different views about its financial condition, its conduct and performance on prior contracts, and its project management capabilities. During the bid protest meetings and in the proceedings before the trial court, Glidepath refuted the bases supporting the Airport's responsibility determination.

{¶35} Glidepath argued that its financial statements had been audited, and Bush's concerns regarding their accuracy were baseless. It similarly challenged Bush's concerns over the \$2.738 million unbilled receivable because the testimony during the final hearing

revealed that portions of this amount had been collected. Glidepath argued that its D&B Reports could have been impacted by the fact that it was a private entity and had no obligation to disclose its financial information to Dun & Bradstreet. It also noted that payments to subcontractors occurred after Glidepath received payments from owners. Consequently, Glidepath believed the Airport's concerns over the timeliness of Glidepath's payments were unfounded. According to Glidepath, the Airport failed to reasonably consider these explanations in making its responsibility determination.

{¶36} With respect to references, Glidepath argued that Heaton's review tainted the evaluation committee's analysis and ultimate conclusion. Heaton offered no explanation as to why the meeting recap included the inaccurate statement that "none of the references were good." As Heaton's supervisor, Spysinski acknowledged that her reliance upon off-the-record comments was improper. Indeed, he would not have relayed these comments to the evaluation committee. One such comment came from Boggus, who was involved in the Reno and Nashville projects and apparently had a personal vendetta against Glidepath. In Glidepath's view, Boggus's bias poisoned the positions of many references who had previously given Glidepath glowing reviews. Glidepath noted that one reference expressed his belief that Heaton had misrepresented his comments. Further, the Airport received only one written reference regarding LeForce, and it was overwhelmingly positive. As a result, Glidepath argued that the negative references were either unreliable or inaccurate and, consequently, should have been outweighed by the majority of positive references. Glidepath believed it sufficiently demonstrated as much during the bid protest meetings.

{¶37} Upon our review, the evidence submitted was clearly subject to interpretation. Indeed, the content was subjective and could have been perceived in a

number of different ways. In the arguments before this court, Glidepath offers its own stance on how the evidence should have been perceived. It raises baseless accusations that the Airport ignored facts and failed to reasonably consider evidence. Therefore, as is clear, Glidepath's arguments regard the relative weight of the competing positions. However, at this stage in the proceedings, we have no authority to engage in this suggested analysis. To accept Glidepath's position would require us to substitute our judgment for that of the Airport. We cannot do so and instead must presume that the Airport performed its duties in a lawful manner. See *Associated Builders* at ¶24, citing *Cedar Bay* at 21.

{¶38} Nowhere has an abuse of discretion been demonstrated in the record before us. In no way has it been shown that the Airport lacked will, judgment, or reason in reaching its responsibility determination. Rather, the inverse is true. The Airport analyzed the responsibility criteria and concluded that Glidepath was a company that presented too much risk for the BHS project. It made qualitative determinations regarding Glidepath's resources, capacity, and overall ability to perform the BHS project. Based upon our review, the Airport's responsibility determination was supported by logic and reason. Glidepath merely disagrees with its determination. Such disagreement, however, does not undermine the logic and reasoning used by the Airport. Having reached these findings, we reject Glidepath's argument that the Airport misapplied the criteria it announced in the bidding documents.

{¶39} Because the Airport neither applied unannounced criteria nor misapplied announced criteria, we find no wrongful rejection of Glidepath's bid. Therefore, a necessary element of Glidepath's bid preparation costs claim is lacking. As a result, this

claim fails. We accordingly find that the trial court did not err in dismissing Glidepath's bid preparation costs claim.³

{¶40} In its fourth assignment of error, Glidepath argues that a performance bond is sufficient evidence of financial responsibility under R.C. 9.312. It argues that the trial court erred when it concluded to the contrary.

{¶41} It is settled that appellate courts do not issue advisory opinions on moot issues. *State ex rel. White v. Kilbane Koch*, 96 Ohio St.3d 395, 2002-Ohio-4848, ¶18, citing *State ex rel Baldzicki v. Cuyahoga Cty. Bd. of Elections*, 90 Ohio St.3d 238, 242, 2000-Ohio-67, and *Egan v. Natl. Distillers & Chem. Corp.* (1986), 25 Ohio St.3d 176, syllabus. Instead, courts must exercise judicial restraint; "if it is not necessary to decide more, it is necessary not to decide more." " *State ex rel. Ohio Democratic Party v. Blackwell*, 111 Ohio St.3d 246, 2006-Ohio-5202, ¶50, quoting *State ex rel. Asti v. Ohio Dept. of Youth Servs.*, 107 Ohio St.3d 262, 2005-Ohio-6432, ¶34, quoting *PDK Laboratories, Inc. v. United States Drug Enforcement Adm.* (C.A.D.C.2004), 362 F.3d 786, 799 (Roberts, J., concurring in part and in the judgment).

{¶42} In the instant matter, Glidepath was deemed non-responsible because of its financial condition, its conduct and performance on prior contracts, and its management skills. Our resolution of the foregoing assignments of error upheld the Airport's responsibility analysis in this regard. In its fourth assignment of error, Glidepath concedes that the bonding issue in no way negates the responsibility analysis under R.C. 9.312. (Appellant's reply, at 10.) Therefore, Glidepath's fourth assignment of error is

³ Likewise, we reject Glidepath's argument that another evidentiary hearing was necessary. This court issued a decision recognizing the viability of a bid-preparation costs claim well before the final hearing before the trial court. See *Meccon, Inc. v. Univ. of Akron*, 182 Ohio App.3d 85, 2009-Ohio-1700. Thus, Glidepath had the chance to present evidence and has waived any purported error on the part of the trial court.

moot. We accordingly refuse to issue an advisory opinion on the moot issue of whether a performance bond constitutes sufficient evidence under R.C. 9.312.

{¶43} Based upon the foregoing, we overrule Glidepath's first three assignments of error. In reviewing and evaluating Glidepath's bid, the Airport neither applied unannounced criteria nor misapplied announced criteria. No abuse of discretion exists on this record. Consequently, Glidepath's bid was not wrongfully rejected, such that it is not entitled to recover its bid preparation costs. Our resolution of Glidepath's first three assignments of error renders moot its fourth assignment of error. Accordingly, we affirm the judgment rendered by the Franklin County Court of Common Pleas.

Judgment affirmed.

KLATT and SADLER, JJ., concur.
