

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

ZINN CONSTRUCTION, INC.	:	JUNE TERM, 2000
Plaintiff	:	
	:	No. 3369
v.	:	
	:	COMMERCE CASE MANAGEMENT
THE SCHOOL DISTRICT OF	:	PROGRAM
PHILADELPHIA and EDWARD J.	:	
MELONEY, INC.	:	
Defendants	:	Control No. 061566

ORDER
DENYING PETITION
FOR A PRELIMINARY INJUNCTION

AND NOW, this 10th day of July, 2000, upon consideration of plaintiff's Amended Petition for a Preliminary Injunction and the Complaint in Equity, defendants' responses thereto, oral argument held thereon, proposed findings of fact, and all other matters of record, this court determines the following:

(1) defendant, the School District of Philadelphia ("the School District"), acted within its discretion in rejecting the bid of plaintiff, Zinn Construction, Inc. ("Zinn"), as ~~not~~ responsive, where Zinn had only been in business as a contractor in this type of construction for one year and it did not literally meet the five-year experience requirement, as set forth in the bidding specifications;¹

¹See Exhibit B, attached to School District's Proposed Findings; and Aff. of Nick Ferrino, principal of Zinn, at ¶¶ 10-11.

Determining who is the lowest responsible bidder is one for the sound discretion of the proper municipal authority, and the concept includes factors beyond the lowest bidder in monetary terms; such as, financial responsibility, integrity, efficiency, experience in the industry, promptness, and performance ability. See Kratz v. City of Allentown, 304 Pa. 51, 54, 155 A. 116, 117 (1931); Hibbs v. Arensberg, 276 Pa. 24, 29, 119 A. 727, 729 (1923); A. Pickett Constr., Inc. v. Luzerne County Convention

(2) Zinn's bid could not be upheld as valid where it failed to meet the mandatory and reasonable requirement of having a minimum of five years of experience in the installation of boilers and control systems, pursuant to § 01010, ¶ 1.05(A) of the bid specifications;²

(3) ordering that the contract be awarded to Zinn would be unwarranted interference with the School District's discretion and legally reserved option to reject any and all bids;³

and that,

Center Authority, 738 A.2d 20, 24 (Pa.Comm. Ct. 1999). The contracting authority is presumed to have acted in good faith when it makes this determination. Weber v. Philadelphia, 437 Pa. 179, 183, 262 A.2d 297, 299 (1970); A. Pickett Constr., 738 A.2d at 24. The burden of showing that the authority abused that discretion is on the one asserting it. A. Pickett Constr., 738 A.2d at 24; J.J.D. Urethane Co. v. Montgomery County, 694 A.2d 368, 370 (Pa.Comm. Ct. 1997). Moreover, this court will not review the School District's rejection of Zinn's bid in the absence of bad faith, fraud, capricious action or abuse of power. American Totalisator Co., Inc. v. Seligman, 489 Pa. 568, 574, 414 A.2d 1037, 1041 (1980); Weber, 437 Pa. at 183, 262 A.2d at 299; Kimmel v. Lower Paxton Twp., 159 Pa. Commw. 475, 481, 633 A.2d 1271, 1274 (1993). Absent proof of fraud, collusion or bad faith, this court will not inquire into the wisdom of the School District's decision or the manner which it executed that decision. American Totalisator, 489 Pa. at 574, 414 A.2d at 1040-41; Weber, 437 Pa. at 183, 262 A.2d at 299.

Zinn has not met its burden in demonstrating that the School District acted in bad faith or arbitrarily in rejecting its bid as non-responsive. If this court were to conclude, as plaintiff suggests, that the experience requirement could be met through the personnel of the corporation, rather than the age of the corporation, it would be substituting its interpretation with that of the School District's. Such a judicial approach is prohibited in the absence of bad faith, fraud, capricious action or abuse of power. American Totalisator, 489 Pa. at 574, 414 A.2d at 1041; Weber, 437 Pa. at 183, 262 A.2d at 299.

²It is well-settled that specifications in bidding documents are mandatory which must be strictly followed for the bid to be valid. R. & B. Builders, Inc. v. School District of Philadelphia, 415 Pa. 50, 52, 202 A.2d 82, 83 (1964); Harris v. City of Philadelphia, 283 Pa. 496, 503, 129 A. 460, 462 (1925); Smith v. Borough of East Stroudsburg, 694 A.2d 19, 23 (Pa. Commw. Ct. 1997); Kimmel, 159 Pa. Commw. at 482, 633 A.2d at 1274-75.

³See Conduit and Foundation Corp. v. City of Philadelphia, 41 Pa. Commw. 641, 649, 401 A.2d 376, 380 (1979). In addition, a public agent retains the authority to withdraw its acceptance of a bid if it finds "fraud, collusion or legally disqualifying error." City of Philadelphia v. Canteen Co., 135 Pa. Commw. 575, 581-82, 581 A.2d 1009, 1012-13 (1990) (quoting McIntosh Road Materials Co. v. Woolworth, 365 Pa. 190, 206, 74 A.2d 384, 391 (1950)). Here, Zinn's failure to have the requisite five years of experience constitutes legally disqualifying error.

(4) Zinn failed to demonstrate the requisite elements for a preliminary injunction or show that it is entitled to the contract award.⁴

It is therefore **ORDERED** that the Petition for Injunctive Relief is **DENIED**.

BY THE COURT,

JOHN W. HERRON, J.

DATED:

⁴The well-established requisites for a preliminary injunction are as follows:

- (1) that relief is necessary to prevent immediate and irreparable harm that cannot be compensated by damages;
- (2) that greater injury will occur from refusing the injunction than by granting it;
- (3) that the injunction will restore the parties to the status quo as it existed immediately before the alleged wrongful conduct;
- (4) that the wrong is actionable and an injunction is reasonably suited to abate that wrong; and
- (5) that the plaintiff's right to relief is clear.

School District of Wilkinsburg v. Wilkinsburg Education Association, 542 Pa. 335, 338, 667 A.2d 5, 6 n.2 (1995); Valley Forge Historical Society v. Washington Memorial Chapel, 493 Pa. 491, 500, 426 A.2d 1123, 1128 (1981). These requisite elements “are cumulative, and if one element is lacking, relief may not be granted. Norristown Mun. Waste Authority v. West Norriton Twp Mun. Authority, 705 A.2d 509, 512 (Pa.Comm. Ct. 1998).

Here, Zinn failed to establish that it's right to relief is clear since the corporation did not meet the five-year experience requirement and could not be deemed the “lowest responsible bidder,” pursuant to 24 P.S. § 7-751 or § 01010, ¶ 1.05(A) of the bid specifications.