

TERREBONNE PARISH SCHOOL BOARD	*	32 ND JUDICIAL DISTRICT COURT
VS. 195980 “E”	*	PARISH OF TERREBONNE
GROUP CONTRACTORS, LLC	*	STATE OF LOUISIANA

JUDGMENT

THIS MATTER came on for bench trial on August 1, 2023.

Present at the trial were:

Stanwood Duval, representing Plaintiff, Terrebonne Parish School Board (“TPSB”).

Murphy Foster, III, representing Defendant, Group Contractors, LLC (“Group”).

Ted Laperouse and Jason Bonaventure, representing Intervenor, Edward J. Laperouse Metal Works, Inc. (“Laperouse”).

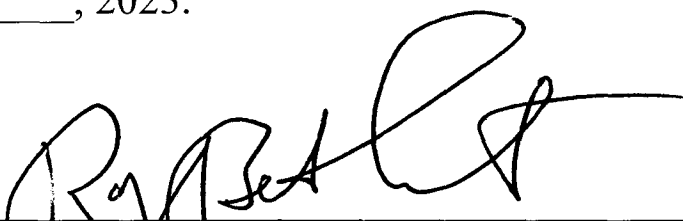
This Court, having considered the evidence, including testimony and exhibits, with its Reasons for Judgment filed simultaneously herewith, issues Judgment as follows:

IT IS ORDERED, ADJUDGED, AND DECREED that the contract entered into between TPSB and Group, dated February 6, 2023, is null and void.

IT IS FURTHER ORDERED that Laperouse be given an adequate opportunity to conform to the bid instructions as the next apparent lowest bidder.

IT IS FURTHER ORDERED that Laperouse be awarded the contract if it produces all documentation in the requisite period of time as required in the bid instructions and under the Public Bid Law.

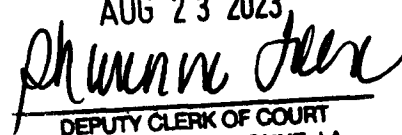
THUS DONE AND SIGNED in Chambers on this 21st day of August, 2023.



HON. RANDALL L. BETHANCOURT
DISTRICT JUDGE

SERVE ALL PARTIES
THROUGH COUNSEL

FILED

AUG 23 2023


DEPUTY CLERK OF COURT
PARISH OF TERREBONNE, LA

TERREBONNE PARISH SCHOOL BOARD	*	32 ND JUDICIAL DISTRICT COURT
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REASONS FOR JUDGMENT

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BACKGROUND

This matter comes before the Court pursuant to a Petition for Declaratory Judgment filed on March 2, 2023 by Plaintiff, TPSB, seeking to have the Court declare a contract as either valid or null and void under Louisisna law. The contract at issue involves the replacement and/or repair of the roof at Oaklawn Middle School here in Terrebonne

Parish (“Project”). On or about December 20, 2022, TPSB submitted a request for bids to perform the aforementioned work.¹ Several bids were received by TPSB between December of 2022 and January of 2023, with TPSB opening the bids for the Project on January 17, 2023.² After disqualifying the first few apparent low bidders due to non-responsiveness, TPSB ultimately awarded the contract to Group on January 24, 2023, which contract was memorialized in writing and signed on the same day.³ Laperouse, the next apparent lowest bidder, sent objections to TPSB claiming that Group had failed to follow certain requirements of the bid instructions.⁴ On March 16, 2023, Laperouse filed a Petition for Intervention, Preliminary Injunction, Permanent Injunction, Mandamus Relief and Declaratory Judgment in response to TPSB’s Petition. The Petition for Intervention asserts that the contract between TPSB and Group violated several aspects of the Louisiana Public Bid Law, including:

1) Group’s failure to submit post-bid documents before perfecting the contract which amounts to an inappropriate waiver of the requirements of the Public Bid Law and the Project Documents.⁵

¹ See TPSB’s *PETITION FOR DECLARATORY JUDGMENT*, p. 1, ¶ 2.

² *Id.* at ¶3-4.

³ *Id.* at ¶5-6.

⁴ *Id.* at p. 2, ¶7.

⁵ See Laperouse’s *PETITION FOR INTERVENTION, PRELIMINARY INJUNCTION, PERMANENT INJUNCTION, MANDAMUS RELIEF AND DECLARATORY JUDGMENT*, p. 4, ¶10.

2) Group's post-bid submittals of the chosen system to use on the roof failed to meet the requirements of the bid documents and were not approved for use in the Project Plans and Specifications.⁶

Laperouse's Motion for Preliminary Injunction was set for hearing on May 26, 2023. This Preliminary Injunction was denied by Order dated July 26, 2023, and the Original Declaratory Action was set for trial on August 1, 2023.⁷ After several stipulations were read into the record, counsel for all parties gave a brief opening statement summarizing the facts of the case along with their individual impressions of the testimony to be elicited. Attorneys for Laperouse put on their case first.

TRIAL

Laperouse called the first and only witness to testify at the trial: Jessica Richard. Miss Richard was called as the minority owner, secretary, treasurer, and controller of Edward J. Laperouse Metal Works. She testified that she was familiar with the Public Bid process during her time with Laperouse and remembers that Laperouse submitted a bid for the Terrebonne Parish School Board Oaklawn Middle School Reroofing Project. From Miss Richard's testimony, coupled with opening and closing arguments of counsel, it is clear that there are two assertions of error by Laperouse: (1) Group did not adhere to the proper substitution

⁶ *Id.* at p. 9, ¶¶28-29.

⁷ See Court's Order dated July 26, 2023.

procedure outlined in the bid instructions and (2) Group did not submit its post-bid documentation within ten days as required by the bid instructions, rendering them nonresponsive.

QUALIFIED ROOFING SYSTEMS/SUBSTITUTIONS

After confirming her familiarity with the bid instructions on this particular project, she was first questioned about the qualified roofing systems contained in the bid instructions. Miss Richard testified that Group's bid package contained the use of the Soprema system, which was a non-preapproved manufacturer in the bid instructions. Her understanding of the bid instructions mandated that substitutions needed to be made at least seven days prior to the bid opening which, in turn, would have to be approved by the project architect in an addendum. Miss Richard testified that no addendum mentioned Soprema being added as an approved system prior to bid day. Further testimony elicited confirmed Miss Richard's understanding that the apparent low-bidder had a maximum of ten days from the bid opening to submit any post-bid submittals and that a failure to do so would render that bidder nonresponsive which would result in automatic disqualification, all as is stated in the bid instructions.

On cross-examination, Miss Richard admitted that one of her chief complaints was the failure of Group to request and/or produce substitution documents within seven days prior to the bid opening as

required in the bid instructions. Additionally, Miss Richard admitted that Laperouse is a certified installer of the Soprema roofing system, a system that is relatively cheaper to install. As such, she testified that had Laperouse known that the Soprema system would have been accepted, Laperouse could have arguably submitted a more competitive bid. In the end however, Miss Richard conceded that Group's contract contemplated that the Garland system would instead be used, despite using Soprema in the bid submittal. She further conceded that Garland was an approved system in the bid instructions.

TEN DAY POST-BID SUBMITTALS

Miss Richard finally testified that she was unaware that, by law, certain documents could not be required to be produced within ten days; however, she agreed that contracts through public bid are normally signed after ten days in her experience. She also confirmed that post-bid submittals were required to be delivered within ten days of being selected as the lowest bidder.

LAW AND ANALYSIS

“Louisiana Revised Statutes 38:2212(A)(1)(a) mandates that all public work exceeding the defined contract limit as set forth in La. R.S. 38:2212(C)(1) be advertised and let by contract to the ‘lowest responsible and responsive bidder.’” *Lathan v. City of Gonzalez*, 340 So. 3d 1146, 1149 (La.App. 1 Cir. 02/25/22). A political entity lacks

authority to take actions that are contrary to the Public Bid Law. *Id.* (citing *Hamp's Construction, L.L.C. v. City of New Orleans*, 924 So.2d 104, 107 (La. 2006)) See also La. R.S. 38:2212(B)(1). In fact, no public work may be done except as provided in the Public Bid Law, and any contravention of its provisions renders the resulting contract null and void. *Barriere Constr. Co. v. Parish of Tangipahoa*, 259 So. 3d 458, 461(La.App. 1 Cir. 09/24/18) (citing La. R.S. 38:2220).

Job-specific bid instructions are allowed, but “when a public entity elects to place certain requirements in its advertisements for bids and on its bid forms, that entity is bound by those requirements and may not choose to waive them at a later date.” *Broadmoor, L.L.C. v. Ernest N. Morial New Orleans Exhibition Hall Auth.*, 867 So.2d 651, 656 (La. 2004). Further, “[t]he case law has recognized that a public entity may ‘include requirements and instructions in advertisements and bid forms that may exceed what is required by the Public Bid Law, as long as the statutory requirements are also met.’” *LeBlanc Marine, L.L.C. v. Div. of Admin., Office of Facility Planning & Control*, 286 So. 3d 391, 396 (La. 2019) (citing *Phylway Const., LLC v. Terrebonne Par. Consol. Gov't.*, 153 So. 3d 516, 521 (La.App. 1 Cir. 9/5/14)).

As to Laperouse’s contention that Group and TPSB engaged in a violation of the bidding instructions by substituting one of the listed

roofing systems with the Soprema system without seven day notice and subsequent approval, the law states:

“Wherever a public entity desires to purchase technical equipment, apparatus, machinery, materials, or supplies of a certain type and such purchases are clearly in the public interest, the public entity may specify a particular brand, make, or manufacturer in the specifications let out for public bid as provided by this Part. If a particular brand, make, or manufacturer is specified, the model or catalog number also shall be specified.”

La. R.S. 38:2212.1(C)(1). Further, if a specific brand, make, or manufacturer is listed in the bid specifications, the law provides:

“Wherever in specifications the name of a certain brand, make, manufacturer, or definite specification is utilized, the specifications shall state clearly that they are used only to denote the quality standard of product desired and that they do not restrict bidders to the specific brand, make, manufacturer, or specification named; that they are used only to set forth and convey prospective bidders the general style, type, character, and quality of product desired; and that equivalent products will be acceptable.

La. R.S. 38:2212.1(C)(2). The bid instructions almost mirror this language under bid instructions article 3.3.1⁸. Article 3.3.2 further specifies and requires that any proposed substitutions must be received by the architect at least seven days prior to the date and time for receipt of bids.⁹

⁸ See JT-Ex. A, p. 15, art. 3.3.1.

⁹ *Id.* at art. 3.3.2.

These bid instructions and the letter(s) of guarantee from Soprema do not render Group as a nonresponsive bidder. It was contemplated that any substitutions by any bidder could be made at any time so long as they were received by the architect at least seven days before the bid date. These substitutions, if accepted, would then be required to have been mentioned in an addenda to the bid instructions. There existed no violations under the Public Bid Law in the bid documents. Instead, the bid documents followed the Public Bid Law that merely exceeded those baseline requirements. Installation of the Soprema system would need to be approved under these bid instructions. This was clearly not done here. However, Laperouse cannot complain that they did not have an opportunity to produce a more competitive bid using the Soprema system as a certified installer of same, because it had the same opportunity as everyone else to request that substitution. All parties maintained a level playing field at that point. Further, the attempt by Group to use the Soprema system is of no concern in this case as it ultimately decided to use the Garland system, a system which *was* already accepted in the bid documents. If Group used the Soprema system, a “less expensive” system as stated in testimony, in calculating its bid, then it would be to its own financial detriment.

As to Laperouse's contention that Group should be declared a nonresponsive bidder in its failure to produce the required post-bid documentation, the law provides:

"The bidding documents shall not require any bidder, other than the apparent low bidder, to furnish any other information or documentation, [not contained in paragraph (2)], including the Attestation Affidavit and the E-Verification Form, any sooner than ten days after the date bids are opened; however, the apparent low bidder may submit such information or documentation at any time prior to the expiration of the ten-day period. If the apparent low bidder does not submit the proper information or documentation as required by the bidding documents within the ten-day period, such bidder shall be declared non-responsive, and the public entity may award the bid to the next lowest bidder, and afford the next lowest bidder not less than ten days from the date the apparent low bidder is declared non-responsive, to submit the proper information and documentation as required by the bidding documents, and may continue such process until the public entity either determines the low bidder or rejects all bids..."

La. R.S. 38:2212(B)(3)(a). This section of the Public Bid Law further provides that "[t]he provisions and requirements of this Section and those stated in the bidding documents shall not be waived by any entity."

La. R.S. 38:2212(B)(1).

It is noteworthy to first point out that TPSB did not attempt to waive the requirements of La. R.S. 38:2212(B)(3)(a), but instead followed this ten-day timeline requirement of the apparent low bidder in Article 6.1 of the bid documents. Therefore, this analysis is focused on Group's time of submission of its post-bid documentation.

During opening statements, counsel for TPSB stated his version of the dispute at issue. That version included TPSB awarding the contract to Group only seven days after bids were opened when the bid instructions called for a certain document before awarding the contract, which the lowest apparent bidder should have been given ten days to produce. Counsel for Group argued that awarding the contract in under ten days was not violative of the Public Bid Law. He further emphasized that Group was not the initial apparent low bidder, but was third in line. Counsel asserted that the post-bid documents were submitted within ten days of learning that Group was selected as the apparent low bidder once the two companies ahead of it were dismissed for non-responsiveness and lack of proper licensure. Counsel for Laperouse stated in its opening that Group attempted to use a manufacturer's letter from Soprema, a yet to be approved system, as its manufacturer's letter and guarantee letter which, he argued, were both required to be submitted ten days post-bid.

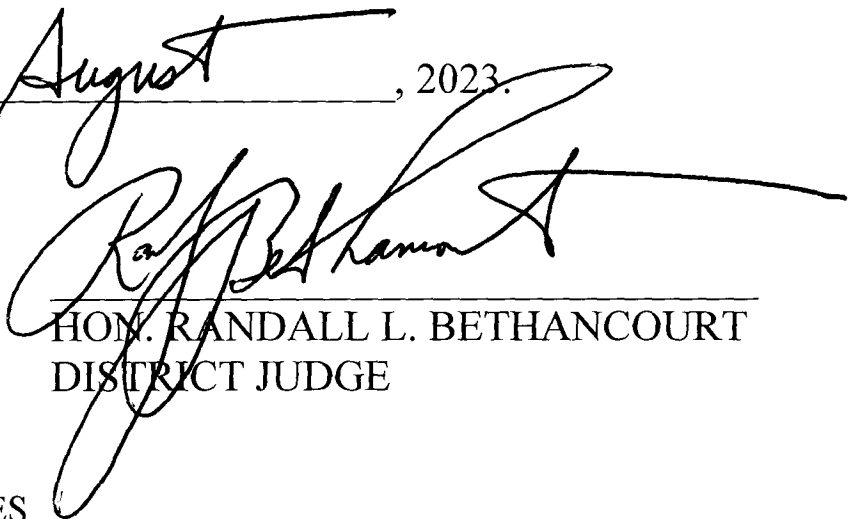
As mentioned previously, Group eventually moved forward with the utilization of the Garland system, a system which was already approved in the bid instructions. However, the larger complaint is that the manufacturer's letter from Garland was not produced until February 6, 2023, longer than ten days after the bid opening of January 17, 2023. Although Group would be given ten days from being declared the apparent low bidder after its predecessor was dismissed, that could have

occurred, at the latest, on January 24, 2023 at the meeting where the School Board unanimously voted to award the contract to Group. That makes thirteen (13) days between being declared the low bidder and the submission of the required documentation. Further, although it was not articulated clearly, bid instruction article 6.3.6 required that “[t]he lowest responsible bidder shall submit to the Architect and the Owner *prior to award of the contract* a letter from the manufacturer that the manufacturer will issue the roof system guarantee based on the specified roof system and include the name of the applicator acceptable to the manufacturer for installing the specified roof system...” Arguably, Group did not even have ten days to submit this documentation, but was required to submit it before the contract was awarded. TPSB’s act of awarding the contract before this submission by Group was a constructive waiver of that bid instruction and therefore, a violation of Public Bid Law.

As stated before, no public work may be done except as provided in the Public Bid Law, and any contravention of its provisions renders the resulting contract null and void. The Public Bid Law further requires that any bid instructions used in conformity with the Public Bid Law cannot be waived. An attempted waiver of such instructions would be a violation of the Public Bid Law. Therefore, TPSB’s seeming waiver of the production of the manufacturer’s letter prior to awarding the

contract, or the alternative waiver of the ten-day post-bid submittal, were violations and the contract between TPSB and Group signed on February 6, 2023, is rendered null and void.

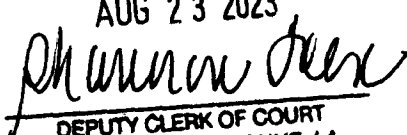
Finally, how the contracting of the work should proceed from this point is dependant on a few variables. Number one, if Laperouse is the next apparent low bidder, then Laperouse must be given the opportunity to first conform with the requirements of the bid instructions, including the production of the post-bid documentation. Second, if all aspects and requirements are rendered by Laperouse as outlined in the bid instructions and under the Public Bid Law, then Laperouse must be awarded the contract.

THUS RENDERED AND SIGNED in Chambers on this
21st day of August, 2023.


HON. RANDALL L. BETHANCOURT
DISTRICT JUDGE

SERVE ALL PARTIES
THROUGH COUNSEL

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