

STATE OF MICHIGAN
COURT OF APPEALS

HEANEY GENERAL CONTRACTING, INC.,

Plaintiff-Appellant,

v

CLINTON COMMUNITY SCHOOLS BOARD
OF EDUCATION,

Defendant-Appellee.

UNPUBLISHED

December 26, 2000

No. 217065

Lenawee Circuit Court

LC No. 98-008051-CZ

Before: Griffin, P.J., and Holbrook, Jr., and Murphy, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition and dismissing plaintiff's complaint with prejudice. The court found plaintiff did not have standing to sue the school district as a disappointed bidder and that, in any event, the school district did not violate MCL 380.1267(4); MSA 15.41267(4). We affirm.

This case concerns the interpretation of MCL 380.1267; MSA 15.41267, which provides:

(1) Before commencing construction of a new school building, or addition to or repair or renovation of an existing school building, except repair in emergency situations, the board of a school district or board of directors of a public school academy, shall obtain competitive bids on all the material and labor required for the complete construction of a proposed new building or addition to or repair or renovation of an existing school building.

(2) The board or board of directors shall advertise for the bids required under subsection (1) once each week for 2 successive weeks in a newspaper of general circulation in the area where the building or addition is to be constructed or where the repair or renovation of an existing building is to take place. The advertisement for bids shall do all of the following:

(a) Specify the date and time by which all bids must be received by the board or board of directors.

(b) State that the board or board of directors will not consider or accept a bid received by the board or board of directors after the date and time specified for bid submission.

(c) Identify the time, date, and place of a public meeting at which the board or board of directors or its designee will open and read aloud each bid received by the board or board of directors by the date and time specified in subdivision (a).

(3) The board or board of directors shall require each bidder for a contract under this section to file with the board or board of directors security in an amount not less than 1/20 of the amount of the bid conditioned to secure the school district from loss or damage by reason of the withdrawal of the bid or by the failure of the bidder to enter a contract for performance, if the bid is accepted by the board or board of directors.

(4) The board or board of directors shall not open, consider, or accept a bid that the board or board of directors receives after the date and time specified for bid submission in the advertisement for bids described in subsection (2).

(5) At a public meeting identified in the advertisement for bids described in subsection (2), the board or board of directors or its designee shall open and read aloud each bid that the board or board of directors received at or before the time and date for bid submission specified in the advertisement for bids. The board or board of directors may reject any or all bids, and if all bids are rejected, shall readvertise in the manner required by this section.

(6) This section does not apply to buildings, renovations, or repairs costing less than \$12,500.00 or to repair work normally performed by school district employees. The maximum amount specified in this subsection shall be adjusted each year by multiplying the amount for the immediately preceding year by the percentage by which the average consumer price index for all items for the 12 months ending August 31 of the year in which the adjustment is made differs from that index's average for the 12 months ending on August 31 of the immediately preceding year and adding that product to the maximum amount that applied in the immediately preceding year, round to the nearest whole dollar.

The trial court did not err in its determination that plaintiff did not have standing, as a disappointed bidder, to sue the school district. *Detroit v Wayne Circuit Judge*, 128 Mich 438; 87 NW 376 (1901); *Talbot Paving Co v Detroit*, 109 Mich 657; 67 NW 979 (1896); *Rayford v Detroit*, 132 Mich App 248, 256-257; 347 NW2d 210 (1984). See also *City Communications, Inc v Detroit*, 650 F Supp 1570, 1580-1581 (ED Mich, 1987); *Kasom v City of Sterling Heights*, 600 F Supp 1555, 1559 (ED Mich, 1985); *Malan Construction Corp v Bd of Co Rd Comm'rs of Wayne Co*, 187 F Supp 937, 938-939 (ED Mich, 1960).

Plaintiff's reliance on *Great Lakes Heating, Cooling, Refrigeration & Sheet Metal Corp v Troy School District*, 197 Mich App 312; 494 NW2d 863 (1992), is misplaced. Although

subsection (4) of MCL 380.1267; MSA 15.41267 was amended in response to this Court's decision in *Great Lakes Heating*, the amendment merely clarifies the bidding process and provides that late bids may not be accepted.

Further, we find no merit to plaintiff's contention that the doctrine of legislative acquiescence requires the conclusion that the amendment also effectively gave disappointed bidders standing to sue. Legislative acquiescence is a highly disfavored doctrine of statutory construction. *Donajkowski v Alpena Power Co*, 460 Mich 243, 258; 596 NW2d 574 (1999); see also *Autio v Proksch Construction Co*, 377 Mich 517, 527; 141 NW2d 81 (1966); *Van Dorpel v Haven-Busch Co*, 350 Mich 135, 145-146; 85 NW2d 97 (1957). The issue of standing is not addressed in either *Great Lakes Heating* or the amendment of subsection (4). We are not persuaded by plaintiff's argument that these "combined silences" reflect a legislative intent to confer standing to disappointed bidders.

Finally, we disagree with plaintiff's claim that defendant violated subsection (4) of the foregoing statute. The undisputed facts show that defendant did not consider or accept a late bid. Rather, it considered Baseline's initial bid, which was timely, and then sought to supplement that bid because it was incomplete. The statute does not address or require any specific procedures in the event of an "incomplete" bid; it is concerned only with timeliness. Plaintiff provides no support for its contention that a timely bid that is "incomplete" cannot be considered "timely." Moreover, the statute provides in subsection (5) that the board "may reject any or all bids." It does not address a procedure for the handling of "informalities and irregularities in bidding," or forbid a school board from including a provision concerning "informalities and irregularities" in its advertisement for bids. Plaintiff has supplied no support for its contention that, by contacting both plaintiff and Baseline concerning a separate bid for the projection screen and lockers, the school board violated the statute. Accordingly, we hold the trial court did not err in holding that a violation of the statute was not established.

Affirmed.

/s/ Richard Allen Griffin
/s/ Donald E. Holbrook, Jr.
/s/ William B. Murphy