STATE OF MICHIGAN

COURT OF APPEALS

L.R. MULLINS CONTRACTING CO., a/k/a ENVIRONMENTAL WOOD SOLUTIONS, INC.,	UNPUBLISHED November 15, 2005
Plaintiff-Appellant,	
v	No. 255562 Ingham Circuit Court
STATE OF MICHIGAN and DEPARTMENT OF MANAGEMENT AND BUDGET,	LC No. 04-000122-CZ
Defendants-Appellees.	

Before: Murphy, P.J., and Sawyer and Meter, JJ.

PER CURIAM.

Plaintiff contracting company appeals as of right the trial court's order granting summary disposition to defendants the State of Michigan and the Department of Management and Budget. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This case concerns defendant's[1] solicitation of bids for a major contract for grinding services in connection with disposal of trees infected with the emerald ash borer beetle. Initially, we note that the "Factual Allegations" within plaintiff's statement of facts in his brief on appeal are substantially argumentative and devoid of record citations, both in violation of MCR 7.212(C)(6). In any event, plaintiff complains that defendant abruptly changed from a policy of generously notifying prospective bidders of a bidding opportunity to one whereby it posted invitations to bid on its website, along with information concerning thousands of other contracts. Plaintiff adds that it had earlier received assurances from defendant that it would be mailed an invitation to bid on the project, but that defendant did no such thing.

Plaintiff admits that it missed a mandatory pre-bid meeting, explaining that this happened because notice of it did not come to its attention. Plaintiff nonetheless submitted a bid, which defendant refused to consider because of plaintiff's nonparticipation in the pre-bid meeting.

[1] Because defendants are the state and one of its agencies, for present purposes the singular "defendant" will refer to the two collectively.

Defendant went on to award contracts to two competitors, and it subsequently rejected plaintiff's bid protest.

Plaintiff filed suit, asking the trial court to vacate the awards to plaintiff's competitors, to enjoin further performance under the awards, and to order defendant to re-bid the project. The trial court denied the motion for injunctive relief on the ground that only the public, acting through its proper representative, not a disappointed bidder, could seek such relief. Defendant moved for summary disposition, which the trial court granted on the ground that "Plaintiff has no standing to legally challenge the contract award."

"Whether a party has standing to bring an action involves a question of law that is reviewed de novo." *In re KH*, 469 Mich 621, 627-628; 677 NW2d 800 (2004).

A seminal case in this area is *Talbot Paving Co v Detroit*, 109 Mich 657; 67 NW 979 (1896), which involved a disappointed bidder on a paving project. In that case, our Supreme Court adopted the principle that a system of bidding for a governmental contract exists to benefit the general public, not prospective bidders. *Id.* at 660, 662. Accordingly, a disappointed bidder cannot maintain an action for damages, such as lost profits. *Id.* In a subsequent case concerning another frustrated bidder, the Supreme Court cited *Talbot* in declaring, without elaboration, "As a bidder, the complainant has no standing." *Detroit v Wayne Circuit Judges*, 128 Mich 438, 439; 87 NW 376 (1901).

Plaintiff states that, according to *Talbot*, "disappointed bidders have 'a remedy by injunction to prevent the making of a contract with the next highest bidder.'" *Talbot, supra* at 662. However, the passage from *Talbot* provides in full, "Again, it is apparent that, if frauds may be perpetrated in that way, there is a remedy by injunction to prevent the making of a contract with the next highest bidder." Plaintiff's complaint is not couched in terms of fraud. We acknowledge that *Talbot* has language that suggests that injunctive relief in general may be sought by a bidder, e.g., "While it is true that there are many cases in which an injunction has been ordered because of the rejection of the lowest bid, and acceptance of a higher bid, . . . we find no cases, except as referred to hereafter, where a party has been permitted . . . to bring and maintain an action at law for loss of profits." *Id.* at 660. But in *Wayne Circuit, supra*, the Court applied the "no standing" principle from *Talbot* to a bidder who, claiming to have submitted the lowest bid, sought a bill to enjoin the city from entering into a contract for a public improvement with another bidder. *Talbot* and *Wayne Circuit*, read together, leave a complaining bidder without standing regardless of whether the relief claimed is injunctive or money damages.

Plaintiff acknowledges that the Supreme Court in *Wayne Circuit* relied on *Talbot* in decreeing that the bidder had no standing, but asserts that the Court was misreading its earlier decision in so decreeing. However, we are not at liberty to disregard any standing ruling of our Supreme Court. Assuming without deciding that the holding in *Wayne Circuit* deviated from *Talbot*, we recognize that such deviation thereby became the settled law of the state.

Moreover, this case factually presents a poor opportunity to revisit the question whether a disappointed bidder should have standing to challenge the award of a public contract. Plaintiff admits that he missed the mandatory meeting that was announced as a prerequisite to bidding, while asserting that notice appeared only one week prior to the meeting, and within a website where it was buried among innumerable other items. Plaintiff cites no authority for the

propositions that a governmental unit may not condition bids on attendance of a meeting, that one week is not sufficient notice for such procedure, or that publication on the Internet along with many unrelated items is deficient.

Plaintiff does not dispute that he submitted his objections to the award after a deadline passed. Instead, he complains that the fourteen-day deadline defendant relied upon "had never been announced or posted." However, plaintiff asserts neither that fourteen days is an insufficient period for such process, nor that its application in this instance followed from some unannounced change from an earlier course of dealing.

For these reasons, we conclude that the trial court properly granted summary disposition to defendant.

Affirmed.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Patrick M. Meter