

Judgment rendered November 3, 2010.
Application for rehearing may be filed
within the delay allowed by art. 2166,
La. C.C.P.

No. 45,669-CA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

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BOGGS & POOLE CONTRACTING
GROUP, INC.

Plaintiff-Appellant

versus

CADDO-BOSSIER PARISH PORT
COMMISSION

Defendant-Appellee

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Appealed from the
First Judicial District Court for the
Parish of Caddo, Louisiana
Trial Court No. 532,158

Honorable Ramon Lafitte, Judge

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JOHN O. HAYTER, III
MIKE BOGGS

Counsel for
Appellant

CHARLES G. TUTT

Counsel for
Appellee

WIENER, WEISS & MADISON
By: James R. Madison
John M. Madison, Jr.

Counsel for
Intervenor-Appellee

* * * * *

Before PEATROSS, DREW and LOLLEY, JJ.

LOLLEY, J.

Boggs & Poole Contracting Group, Inc. (“Boggs & Poole”) appeals the judgment of the First Judicial District Court for the Parish of Caddo, Louisiana, which denied its petition for injunctive relief against the Caddo-Bossier Parishes Port Commission (“the Port”). For the following reasons, we affirm the judgment of the trial court.

FACTS

In mid-2009, the Port was taking bids for the construction of the Regional Commerce Center (“the Project”). As part of its bid package, the Port required all contractors to complete and submit a Louisiana Uniform Public Work Bid Form contained in the bid package. The Port received eight bids, among those included the bids by Boggs & Poole and Wieland-Davco Corporation (“Wieland-Davco”). On June 9, 2009, the submitted bids were opened. Boggs & Poole’s bid of \$9,922,000.00 was the second lowest bid. The lowest bid for the Project (and the one accepted by the Port) was by Wieland-Davco in the amount of \$9,237,000.00. On June 18, the contract was awarded to Wieland-Davco. However, Boggs & Poole maintained that Wieland-Davco did not precisely follow the bidding requirements and its bid should have been rejected, leaving Boggs & Poole as the lowest bidder.

On June 23, 2009, Boggs & Poole filed its petition for preliminary injunction and permanent injunction and mandamus against the Port. Wieland-Davco subsequently intervened. As stated, Boggs & Poole maintained that Wieland-Davco’s bid form was not completed properly, and it should have been rejected, making the bid by Boggs & Poole the lowest

bid and the one that should have been accepted. A trial was conducted, and the trial court ruled in favor of the Port and Wieland-Davco, dismissing the injunction request by Boggs & Poole. This appeal by Boggs & Poole ensued.

DISCUSSION

On appeal, Boggs & Poole raises one issue: whether the trial court erred in concluding that the Wieland-Davco bid followed the bid requirements? Specifically, Boggs & Poole submits that the bid requirement at issue in the present case is “where are the proper places to enter the bid amount.” The Port maintains that the real issue for this court to decide is not whether it waived a bidding requirement in favor of Wieland-Davco, but whether the Port properly interpreted its own bidding requirements.

Boggs & Poole states that the bid form in question provided two places to enter the bid amount and that the Special Provisions of the Project specifications required the following:

If submitting a paper bid, the bidder must record his bid in ink in figures and only in figures. The total bid amount must be written in the **proper places** provided for on the proposal form. (Emphasis added).

Boggs & Poole states that the Project bid form looked like this for the entry of the bid:

_____ DOLLARS (\$_____)

It maintains that because the Project specifications state that “The total bid amount must be written in the proper places [plural] provided for on the

trial on the merits in which the burden of proof is a preponderance of the evidence, but a preliminary injunction may be issued on merely a prima facie showing by the plaintiff that he is entitled to relief. *Mary Moe, L.L.C. v. Louisiana Bd. of Ethics*, 2003-2220 (La. 04/14/04), 875 So. 2d 22; *Metro Ambulance Service, Inc., supra*.

In the case *sub judice*, Boggs & Poole relies on *Hamp's Const., supra*, arguing that the case stands for the simple principle that public bid form requirements must be followed precisely and that if the requirement is not followed, the bid is non-responsive. Neither the Port or Wieland-Davco dispute the holding of *Hamp's Const.*, only its applicability to the facts in this case. We also agree that the the holding in *Hamp's Const.* is not relative to the facts of this case, because we do not believe that Wieland-Davco deviated from the bid requirements.

As noted by Boggs & Poole, the construction specifications for the Project state as follows:

If submitting a paper bid, the bidder must record his bid in ink in figures and only in figures. The total bid amount must be written in the proper places provided for on the proposal form.

However, despite the claims of Boggs & Poole, it does not appear that the Port allowed Wieland-Davco to deviate from these bidding requirements in violation of La. R.S. 33:2212A(1)(b).

As shown herein, the bid form contained two blanks. It is evident that the first blank was not intended for figures as it has the word "DOLLARS" after it. That blank seemingly should have contained the bid amount stated in words, but the construction specifications state that the bid

be made in “figures and only in figures.” The second blank following the open parenthesis and dollar sign is clearly the blank intended for a numerical expression of the bid amount, i.e., “figures.” Although the bid form contained more than one blank, that does not mean that there was more than one proper place to state the bid. Clearly, the only proper place to insert the required figures was in the blank following the word, “DOLLARS,” not before it. In fact, the trial court noted that “the proper place to place numbers is within the parentheses and not before the word dollars.” It certainly would appear from the form that was the only reasonable and proper place to insert a numerical figure.¹ We do not believe the conclusion by the trial court was an abuse of discretion or in error.

CONCLUSION

Considering the foregoing, we affirm the judgment in favor of the Caddo-Bossier Parishes Port Commission and Wieland-Davco Corporation as intervenor. All costs of this appeal are assessed to Boggs & Poole Contracting Group, Inc.

AFFIRMED.

¹Interestingly, Boggs & Poole was the only bidder who submitted a bid in figures placed on both blanks.