

STATE BOARD OF EDUCATION

STATE OF GEORGIA

CURRAHEE CONSTRUCTION COMPANY, INC.,	:	
	:	
	:	
Appellant,	:	CASE NO. 1986-43
	:	
V.	:	
	:	
RABUN COUNTY BOARD OF EDUCATION,	:	DECISION
	:	
	:	
Appellee.	:	

PART I

SUMMARY

This is an appeal by Currahee Construction Company, Inc. (hereinafter "Appellant") from a decision of the Rabun County Board of Education (hereinafter "Local Board") which found that Appellant was an irresponsible bidder. As a result, the Local Board refused to award Appellant a contract to construct an elementary school, even though Appellant was the lowest bidder. Appellant contends on appeal that the Local Board was required to award the bid to it as the lowest responsible bidder, that there was no evidence Appellant was not a responsible bidder, the Local Board abused its discretion, and the Local Board acted in an arbitrary and capricious manner. The decision of the Local Board is sustained.

PART II

FACTUAL BACKGROUND

On August 26, 1986, pursuant to a publicly advertised invitation to bid, the Local Board received and opened bids for construction of a new elementary school. Appellant submitted the lowest bid. The Local Board was involved in a dispute with Appellant over a 1984 contract because a school Appellant was repairing had burned and the Local Board had not received

payment for the damages. As a result, the Local Board decided to hold a hearing to determine if Appellant was a responsible bidder. The hearing was held on September 4, 1986.

At the hearing, the Local Board's attorney presented evidence of the problem which existed with the previous contract. The Local School Superintendent testified that the Local Board had contracted with Appellant for construction work at South Rabun Elementary School (hereinafter "the South Rabun school"). He testified that there was a provision in the contract between Appellant and the Local Board which prohibited open fires within the building enclosure. He further testified that the South Rabun School burned during the time Appellant was working on it. The principal who had jurisdiction of the South Rabun school at the time it burned testified that only employees of Appellant were in the school before it burned, and that he had observed Appellant's men working with open torches inside the building on several occasions. The maintenance man for the South Rabun School testified he heard men who worked for Appellant say they had cut a window out and a small fire had started which they thought they had put out. Additionally, it was stated that the members of the Local Board were well aware of the situation surrounding the fire at the school, the failure of that project to be completed by Appellant, and the fact that the matter had not been resolved between the Local Board and Appellant and was in litigation at the time.

Appellant presented evidence of its responsibility as a contractor. The Dawson County School Superintendent testified that Appellant had built an elementary school for his school system, did a fine job and stayed on schedule in building it. An officer of Appellant testified that the school being bid for the local Board was similar to the school which was built in Dawson County and the only significant difference was a gymnasium. He then testified that Appellant was constructing a gymnasium in another county which was much larger than the one contracted for by the Local Board. Appellant then had its insurance agent testify that Appellant was financially sound, qualified, that it had completed approximately seven million dollars worth of

work since he had been doing their bonding, and he was unaware of any complaints about Appellant's work. He stated he had investigated Appellant in detail.

The Local Board found that Appellant entered into a contract for renovation of the South Rabun School and that the contract for renovation of the school was behind schedule as of September 4, 1984, and there were questions and disputes between Appellant and the architect. The Local Board found that Appellant had utilized open flames in the form of acetylene torches in violation of the contract and that the fire caused by the use of the torches resulted in substantial damage to the building for which the Local Board had not been compensated by Appellant. The Local Board also found that Appellant's negligence caused the fire. The Local Board then found that Appellant did not possess that degree of responsibility which would qualify it as a bidder for Rabun Gap Community School and refused to award the bid to Appellant. Appellant filed this appeal on September 9, 1986.

PART III

DISCUSSION

Appellant contends on appeal that the Local Board was predisposed not to award it the contract, there was no evidence of irresponsibility, the Local Board's findings of fact were not supported by the evidence, the Local Board delayed its findings of fact beyond the ten days allowed, the record on appeal improperly contained minutes of meetings of the Local Board which were not introduced into evidence at the hearing, the Local Board is required to issue the contract to the lowest responsible bidder, and that rejection of the bid because of prior bona fide disputes is unallowable. The Local Board contends that the hearing was fair, the evidence supports the decision of the Local Board, and it did not abuse its discretion.

The Local Board's finding that the use of acetylene torches by Appellant was a violation of the terms of the 1984 contract is not supported by the evidence. The contractual provision allegedly violated is as follows:

contractor will at all times provide protection against rain, storms, frost or heat, so as to maintain all work, materials, apparatus, and fixtures free from injury or damage. At the end of each day's work all new work likely to get damaged will be covered. During cold weather, the Contractor will protect all work against damage. If low temperatures make it impossible to continue operations safely in spite of cold weather precautions, the Contractor will cease work and so notify the Architect. Open fires will not be permitted within the building enclosure.

In light of the uncontradicted testimony that torches are required in the work, this provision should be read to prevent open fires, such as bonfires for warming, and not fire from tools used in construction, such as blowtorches, cutting torches, and welders. Thus the only findings of significance relating to the appeal are the findings that Appellant negligently caused the fire, has not corrected or paid for the damages, and that litigation has ensued as a result.

There is evidence in the record from which the local Board could reach these findings because the testimony showed that Appellant was in control of the building and had workmen using torches before the fire occurred. Additionally, the testimony showed that Appellant had not corrected or paid for the damages and that Appellant and the Local Board were involved in litigation over the matter.

It is uncontroverted that the State Board of Education has a requirement that the bid must be awarded to the lowest responsible bidder. This requirement has been upheld by the Supreme Court of Georgia in Hilton Construction Company vs. Rockdale Cnty. Bd. of Ed., 245 Ga. 533 (1980). The issue to be decided on appeal is whether the Local Board's finding that Appellant had previously committed a negligent act while performing a contract for the Local Board, and had failed to correct the damage caused by

that act, make Appellant an irresponsible contractor within the meaning of the State Board of Education policy.

Although Black's Law Dictionary, 1476 (4th ed. 1968) defines 'responsibility' as being able to pay a sum for which one is or may become liable, or to discharge an obligation which one may be under, the State Board of Education interprets the policy as providing for more than mere financial ability to make restitution for damages. A local board of education must be in a position of being able to work with the contractors it hires. Thus, as in the instant case, if there is a dispute between a contractor and a local board such that the local board is placed in the position of being unable to manage the affairs of the school system through the actions of a contractor because the contractor has denied liability and the local board has to obtain construction funds from other sources, then the State Board of Education is of the opinion that the local board does not have to deem such contractor a responsible contractor.

PART IV

DECISION

Based upon the foregoing discussion, the record presented, and the briefs and arguments of counsel, the State Board of Education is of the opinion the Local Board demonstrated that Appellant was irresponsible. The State Board of Education, therefore, determines and orders that the decision of the Local Board is

SUSTAINED.

This 5th day of January, 1987

LARRY A. FOSTER, SR.
Vice Chairman for Appeals