

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JAMES GOLDMAN STEWART,	:	
Plaintiff,	:	DOCKET NO. 13-01,040
vs.	:	
	:	CIVIL ACTION
JERSEY SHORE AREA SCHOOL DISTRICT and	:	
JAY R. REYNOLDS, INC.,	:	PRELIMINARY
Defendants.	:	INJUNCTION

OPINION AND ORDER

AND NOW, this 9th day of May, 2013, following a factual hearing on Plaintiff's Motion for Preliminary Injunction, held May 1, 2013, and a supplemental briefing period, it is hereby ORDERED and DIRECTED that Plaintiff's motion is DENIED. The Court finds that Plaintiff failed to satisfy the prerequisites for the granting of a mandatory preliminary injunction. The Court enters the following findings of fact and conclusions of law.

I. Findings of Fact

a. Parties

1. Plaintiff James Goldman Stewart, an adult individual, resides at 231 Oliver Street, Jersey Shore, Lycoming County, Pennsylvania. Plaintiff and his wife own this property. This property is located within the Jersey Shore Area School District. *See* Pl. Ex. 1.
2. Neither Plaintiff nor his wife appeared at the preliminary injunction hearing.
3. Defendant Jersey Shore Area School District (the "District") is a public school district duly authorized and existing under the laws of the Commonwealth of Pennsylvania, with a main office located at 175 A & P Drive, Jersey Shore, Lycoming County, Pennsylvania.
4. Defendant Jay R. Reynolds, Inc. (Reynolds) is a Pennsylvania corporation, with a principal place of business located at 1 Brooks Avenue, P.O. Box 326, Willow Street, Lancaster County, Pennsylvania.

b. Project

5. This matter pertains to the Jersey Shore Elementary School Additions and Renovations Project (the “project”).
6. Adriane Craig (Craig), the District’s business manager, testified that the project needs to be completed in five hundred and two (502) calendar days spanning over the course of two (2) summers (2013 and 2014).
7. At issue in this matter is who should be awarded the plumbing prime contract for the project.

c. Initial Project Bids

8. Around January 2013, the District initially opened the project for bidding. *See* Pl. Ex. 2. The initial project listed its CRA project number as 2440 and its PDE project number as 3659. *Id.*
9. When the District initially opened the project, it received bids for five (5) prime contracts; these contracts included: 1) asbestos abatement construction, 2) electrical construction, 3) general construction, 4) HVAC (heating, ventilation, and air conditioning) construction, and 5) plumbing construction. *Id.* at 3.
10. The District bid each of these five (5) prime contracts separately; each contract had its own specifications and pricing. *Id.* Likewise, each of the prime contracts had its own budget.
11. The District identified its initial plumbing prime contract as Contract 2440-3. *Id.* at 5. *See also id.* at 5-6 (District’s outline of the work included under the plumbing prime contract) and Pl. Ex. 8 (initial plumbing drawings).
12. On February 5, 2013, the District opened the sealed bids for all five (5) of the prime contracts. The District opened the general contracting bids first.

13. Six (6) contractors submitted sealed bids for the plumbing prime contract. Def. Dist. Ex.

1. *See also* Pl. Ex. 3 (Tomko's internal business document pertaining to the bid results).

14. The sealed plumbing prime contract bids included:

<u><i>Bidder</i></u>	<u><i>Base Bid</i></u>
Jay R. Reynolds, Inc.	\$686,700.00
Schoonover P & H	\$988,400.00
Silvertip, Inc.	\$944,000.00
W.G. Tomko, Inc.	\$833,200.00
Yannuzzi, Inc.	\$1,350,000.00
Worth and Company	\$950,000.00

Id.

15. As of the bid opening on February 5, 2013, Reynolds submitted the lowest plumbing prime bid and W.G. Tomko, Inc. (Tomko) submitted the second lowest bid. *Id.*

16. At the time of the bid opening, the District realized that the project was over budget in the amount of \$1,000,000.00 to \$1,500,000.00.

17. At the time of the bid opening, the District believed that it would reject all of the bids and it would review, reengineer and redesign the project.

18. Once the bids were evaluated, the District determined that two (2) of the low bids that it received were under budget; in particular, the asbestos abatement and the electrical construction prime contracts were under budget.

19. The remaining three (3) prime contracts, general contracting, HVAC, and plumbing construction, were still over budget following further evaluation by the District.

d. Reynolds' Withdraw Request

20. By letter dated February 6, 2013, Wayne R. Reynolds, a Vice President of Reynolds, requested on behalf of Reynolds that the District permit Reynolds' bid opened on

February 5, 2013 be withdrawn. Def. Reynolds Ex. 1. Reynolds conveyed to the District that an “unintentional and substantial arithmetical error” occurred in the drafting of its bid “which resulted in an omission of a substantial amount of labor cost.” *Id.*

Specifically, Reynolds provided that it underbid the plumbing prime contract by \$285,844.00; thus, Reynolds should have bid for the plumbing prime contract should have been in the amount of \$972,544.00. *See id.*

21. The District received the Reynolds letter on February 7, 2013. *Id.*
22. The District did not take Reynolds’ attempted withdraw into consideration when it decided to rebid the plumbing contract.
23. By email message sent Sunday, February 10, 2013, Jack Berry, a Vice President of Tomko, asked Daniel Cicala (Cicala), the construction manager of the project, if Reynolds was precluded from rebidding the project. Pl. Ex. 6. Also on that date, Cicala responded that he had to “review” Tomko’s inquiry. *Id.*

e. **February 11, 2013 School Board Meeting**

24. The next school board meeting following the February 5, 2013 bid opening occurred on Monday, February 11, 2013.
25. At the February 11, 2013 school board meeting, the District awarded asbestos abatement and electrical construction prime contracts to the low bidders in each respective category.
26. The District accepted the low asbestos abatement and electrical construction prime bids because these low bids were under budget. The District’s decision to accept these two low bids was based upon a recommendation by its administrative team, consisting of the project’s architect, Brian Haines (Haines), and the construction manager, Cicala.
27. Also at the February 11, 2013 meeting, the District rejected all of the bids it received for the general construction, HVAC, and plumbing prime contracts.

28. The District rejected all of the general construction, HVAC and plumbing prime contract bids because they were over budget *substantially* from the District's bid estimates for these prime contracts.
29. Haines testified that the budget for the plumbing prime contract was approximately \$800,000.00 – \$850,000.00.
30. The District did not take formal action on Reynolds' request to withdraw.
31. On February 12, 2013, the District sent memorandum notices to the prospective bidders and plan holders for the plumbing prime contract; these notices provided that all of the plumbing bids were rejected and that the project would be rebid with new specifications in the near future.

f. Revised Project Bids

32. On February 25, 2013, the District rebid the project. *See* Pl. Ex. 4.
33. Cicala testified that the rebid project consisted of qualitative changes. Cicala testified that the project consisted of eight (8) phases and that each phase had to be changed as a result of the rebid. The Court finds this testimony to be credible.
34. The rebid project listed its CRA project number as 2440 and its PDE project number as 3659. *Id.*
35. The District identified its revised plumbing prime contract as Contract 2440-3. *Id.* at 5. *See also id.* at 5-6 (District's outline of the work included under the revised plumbing prime contract) and Pl. Ex. 9 (revised plumbing drawings).
36. On February 25, 2013, the District distributed Bulletin No. 1 to all of the prospective bidders for the general construction, HVAC, and plumbing prime contracts. Def. Dist. Ex. 3. This bulletin highlighted the revisions that the District made to the project. *Id.*

37. In total, the Bulletin addressed fifty-two (52) design revisions. *Id.* Three (3) revisions pertained to the plumbing prime contract; these revisions included:

21. The scope of the plumbing and terrazzo work required by the below slab sanitary line has been greatly reduced. This line will now only be partially replaced in the areas below the terrazzo. The now existing to remain areas of this line will only be routed and cleaned. Refer to the revised Demolition and Plumbing Drawings.

22. The scope of the plumbing and terrazzo work required at the exiting main lobby entrance (B216), required due to the new below slab sanitary line for the Art Room has been revised. The surface walk-off mat will now extend from wall to wall in lieu of the terrazzo repair. Refer to the revised plans and details of this area.

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43. The design of the domestic water system has been revised to re-use the existing, heavy walled domestic water piping for the classroom sinks in lieu of replacing with new. Refer to the revised plumbing drawings.

Id. at 4-5. *See also* Pl. Ex. 9 (revised plumbing drawings).

38. Haines testified that the plumbing prime contract was changed in two (2) material aspects. First, the rebid project saved a large amount of the now-existing copper pipes that serviced the classroom sinks; second, the rebid project did not replace an under-the-floor sanitary line. The Court finds this testimony to be credible.

39. Clyde Rombach, III (Rombach), a project manager from Tomko, testified that the plumbing prime contract rebid reduced the project by ten (10) working days (or two (2) weeks because Tomko works five (5) day weeks) and \$25,000.00. Rombach characterized the reengineering of the project as a “slight change” from the initial project.

40. Brian FitzGerald (FitzGerald), a Vice President of Reynolds who oversees Reynolds' project managers, characterized the reengineering of the plumbing prime contract as "material" and "significant" because of the tight time frame that the District needed its contractors to comply with. Pertaining to the plumbing prime contract, FitzGerald testified that the rebid saved the District approximately \$100,000.00 and more than ten (10) working days.
41. The February 25, 2013 bulletin requested revised bids for the outstanding prime contracts, including the plumbing prime contract. Prospective bidders were instructed to submit their bids to the District not later than 2:00 p.m. on March 12, 2013. *Id.* at 1.
42. Four (4) contractors submitted sealed bids for the revised plumbing prime contract. Def. Dist. Ex. 2. *See also* Pl. Ex. 5 (Tomko's internal business document pertaining to the bid results).
43. On Tuesday, March 12, 2013, the District opened the sealed bids received for the revised project; these bids included:

<u><i>Bidder</i></u>	<u><i>Base Bid</i></u>
Jay R. Reynolds, Inc.	\$777,500.00
Schoonover P & H	\$892,300.00
Silvertip, Inc.	\$851,000.00
W.G. Tomko, Inc.	\$818,888.00

Id.

44. As of the second bid opening on March 12, 2013, again, Reynolds submitted the lowest plumbing bid and Tomko submitted the second lowest bid for the plumbing prime contract. *Id.*

45. As a result of the reengineering of the plumbing prime contract by the District, Reynolds lowered its bid by \$195,044¹ or 20.055%² of its original bid amount (taking into consideration Reynolds' computation error), and Tomko lowered its bid by \$14,312³ or 1.7177%⁴ of its original bid amount.
46. Reynolds revised bid is 5.0542%⁵ lower than Tomko's revised bid.
47. The District accepted Reynolds' low bid for the plumbing prime contract.
48. As a result of the rebidding process, the District saved \$997,500.00, globally, and finished \$180,000.00 under budget.

g. Tomko's Bid Protests

49. On Wednesday, March 13, 2013, Bill Tomko, III, sent the following email message to Cicala:

You are going to throw out JR Reynolds bid correct? You cut out about 30K worth of work & they raised their price 90K. It is against the law to allow a contractor on a public bid that threw is bid in to rebid the project. We will protest if his bid is not thrown out.

Pl. Ex. 7. On Sunday, March 17, 2013, Cicala responded that he was discussing Tomko's issue with the District. *Id.*

50. On March 20, 2013, Tomko sent a notice of dispute to Cicala and the District's business manager through the use of an email message. Stip. 3.
51. On April 1, 2013, Tomko's general counsel submitted a written bid protest to the District, Cicala and the District's solicitor. Stip. 2.

¹ \$686,700 + 285,844 = \$972,544.00 – 777,500 = \$195,044.00.

² \$195,044 / 972,544 = 0.20055 * 100 = 20.055%.

³ \$833,200 – 818,888 = \$14,312.00.

⁴ \$14,312 / 833,200 = 0.017177 * 100 = 1.7177%.

⁵ \$818,888 - \$777,500 = \$41,388 / 818,888 = 0.050542 * 100 = 5.0542%.

52. If the rebid project was delayed, Cicala testified that it would take the District another month and a half to get to the point that it is at presently. Cicala testified that the District would have to throw out its present construction schedule. He testified that the District would lose this summer's work because of the nature of the first phase of the project (asbestos abatement). He testified that losing this summer's work would cause the finish date of the project to be moved back one (1) semester. By losing a semester in the renovated elementary school, the District would expend monies in keeping two (2) additional elementary schools open for this additional semester. Also, the District would have to grapple with the issue of moving students and teachers during the course of an academic school year. Cicala testified delaying the project now would cost the District approximately \$30,000.00 – \$70,000.00 per month, plus overtime.

53. Haines testified that delaying the project would cause problems with the Department of Education's reimbursement to the District for the project.

54. Craig testified that by closing two (2) smaller elementary schools within the District that the District is saving approximately \$1,000,000.00 per year.

h. Procedural Background

55. On April 30, 2013, Plaintiff filed a complaint in equity against the Defendants. Also on that date, Plaintiff filed a motion for preliminary injunction.

56. On May 1, 2013, the Court held a hearing on the request for preliminary injunction.

57. The Court granted the parties a supplemental briefing period following the hearing. The parties' briefs were due on or before May 6, 2013.

58. This matter is now ripe for review.

II. Conclusions of Law

a. Standing

1. Both our Supreme and Commonwealth Courts have addressed taxpayers' standing to sue boroughs, municipalities, and school districts. See *Consumer Party of Pennsylvania v. Commonwealth*, 507 A.2d 323 (Pa. 1986) and *Rainey v. Borough of Derry*, 641 A.2d 698 (Pa. Cmwlth. Ct. 1994). In *Rainey*, our Commonwealth Court provided:

[i]n *Consumer Party of Pennsylvania v. Commonwealth*, the Pennsylvania Supreme Court, citing *Application of Biester*, noted that, generally, for a plaintiff to have taxpayer standing, he or she must establish, through their averments, an interest in the outcome of a lawsuit that surpasses the common interest of all taxpaying citizens. In order to surpass that common interest, a party must show that his interest in the outcome is at least substantial, direct, and immediate.

However, the court in *Consumer Party*, citing *Biester*, noted that there is a narrow exception to the requirement that a taxpayer have the above-mentioned interest in the outcome of litigation. That exception provides that a taxpayer has standing, even if he does not establish a direct, substantial and immediate interest, if he can demonstrate that

1. the governmental action would otherwise go unchallenged;
2. those directly and immediately affected by the complained of expenditures are beneficially affected and not inclined to challenge the action;
3. judicial relief is appropriate;
4. redress through other channels is unavailable; and
5. no other persons are better situated to assert the claim.

Rainey, 641 A.2d at 701 (citations omitted).

2. In this matter, as in *Rainey*, all five of these requirements are present; specifically:

[d]isappointed bidders generally do not have standing to challenge the bidding process. Therefore, the governmental action in this case would otherwise go unchallenged. The only entity that is directly and immediately affected by the award of the bid, other than the taxpayers, is the successful bidder, who is not likely to challenge the [District's] action. Judicial relief is appropriate, if the taxpayers are not successful on the merits. There is no other means of challenging the award. [And] [f]inally, because disappointed bidders who are not taxpayers cannot challenge the government action that improperly awards a contract to a particular bidder, taxpayers are in the best position to challenge bid award improprieties.

Id.

3. Plaintiff has standing to bring this action even assuming he may be acting as a straw party for Tomko.

b. Preliminary Injunction

4. In order to obtain a preliminary injunction within the Commonwealth, the party requesting the injunctive relief must establish six "essential prerequisites." *Warehime v. Warehime*, 860 A.2d 41, 46 (Pa. 2004). *See also Brayman Constr. Corp. v. Dep't of Transp.*, 13 A.3d 925, 935 (Pa. 2011); *Summit Towne Ctr., Inc. v. Shoe Snow of Rocky Mount, Inc.*, 828 A.2d 995, 1001 (Pa. 2003).
5. Specifically, the requesting party must establish:
 - (1) relief is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by money damages; (2) greater injury will occur from refusing to grant the injunction than from granting it; (3) the injunction will restore the parties to their status quo as it existed before the alleged wrongful conduct; (4) the petitioner is likely to prevail in the merits; (5) the injunction is reasonably situated to abate the offending

activity; and (6) the public interest will not be harmed if the injunction is granted.

Brayman Constr. Corp., 13 A.3d at 935. See also *Warehime*, 860 A.2d at 46-47; *Summit Towne Centre, Inc.*, 828 A.2d at 1002.

6. A preliminary injunction is considered to be an extraordinary measure; the trial court should grant a petition for preliminary injunction only after the moving party has established a clear right to relief. *Soja v. Factoryville Sportsmen's Club*, 522 A.2d 1129, 1131 (Pa. Super. Ct. 1987).
7. Upon the Court's reading of Plaintiff's requested relief in his motion for preliminary injunction, the Court finds that Plaintiff is requesting *mandatory* injunctive relief. *Lewistown Police Ass'n v. Mifflin County Regional Police Dep't*, 661 A.2d 508, 510 n.11 (Pa. Cmwlth. Ct.1995). See also *Phillips Brothers Electrical Contractors, Inc. v. Valley Forge Sewer Authority*, 999 A.2d 652, 657 n.6 (Pa. Cmwlth. Ct. 2010).
8. *Mandatory* preliminary injunctions go beyond the prohibitive nature of standard preliminary injunctions; mandatory injunctions command action. *Lewistown*, 661 A.2d at 510 n.11.
9. In order to be granted *mandatory* injunctive relief, Plaintiff must satisfy a stricter evidentiary burden than when pursuing a prohibitory preliminary injunction. *Id.* Specifically, "the moving party must demonstrate that he is legally entitled to immediate relief and that he will suffer irreparable injury if the relief is not granted." *Id.*
10. Irreparable harm causes "damage which can be estimated only by conjecture and not by an accurate pecuniary standard." *Ambrogi v. Reber*, 932 A.2d 969, 978 n.5 (Pa. Super. Ct. 2007).

11. Mandatory preliminary injunctions should be granted more sparingly than those injunctions prohibitory in nature. *Id.*
12. In this matter, the burden of proof is placed on Plaintiff because he is the party requesting the injunctive relief. *Warehime*, 860 A.2d at 47.
13. After analyzing the two (2) factors required for mandatory injunctive relief, the Court finds that Plaintiff failed to establish these prerequisites. Specifically, the Court finds that Plaintiff has not proven that he is entitled to immediate relief and that he will suffer irreparable injury if the injunction is not granted.
14. The Public School Code of 1949, 24 P.S. §§ 1-101 – 26-2601-I, requires a school district must award a construction contract to the lowest responsible bidder. 24 P.S. § 7-751(a)(2). Section 7-751(a)(2) provides:

All construction, reconstruction, repairs, maintenance or work of any nature, including the introduction of plumbing, heating and ventilating, or lighting systems, upon any school building or upon any school property, or upon any building or portion of a building leased under the provisions of section 703.1, made by any school district where the entire cost, value or amount of such construction, reconstruction, repairs, maintenance or work, including labor and material, shall exceed a base amount of eighteen thousand five hundred dollars (\$18,500), subject to adjustment under section 120, shall be done under separate contracts to be entered into by such school district with the lowest responsible bidder, upon proper terms, after due public notice has been given asking for competitive bids....

Id. (emphasis added) (footnotes omitted).

15. Section 18 of the Trade and Commerce Code, 73 P.S. §§ 1601-1607, pertains to the withdrawal of public contract bids. Specifically, section 1602 addresses the withdrawal of bids; that section provides:

A bidder to any construction contract for the construction, reconstruction, demolition, alteration or repair of any public building or other public improvement or for the provision of services to or lease of real or personal property whether by lease or concession from such contracting body, excepting highway work, *may withdraw his bid from consideration after the bid opening* without forfeiture of the certified check, bank cashier's check, surety bid bond or other security filed with the *bid if the price bid was submitted in good faith, and the bidder submits credible evidence that the reason for the price bid being substantially lower was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional and substantial arithmetical error or an unintentional omission of a substantial quantity of work, labor, material or services made directly in the compilation of the bid*; provided, (i) notice of a claim of the right to withdraw such bid is made in writing with the contracting body within two business days after the opening of bids; and (ii) the withdrawal of the bid would not result in the awarding of the contract on another bid of the same bidder, his partner, or to a corporation or business venture owned by or in which he has a substantial interest. *No bidder who is permitted to withdraw a bid shall supply any material or labor to, or perform any subcontract or other work agreement for any person to whom a contract or subcontract is awarded in the performance of the contract for which the withdrawn bid was submitted, without the written approval of the contracting body.* The contracting body may prepare regulations to *carry out the intent and purposes of the act.*

Id. (emphasis added).

16. Section 1603 of the Trade and Commerce Code addresses reawarding a contract once a contracting body permits a bid to be withdrawn; that section provides:

If a bid is withdrawn in accordance with the provisions of this act, the contracting body may award the contract to the next lowest bidder or reject all bids and resubmit the project for bidding. In the event the

contracting body resubmits the project for bidding the withdrawing bidder shall pay the costs, in connection with the resubmission, of printing new contract document, required advertising, and printing and mailing notices to prospective bidders, if the contracting authority finds that such costs would not have been incurred but for such withdrawal. *In no event shall the withdrawing bidder be permitted to resubmit a bid for the project.*

73 P.S. § 1603.

17. The District is considered to be a contracting body under 73 P.S. §§ 1601-1607. *See* 73 P.S. § 1601.

18. The Court finds that Plaintiff failed to prove that he is entitled to immediate relief.

Specifically, the Court finds that Plaintiff failed to prove that: 1) the District permitted Reynolds to withdraw its initial bid pursuant to 73 P.S. § 1602; and 2) that 73 P.S. § 1603 applies when the project that was resubmitted for bidding underwent reengineering and redevelopment that resulted in a redesign of all of the phases of the project and fifty-two (52) material renovations causing the District to save \$997,500.00 from its original bid and leading the project to be rebid \$180,000.00 under budget.

19. Plaintiff has not proven that his injury is irreparable because the injury could be quantified in a pecuniary amount.

20. The Court concludes that, under the facts of this case, section 1603 of the Trade and Commerce Code is inapplicable.

21. The Court finds that granting a preliminary injunction in this matter would directly contravene the public interest.

III. Discussion

This crux of this matter is whether Reynolds was disqualified, under 73 P.S. §§ 1601-1608, to submit a bid for the revised plumbing prime contract that the District issued on February 25, 2013. However, the issue presently before this Court is whether Plaintiff, a taxpayer within the District, should be granted a preliminary injunction to enjoin Reynolds' work on the project. The Court finds that neither Plaintiff nor Tomko presented sufficient evidence to justify an award of a *mandatory* preliminary injunction in this matter.

Instantly, Plaintiff is requesting that the Court declare the District's award of the plumbing prime contract to Reynolds as null and void and to instruct the District to accept Tomko as the lowest bidder on the contract and award Tomko the contract. The Court will not do so. The Court finds that Plaintiff failed to prove that he is entitled to mandatory injunctive relief. This finding is based upon the reading of 73 P.S. §§ 1601-1608. That section of the Trade and Commerce Code provides that an individual/entity who is permitted by a public contracting body to withdraw a bid cannot submit another bid when that project is reawarded. Reading the statute in whole, this Court cannot conclude, at this stage, that the statutory section applies to the case at bar. In this matter, when the initial project bids were read by the District on February 5, 2013, the District knew that the project had to be materially altered in order to proceed because the bids placed the project between \$1,000,000 and \$1,500,000 over budget. The District's business manager, along with its architect and contractor, testified as much. The testimony unequivocally provided that this decision was made by the District when the bids were initially opened on February 5, 2013. After evaluation of the bids opened on that date, the District realized that two (2) of the bids for two (2) of the prime contracts came in under budget; thus, these bids could be accepted by the District.

At the proceeding school board meeting, held on February 11, 2013, the district accepted those two (2) bids. Also at this meeting, a mere six (6) days after opening the bids, the District rejected *all* of the other bids on the remaining three (3) prime projects, including the plumbing prime contract. When the District rejected all of the plumbing prime contract bids it received, the District had knowledge that Reynolds wished to withdraw its bid due to a mathematical error. However, at the school board meeting the District took no action on Reynolds request to withdraw. Instead, the District rejected all the bids.

After the February 11, 2013 school board meeting, the District notified all plan holders and potential bidders that it was materially redesigning the project. The District's architect and contractor redesigned the project by approximately \$1,000,000.00. This reengineering included a total of fifty-two (52) material changes to the project; each of these changes were reflected in the remaining prime contracts, i.e. general construction, HVAC, and plumbing.

Upon consideration of these facts and the statutory scheme, the Court finds that Plaintiff's right to relief is not as clear as he believes it is. The Court finds that the District did not permit Reynolds to withdraw its initial bid and that the first and second bid projects should not be considered to be the same "project" under the statute; therefore, the Court will not grant Plaintiff's request for *mandatory* preliminary injunctive relief.

IV. Conclusion

In short, this Court finds that Plaintiff has not provided the Court with sufficient evidence that would warrant issuing a preliminary injunction in this matter. It is evident to this Court that no impropriety occurred when the District rebid its general contracting, electrical, and plumbing prime contracts. Multiple District officials testified that the District's motive behind rejecting the bids for these prime contracts was solely based upon the fact that all of the bids received for

these contracts were significantly over budget. In total, the February 5, 2013 bids were over budget by approximately \$1,000,000.00. At the time the District opened those bids, the District knew that the project needed to be materially altered for it to continue; the District undertook this alteration which resulted in the project finishing at \$180,000.00 under budget.

The Court stresses that this decision should not be interpreted as issuing an opinion as to whether or not the District's elementary school renovation and expansion is either a good or bad project for the District to undertake. This Court is not a governing body and will neither compliment nor criticize the District's actions. It appears that the public interest is served by the District's decision of prudent fiscal responsibility.

The Court enters the following Order.

ORDER

AND NOW, this 9th day of May, 2013, for the reasons stated above, it is hereby ORDERED and DIRECTED that Plaintiff's Motion for a Preliminary Injunction is DENIED. This matter shall be placed on the undersigned's January 2014 Trial Term. The parties' scheduling order is attached herewith and entered hereto.

BY THE COURT,

Date

Richard A. Gray, J.

cc: William P. Carlucci, Esq. – Plaintiff's Counsel
J. David Smith, Esq. – Solicitor JSASD
Theodore A. Adler, Esq. – Defendant Reynolds' Counsel
2331 Market St., Camp Hill, PA 17011
Gary L. Weber, Esq. – Lycoming County Reporter