



illegally, or dishonestly when it rejected all bids in lease no. 700:0820.

PRELIMINARY MATTERS

After receiving a letter stating that the Department of Corrections was rejecting all bids for lease no. 700:0820, Capital Properties Group, Inc., filed its formal protest on July 29, 1999.

The protest was forwarded to the Division of Administrative Hearings with the parties' request that the hearing not be conducted before September 16, 1999.

On September 20, 1999, the parties filed a Joint Motion for Continuance and later requested an abeyance of the case during protracted settlement negotiations. When those negotiations failed the hearing was rescheduled and proceeded as described above.

At the hearing the Capital Properties Group, Inc. presented testimony of Robert Harrison and Malcom Wilson. Its exhibits marked Petitioner's Exhibits Nos. 1-6 were received in evidence.

The Department of Corrections presented testimony of Joseph Papy (by deposition, without objection) and Raymond Bockner. Its Exhibits Nos. 1-7 were received into evidence.

The parties requested and received leave to file their proposed recommended orders within 15 days of the filing of the transcript. The Transcript was filed March 31, 2000. The Proposed Recommended Orders have been considered in the

preparation of this Recommended Order. The parties' submittals reflect very little dispute as to the material facts.

FINDINGS OF FACT

1. On or about May 9, 1999, the Department of Corrections (DOC or agency) issued a request for proposals (RFP) for the agency's Probation and Parole Office in Fort Myers, Florida (lease no. 700:0820).

2. The RFP sought approximately 5225 square feet of space, plus or minus 3 percent. The RFP required that bidders indicate in their proposals whether the space being offered was within one quarter mile of the following:

a school for children in grade 12  
or lower,  
a licensed day care facility,  
a park or playground,  
a nursing home,  
a convalescent center,  
a hospital,  
an association for disabled  
population,  
a mental health center,  
a youth center, or  
a group home for disabled  
population.

3. Two proposals were submitted: one from Capital Properties Group, Inc. (Capital), and one from Offilock, Inc. (Offilock), the entity currently providing office space for the Probation and Parole Office.

4. Both bids were found to be responsive and were evaluated on or about July 7, 1999. According to the RFP criteria the evaluation team considered the following: fiscal costs (base and

options period rental rate), moving costs, location (including proximity to the Justice Center, public transportation, and clients, as well as security issues), and the facility (layout and future expansion).

5. Offilock's bid included lease rates higher than the rates set for the geographical region by the Department of Management Services (DMS). Capital's bid provided lease rates at the highest end of DMS' rates.

6. While DOC is required to consider DMS' rates, it is not bound by those rates and higher rates would not automatically disqualify a bidder. Still, DOC was concerned with reducing its office lease costs either by reducing the rental rates or by reducing the space requirements. The agency had hoped to obtain a lease rate at the low-to-mid range of DMS' rates.

7. The evaluation committee rated Capital higher than Offilock in the fiscal category but substantially lower than Offilock in the remaining categories. The final scores for the two bidders were Capital: 242; Offilock: 328.

8. In its response to the question described in paragraph 2, above, regarding location, Capital indicated that its space is within one quarter mile of a school for children in grade 12 or lower. It responded "no," as to the other facilities. Offilock's space is not within one quarter mile of any of the facilities.

9. During site visits DOC staff noted that Capital's building abutts a school for children in grades pre-kindergarten through eight, with a playground approximately 30 feet from the proposed office. Across the street from the building is another school for elementary through high-school children. Also across the street is a church with a children's outdoor play area.

10. The office which is the subject of lease no. 700:0820 serves approximately 1100 felony probationers, including sexual offenders, drug offenders, and other felons. Most are required to report to the office at least once a month.

11. Nothing in the RFP for lease no. 700:820 specifies that a property will be disqualified because of proximity to a school or other facility listed in paragraph 2 above. Instead, Section 945.28, Florida Statutes, requires that the DOC provide newspaper notice and written notice to the county or city manager whenever the agency intends to lease or purchase probation and parole office space. DOC complied with this requirement.

12. Before any complaints were received, on July 13, 1999, DOC General Services Manager Malcolm Wilson sent a letter to both Capital and Offilock stating that the agency was rejecting all bids for this project as not being in the best interests of the State of Florida. The letter thanked the bidders and stated they would be given an opportunity to bid on a new package.

13. Although there was some concern initially that Capital's property might not be zoned for a probation and parole

office, that concern was eliminated with a letter from the Lee County Department of Community Development.

14. In their testimony at hearing and in their pre-rejection internal memoranda, DOC staff explained that the bases for rejecting all bids were lease costs and the immediate proximity of Capital's offered property to schools and playgrounds. The staff responsible for the decision in lease no. 700:0820 were concerned about public safety and negative responses by the community. In other similar cases in the past the agency has experienced objections by the community.

15. Since July 1999, DOC has included in other probation and parole office RFPs the provision that such offices may not be located within one quarter mile of the facilities listed in Section 945.28, Florida Statutes.

#### CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction in this proceeding pursuant to Section 120.57(1) and (3), Florida Statutes.

17. Capital must prove by a preponderance of the evidence that DOC's intended rejection of all bids is illegal, arbitrary, dishonest, or fraudulent. See Section 120.57(3)(f), Florida Statutes. This standard codifies the standard established by the Florida Supreme Court in Department of Transportation v. Groves-Watkins Constructors, 530 So. 2d 912 (Fla. 1988) and, as a review standard, is contrasted with the statutory mandate that in

competitive procurement protests the role of the administrative Law Judge is a de novo determination of whether the agency's proposed action is

. . . contrary to the agency's governing Statutes, the agency's rules or policies, or the bid or proposal specifications. The standard of proof for such proceedings [other than rejection of all bids] shall be whether the proposed agency action was clearly erroneous, contrary to competition, arbitrary, or capricious. (Section 120.57(3)(f), Florida Statutes)

18. Capital argues that its bid may not be rejected as it was fully responsive to the RFP. This argument ignores the agency's sole discretion to accept or reject all bids and to reinitiate the solicitation process. See Rule 96-60H-015(5)(a), Florida Administrative Code, and Executive Ventures v. Department of Children and Families, 1997 WL 1052877 (DOAH no. 96-5852BID, Final Order entered 8/27/97). Rejection of all bids may be based on the "best interests of the state" and on budgetary constraints. See Rule 60H-1.029(3), Florida Administrative Code.

19. "[A]n agency's rejection of all bids must stand, absent a showing that the 'purpose or effect of the rejection is to defeat the object and integrity of competitive bidding.'" Gulf Real Properties, Inc. v. Department of Health and Rehabilitative Services, 687 So. 2d. 1336 (Fla. 1st DCA 1997). There was no evidence whatsoever in this proceeding to suggest that the agency's stated reasons for rejection were merely pretext.

20. Capital failed to meet its burden of proving that DOC's intended action is illegal, arbitrary, dishonest, or fraudulent. The purpose of the action according to uncontroverted evidence was to safeguard community security, to avoid public controversy, and to further agency goals to reduce rental costs.

21. Capital seeks to reverse the agency's rejection of all bids and to obtain an order awarding the lease to the "lowest and best bidder." See Capital's Proposed Recommended Order, page 17. Presumably Capital considers itself the "lowest and best bidder," but has failed to prove in this proceeding that it is any more than the "lowest" bidder. The evaluation committee otherwise ranked Capital's proposal substantially lower than that of Offilock. Assuming that it could successfully require that a bidder be selected, Capital has failed to establish that it, and not its competitor, should be awarded the lease.

#### RECOMMENDATION

Based on the foregoing, it is hereby

RECOMMENDED: That the protest of Capital Properties Group, Inc., be dismissed.



DONE AND ENTERED this 19th day of May, 2000, in Tallahassee,  
Leon County, Florida.

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MARY CLARK  
Administrative Law Judge  
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Filed with the Clerk of the  
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this 19th day of May, 2000.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions  
within 10 days from the date of this Recommended Order. Any  
exceptions to this Recommended Order should be filed with the  
agency that will issue the final order in this case.