

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

LAUDERDALE MARKET PLACE )  
INVESTMENTS, L.L.C., )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 00-3520BID  
 )  
FLORIDA DEPARTMENT OF )  
JUVENILE JUSTICE, )  
 )  
Respondent, )  
 )  
and )  
 )  
SUNRISE POINT I, LTD. and )  
HIGH GLEN DEVELOPMENT, LTD., )  
 )  
Intervenors. )  
----- )  
SUNRISE POINT I, LTD., )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 00-3522BID  
 )  
FLORIDA DEPARTMENT OF )  
JUVENILE JUSTICE, )  
 )  
Respondent, )  
 )  
and )  
 )  
 )  
LAUDERDALE MARKET PLACE )  
INVESTMENTS, L.L.C. and )  
HIGH GLEN DEVELOPMENT, LTD., )  
 )  
Intervenors. )  
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RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in these cases by video teleconference on April 6, 2001, with the parties appearing in Tallahassee, Florida, and with witnesses testifying from Fort Lauderdale, Florida, before J. D. Parrish, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Daniel H. Thompson, Esquire  
Berger, Davis & Singerman  
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For Respondent: Brian D. Berkowitz, Esquire  
Assistant General Counsel  
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Department of Juvenile Justice  
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STATEMENT OF THE ISSUE

Whether the decision to reject all bids for Lease No. 800:0187 is illegal, arbitrary, dishonest, or fraudulent under the provisions of Section 120.57(3), Florida Statutes, or violates the terms of the Request for Proposal.

PRELIMINARY STATEMENT

Petitioner/Intervenor, Lauderdale Market Place Investments, L.L.C. (Lauderdale or Petitioner), filed a Formal Written Protest and Petition for Administrative Proceedings with the Respondent, Department of Juvenile Justice

(Department or Respondent), on August 7, 2000. This protest contested the Department's decision of July 24, 2000. The Department's decision, to reject all bids for Lease No. 800:0187, was also protested by Sunrise Point I, LTD (Sunrise). That case, assigned DOAH Case No. 00-3522BID, was withdrawn and abandoned by Sunrise on April 5, 2001. Accordingly, DOAH Case No. 00-3522BID is hereby closed. Jurisdiction in that matter is relinquished to the Department.

As to this case, DOAH Case No. 00-3520BID, the Petitioner has alleged that the Department's decision to reject all bids is illegal, arbitrary, dishonest, or fraudulent. Moreover, the Petitioner maintains that such action is contrary to Section M of the Request for Proposal (RFP) as the Department has not established "strong justification" for its decision.

A third group, High Glen Development, Ltd. and Rossland Real Estate Ltd. (Intervenor), whose request to intervene in the proceedings had been granted also withdrew and abandoned its claim in this cause. Accordingly, the matter went to hearing with only Petitioner presenting evidence in opposition to the Department's decision.

The Petitioner presented testimony from Alan Taylor and Mary Goodwin. The Petitioner's Exhibits numbered 1-5 were admitted into evidence. The Department presented testimony from Perry Anderson. The Respondent's exhibit, marked for

identification as DJJ Exhibit 1, was also received in evidence. Joint Exhibits numbered 1-12 were received by stipulation of the parties.

The transcript of these proceedings was filed on May 7, 2001. Thereafter, an Unopposed Motion for Extension of Time to file Proposed Recommended Orders was granted. The parties timely filed Proposed Recommended Orders that have been fully considered in the preparation of this order.

#### FINDINGS OF FACT

1. Prior to May 17, 1999, the Department issued a RFP for office space seeking to lease approximately 14,420 contiguous square feet of space located in Broward County, Florida. This lease, designated 800:0187 in this record, was to run for a basic term of seven years with three two-year renewal options. The RFP specified the lessor was to provide full services and 60 parking spaces.

2. In response to the RFP, the Petitioner, Sunrise, and Intervenor timely submitted proposals. The space proposed by Petitioner complied with the requirements of the RFP. Additionally, the Petitioner's submittal was well within the Department's acceptable rate range.

3. On May 17, 1999, the Department issued an intended award to Sunrise for lease 800:0187. Sunrise was deemed the

lowest responsive bidder. All objections to the award to Sunrise were resolved or withdrawn.

4. For reasons not clearly documented in this record, the Department withdrew its decision to award the lease to Sunrise. The agency action, posted on June 12, 2000, some 13 months after the initial posting, stated Sunrise had not performed and recommended Lauderdale as the second-ranked entity that had responded to the RFP.

5. Both Sunrise and the Intervenor timely filed protests to the proposed award to Lauderdale. The Petitioner filed motions with the Department to dismiss and intervene in those protests. As of the date of the final hearing in the instant case, the Department had not resolved or referred those protests to the Division of Administrative Hearings.

6. Instead, on July 24, 2000, the Department issued a notice stating it would reject all bids for lease 800:0187 and rescind the award to Lauderdale. In reaching this decision, the Department stated it "cannot determine its space needs until after the pending Department reorganization is complete."

7. If the Department was being "reorganized" such reorganization would have been known to the Department on June 12, 2000. No legislative or administrative action was

taken to require reorganization between June 12, 2000 and July 24, 2000.

8. The Department determined that its decision of July 24, 2000, rendered the June 12 award to Lauderdale moot.

9. The Petitioner, Sunrise, and Intervenor challenged the agency's decision to reject all bids.

10. Section M of the RFP provides, in pertinent part:

The Department reserves the right to reject any and all proposals when such rejection is in the best interest of the State of Florida. Such rejection shall not be arbitrary, but be based on strong justification. (Emphasis in original omitted.)

11. Subsequent to the protests of the rejection of all proposals, Perry Anderson, a regional administrator for the Department whose region encompasses Broward County, drafted a memorandum dated September 22, 2000, to address the number of leases and unit requirements for service areas of Broward County. The proposals set forth in the memorandum have not been resolved. As of the date of the hearing, the Department did not present any definitive statement as to its leasing needs for Broward County or how and why the submittals for lease 800:0187 could not address the agency's need.

12. The Department has not presented documentation for any agency plan or statutory mandate to reorganize or decentralize the office space encompassed by lease 800:0187.

13. If decentralization is required, the Department has presented no studies to determine the location, service areas, or numbers of clients for such offices. Studies for demographics, travel times, accessibility to public transportation, client case loads, or how reorganization would better address such issues have not been presented.

14. Moreover, the Department has not demonstrated how decentralization would be inconsistent with the award of lease space as designated by lease 800:0187.

15. The only justification for the rejection of all proposals for lease 800:0187 was the alleged reorganization of the Department. The Department presented no factual information as to how the "reorganization" related to an emerging philosophy supporting decentralization or improved services to the client population.

#### CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of these proceedings. Section 120.57, Florida Statutes.

17. The Petitioner has standing to challenge the agency action and has met all procedural prerequisites in timely filing the instant challenge.

18. Section 120.57(3), Florida Statutes, provides in pertinent part::

(3) ADDITIONAL PROCEDURES APPLICABLE TO PROTESTS TO CONTRACT BIDDING OR AWARD.- Agencies subject to this chapter shall utilize the uniform rules of procedure, which provide procedures for the resolution of protests arising from the contract bidding process. Such rules shall at least provide that:

\* \* \*

(f) In a competitive-procurement protest, no submissions made after the bid or proposal opening amending or supplementing the bid or proposal shall be considered. Unless otherwise provided by statute, the burden of proof shall rest with the party protesting the proposed agency action. In a competitive-procurement protest, other than a rejection of all bids, the administrative law judge shall conduct a de novo proceeding to determine 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 shall be whether the proposed agency action was clearly erroneous, contrary to competition, arbitrary, or capricious. In any bid-protest proceeding contesting an intended agency action to reject all bids, the standard of review by an administrative law judge shall be whether the agency's intended action is illegal, arbitrary, dishonest, or fraudulent.

19. Based upon the foregoing, the Petitioner bears the burden of proof to establish the Department intended action is illegal, arbitrary, dishonest, or fraudulent. Additionally, as the Petitioner maintains the Department's action is without strong justification, it must also meet that evidentiary burden.



20. A decision is arbitrary if it is not supported by fact or logic. See Agrico Chemical Co. v. State Department of Environmental Regulation, 365 So. 2d 759 (Fla. 1st DCA 1978). In this regard the Petitioner has established that the decision to reject all proposals was not supported by fact or logic. The Department's representation of "reorganization" was pretextual in that no mandate by rule or policy existed at the time of the decision. This conclusion is further supported by the fact that a mandate to reorganize would have been equally applicable at the time of the award to the Petitioner. Instead, the decision to reject all proposals followed the unresolved protests of the award to the Petitioner. By electing to reject all proposals, the Department sought to avoid the procedural and substantive obligation to resolve the protests. Convenience of the Department is not strong justification for the rejection of all bids.

21. In this case there has been no demonstration of a strong justification to reject all proposals. The Department issued the first award on the RFP in May of 1999. Since that time the first successful bidder has been rejected for alleged non-performance, the second successful bidder has been rejected to accommodate an alleged reorganization, and all proposals have been rejected without any definite

clarification as to why the Department is unable to state its leasing needs. Such conduct is not strong justification for the agency's action and does not logically support its decision to reject all bids.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Juvenile Justice enter a final order rescinding its decision to reject all proposals for lease 800:0187.

DONE AND ENTERED this 27th day of July, 2001, in Tallahassee, Leon County, Florida.

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Filed with the Clerk of the  
Division of Administrative Hearings  
this 27th day of July, 2001.

COPIES FURNISHED:

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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.