

4-6-01

AT

STATE OF FLORIDA
DEPARTMENT OF CORRECTIONS

FILED
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DIVISION OF
ADMINISTRATIVE
HEARINGS

SPRINT PAYPHONE SERVICES, INC.,

Petitioner,

vs.

DC Case No.: 00-75
DOAH Case No.: 01-0189BID

DEPARTMENT OF CORRECTIONS,

Respondent,

and

MCI WORLDCOM COMMUNICATIONS, INC.,

Intervenor.

FINAL ORDER

This matter comes before the Department of Corrections ("Department") for consideration and final agency action. On February 15, 2001, Barbara Staros, Administrative Law Judge ("ALJ"), Division of Administrative Hearings, conducted a formal hearing in this cause and, on April 6, 2001, issued a Recommended Order. A copy of the Recommended Order is attached hereto as Appendix "A".

Pursuant to section 120.57(3)(e), Florida Statutes, and Rule 28-106.217, Florida Administrative Code, the parties were allowed ten (10) days to submit exceptions to the Recommended Order. On April 16, 2001, Petitioner Sprint Payphone Services, Inc. ("Sprint") submitted its Exceptions to Recommended Order. Respondent has not submitted any exceptions to the Recommended Order.

STANDARD OF REVIEW

An agency may not reject an Administrative Law Judge's ("ALJ") findings of fact "unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law." Section 120.57(1)(l), Florida Statutes; see also Florida Power & Light v. State of Florida, Siting Board, 693 So.2d 1025 (Fla. 1st DCA 1997). An agency may not reweigh the evidence presented at formal hearing and substitute its findings of fact for those of the ALJ. South Florida Water Management District v. Caluwe, 459 So.2d 390 (Fla. 4th DCA 1984). Accordingly, an agency must accept an ALJ's findings of fact if they are supported by competent substantial evidence in the record. Friends of Children v. Department of Health and Rehabilitative Services, 504 So.2d 1345 (Fla. 1st DCA 1987). Finally, an agency may not circumvent these requirements by simply characterizing an ALJ's findings of fact as legal conclusions. Goin v. Commission on Ethics, 658 So.2d 1131 (Fla. 1st DCA 1995).

RULINGS ON PETITIONER'S EXCEPTIONS

1. Petitioner's exceptions numbers 1, 2, 3, 4, 5, 6, 7, and 8 to the Findings of Fact contained in paragraphs 18, 19, 20, 22, 23, 24, 25, and 26 of the Recommended Order are rejected. Upon review and consideration of Sprint's above-mentioned exceptions, the ALJ's Findings of Fact in the abovementioned paragraphs of the Recommended Order were based upon competent, substantial evidence. Also, it is the ALJ's "function to consider all the evidence presented, resolve conflicts, judge credibility of witnesses, draw permissible inferences from the evidence, and reach ultimate findings of fact based on competent, substantial evidence." Heifetz

v. Department of Business Regulation, 475 So.2d 1277, 1281 (Fla. 1st DCA 1985). Further, an agency is bound by an ALJ's findings of fact if they are supported by competent and substantial evidence. State Contracting and Engineering Corp. v. Department of Transportation, 709 So.2d 607, 609 (Fla. 1st DCA 1998). Lastly, the Department may not reweigh the evidence presented at formal hearing and substitute its findings of fact for those of the ALJ. South Florida Water Management District v. Caluwe, 459 So.2d 390 (Fla. 4th DCA 1984).

2. Petitioner's exceptions numbers 9 and 10 to the Conclusion of Law contained in paragraphs 30 and 31 of the Recommended Order are rejected. The ALJ's Conclusions of Law in paragraphs 30 and 31 of the Recommended Order, regarding Petitioner's burden of proof and failure to meet this burden, were correct and were based upon Findings of Fact founded upon competent, substantial evidence.

3. Petitioner's exception number 11 to the Conclusion of Law contained in paragraph 32 of the Recommended Order is rejected. The ALJ's Conclusions of Law in paragraph 32 of the Recommended Order were based upon Findings of Fact pertaining to the competent, substantial evidence regarding sections 5.1 and 6.1 of the RFP, and were correct.

4. Petitioner's exceptions numbers 12, 13 and 14 to the Conclusion of Law contained in paragraphs 35, 36 and 37 of the Recommended Order are rejected. The ALJ correctly concluded that Sprint's unauthorized limitation of the Liquidated Damages part of the Supplemental Proposal Sheet constituted a material deviation from the expectations of the RFP. Also, the ALJ correctly concluded that Sprint's proposal was non-responsive as a matter of law. And, as correctly concluded by the ALJ in paragraph 37 of the Recommended Order, "[b]ecause Sprint's proposal is non-responsive as a matter of law, it is not necessary to address the question

of whether the Department's award of the contract to Worldcom is contrary to the agency's governing statutes, rules or policies, or the bid or proposal specifications." The Conclusions of Law in paragraphs 35, 36 and 37 of the Recommended Order were correct and were based upon Findings of Fact founded upon competent, substantial evidence.

5. Based upon the above-mentioned responses to Sprint's Exceptions to Recommended Order, Petitioner's exception number 15, regarding the ALJ's recommendation that the Department enter a final order dismissing the bid protest filed by Sprint, is rejected. This recommendation by the ALJ that the Department enter a final order dismissing Sprint's bid protest was correct and was based upon Findings of Fact founded upon competent, substantial evidence.

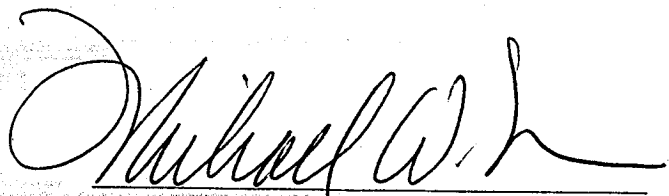
FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Department adopts and incorporates herein the Findings of Fact and Conclusions of Law contained in the Recommended Order. Accordingly, it is

ORDERED that:

The Department's actions in this cause are affirmed, and the Petitioner's formal written protest is hereby dismissed with prejudice.

DONE AND ORDERED this 29th day of April, 2001, in Tallahassee, Florida.



MICHAEL W. MOORE, Secretary
Department of Corrections
2601 Blair Stone Road
Tallahassee, Florida 32399-2500
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RIGHTS OF APPEAL

This Order may be appealed within thirty (30) days by filing a Notice of Appeal with the agency and with the District Court of Appeal. Except in cases of indigence, the Court will require a filing fee and the agency will require payment for preparing the record on appeal. For further explanation of the right to appeal, refer to Section 120.68, Florida Statutes, and the Florida Rules of Appellate Procedure.

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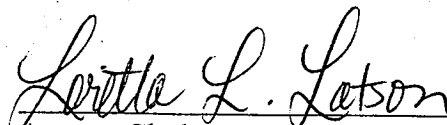
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Filed in the official records of the Department of Corrections on this 21st day of April,

2001.



Agency Clerk