

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

AQUA-TERRA, INC. OF Martin)
COUNTY,)
)
Petitioner,)
)
vs.) Case No. 02-1114BID
)
DEPARTMENT OF ENVIRONMENTAL)
REGULATION,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case by video teleconference with the Petitioner appearing from West Palm Beach, Florida, and the Respondent in Tallahassee, Florida, on April 9, 2002, before J. D. Parrish, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Carlton Oaks, President
Aqua-Terra, Inc. of Martin County
Post Office Box 2104
Hobe Sound, Florida 33475-1956

For Respondent: Marshall G. Wiseheart, Esquire
Department of Environmental Protection
3900 Commonwealth Boulevard
Mail Station 35
Tallahassee, Florida 32399-3000

STATEMENT OF THE ISSUE

Whether the Petitioner is entitled to the award of Bid Number 2002024C as the lowest responsive bidder.

PRELIMINARY STATEMENT

On December 20, 2001, the Respondent, Department of Environmental Protection (Department or Respondent), issued an Invitation to Bid (ITB) for the mechanical removal of exotic plants within the Sebastian Inlet State Park (the project is identified in this record as Bid Number 2002024C). The Petitioner, Aqua-Terra, Inc. of Martin County, and others responded to the ITB.

During the ranking of the bids, the Petitioner was scored based upon references provided to the Department. The Department contacted references who were asked to respond to a series of questions. The Petitioner believes the Department erroneously scored its references' responses to the questions posed.

Accordingly, when it obtained written statements from the two references, the Petitioner filed the instant bid challenge to contest the score it was given. The bid protest was timely filed on January 24, 2002. The case was not referred to the Division of Administrative Hearings until March 20, 2002.

The case was promptly scheduled for hearing and all parties consented to the hearing date. A Notice of Hearing was issued on March 26, 2002. The Notice of Hearing provided that subpoenas would be issued upon request of the parties. Neither party requested subpoenas in this matter.

At the hearing, Carlton Oaks testified on behalf of the Petitioner. The Petitioner was unable to get two references to voluntarily appear to testify. Nevertheless, the Petitioner attempted to move two reference letters into evidence. The Department objected to the admissibility of the evidence as hearsay. Such objection was sustained.

As a result of the ruling, the Petitioner elected to withdraw the bid protest. Accordingly, this Recommended Order of Dismissal is being entered as there are no disputed issues of material fact to address.

RECOMMENDATION

Based on the foregoing, it is RECOMMENDED that the Department enter a Final Order dismissing the bid protest filed by the Petitioner regarding Bid Number 2002024C.

DONE AND ENTERED this 10th day of April, 2002, in
Tallahassee, Leon County, Florida.

J. D. PARRISH
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 10th day of April, 2002.

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.