

9-24-02

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

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RECEIVED
ADMINISTRATIVE
HEARINGS DIVISION

AT

ALL AMERICA COMPANIES,)
)
Petitioner,)
)
vs.)
)
DEPARTMENT OF ENVIRONMENTAL)
PROTECTION,)
)
Respondent.)

DOAH CASE NO. 02-2776BID

CAS-Closed
JHC

ALL AMERICA HOMES OF GAINESVILLE,)
INC., a Florida Corporation, individually and)
d/b/a ALL AMERICA COMPANIES,)
)
Petitioner,)
)
vs.)
)
DEPARTMENT OF ENVIRONMENTAL)
PROTECTION, BUREAU OF DESIGN AND)
RECREATION SERVICES,)
)
Respondent.)

OGC CASE NO. 02-1644
DOAH CASE NO. 02-2777BID

FINAL ORDER

On September 24, 2002, an Administrative Law Judge with the Division of Administrative Hearings ("DOAH") submitted his Recommended Order to the Department of Environmental Protection ("DEP") in these proceedings. The Recommended Order reflects that copies thereof were served upon Allen E. Stine, President of All America Homes of Gainesville, Inc. ("All America"), and upon counsel for DEP. A copy of the Recommended Order is attached as Exhibit A. The matter is now before the Secretary of DEP for final agency action.

BACKGROUND

In November of 2001, an Invitation to Bid ("ITB") was issued by DEP's Bureau of Design and Recreation ("Bureau") on Project No. BDRS 52-01/02. The ITB requested bids from contractors to provide the necessary equipment, labor, materials, and supervision to construct a new concession building at the Hillsborough River State Park and to modify the existing concession building (the "Project"). In December of 2001, the Bureau issued "Addendum No. One (1)" to the ITB for the Project. This Project addendum notified bidders to include an allowance of \$25,000 in their base bids for renovation of the existing concession building, in the event that DEP requested such renovation work.

The bids for the Hillsborough River State Park Project were opened on December 18, 2001. DEP's Bureau staff determined that the lowest base bid (\$355,478.00) was submitted by Nelco Diversified, Inc. ("Nelco"), but the staff had a question as to whether Nelco had included the \$25,000.00 allowance in its base bid. The Bureau staff also determined that the second lowest base bid (\$362,000.00) was submitted by All America. After consulting with Nelco's Project Manager to verify the fact that Nelco had included the \$25,000.00 allowance in their base bid, DEP posted the Tabulation of Bids showing the anticipated award of the Project to Nelco.

All America then filed a written formal bid protest, precipitating a review of the Project documents and bid procedures by DEP's Bureau staff. Based on the number of questions received concerning the Project addendum and the hand-written notes on several of the bid forms, DEP's Bureau Chief determined that the Project bid documents were confusing and ambiguous. Accordingly, on May 13, 2002, DEP posted a rejection

of all bids on the Project. On May 16, 2002, All America filed a formal written protest of this rejection by DEP of all the Project bids.

After some unsuccessful settlement negotiations between DEP and All America, the matter was forwarded to DOAH for formal proceedings. Administrative Law Judge, Charles A. Stampelos ("ALJ"), was assigned to conduct a formal administrative hearing. A DOAH final hearing in these consolidated cases was held in Tallahassee on August 8, 2002. Testimony and exhibits were admitted into evidence at the final hearing on behalf of All America and DEP.

RECOMMENDED ORDER

In his Recommended Order, the ALJ found that DEP's determination that the Project bid documents were confusing and ambiguous was supported by the weight of the evidence presented at the final hearing. The ALJ also found that this confusion and ambiguity in the bid documents constituted a valid rationale for DEP rejecting all the Project bids under these circumstances. See, e.g., Caber Systems, Inc. v. Dept. of General Services, 530 So.2d 325 (Fla. 1st DCA 1988).

The ALJ thus concluded that All America did not prove that DEP "acted in a way that was illegal, arbitrary, dishonest, or fraudulent" in rejecting all the bids. The ALJ also concluded that All America was not a prevailing party and that DEP had not participated in these proceedings for an "improper purpose" under § 120.595(1), Florida Statutes. The ALJ ultimately recommended that DEP enter a final order "dismissing All America's Petition to Prevent Rejection of Bids and to Award Contract to Petitioner and denying All America's request for attorney's fees and costs."

CONCLUSION

The Recommended Order now on administrative review upholds the preliminary determination of DEP's Bureau of Design and Recreation that all the Project bids should be rejected because the bid documents were confusing and ambiguous. The Recommended Order also rejects all of the claims raised by All America in the DOAH proceedings. Nevertheless, All America failed to file any Exceptions to this adverse Recommended Order. Having considered the unchallenged Recommended Order and having reviewed the applicable law,

It is hereby ORDERED:

A. The ALJ's Recommended Order is adopted in its entirety and incorporated by reference herein.

B. All America's Petition to Prevent Rejection of Bids and Award Contract to Petitioner is DENIED.

C. All America's related request for attorney's fees and costs is also DENIED.

Any party to this proceeding has the right to seek judicial review of the Final Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, M.S. 35, Tallahassee, Florida 32399-3000; and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 days from the date this Final Order is filed with the clerk of the Department.

DONE AND ORDERED this 22 day of October, 2002, in Tallahassee, Florida.

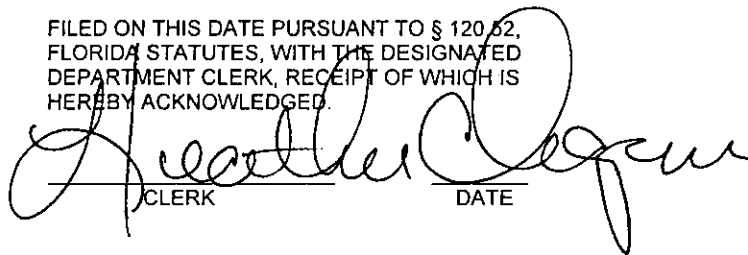
STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



DAVID B. STRUHS
Secretary

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

FILED ON THIS DATE PURSUANT TO § 120.62,
FLORIDA STATUTES, WITH THE DESIGNATED
DEPARTMENT CLERK, RECEIPT OF WHICH IS
HEREBY ACKNOWLEDGED.

 10/24/02
CLERK DATE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Final Order has been sent by United States Postal Service to:

Allen E. Stine, President
All American Homes, Inc. of Gainesville
10424 Southwest 8th Lane
Gainesville, FL 32607


Ann Cole, Clerk and
Charles A. Stampelos, Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-1550

and by hand delivery to:

Jerome I. Johnson, Esquire
Suzanne B. Brantley, Esquire
Department of Environmental Protection
3900 Commonwealth Blvd., M.S. 35
Tallahassee, FL 32399-3000

this 24th day of October, 2002.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION


J. TERRELL WILLIAMS
Assistant General Counsel

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