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STATE OF FLORIDA  
DEPARTMENT OF JUVENILE JUSTICE

AT

MAD DADS OF GREATER OCALA, INC. )  
 )  
Petitioner, )  
 )  
v. )  
 )  
DEPARTMENT OF JUVENILE JUSTICE, )  
 )  
Respondent, )  
 )  
and )  
 )  
BAY AREA YOUTH SERVICES, INC., )  
 )  
Intervenor. )

DJJ CASE NO.: 04-0001

DOAH No.: 03-3670BID

WFA-CWS

JUVENILE SERVICES PROGRAM, INC. )  
 )  
Petitioner, )  
 )  
v. )  
 )  
DEPARTMENT OF JUVENILE JUSTICE, )  
 )  
Respondent, )  
 )  
and )  
 )  
BAY AREA YOUTH SERVICES, INC. )  
 )  
Intervenor. )

DOAH Nos.: 03-3671BID  
03-3672BID  
03-3673BID

FINAL ORDER

This matter is now before the undersigned for issuance of final agency action in regard to the bid protests filed by the

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Petitioners, Mad Dads of Greater Ocala, Inc. (hereafter, "Mad Dads"), and Juvenile Services Program, Inc. (hereafter, "JSP"). The protests were conducted pursuant to section 120.57(1), Florida Statutes, with a formal hearing held on November 13, 2003, before Administrative Law Judge William F. Quattlebaum in Tallahassee, Florida. A "Recommended Order" (RO) issued on January 16, 2004, which is attached and incorporated within this Final Order.

In DOAH Case Number 03-3670BID, the Petitioner, Mad Dads, filed no exceptions to the Administrative Law Judge's recommendation that the protest be dismissed. In DOAH Case Numbers 03-3671BID, 03-3672BID and 03-3673BID, the Petitioner, JSP, filed exceptions, and the Intervenor, Bay Area Youth Services, Inc. (hereafter, "BAYS"), filed a response.

**Findings of Fact**

The Department adopts the "Findings of Fact" set out in paragraphs 1 through 47 of the RO. Petitioner/JSP's exceptions to findings of fact 4, 10, 12, 15-17, 19-20, 22-24, 26-29, and 39-47 are rejected as set forth in the discussion of the exceptions.

**Conclusions of Law**

The Department generally accepts the Administrative Law Judge's Conclusions of Law set out in paragraphs 48 through 59 of

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the RO. In so doing, the Department rejects the Petitioner/JSP's exceptions to paragraphs 50 through 59 as discussed below.

Exceptions

1. In its first exception, directed at paragraphs 4 and 51, JSP argues that BAYS' failure to return a signed copy of the July 18, 2003 RFP addendum, should have been deemed fatal to the consideration of BAYS' proposal. The exception is without merit.

The addendum was not mandatory in its wording: "*Please sign and return this Addendum #1 with your proposal.*" (Jnt.Exh.1). Moreover, paragraphs 5, 7, and 8 of the RO, which are unexcepted and supported by the evidence (Transcript, p.111-12), specify that there are only two fatal criteria in the RFP, neither one of which includes the failure to return the July 18 addendum. The exception is denied.

2. JSP's second exception is directed at paragraphs 10, 12, 15 and 52. Here, JSP argues that the RFP reviewers should have considered its budget sheets in Attachments H1 through H6 and should have used them to recalculate JSP's response to Attachment J - the Cost Sheet. The exception is without merit.

Attachment D, Section 1 specified as follows: "Total cost for the purposes of evaluation shall be the Annual Maximum Contract Dollar Amount multiplied by the term of the Contract." (Jnt.Exh.1). This was repeated in bold, underlined capital lettering on Attachment J itself. To the extent that JSP now

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asks the Department to go behind JSP's own calculations or miscalculations to evaluate cost on a different basis, that invitation must be declined. The exception is denied.

3. Citing paragraphs 16, 17 and 55 of the RO, JSP argues that it was treated unfairly as compared to BAYS. The Administrative Law Judge recommended that BAYS' score be increased by 90 points, because BAYS was improperly denied credit for submitting its Supplier Evaluation Report (SER). In fact, BAYS timely submitted a hard copy of its SER, but the submission was overlooked in favor of other bidders, such as JSP, who provided this information electronically. (Transcript, p.97). The exception is without merit.

JSP fails to identify an absence of competent substantial evidence, or a point of law that was misapprehended in the RO. Instead, it argues that BAYS should not be accommodated when the Administrative Law Judge refused a similar accommodation for JSP in the evaluation of its cost data. Contrary to JSP's argument, this is not a case of disparate treatment. Unlike BAYS, whose timely SER submission was improperly overlooked, JSP's submission of cost data on Attachment J was given exactly the consideration that was indicated in the RFP. It is not an accommodation that JSP is seeking, but rather an opportunity to revisit its bid. The exception is denied.

4. JSP's fourth exception references paragraphs 19, 20 and 53. Here, JSP argues that BAYS should not have been credited for

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subcontracting with a particular certified minority business enterprise (CMBE). Specifically, BAYS was awarded the maximum number of points (60) for using "Nelco," a personnel services company, to process payroll and employee benefits. JSP contends that this was simply a "pass-through" arrangement whereby BAYS recast a large portion of its expenditures under the contract as CMBE expenditures. Thus, JSP asserts that Nelco "merely performs administrative payroll functions and therefore [BAYS] only should be given credit for any administrative payroll fees it pays." The exception is without merit.

JSP's argument again fails to identify an absence of competent substantial evidence or a misapprehension of law. Evidence supported that the amounts indicated on BAYS' CMBE plan (Attachment F) would actually be invoiced to BAYS and paid to Nelco (Transcript, p.71). Moreover, it is undisputed that Nelco was a CMBE. The RFP required nothing more. JSP's complaint addresses the RFP itself, and is therefore untimely at this stage in the procurement. Finally, even if all of BAYS' CMBE points were eliminated, the difference of 60 points would be more than made up by the addition of 90 points for BAYS on the SER issue. The exception is denied.

5. JSP's fifth exception references paragraphs 22-23 and 26-28 of the RO. Here, JSP correctly notes that bidders were asked to present their technical proposal in Volume 1, Tabs 3-5. Tab 3 was to include an introductory statement, Tab 4 should

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describe management capability, and Tab 5 was to provide a description of the program services. Apparently, BAYS included information concerning its management capability and program services in a "Tab 6," contrary to directions. JSP asserts that it was arbitrary and capricious for the Department to award BAYS points for these incorrectly-tabbed items. The exception is without merit.

JSP has conflated a waivable defect with a material omission. Bidders were instructed, "*Information submitted in variance with these instructions may not be reviewed or evaluated. . . . Failure to have all copies properly 'tabbed' makes it much more difficult for the Department to evaluate the proposal.*" (Jnt.Exh.1, underscore added). Bidders were also warned that "*failure . . . to provide any of the information required . . . shall result in no points being awarded for that element of the evaluation.*" (Jnt.Exh.1). The distinction between an incorrectly tabbed inclusion, which *may or may not* be reviewed, and a material omission, which *will not* be evaluated, is consistent with the contract evaluator's testimony. (Transcript, p.104-05).

BAYS' included required information under an extra tab. Although this was a defect, it was waivable under the language of the RFP. The Department did not act arbitrarily or capriciously in waiving the defect and scoring the required information. This was not an instance in which BAYS was given points for omitted

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information, which would have been contrary to the terms of the RFP. The exception is denied.

6. Citing paragraphs 24 and 54, JSP's sixth exception concerns alleged bias on the part of an evaluator. Specifically, JSP contends that Donna Butt, a Juvenile Probation Officer Supervisor and an evaluator for Circuit 6, generated an adverse report about JSP's performance. This, coupled with Butt's giving JSP a lower score than BAYS, is offered as proof of bias. The exception is without merit.

Competent substantial evidence supports the Administrative Law Judge's finding in paragraph 24 that JSP failed to establish bias. In her deposition, Donna Butt testified that she did not remember the nature of JSP's alleged performance deficiency, nor whether there was in fact a deficiency. Rather, she merely passed on to her superiors via e-mail a concern raised by one of her probation officers. (Butt Dep., pp.21-22). Butt was adamant that this did not impair her objectivity in evaluating the proposals. (Butt.Dep., pp.22-23). The exception is denied.

7. JSP's seventh exception is directed at paragraph 29 of the RO. Here, JSP argues that BAYS breached the confidentiality provisions in section 985.04, Florida Statutes (2003), by including confidential client information in its proposal. The exception is without merit.

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Whether or not BAYS included unredacted client information in its proposal, nothing in the RFP prohibited this practice. The exception is denied.

8. JSP's eighth exception references paragraphs 39-47 and 56-59 of the RO. In these paragraphs, the Administrative Law Judge granted BAYS' motion to dismiss JSP's protests, finding that JSP failed to timely submit protest bonds in the proper amount. Here, JSP asserts that "[t]he Department should be estopped from arguing that although it invited [JSP] to submit additional funding, it has changed its position and has concluded that there is no authority for the Department to have allowed [JSP] to fulfill the bond requirement." The exception is without merit.

It is noted at the outset that JSP's argument is unavailing to the extent that a separate and independent basis for dismissal exists in the Administrative Law Judge's rulings on the merits. Thus, the sole question presented by this exception is whether JSP's protest was procedurally barred in addition to being meritless.

The exception is also unclear as to what precisely the Department should be estopped from doing. It was BAYS, not the Department, who moved for dismissal on the bond requirement. At the hearing, the Department defended its position as to the required amount of the bond, but did not move for dismissal on

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this basis. This was confirmed by the Administrative Law Judge who after hearing argument on BAYS' motion, stated:

*I'm going to reserve ruling on the motion to dismiss until I enter a recommended order to the Department. Basically I don't want the Department to send the case back for hearing if they disagree with some recommendation I make regarding the motion to dismiss, so we're going to go ahead and conduct the hearing today.*

(Transcript, p.19) (emphasis added).

Despite the positions asserted by JSP and counsel for the Department, the Administrative Law Judge correctly concluded that JSP's insufficient and untimely bond submissions mandated dismissal. Section 287.042(2)(c), Florida Statutes (2003), required JSP to file a bid bond or statutorily authorized alternative equal to one percent of the total contract price by the date the formal written protest was due. Florida Administrative Code Rule 28-110.005(3) further provides that in the event the bond is not posted when required, "the agency shall summarily dismiss the petition." The Administrative Law Judge correctly concluded that JSP twice failed to provide bonds in the proper amounts, and that the Department had no authority to extend the time for filing. The exception is denied.

9. JSP's final exception is directed at paragraph 50 of the RO. Here, the Administrative Law Judge concluded that JSP failed to demonstrate that the Department's actions were clearly erroneous, contrary to competition, arbitrary or capricious. For the reasons set forth above, the exception is denied.

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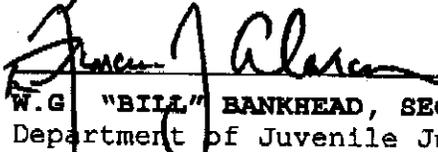
Based upon the foregoing it is hereby **ORDERED**:

1. The Administrative Law Judge's Findings of Fact and Conclusions of Law are adopted.
2. Petitioner/JSP's exceptions are denied.
3. Petitioner/JSP's protests are dismissed.
4. Petitioner/Mad Dads' protest is dismissed.

Notification of Right to Appeal

In accordance with the provisions of section 120.68(1), Florida Statutes, a party who is adversely affected by this Final Order is entitled to judicial review. To appeal this Final Order, a notice of appeal with a copy of this order attached must be filed with this agency within 30 days of the date below. The appeal may be filed in the District Court of Appeal in which this agency maintains its headquarters or in which the party appealing this Final Order resides. Any such appeal shall then be conducted pursuant to the Florida Rules of Appellate Procedure.

Entered this 23 day of February, 2004, in Tallahassee, Florida.

  
W.G. "BILL" BANKHEAD, SECRETARY  
Department of Juvenile Justice

  
Frankie D. Leland, Indexing Clerk

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