

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

HILL YORK SERVICE CORPORATION,)
)
 Petitioner,)
)
 vs.) Case No. 04-2298BID
)
 SARASOTA COUNTY SCHOOL BOARD,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Administrative Law Judge (ALJ) Daniel Manry conducted the administrative hearing of this proceeding on behalf of the Division of Administrative Hearings (DOAH) on August 4, 2004, in Sarasota, Florida.

APPEARANCES

For Petitioner: John R. Smith
Hill York Service Corporation
2427 Porter Lake Drive, Suite 101
Sarasota, Florida 34240

For Respondent: Arthur S. Hardy, Esquire
Matthews, Eastmoore, Hardy,
Crauwels & Garcia, P.A.
Post Office Box 49377
Sarasota, Florida 34230-6377

STATEMENT OF THE ISSUES

The issues are whether Respondent should reject Petitioner's bid as nonresponsive and award the bid to two other bidders.

PRELIMINARY STATEMENT

Petitioner protested Respondent's proposed rejection of Petitioner's bid and award to other bidders. Respondent referred the protest to DOAH to conduct an administrative hearing.

At the administrative hearing, Petitioner presented the testimony of three witnesses, one rebuttal witness, and one composite exhibit for admission into evidence. Respondent presented the testimony of five witnesses and submitted eight exhibits for admission into evidence.

The identity of the witnesses and exhibits, and the rulings regarding each, are reported in the one-volume Transcript of the hearing filed with DOAH on August 12, 2004. Neither party filed a written proposed recommended order on or before August 23, 2004.

FINDINGS OF FACT

1. Petitioner is a closely held Florida corporation licensed in the state as a mechanical contractor. Mr. John Smith is vice president and the sole shareholder of Petitioner.

2. Respondent is a local school district in the state. Respondent regularly solicits bids for goods and services Respondent needs to construct, renovate, manage, and operate the public schools in Sarasota County, Florida (the District).

3. On April 13, 2004, Respondent issued an invitation to bid identified in the record as No. 4134 (the ITB). The ITB solicited bids to provide HVAC and refrigeration maintenance and installation services to the District.

4. On April 27, 2004, Respondent conducted a mandatory pre-bid meeting with vendors interested in bidding. Two of Petitioner's employees attended the meeting.

5. Based upon discussions with attendees at the pre-bid meeting, Respondent issued an addendum to the ITB on April 29, 2004 (the Addendum), and required a signed copy of the Addendum to be included with each bid. Petitioner and others at the meeting subsequently submitted separate bids.

6. Petitioner, along with six other prospective vendors, submitted a bid in response to the ITB. Petitioner did not include a signed Addendum in its bid.

7. On May 25, 2004, Respondent posted its intent to award the bid to a primary vendor and to a secondary vendor, neither of which was Petitioner. Prior to the posting of the intent to award the bid, Respondent provided actual notice to Petitioner that Respondent deemed Petitioner's bid to be non-responsive for failure to include a signed Addendum.

8. Petitioner filed a timely protest pursuant to Subsection 120.57(3)(b), Florida Statutes (2003). Respondent halted the contract award process until this protest is resolved as required in Subsection 120.57(3)(c), Florida Statutes (2003).

9. Petitioner's position is that it in fact included a signed Addendum in its response to the ITB, or, alternatively, that the signed Addendum was not required to be included with the bid because either Respondent did not make Petitioner aware of the requirement; or the requirement for an signed Addendum was not material.

10. Petitioner did not include a signed Addendum with its bid. Petitioner did not submit a copy of a signed Addendum for admission into evidence.

11. Petitioner's vice-president personally compiled Petitioner's bid the night before Petitioner submitted the bid, sealed the bid, and left the sealed bid for a designated employee to deliver the bid to Respondent the following day. No one assisted the vice-president in sealing the bid. The designated employee delivered Petitioner's sealed bid to Respondent the next day. The bid remained sealed until Respondent opened the bid, along with all the other bids, at the bid opening.

12. Respondent opened the sealed bids in accordance with Respondent's customary procedure for bid openings. All of the bidders attended the bid opening in the same room. One of Respondent's employees opened each sealed bid in front of the bidders and verbally relayed pertinent information from each bid to a second employee a few feet away who entered the information into an Excel spreadsheet on a computer. The information included the name, address, and contact information for each bidder; bid price information; and whether the bid included a signed Addendum.

13. Respondent's two employees at the bid opening specifically recalled the announcement that Petitioner's bid did not include a signed Addendum. Members of the audience at the bid opening corroborated the testimony of Respondent's two employees. Their testimony was credible and persuasive.

14. After Respondent opened the bids, the employee who had recorded the information in the spreadsheet reviewed each bid to verify the accuracy of the information in the spreadsheet. The employee maintained continuous possession of the bids in the room where she entered the information into the spreadsheet. A third employee for Respondent, not present at the bid opening, subsequently reviewed Petitioner's response and did not find a signed Addendum. The information in the copies of the spreadsheet in evidence shows that Petitioner's bid did not include a signed Addendum.

15. Both the ITB and the Addendum state the requirement for each bidder to include a signed Addendum with the bid. The ITB states, in relevant part:

. . . prior to submitting the bid, it shall be the sole responsibility of each bidder to contact the Purchasing Office at (941) 486-2183 to determine if addenda were issued and, if so, to obtain such addenda for attachment to the bid. (emphasis in original).

Similarly, the Addendum, states in relevant part: "**PLEASE EXECUTE THIS FORM AND ENCLOSE IN THE SEALED ENVELOPE WITH YOUR BID RESPONSE.**" (emphasis in original).

16. The requirement for a signed Addendum is a material requirement for a bid to be responsive. The information in the Addendum has a direct affect on the prices to be charged to Respondent by a vendor in terms of the hourly rates for services and the permissible costs that a bidder may pass through to Respondent. The information ensured the fairness of the ITB and assured the bids Respondent received were based on similar

assumptions and methods of computation. The requirement for a signed Addendum assured that each bidder had read the Addendum.

17. Respondent's proposed award of the bid to the two successful bidders is reasonable. The two bids are the two lowest priced bids.

CONCLUSIONS OF LAW

18. DOAH has jurisdiction over the parties and subject matter of this proceeding. §§ 120.569 and 120.57(3), Fla. Stat. (2003). DOAH provided the parties with adequate notice of the administrative hearing.

19. Petitioner has the burden of proving a valid ground for invalidating the proposed agency action. State Contracting and Engineering Corporation v. Department of Transportation, 709 So. 2d 607, 609 (Fla. 1st DCA 1998). Petitioner must show that the proposed agency action is clearly erroneous, contrary to competition, arbitrary, or capricious. Id.; see also § 120.57(3)(f), Fla. Stat. (2003)

20. For reasons stated in the Findings of Fact, Petitioner did not satisfy its burden of proof. Petitioner omitted a signed Addendum from its bid, Respondent required each bid to include a signed Addendum, and the requirement for a signed Addendum was material. The proposed award of the bid to two other bidders is reasonable.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby

RECOMMENDED that Respondent issue a final order dismissing the protest.

DONE AND ENTERED this 27th day of August, 2004, in
Tallahassee, Leon County, Florida.



DANIEL MANRY
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 27th day of August, 2004.

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.