

STATE OF FLORIDA

DEPARTMENT OF JUVENILE JUSTICE

FILED  
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DIVISION OF  
ADMINISTRATIVE  
HEARINGS

JUVENILE SERVICES PROGRAM, INC. )  
 )  
Petitioner, )  
 )  
v. )  
 )  
DEPARTMENT OF JUVENILE JUSTICE, )  
 )  
Respondent. )  
\_\_\_\_\_ )

DJJ Case No.: 07-0022

DOAH No.: 07-1975BID

FINAL ORDER

This matter is now before the undersigned for issuance of final agency action in regard to the Petitioner's challenge to a proposed award to the winning bidder in a request for proposals (RFP), Psychotherapeutic Solutions (hereafter "PS"). The protest was conducted pursuant to section 120.57(1), Florida Statutes, with a formal hearing conducted on July 18, 2007, before Administrative Law Judge Carolyn S. Holifield in Tallahassee, Florida. A "Recommended Order" was entered on October 31, 2007, which is attached and incorporated within this Final Order. Pursuant to section 120.57(3)(e), Florida Statutes, the parties were allowed 10 days within which to submit written exceptions.

Petitioner, Juvenile Services Program, Inc. (hereafter, "JSP") submitted twenty-four exceptions to the Recommended Order. Respondent, Department of Juvenile Justice (hereafter "the Department") did not file responses to the exceptions.

### **Findings of Fact**

The Department adopts the "Findings of Fact" set out in paragraphs 1 through 87 of the Recommended Order, with the exception of those portions of paragraphs 23 and 45 referenced in JSP's third and seventh exceptions.

### **Conclusions of Law**

The Department generally accepts the "Conclusions of Law" set out in paragraphs 88 through 98 of the Recommended Order. There, the ALJ concluded, based upon the facts presented, that the Petitioner failed to prove that the Department's proposed award to PS was contrary to the RFP specifications, and further failed to establish that the award was clearly erroneous, contrary to competition, or was arbitrary and capricious.

### **Exceptions**

1. In its first exception, directed at paragraph 5, JSP argues that the Recommended Order (hereafter "RO") erroneously specifies that 200 points was the maximum allotment for "Past Performance" in the Evaluation Criteria of the RFP. JSP asserts

"[f]or clarification," that this 200-point allotment included 100 points for Performance Scores and 100 points for Compliance Scores.

The exception is denied. Competent substantial evidence supports the RO. Although JSP's suggested "clarification" may be correct, it constitutes an additional finding that the RO was not required to incorporate.

2. In its second exception, directed at paragraph 6, JSP contests the RO's statement that "All three evaluators were Department employees who were trained and randomly selected to evaluate the proposals." Specifically, JSP argues that there is no competent substantial evidence that evaluators Yvette Lucille Rapale and Terria Flakes received any Department training.

The exception is denied. Testimony of evaluator Loretta Bright concerning Department training for evaluators (T.147), along with the testimony of evaluator Rapale (T.152) and Flakes (T.162) concerning written instructions on the evaluation process, constitute competent substantial evidence to support the RO's finding.

3. In its third exception, directed at paragraph 23, JSP correctly identifies what appears to be a typographical error in the RO's transcription of RFP Attachment B, Section XVIII, D.1.b. The exception is well taken, though it appears to be entirely harmless.

4. In its fourth exception, directed at paragraph 27, JSP contests the RO's conclusion that the winning bidder's use of a re-created Price Sheet ("Attachment J") did not render the proposal non-responsive. According to JSP, by not using the form provided, PS avoided acknowledging the requirement, omitted from its re-created version, that the renewal terms must be identical in price and duration to the initial agreement.

The exception is denied. As noted in the RO (¶¶ 27-31), and supported by the record (T.110-12), the re-created Attachment J included all the necessary terms. Moreover, the "acknowledgement" is repeated in Attachment G and in the contract itself, rendering immaterial the omitted language from Attachment J.

5. JSP's fifth exception is directed at paragraph 31, and similarly asserts that PS's failure to include renewal terms in its re-created Attachment J necessitated rejection of the bid. The exception is denied for the reasons stated above.

6. JSP's sixth exception is directed at paragraphs 35 and 37, and again references Attachment J. For the reasons stated above, the exception is denied.

7. JSP's clarifying exception directed at paragraph 45 is well taken. The evaluation criteria for Criterion No. 2 in fact relates to management capability.

8. JSP's exception to paragraph 47 is denied. Rather than point out a lack of competent substantial evidence to support the finding, JSP's exception is an attempt to relitigate the case.

9. JSP's exception to paragraph 48 is denied. In paragraph 48 the RO correctly reflects the points awarded for Evaluation Criterion 2.

10. JSP's exception to paragraph 49 is denied, as it is based upon a misreading of the RO.

11. JSP's exception to paragraph 55 is denied. The RO correctly asserts that points were not required to be awarded for the submission of "support letters" from local agencies. JSP's exception merely states that points "could have" been awarded for the submission of such letters.

12. JSP's next ten exceptions, numbered 12 through 21, are directed at paragraphs 75 through 83 and 85, respectively. Here, JSP asserts that PS's bid was non-responsive because it failed to include its raw Quality Assurance (QA) scores in its response to Attachment C (Past Performance). As the RO correctly notes in the excepted paragraphs, PS had achieved "deemed status" in 2003, and had retained this status every year since. Consistent with that status, PS had to obtain a score of 90 percent or more each year during a program review, but did not receive any new raw scores since achieving deemed status. Consequently, PS accurately responded to Attachment C's request for "Most Recent QA Score" by writing in "90% or above." To obtain the specific

scores to be input into the scoring spreadsheet, the Department's program administrator had to look up PS's 2003 QA scores from the Department's publicly accessible website. In fact, the administrator used this same resource to verify the raw scores included in JSP's response (T.93-95).

JSP's exceptions are denied. In essence, JSP argues that it should be rewarded or, more accurately, that PS should be punished, because PS attained a QA rating so high that raw scores were unavailable for inclusion on Attachment C. The absence of raw scores, and the reference to a program review "range" did not render PS's submission non-responsive. Nor did the Department act improperly by accessing and inputting the last available QA scores for PS.

13. JSP's exception number 22, directed at paragraph 87, is denied. Here, JSP contests the conclusion in the RO that Department evaluators "properly and adequately evaluated" the proposals.

14. JSP's last two exceptions, numbered 23 and 24, are directed at paragraphs 96 through 98, in which the RO concluded that JSP failed to meet its burden of proving that the Department's evaluation of PS's proposal, and its subsequent award to PS, was arbitrary and capricious.

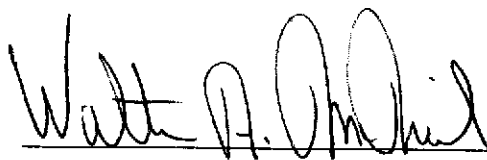
JSP's exceptions are denied, as they are premised upon the acceptance of previously rejected exceptions.

Order

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

1. The Administrative Law Judge's Findings of Fact and Conclusions of Law are adopted as described above.
2. The Petitioner's protest to the RFP is dismissed.

Entered this 30<sup>th</sup> day of November, 2007, in Tallahassee, Florida.



**WALTER A. MCNEIL, SECRETARY**  
Department of Juvenile Justice



Karen Blackburn, Agency Clerk

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. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a notice of appeal with the Agency Clerk, Department of Juvenile Justice, 2737 Centerview Drive, Suite 3200, Tallahassee, Florida 32399-3100, and a second copy, accompanied by filing fees prescribed by section 35.22, Florida Statutes, with the District Court of Appeal, First District, 301 Martin Luther King, Jr. Boulevard, Tallahassee, Florida 32399-1850, or with the District Court of Appeal in the appellate district where the party resides. The notice of appeal must be filed within 30 days of rendition of the order to be reviewed.

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