

STATE OF FLORIDA
DEPARTMENT OF REVENUE

FILED
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DIVISION OF
ADMINISTRATIVE
HEARINGS

LABORATORY CORPORATION OF
AMERICA,

Petitioner,

vs.

DEPARTMENT OF REVENUE,

DOR Case No. 08-1 BID
DOAH Case No. 08-0164 BID

Respondent,

and

ORCHID CELLMARK, INC.,

Intervenor.

FINAL ORDER

The Department of Revenue hereby issues its Final Order in the above styled matter pursuant to Section 120.57, Florida Statutes. On June 13, 2008 the Division of Administrative Hearings (DOAH) issued its recommended order, which is attached hereto as Exhibit A. This recommended order was rendered after a disputed fact hearing was conducted on April 21 through 23, 2008 in Tallahassee, Florida, pursuant to Subsections 120.57(1) and 120.57(3), Florida Statutes.

On June 23, 2008 the Petitioner filed timely exceptions to the recommended order. On July 3, 2008 the Respondent and Intervenor filed a timely joint response to the Petitioner's exceptions.

RULINGS ON EXCEPTIONS

The statutory standard for agency review and processing of recommended orders issued by the Division of Administrative Hearings (DOAH) prescribed by Subsection 120.57(1)(l), Florida Statutes, is as follows:

The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The agency may accept the recommended penalty in a recommended order, but may not reduce or increase it without a review of the complete record and without stating with particularity its reasons therefor in the order, by citing to the record in justifying the action.

Based upon the foregoing standard of review, the following rulings are made in regard to the exceptions filed by the Petitioner herein:

1. Petitioner's exception number one (1) is hereby denied. There is competent substantial evidence in the record to support the Administrative Law Judge's (ALJ's) finding of fact in paragraph nine (9).

2. Petitioner's exception number two (2) is hereby granted. The Request for Proposal (RFP) herein clearly contemplates a variety of DNA tests, not limiting such testing to polymerase chain reaction (PCR) technology. This is clearly documented in Joint Exhibit 1, page 34, Section 5.1.2.4 "Genetic Tests". There is no competent substantial evidence in the record to support the ALJ's finding of fact in the fifth sentence of paragraph 13

3. Petitioner's exception number three (3) is hereby denied. There is competent substantial evidence in the record to support the ALJ's finding of fact in the first sentence of paragraph 20.

4. Petitioner's exception number four (4) is hereby denied. There is competent substantial evidence in the record to support the ALJ's finding of fact in paragraph 26.

5. Petitioner's exception number five (5) is hereby denied. There is competent substantial evidence in the record to support the ALJ's finding of fact in the second sentence of paragraph 31.

6. Petitioner's exception number six (6) is hereby denied. There is competent substantial evidence in the record to support the ALJ's finding of fact in the fourth sentence of paragraph 31.

7. Petitioner's exception number seven (7) is hereby denied. There is competent substantial evidence in the record to support the ALJ's finding of fact in the fifth and sixth sentences of paragraph 31.

8. Petitioner's exception number eight (8) is hereby denied. There is competent substantial evidence in the record to support the ALJ's finding of fact in the fourth sentence of paragraph 33.

9. Petitioner's exception number nine (9) is hereby denied. There is competent substantial evidence in the record to support the ALJ's finding of fact in the second sentence of paragraph 37.

10. Petitioner's exception number ten (10) is hereby denied. There is competent substantial evidence in the record to support the ALJ's finding of fact in the first sentence of paragraph 38.

11. Petitioner's exception number eleven (11) is hereby denied. There is competent substantial evidence in the record to support the ALJ's finding of fact in the fourth sentence of paragraph 39.

12. Petitioner's exception number twelve (12) is hereby denied. There are not sufficient grounds to reject or modify the ALJ's conclusion of law in the first sentence of paragraph 43. The correct statutory process and standard for review of bid protests is fully set forth in paragraph 41 of the recommended order.

13. Petitioner's exception number thirteen (13) is hereby denied. There are not sufficient grounds to reject or modify the ALJ's conclusion of law in the second sentence of paragraph 43. The correct statutory process and standard for review of bid protests is fully set forth in paragraph 41 of the recommended order.

14. Petitioner's exception number fourteen (14) is hereby denied. There are not sufficient grounds to reject or modify the ALJ's conclusion of law in the first sentence of paragraph 44.

15. Petitioner's exception number fifteen (15) is hereby denied. There are not sufficient grounds to reject or modify the ALJ's conclusion of law in the second sentence of paragraph 44.

16. Petitioner's exception number sixteen (16) is hereby denied. There are not sufficient grounds to reject or modify the ALJ's conclusion of law in the first sentence of paragraph 46.

17. Petitioner's exception number seventeen (17) is hereby denied. There are not sufficient grounds to reject or modify the ALJ's conclusion of law in the second sentence of paragraph 46.

18. Petitioner's exception number eighteen (18) is hereby denied. There are not sufficient grounds to reject or modify the ALJ's conclusion of law in the fourth sentence of paragraph 46.

19. Petitioner's exception number nineteen (19) is hereby denied. There are not sufficient grounds to reject or modify the ALJ's conclusion of law in the second sentence of paragraph 47.

20. Petitioner's exception number twenty (20) is hereby denied. There are not sufficient grounds to reject or modify the ALJ's conclusion of law in the first sentence of paragraph 49.

21. Petitioner's exception number twenty-one (21) is hereby denied. There are not sufficient grounds to reject or modify the ALJ's conclusion of law in the second sentence of paragraph 52.

In regard to the issue raised by the Petitioner regarding the disclosure of subcontractors, it is specifically noted that *E. M. Watkins & Company, Inc., v. Board of Regents and Winchester Construction & Engineering*, 414 So. 2d 583 (Fla. 1st DCA 1982) is inapplicable to this matter, as the *Watkins* case was controlled by statutory limitations regarding the submission of subcontractors which are not applicable herein.

FINDINGS OF FACT

With the exception of the finding of fact in the fifth sentence of paragraph 13 of the recommended order, which is hereby stricken, the Department adopts and incorporates by reference the findings of fact as set forth in the recommended order as the factual findings herein.

CONCLUSIONS OF LAW

The Department hereby adopts and incorporates by reference the conclusions of law as set forth in the recommended order as the conclusions of law herein.

DETERMINATION

Accordingly, it is ORDERED:

That the Petitioner's Protest is DISMISSED and Respondent may proceed with the contract award process in this matter.

ORDERED in Tallahassee, Leon County, Florida, this 11 day of July, 2008.

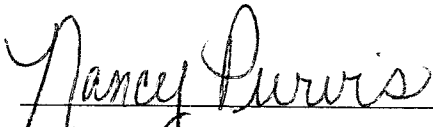
State of Florida
DEPARTMENT OF REVENUE



Lisa Echeverri
Executive Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Final Order has been filed in the official records of the Florida Department of Revenue and that a true and correct copy of the Final Order has been furnished by United States certified mail return receipt requested, to: Charles A. Guyton, Teri L. Donaldson, and Gary P. Timin of Squire, Sanders and Dempsey, LLP at 215 South Monroe Street, Suite 601, Tallahassee, Florida 32301; William E. Williams, Michael E. Riley, and Amy W. Schrader of Gray Robinson, PA at 301 South Bronough Street, Suite 600, Tallahassee, Florida 32301; Jack Fernandez and Nathan Berman of Zuckerman Spaeder, LLP at 101 East Kennedy Boulevard, Suite 1200, Tampa, Florida 33602 this 14th day of July, 2008.



Nancy Purvis
Agency Clerk

NOTICE OF RIGHT TO JUDICIAL REVIEW

Any party who is adversely affected by this final order has the right to seek judicial review of the order under section 120.68, Florida Statutes, by filing a notice of appeal under Rule 9.190 of the Florida Rules of Appellate Procedure with the Agency Clerk of the Department of Revenue in the Office of the General Counsel, Room 201, Carlton Building, Tallahassee, Florida 32399-0100, **AND** by filing a **copy** of the notice of appeal accompanied by the applicable filing fees with the District Court of Appeal, First District 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 from the date this order is filed with the clerk of the Department.**

Copy to: Judge R. Bruce McKibben
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060