

FILED
2010 OCT -7 A 10:54
DIVISION OF
ADMINISTRATIVE
HEARINGS

URBAN BUILDING SYSTEMS, INC.)
)
Petitioner,)
)
vs.)
)
MARTIN COUNTY SCHOOL BOARD,)
)
Respondent,)
)
and)
)
PIRTLE CONSTRUCTION COMPANY,)
)
Intervenor.)
_____)

Case No. BP10-003

FINAL ORDER

Preliminary Statement

On October 1, 2009 the School Board issued Request for Qualification #080351-0-2009 ("RFQ") for construction manager at risk services for renovations to be made at Pinewood and Crystal Lake Elementary schools. Twelve firms, including Urban Building Systems, Inc. ("Urban"), and Pirtle Construction Company ("Pirtle"), submitted timely responses to the RFQ.

The Professional Services Advisory Committee ("PSAC") met on November 12, 2009 for the "Short Listing" and decided to invite six firms, with the highest number of points, to make presentations to the PSAC. The firms and their corresponding Step 1 points were as follows:

<u>Firm</u>	<u>Step 1 Points</u>
1. Morganti	543
2. Pirtle	541
3. Suffolk	531
4. Urban	526
5. Klewin	510
6. Weitz	510

Then the PSAC met on November 23, 2009 to reduce the number of qualified applicants to three and to determine the order of preference, the rankings were as follows:

<u>Firm</u>	<u>Step 2 Points</u>
1. Pirtle	436
2. Klewin	424
3. Urban	424
4. Morganti	423
5. Suffolk	421
6. Weitz	400

The three highest ranking firms made their presentations at a workshop on December 15, 2009. At the regularly scheduled School Board meeting convening following the workshop, the School Board voted to rank Pirtle first, Urban second and Klewin third as its preference for construction manager at risk for the project. Urban filed a timely protest of the ranking.

Urban's protest was transferred to the Division of Administrative Hearings. Administrative Law Judge Eleanor M. Hunter was assigned by the Division. She held a video teleconference hearing which commenced on April 14, 2010, and was reconvened and continued through May 26 and May 27, 2010. The parties submitted proposed recommended orders by July 8, 2010 and the Administrative Law Judge entered her Recommended Order on August 23, 2010. A copy of which is attached hereto as Exhibit "A".

Urban filed exceptions to the Recommended Order on September 2, 2010, which are attached as Exhibit "B".

Standard of Review

The School Board's standard of review in this case is set forth by statute at Section 120.57(1)(l) 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.

Analysis

In Exception 1 Urban asserts that Exhibits 57 and 66 were received into evidence by stipulation. Exception 1 is granted, but it has no bearing on the outcome of this case.

Exceptions 6, 7, 9, 11, 12, and 13 all question credibility determinations, weight of evidence, and inferences drawn by the Administrative Law Judge. The law is well established, however, that when making findings of fact, the hearing officer must consider all of the evidence presented, resolve conflicts, judge credibility, weigh evidence, and draw permissible inferences from the evidence. In reviewing the Administrative Law Judge's findings of fact, the School Board is without authority to reject the hearing officer's credibility determinations or findings if they are supported by competent and substantial evidence and the proceeding complied with the essential requirements of law. Strickland v. Florida A & M University, 799 So.2d 276 (1st Dist 2001); Boyd v. Department of Revenue, 682 So.2d 1117 (4th Dist. 1996). Upon review of the complete record, we conclude that the Administrative Law Judge's findings of fact challenged by Urban are supported by competent and substantial evidence in the record

received in a proceeding which satisfies the essential requirements of law. Therefore, the above exceptions are rejected.

In Exceptions 3, 4, 5, 6, 8, 10 and 14 Urban essentially objects to the Administrative Law Judge's failure to make certain findings of fact in the manner requested by Urban. These exceptions relate to Urban's claims regarding additional violations of the Sunshine Law by the Professional Services Advisory Committee, scoring methodology, and equitable distribution of work. The Administrative Law Judge discussed each of these issues at length. When the substance of proposed facts is discussed by the Administrative Law Judge, the failure to adopt the findings in precisely the form requested by Urban is harmless. Schommer v. Department of Environmental Regulations, 417 So.2d 1089 (3rd Dist. 1982). Accordingly, the above exceptions are rejected.

Upon review of the complete record, we conclude that the Administrative Law Judge's findings of fact are supported by competent and substantial evidence received in a proceeding which satisfies the essential requirements of the law. In addition, we agree with the Administrative Law Judge's analysis of the dispositive legal issues, her conclusions of law, and her recommendations.

Therefore, **IT IS ORDERED**

1. All of Urban's exceptions, except number 1, are denied.
2. Except to note that exhibits 57 through 66 were also received in evidence by stipulation, the School Board hereby adopts the Administrative Law Judge's Recommended Order as the School Board's Final Order in this matter.

3. The Administrative Law Judge's Recommended Order, as modified, is incorporated herein by reference.

DONE AND ORDERED this 21st day of September, 2010 in Stuart, Martin County, Florida.



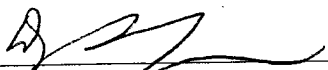
Lorie Shekailo, Chairperson

NOTICE

This Order represents final agency action. Judicial review shall be sought in the appellate district where the agency maintains its headquarters or where a party resides or is otherwise provided by law. All proceedings shall be instituted by filing a notice of appeal or petition for review in accordance with the rules of appellate procedure within thirty days after rendition of this order.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Final Order has been sent by U.S. Mail to Joseph L. Mannikko at P.O. Box 1667, Macclenny, Florida 32063 and William C. Davell, May Meacham & Davell, One Financial Plaza, Suite 2602, Fort Lauderdale, Florida this 27 day of September 2010.



Douglas G. Griffin