

STATE OF FLORIDA

DEPARTMENT OF JUVENILE JUSTICE

FILED  
2011 APR 13 A 11:47  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

PSYCHOTHERAPEUTIC SERVICES OF )  
FLORIDA, INC., )  
 )  
Petitioner, )  
 )  
v. )  
 )  
DEPARTMENT OF JUVENILE JUSTICE, )  
 )  
Respondent, )  
 )  
and )  
 )  
THE HENRY AND RILLA WHITE YOUTH )  
FOUNDATION, INC., )  
 )  
Intervenor. )  
\_\_\_\_\_ )

DJJ Case No.: 11-0028  
DOAH No.: 10-6279BID

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 Henry and Rilla White Foundation (hereafter, "White Foundation" or Intervenor), the winning bidder in Request for Proposals P2602 (the RFP), concerning a contract to operate an Intensive Delinquency Diversion Services (IDDS) program in Circuit 17, Broward County. The protest was conducted pursuant to section 120.57(3), Florida Statutes, with a formal

hearing held on December 14, 2010, before Administrative Law Judge Elizabeth W. McArthur, in Tallahassee, Florida.

A "Recommended Order" (hereafter, "RO") was entered on March 14, 2011, 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, Psychotherapeutic Services of Florida, Inc. (hereafter "PSF") timely filed sixteen exceptions. The Respondent (hereafter, "Department") and Intervenor did not file exceptions. On April 4, 2011, Intervenor filed its "Response to Exceptions."

#### **Findings of Fact**

The Department adopts the "Findings of Fact" set out in paragraphs 1 through 28 of the RO.

#### **Conclusions of Law**

The Department generally accepts the "Conclusions of Law" set out in paragraphs 29 through 44 of the RO. There, the ALJ concluded, based upon the facts presented, that PSF failed to establish its claim that the Department's evaluators were not qualified to evaluate the proposals.

#### **Exceptions**

1. PSF's first exception is directed at RO paragraph 12, wherein the ALJ found that the Department went "beyond the statutory requirements [of section 287.057(17), Florida Statutes

(2009)] by specifically training potential evaluators in the competitive procurement process with a focus on the process itself, including evaluation and scoring of proposals.”

The exception is denied. Testimony provided by the Department’s RFP evaluator Jeff Balliet (T.54-55), and Amy Johnson, Chief of Contracts (T.113-14, 119), established the Department’s additional training in the competitive procurement process.

2. PSF’s second exception is directed at RO paragraph 13, where the ALJ describes in detail the Department’s two-step qualification process for potential procurement evaluators. The process requires that the Department’s program areas identify individuals considered qualified to evaluate various programs and services within that program area, and further requires that the identified individuals be trained in the competitive procurement process. The finding is supported by competent, substantial evidence cited in response to PSF’s first exception and, for this reason, the exception is denied.

PSF’s exception does not contest the description contained in the RO, but simply repeats its assertion that the Department’s process fails to comply with section 287.057(17), Florida Statutes. In support, PSF claims that evaluator Karen McNeal was unqualified to participate in the IDDS procurement. Here, and in four other of its exceptions (3, 12, 15 and 16), PSF repeats the same lengthy record citations in support of its claim that McNeal

was not qualified. These are not germane to the excepted finding, but are addressed below.

3. PSF's third exception is directed at RO paragraph 16, where the ALJ described Paul Hatcher's role in the identification of substantively qualified evaluators for the Department's Probation and Community Intervention program area. Here again, PSF asserts that the Department failed to comply with section 287.057(17), and that Karen McNeal was unqualified.

The exception is denied. Testimony from Paul Hatcher (T.101) and Amy Johnson (T. 112-13) supports the ALJ's description of Hatcher's role. Karen McNeal's specific qualifications are not addressed in the excepted paragraph, and PSF's supporting citations are not germane.

4. PSF's fourth exception is directed at RO paragraph 18, where the ALJ described Elaine Atwood's role in reviewing and scoring the financial proposal for the subject RFP.

The exception is denied. Atwood described her role in the subject procurement (T.67-68), and the ALJ accurately summarized her testimony in this regard. PSF's assertion that she was not on the 3-person evaluating team is not inconsistent with the ALJ's findings.

5. PSF's fifth exception is directed at RO paragraph 19, where the ALJ described Paul Hatcher's role in evaluating the prospective providers' past performance.

The exception is denied. Petitioner's Exhibits 4 and 5 support the ALJ's findings. The fact that Hatcher was not on the 3-person evaluation team is not inconsistent with the ALJ's findings.

6. PSF's sixth exception is directed at RO paragraph 21, where the ALJ summarizes evaluator Karen McNeal's work experience. PSF asserts that McNeal's experience did not include "work with IDDS."

The exception is denied. The ALJ's findings are consistent with McNeal's testimony (T.19). The ALJ's summary does not include a reference to McNeal "work[ing] with IDDS," so there is no basis for an exception.

7. PSF's seventh exception is directed at RO paragraph 22. Here, the ALJ describes McNeal's exposure to IDDS through her four-week juvenile probation officer certification course. Again, PSF's exception does not dispute the ALJ's finding as unsupported, but rather observes that McNeal did not personally work in an IDDS program.

The exception is denied. The ALJ's findings are supported by McNeal's testimony (T.40). Nowhere did the ALJ assert that McNeal had personal experience working in an IDDS program. Consequently, there is no basis for PSF's exception.

8. PSF's eighth exception is directed at RO paragraph 25, where the ALJ summarizes evaluator Jeff Balliet's testimony. Specifically, Balliet was asked whether experience in the IDDS

program was necessary to properly evaluate the subject RFP. He answered in the negative (T.54). The ALJ's finding is supported by Balliet's testimony, and the exception is denied.

9. PSF's next exception addresses RO paragraph 27, and the ALJ's finding that PSF "failed to establish that the experience and training Ms. McNeal has obtained over the years and, particularly, since assuming the oversight position for Duval Assessment Center, is not appropriate or sufficient to qualify her to evaluate proposals for IDDS." (RO.14). PSF's exception is denied, as it does not cast doubt upon the ALJ's finding.

10. PSF next takes exception to RO paragraph 28. There, the ALJ noted that PSF failed to demonstrate that there was a sufficient number of prospective evaluators in the pool that had direct experience with IDDS programs, and also had previously served as evaluators. The ALJ found that imposing these prerequisites, and thus excluding McNeal, "could serve as an impossibly restrictive hindrance to an agency trying to follow the competitive procurement process." (RO.14-15).

PSF cites the Evaluator Pool Spreadsheet (Respondent's Exhibit) in support of its exception. However, the Spreadsheet does not address individuals' personal experience in IDDS programs, but only lists whether particular evaluators were qualified for IDDS procurements. The exception is denied.

11. Moving on to the ALJ's conclusions of law, PSF's eleventh exception is directed at RO paragraphs 35 and 36.

There, the ALJ concluded that PSF's standing, and the scope of its challenge to the RFP, was limited by it being the third-ranked bidder. "Thus, Petitioner lacks standing to challenge the merits of Respondent's actions in scoring Intervenor's proposal higher than Petitioner's, because even if Petitioner were correct, Petitioner would not, thereby, be entitled to the contract award." (RO.18). PSF cites Knaus Systems, Inc. v. Dept. of Children and Family Svcs., DOAH Case No. 99-1230BID (Fla. Div. Admin. Hrngs. Sept. 3, 1999), as authority for its standing as a third-ranked bidder to challenge the lack of qualifications of evaluators.

The exception is denied. PSF was not precluded from challenging the qualifications of the Department's evaluators. The language in the excepted paragraphs of the RO does not conflict with the cited case, and in no way prevented PSF from bringing its challenge.

12. PSF's twelfth exception is directed at RO paragraph 40, where the ALJ concluded that PSF failed to meet its burden of proving a lack of collective experience and knowledge on the part of the three evaluators. Specifically, PSF argues that evaluator McNeal "failed to add value to the 'collective' or the 3-person evaluation team either as an experienced evaluator or as someone with knowledge and experience with IDDS." Here, PSF repeats its record citations addressing the lack of experience of evaluator

McNeal. The citations are germane but not persuasive, and the exception is denied.

For the subject procurement, section 287.057(17)(a), Florida Statutes (2009), required at least three evaluators "who collectively have experience and knowledge in the program areas and service requirements for which . . . contractual services are sought."

PSF's suggestion that before McNeal could be qualified to evaluate a procurement she must first possess experience in evaluating procurements must collapse under its own paradoxical weight. The ALJ noted that McNeal had not previously served as an evaluator, but that Elaine Atwood had trained her in the competitive procurement process. (RO.13). The relevant statute required nothing more.

McNeal was no doubt the least qualified of the three evaluators, but she was nonetheless qualified under the Department's two-step qualification process. (RO.8-9; T.118). In addition to the above-referenced evaluator training, McNeal underwent training in her program area, including training on the IDDS program, which was the subject of the challenged procurement. (T.40-41).

13. PSF's thirteenth exception is directed at RO paragraph 41, where the ALJ concluded that PSF failed to prove that McNeal lacked the requisite experience and knowledge to evaluate IDDS proposals. Here, PSF points out that the Department's RFP



promised that proposals would be evaluated by staff that were "fully knowledgeable about IDDS programs and how they are run." (Petitioner's Exhibit 1).

The exception is denied. PSF established that McNeal did not have programmatic experience in an IDDS program (T.42), and this point was not in dispute. However, there is competent substantial evidence in the record that McNeal was trained and introduced to IDDS (T.40), and she reviewed her IDDS materials prior to serving on the evaluation team (T.41). Experience working in an IDDS program was not a qualification to serving on the team, nor was it specifically required by the RFP. (T.53-54).

14. In its fourteenth exception, PSF points to RO paragraph 42, essentially repeating its argument that each evaluator was required to have IDDS experience. The exception is denied for the reasons stated above.

15. PSF's fifteenth exception is directed at RO paragraph 43, where the ALJ concluded, in pertinent part:

In terms of the actual RFP Addendum standard, Petitioner failed to prove that any evaluation team member was not fully knowledgeable about IDDS programs. Petitioner simply did not explore this issue, such as by delving into required components of an IDDS program to test an evaluator's knowledge of those components. . . . The evidence suggests to the contrary - that this standard was met. Respondent has in place a reasonable process for identifying individuals qualified by their background and experience to evaluate various types of programs and services.

In opposition, PSF repeats its record citations establishing evaluator McNeal's lack of experience in procurement and that she never personally worked in an IDDS program.

The exception is denied. Competent substantial evidence was presented that McNeal had training in IDDS (T.40-41), and that working in such a program was not required to evaluate the subject proposals (T.53-54). Testimony also established McNeal's extensive supervisory and programmatic experience with the Department, which included service in detention, residential and, most recently, probation program areas (T.42). As noted by the ALJ, PSF did not attempt to demonstrate that this experience was irrelevant to the task at hand, or otherwise dispute the Department's decision to list McNeal as qualified for the evaluation team. Instead, PSF was content to rely upon the fact that McNeal never worked in an IDDS program. As noted above, this fact did not preclude her from serving as an evaluator.

16. PSF's final exception is directed at RO paragraph 44, where the ALJ concluded that PSF failed to meet its burden of proving that the selection of evaluators for the technical part of the proposals was clearly erroneous, contrary to competition, arbitrary or capricious. Here, PSF repeats its citations to the effect that evaluator McNeal was unqualified. For the reasons set out above, the exception is denied.

Order

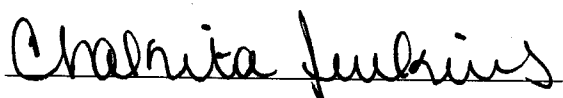
Based upon the foregoing it is hereby **ORDERED**:

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 11<sup>th</sup> day of April, 2011, in  
Tallahassee, Florida.



**WANSLEY WALTERS, Secretary**  
Department of Juvenile Justice



Chakita Jenkins, Agency Clerk

Filed this 11<sup>th</sup> day of  
April, 2011

COPIES FURNISHED:

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**Notice of Right to Judicial Review**

In accordance with the provisions of section 120.68, 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 a notice of appeal with the Agency Clerk, Office of the General Counsel, 2737 Centerview Drive, Suite 3200, Tallahassee, Florida 32399-3100, and a copy, accompanied by filing fees prescribed by section 35.22, Florida Statutes, with the First District Court of Appeal, 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.