STATE OF FLORIDA

DEPARTMENT OF JUVENILE JUSTICE

JUVENILE SERVICES PROGRAM, INC.,	
Petitioner,	
v.	**DJJ Case No.: 11-0029**
DEPARTMENT OF JUVENILE JUSTICE,	DOAH No.: 10-6280BID
Respondent,	
and	
THE HENRY AND RILLA WHITE YOUTH FOUNDATION, INC.,	
Intervenor.	

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 15, Palm Beach County. The protest was conducted pursuant to section 120.57(3), Florida Statutes, with a

formal hearing held on January 11, 2011, before Administrative Law Judge J. D. Parrish, 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, Juvenile Services Program, Inc. (hereafter "JSP") 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 22 of the RO, except that portion of paragraph 13 that is the subject of Petitioner's exceptions 5 and 8, referenced below.

Conclusions of Law

The Department generally accepts the "Conclusions of Law" set out in paragraphs 23 through 31 of the RO. There, the ALJ concluded, based upon the facts presented, that JSP failed to establish its claim that the Department's intended award to Intervenor was clearly erroneous, contrary to competition, arbitrary, or capricious.

Exceptions

1. JSP's first exception is directed at the ALJ's Preliminary Statement describing the exhibits admitted into evidence. JSP correctly asserts, and the Intervenor agrees, that the ALJ mistakenly omitted a reference to Petitioner's Exhibit 19. In fact, the ALJ admitted Petitioner's Exhibit 19 into evidence. (T.129). The exception is granted, but the omitted reference does not appear to be germane to any pertinent finding of fact or conclusion of law, and is not dispositive of or relevant to an issue in the instant case.

2. JSP's second exception is directed at RO paragraph 10, where the ALJ found that the Department's program area managers selected evaluators, who were then approved by the Department's Deputy Secretary. Specifically, JSP points out that Paul Hatcher, a Department program area manager, did not recommend evaluators Surls and Balliet.

The exception is denied. The finding that is the subject of JSP's exception is a verbatim recitation of the testimony of the Department's Chief of Contracts, Amy Johnson, at T.21, lines 8-10. As such, the finding is supported by competent substantial evidence. This is true whether or not Paul Hatcher was the program area manager that recommended a particular evaluator.

3. JSP's third exception is directed at RO paragraph 11, which describes the Department's spreadsheet listing qualified evaluators, and the fact that all of the evaluators in the

subject procurement were listed as qualified. Once again, JSP's exception does not point to a lack of competent substantial evidence to support the finding, which is consistent with Amy Johnson's testimony (T.21-24) and with Petitioner's Exhibit 2. The exception is denied.

4-8. JSP's fourth through eighth exceptions are directed at portions of RO paragraph 13, where the ALJ found as follows:

> Ms. Johnson insured that the evaluators were trained to perform their duties. In this regard, Ms. Johnson reviewed the rules of the evaluation process and a generic evaluation with each of the evaluators. Training for the evaluators included how to score, along with sample scoring sheets. Although Ms. McNeal had not served as an evaluator prior to this case, she was appropriately trained and instructed in the methodology and guidelines for scoring proposals. Further, her job training and experience assured that she was familiar with IDDS program services. Mr. Balliet has served as an evaluator for proposals for approximately ten years. Mr. Balliet was appropriately trained and instructed in the scoring process. Additionally, Mr. Balliet's work experience also qualified him to evaluate the IDDS proposals encompassed within the RFP responses. Finally, Ms. Surls has been familiar with the programs and services of IDDS for several years. She also completed RFP evaluation training prior to being placed on the spreadsheet list of potential evaluators.

JSP first disputes the finding that Ms. Johnson "insured that the evaluators were trained to perform their duties." Here, JSP points out that Johnson's role was limited to ensuring prospective evaluators were trained in the evaluation process.

The exception is denied. In fact, Johnson's "process training" ensured that prospective evaluators could perform "their duties" as evaluators. It was also clear from her

testimony, and consistent with RO paragraph 10, that relevant program managers, who were aware of the professional qualifications of the staff in their program areas, had to approve qualifications for staff to be listed as potential evaluators.

Next, JSP disputes the finding that Johnson "reviewed the rules of the evaluation process and a generic evaluation with each of the evaluators." The exception is granted, to the extent that Johnson did not personally perform these tasks with respect to each evaluator. (T.31). In fact, the bulk of this training appears to have been conducted by Elaine Atwood. (T.71, 117-18). The distinction is not significant, since the record establishes that Atwood worked in Johnson's office. (T.23). So, whether it was Atwood or Johnson who personally conducted the process training, it was still provided by Johnson's Office. This is reflected in Johnson's testimony: "***We*** provide training pretty frequently." (T.30).

JSP further contests the finding that McNeal "was appropriately trained and instructed in the methodology and guidelines for scoring proposals." The exception is denied. In fact, the citations provided by JSP ostensibly in support of the exception, constitute competent substantial evidence for the challenged finding. (T.117-18). JSP effectively refutes its own exception.

JSP next challenges the finding that McNeal's "job training and experience assured that she was familiar with IDDS program services." Here, JSP points to the fact that McNeal's previous work experience did not include diversion services or IDDS. (T.117). The exception is denied, because the finding is supported by McNeal's testimony. (T.118-19).

JSP's last exception to paragraph 13 disputes the finding that evaluator "Surls has been familiar with the programs and services of IDDS for several years." In opposition to the finding, JSP cites Surls' testimony that she had not previously worked in or monitored an IDDS program. (T.108). The exception is granted.

The Intervenor correctly points out that the absence of prior experience working in or monitoring an IDDS program does not mean that Surls was unfamiliar with IDDS services. Rather, the Intervenor points to Surls' listing on the Department's evaluator spreadsheet as competent substantial evidence to support the challenged finding. (Response, p.9).

It is true that Surls was listed in the Department's spreadsheet as qualified to evaluate IDDS programs. (Petitioner's Exhibit 2). This is competent substantial evidence in support of the ultimate issue of Surls' qualification to serve as an evaluator for the subject procurement. It may even support a finding that she was "familiar" with IDDS. But it is not sufficient to sustain the specific finding that she had been

"familiar with . . . IDDS for several years." Neither Surls nor any other witness testified that she possessed "several years" of IDDS familiarity.

9. JSP's ninth exception is directed at RO paragraph 14, where the ALJ found that Elaine Atwood conducted a conference call with the evaluators on January 11, 2010, and "[a]ll of the evaluators were familiar with the IDDS program and were provided an opportunity to ask Paul Hatcher, the author of the scope of services for this RFP, any program question regarding IDDS and/or the RFP." In opposition to the finding, JSP cites portions of the record evidencing the lack of IDDS experience of evaluators McNeal and Surls.

The exception is denied. Competent substantial evidence supports the finding that the evaluators were familiar with IDDS. Karen McNeal specifically testified that she was "familiar with IDDS." (T.118). Each of the evaluators was listed as IDDS "qualified" on the Department's spreadsheet. (Petitioner's Exhibit 2). In addition, the evaluators were asked whether they had programmatic questions regarding the IDDS procurement at the January 11, 2010 conference call. (Petitioner's Exhibit 10, p.3). Paul Hatcher testified that he participated in the conference call, and could not recall any of the evaluators asking a question regarding IDDS services. (T.52-53).

10. JSP's tenth exception is directed at RO paragraph 17. There, the ALJ found as follows:

> Petitioner maintained that one evaluator, Ms. McNeal, failed to follow the directions related to changes to scoring. It is concluded that Ms. McNeal adequately marked the score sheet, such that there was no confusion as to the score awarded, or the time of its entry. Contemporaneous with an initial score of "5" for the category "Management Capability," Ms. McNeal re-marked the JSP score to a "4." Similarly, Ms. McNeal re-marked the JSP score for the category "Consideration 1" from "5" to "4." Any "change" occurred in the matter of moments that it took Ms. McNeal to re-mark the score sheet, and did not indicate a reflection or after-thought of "change." If anything, the "change" was to correct an error of marking. Ms. McNeal's testimony as to the marking of the score sheet and her rationale for re-marking it has been deemed credible. Any deviation from the instructions as to a requirement that "change" must be documented is deemed minor or insignificant. Documenting a "change" is deemed minor and insignificant in this case, because the notation for a score of "4" was contemporaneous with the initial mark and not a later after-thought.

JSP cites the RFP scoring instructions specifying how changes were to be documented, and McNeal's failure to follow the instructions. The exception is denied. McNeal was questioned extensively concerning the score changes, and her testimony is consistent with the ALJ's finding. (T.123-25).

11. JSP's eleventh exception is directed at RO paragraph 18, where the ALJ addressed JSP's contention that evaluator Surls demonstrated a lack of understanding when she gave JSP a score of "3" in all categories. The ALJ found that Surls "was consistent and thorough in her review of the proposals and commented appropriately as to the basis for each score." The exception is denied. Surls explained her scoring (T.114-15), and the

scoresheets provide the necessary comments in support of the scores (Petitioner's Exhibit 17).

12. JSP's twelfth exception is directed at RO paragraph 19, where the ALJ found that Intervenor's "Technical Proposal narrative" did not exceed sixty pages. JSP contends that Intervenor's Technical Proposal narrative was 119 pages. The exception is denied. Competent substantial evidence supports the ALJ's finding that the narrative portion of Intervenor's Technical Proposal did not exceed sixty pages. (T.69-70, 100-01, 105-06; Petitioner's Exhibit 5).

13. JSP's thirteenth exception is directed at RO paragraph 21, where the ALJ found that "[a]ll proposals were given the same consideration and thoughtful review." As grounds to reject this finding, JSP cites the need for a scoring clarification, and evaluator McNeal's lack of experience evaluating bid proposals.

The exception is denied. JSP does not explain how this being McNeal's first time evaluating proposals means that she or her co-evaluators necessarily failed to provide thoughtful review. Nor is it apparent how the need for a scoring clarification reflects a lack of consideration or care. Elaine Atwood's testimony concerning the debriefing session that was held is competent substantial evidence supporting the challenged finding. (T.80).

14. JSP's fourteenth exception is directed at RO paragraph 22, where the ALJ found as follows:

> The Department has used RFPs to cover multiple circuits in numerous instances. Petitioner did not timely challenge the process of providing for proposals for multiple circuits. Moreover, no evidence supports a finding that the process of covering multiple circuits within one RFP is inherently flawed or contrary to law.

Specifically, JSP disputes the ALJ's statement that "no evidence supports a finding" that an RFP covering multiple circuits is inherently flawed. Here, JSP again cites the need for clarification of McNeal's scores.

The exception is denied. Elaine Atwood explained the need for clarification in McNeal's scoring given that there were separate staffing scoring packets for each of the proposed circuits. The matter was adequately addressed, and is not indicative of an inherent flaw in the procurement (T.85-86).

15. JSP's fifteenth exception is directed at the conclusion of law in RO paragraph 30, where the ALJ found that the Department's "use of a spreadsheet from which to select eligible evaluators does not favor any party over another or demonstrate any inherent bias in the scoring system." The exception is denied, as JSP fails to cite evidence or argument that would contradict the ALJ's conclusion.

16. In its final exception, JSP challenges the entirety of RO paragraph 31, in which the ALJ concluded as follows:

> It is concluded that the Department's intended award of this contract to White is based upon the information that was available to the agency at the time the proposals were evaluated; that none of the evaluators intentionally (or otherwise) incorrectly

> scored the proposals; that the scoring was clear and unambiguous; that no party was inappropriately favored over another; that the process in this case supported competitive bidding; and that the Department's decision in this cause is supported by facts and logic. In short, Petitioner has failed to meet its burden in this case.

Here, JSP merely re-alleges its previous exceptions, offering nothing specifically directed at the challenged conclusion. For the reasons set out above, this 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 11th day of April, 2011, in Tallahassee, Florida.

Wansley Walters

WANSLEY WALTERS, Secretary
Department of Juvenile Justice

Chakita Jenkins

Chakita Jenkins, Agency Clerk
Filed this 11th 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.