

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

TRAVELER ELEVATOR, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 FLORIDA SCHOOL FOR THE ) Case No. 12-2288BID  
 DEAF AND THE BLIND, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

On July 26, 2012, a duly-noticed video conference hearing was held with sites in Jacksonville and Tallahassee, Florida, before F. Scott Boyd, an Administrative Law Judge assigned by the Division of Administrative Hearings.

APPEARANCES

For Petitioner: William David Talbert II, Esquire  
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Jacksonville, Florida 32207

For Respondent: Frank Damon Kitchen, Esquire  
Constangy, Brooks and Smith, LLC  
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Jacksonville, Florida 32202

STATEMENT OF THE ISSUE

Whether Respondent's rejection of all bids submitted in response to ITB-05-23-12, relating to a contract for annual elevator maintenance and repair services, is illegal, arbitrary, dishonest, or fraudulent.

PRELIMINARY STATEMENT

On May 23, 2012, Respondent, Florida School for the Deaf and the Blind (the School), solicited competitive bids for the award of its annual elevator maintenance, inspection, and repair services contract. On June 18, 2012, the School posted the bid tabulation and its notice of award recommendation to the lowest bidder, Otis Elevator (Otis). The next-lowest bidder, Traveler Elevator (Traveler), served the School with an e-mail notice of its intent to protest the decision on June 18, 2012, and hand-delivered its written formal protest in letter form later that same day. On June 21, 2012, the School advised Traveler and the other bidders that it was exercising its right to reject all bids. It further advised that a date for the rebidding of the contract had not been determined. On June 22, 2012, Traveler e-mailed the School, objecting to the rejection of all bids and requesting a formal hearing. On June 29, 2012, the matter was referred to the Division of Administrative Hearings (Division) for assignment of an administrative law judge.

Hearing was set for July 26, 2012. Stipulated facts contained in the Joint Prehearing Statement were accepted and Petitioner's Exhibits P-1 through P-4 and Respondent's Exhibits R-1 through R-9 were admitted, all without objection. Petitioner offered the testimony of one witness, Mr. Mark DeWitt, Traveler's party representative. Respondent offered the

testimony of six witnesses, all School employees: Mr. Jerry Chandlee, Police Chief; Ms. Victoria Cannon, Security Officer; Mr. Jerry Arsenault, Facilities Superintendent; Mr. Dennis Baker, Project Manager; Ms. Donna Thompson, Administrative Assistant; and Ms. Laura Bowden, Contract Administrator.

The Transcript was filed with the Division on August 13, 2012. Respondent timely submitted a Proposed Recommended Order. Petitioner submitted a Proposed Recommended Order seven days after the deadline. On September 4, 2012, Respondent filed a Motion to Strike Petitioner's Late-Filed Proposed Recommended Order. Respondent asserted that it would be prejudiced because, unlike Petitioner, Respondent did not have the opportunity to review Petitioner's Proposed Recommended Order before filing. On September 11, 2012, Petitioner's Response in Opposition to Respondent's Motion to Strike was filed, setting forth reasons for the delay and averring that Petitioner had not read Respondent's Proposed Recommended Order before filing. Although filed seven days late, under all of the circumstances the undersigned finds no prejudice would result from consideration of Petitioner's Proposed Recommended Order. The Motion to Strike is denied. Both Proposed Recommended Orders were considered in the preparation of this Recommended Order.

## FINDINGS OF FACT

1. Respondent Florida School for the Deaf and the Blind is a state-supported residential public school for hearing-impaired and visually-impaired students in preschool through 12th grade.

2. Access to the School is restricted for the protection of the students that are enrolled there. Visitors to the School campus must obtain credentials through a visitor identification badging system maintained by the Campus Police Department before they are permitted to enter. There are only two locations from which access badges may be obtained. The first is the Campus Police Department Communications Center and the second is the Campus Police Department Guardhouse at the Genoply Street gate. There are no off-campus locations from which badges may be obtained.

3. Petitioner Traveler is a corporation registered with the Department of Business and Professional Regulation under the provisions of chapter 399, Florida Statutes, to construct, install, inspect, maintain, and repair elevators. Mr. Mark DeWitt is an owner of Traveler.

4. Otis was the incumbent contractor providing service to the School's elevators, a position it had held for the last three years.

5. On May 23, 2012, in Invitation to Bid 05-23-12 (the ITB), the School solicited competitive bids for the award of a contract to provide elevator maintenance, inspection, and repair services for elevators at various locations on the School campus (contract).

6. The ITB was a one page document which stated:

The Florida School for the Deaf and the Blind, 207 N. San Marco Avenue, St. Augustine, FL 32084 will receive bids in the Purchasing Department June 14, 2012, until 2:00 p.m. for the purpose of selecting an Elevator contractor for supplying all labor, material, and ancillary services required for the scope listed below.

Scope of Project: The purpose and intent of this invitation to bid is to select (1) Elevator contractor who is OEM certified and OEM trained to provide preventative maintenance (PM) services to elevators on a monthly schedule at various campus locations and who will deliver and install parts and provide emergency repair service for a period of (1) year with the option to renew (2) additional years contingent upon availability of funding and satisfactory performance by the contractor.

Licensing Requirements: All contractors must possess any applicable licenses required for this type of work per the State of Florida Department of Business and Professional Regulation.

Mandatory Pre Bid Conference: A mandatory pre bid conference will be held at The Florida School for the Deaf and the Blind, 207 N. San Marco Avenue, St. Augustine, FL 32084, Hogel Building #27, Conference Room on June 7, 2012 at 10:00 a.m. All attendees will be checked through Campus Security, so

allow ample time. Attendance at this pre bid conference is mandatory in order for all potential bidders to receive the benefit of answers to theirs and other's technical questions first hand. It is imperative that all the information be disseminated in a public forum with all potential bidders present to minimize confusion or misunderstandings. Additions or changes to the original bid documents resulting from this conference of a material nature will be documented in the form of written addenda and distributed to all attendees. Please note that if you are late to this mandatory pre bid conference you will not be eligible to sign the attendance roster and therefore may not submit a bid.

Any person with a qualified disability requiring special accommodations at the pre bid conference and/or bid opening shall contact the Purchasing Office at 904-827-2356 at least (5) working days prior to this event. If you are hearing or speech impaired, please contact this office by using the Florida Relay Services which can be reached at 1-800-955-8772.

The Florida School for the Deaf and the Blind reserves the right to reject any and all bids and accept minor irregularities in the best interest of the State of Florida.

7. Neither Traveler nor any other bidder filed a notice of protest to the terms, conditions, or specifications contained in the solicitation within 72 hours of the posting of this solicitation.

8. As provided in the ITB, a pre-bid conference was held regarding the contract at 10:00 a.m. on June 7, 2012, in the Hogel Maintenance Building Conference Room.

9. Mr. DeWitt and Mr. Jim Halstead, another owner of Traveler, arrived at the conference room about 9:40 a.m. They had taken about two minutes to pass through the security gate at the front of the campus, and about ten minutes more to then navigate the speed bumps, stop signs, and crosswalks to arrive at the Hogel Maintenance Building area and make their way to the conference room.

10. Prior to 10:00 a.m. two cars, containing Mr. Joe Ramos and Mr. Max Stanley of Kone Elevators and Mr. David Baskin of Otis, were at the Campus Police Department Communications Center attempting to get access badges. Security Officer Victoria Cannon attempted to scan their identification cards to process them through the electronic visitor identification manager software, but the program was "frozen" on her computer screen and she was unable to do so. She attempted to "tinker" with the computer to get it to work, but was unsuccessful. She instead checked the visitors' identification and prepared the old handwritten badges that had been used prior to the electronic scan system. These were self-adhesive badges with a red background that the occupants of the vehicles put on their clothes. The old badges had not been used for about seven years, because the School had put in the electronic system to enhance security. A stock of the old badges had been maintained to use as a temporary backup if the electronic system went down.

Officer Cannon testified that the men were "delayed a little" but provided no more specific estimate as to the length of time.

11. When the three men left the Campus Police Department Communications Center, Officer Cannon then communicated with Security Officer Bruce Hardy in the guardhouse to let him know that the visitors had been approved for entry onto the campus, so they would not have to be run through the system at the guardhouse.

12. Campus Police Chief Jerry Chandlee was at the police guardhouse on Genoply Avenue with Officer Hardy when the call to Officer Hardy from Officer Cannon came in. When the first vehicle arrived, Chief Chandlee saw the red temporary visitor ID badge. It was about 9:55 a.m. He decided that he wanted to issue the standard electronic visitor ID badge so that identification information would be collected electronically, as the system had been set up to do. The electronic information allows a check with the Florida Crime Information System and the National Crime Information System. Chief Chandlee then called Officer Cannon to find out why the men had been given the old red manual badges and learned that her computer had not been working correctly. The second vehicle arrived at the gate about 9:58 a.m. Chief Chandlee directed Officer Hardy to request driver's licenses again from all three men and to process them



through the electronic system. Chief Chandlee said it only took about a minute to process each electronic identification card.

13. Chief Chandlee learned when talking with the occupants of the second vehicle that the men were seeking entry to the campus to attend the pre-bid conference. Chief Chandlee was requested to make a courtesy call to the location of the bid meeting informing them that the men had been detained by security and might be late. Chief Chandlee apologized for the delay and asked Officer Hardy to make the call. When Officer Hardy called Administrative Assistant Donna Thompson to explain that bidders had been held up by the Campus Police Department, she replied, "Well, it's ten o'clock. So they need to hustle." Ms. Thompson was sitting inside her office. She did not immediately inform Ms. Laura Bowden, who was in charge of the pre-bid conference and was already inside the conference room with the door closed. Ms. Thompson decided to go to the building entrance to make sure that the men found the building without a problem.

14. At about 10:00 a.m., the pre-bid conference was convened by Ms. Laura Bowden. She began by reading the contract. Also present at this time, in addition to Ms. Bowden, Mr. DeWitt, and Mr. Halstead, were several others: Mr. Harper Smith, representing ThyssenKrupp Elevators; Mr. Cliff Vaughn, Representing First Coast Elevators; Mr. Noel Fossette,

representing Schindler Elevator; Mr. Jerry Arsenault, Facilities Superintendent for the School; and Mr. Dennis Baker, a Project Manager for the School. At the conference, bidders were provided a copy of a "pre-bid packet" containing additional information about the elevator contract.

15. When the three men arrived at the Hogel Maintenance Building, Ms. Thompson was waiting for them. She opened up the building entrance door and waved, because they were about to pass by it, brought them inside the building, and escorted them over to the conference room door. Ms. Thompson then returned to her office.

16. Ms. Bowden had read a couple of pages of the contract, when Mr. Ramos, Mr. Stanley, and Mr. Baskin came into the meeting. Ms. Bowden said, "You're late." As soon as she did so, Mr. Arsenault instinctively looked at the clock on the wall. He testified that it read 10:07 a.m. Mr. Baker also testified that it was seven or eight minutes past 10:00 when the men arrived. One of the men responded to Ms. Bowden's comment with the statement that police security had already called the secretary.

17. Ms. Bowden left the conference room and went to Ms. Thompson's office. Ms. Bowden asked Ms. Thompson if she knew why the bidders had been late. Ms. Thompson explained that she had received a call from Officer Hardy, stating that the

Campus Police had held them up there. Ms. Bowden thanked her and returned to the conference room.

18. Once back in the conference room, Ms. Bowden restarted the meeting. She began reading the contract again from the beginning. No questions had been asked before the late arrivals, and there was no information that had been given earlier that was not repeated when the meeting was restarted. The late-bidders were allowed to sign the attendance roster. No one protested that late-bidders were allowed to attend the meeting, that the meeting was restarted, or that the late-bidders were allowed to sign the attendance roster.

19. Ms. Bowden was aware that the ITB stated that any bidder late to the pre-bid conference would not be eligible to sign the attendance roster and could not submit a bid. However, based on the information she had from Ms. Thompson, Ms. Bowden decided that it had been the School's fault, and not their own, that the late bidders had not arrived at the conference room on time. She allowed the late-bidders from Kone and Otis to attend the pre-bid conference because under the circumstances she thought their late arrival was a minor irregularity. As indicated in the ITB, attendance at the pre-bid conference was mandatory to allow all potential bidders to receive the benefit of answers to their own and others' technical questions firsthand. Ms. Bowden had received no questions prior to the

entry of the Kone and Otis representatives, and she started the meeting over to ensure that all bidders received the same information.

20. On June 14, there was a public bid opening, which was attended by Mr. DeWitt of Traveler as well as Mr. Baskin and another representative of Otis, among others. Traveler could hear who the bidders were, and was aware that Otis had been allowed to submit a bid. At that time, Traveler made no objection that Otis had been permitted to bid.

21. The School applied the same criterion to all bids when evaluating them. Rankings in various categories were combined pursuant to a weighted formula to arrive at a total weight for each bidder. In the overall ranking of the bids, Otis ranked first, while Traveler came in second.

22. On June 18, 2012, at 9:30 a.m., the Bid Tabulation and Notice of Award Recommendation was posted. The School prepared and disseminated it to each of the bidders. It indicated that the School was recommending that the contract be awarded to Otis as the lowest responsive bidder. Traveler was listed as the second lowest bidder.

23. Traveler e-mailed a Notice of Protest in response to the School's recommendation about 10:49 a.m. on June 18, 2012, followed the same day by a formal protest. As grounds for its

protest, Traveler contended that Otis had been late to the pre-bid conference, and pursuant to the procedures set forth in the ITB should not have been allowed to sign the attendance roster or submit a bid.

24. Ms. Bowden still believed the late arrival of Otis was a minor irregularity, but she could not know if an administrative law judge would necessarily agree. Traveler was contesting that conclusion, claiming that the failure of Otis was a material deviation from the explicit bid specifications and that the School was required to reject the Otis bid and award the contract to Traveler. She testified that if she had determined that the late arrival to the pre-bid conference by Otis had been a material deviation, and awarded the contract to Traveler, that she believed that Otis would surely have protested. After careful consideration and discussions with counsel, Ms. Bowden decided to reject all bids.

25. On June 21, 2012, the School notified Traveler and the other bidders that it was exercising its right to reject all bids and re-bid the contract, at a yet undetermined date in the future.

26. On June 22, 2012, Traveler e-mailed the School, objecting to FSDB's rejection of all bids and requesting that the matter be referred to the Division of Administrative Hearings.

27. On July 10, 2012, Respondent filed a Notice of Compliance with Paragraphs 2 and 3 of the Order of Pre-Hearing Instructions, indicating that it had notified all bidders that if they wished to intervene they must file a Petition to Intervene at the earliest practicable date. No Petition to Intervene was received from any person prior to hearing.

28. At hearing on July 26, 2012, Mr. Cliff Vaughn appeared and asked that he be allowed to participate, or in the alternative that a continuance be granted. Mr. Vaughn was a corporate officer of First Coast Elevator, the third-place bidder. Mr. Vaughn stated he supported the School's action in rejecting all bids. Mr. Vaughn admitted that he had received the notice requiring him to file a Petition if he wished to Intervene.

29. No Petition had been filed by Mr. Vaughn and his appearance at hearing was the first time either party was aware of his interest. He was not eligible to represent his corporation in a "pro se" capacity. Given the statutory policy in favor of expedited hearings in bid protests, the granting of a continuance after the hearing had begun would not serve the public interest and would be unfair to the parties. His requests were denied.

30. The School's rejection of all bids does not have the purpose or effect of defeating the object and integrity of the competitive bidding process and does not give an unfair competitive advantage to any bidder.

31. The School's rejection of all bids is not illegal, arbitrary, dishonest, or fraudulent.

#### CONCLUSIONS OF LAW

32. The Division of Administrative Hearings has jurisdiction over the subject matter and parties in this case under sections 120.569 and 120.57(1), Florida Statutes.

33. Petitioner bears the burden of proof, which rests with the party protesting proposed agency action. § 120.57(3)(f); State Contracting and Eng. Corp. v. Dep't of Transp., 709 So. 2d 607, 609 (Fla. 1st DCA 1998).

34. As a preliminary matter, Respondent argues that Petitioner has waived its right to protest because the challenge is actually an untimely protest of the specifications of the ITB.

35. Respondent cites section 120.57(3)(b), which establishes the applicable point of entry for a challenge to bid specifications. It provides in part: "With respect to a protest of the terms, conditions, and specifications contained in a solicitation, including any provisions governing the methods for ranking bids, proposals, or replies, awarding contracts,

reserving rights of further negotiation, or modifying or amending any contract, the notice of protest shall be filed in writing within 72 hours after the posting of the solicitation." The solicitation was posted on May 23, 2012. The protest was not filed until June 18, 2012.

36. Contrary to Respondent's assertion, no protest to the specifications of the ITB is involved here. Petitioner is not objecting to the terms, conditions, or specifications of the ITB, to which it would indeed have been required to raise objection within 72 hours after posting. Specification protests are intended to allow an agency to correct or clarify specifications prior to accepting bids in order to save expense to the bidders and to assure fair competition. Consultech of Jacksonville v. Dep't of Health, 876 So. 2d 731, 734 (Fla. 1st DCA 2004).

37. In fact, the actual grounds of protest in this case -- that Otis was admitted to the pre-bid conference, was permitted to sign the attendance roster, and was allowed to submit a bid -- did not arise, at the earliest, until June 7, 2012, well after the 72-hour window of opportunity had passed. The Administrative Procedure Act does not require bidders to accurately prophesy the future to avoid waiving claims that have yet to arise. Claims that an agency's subsequent bid solicitation processes are flawed are considered in a protest of



the intended decision. Cf. Fort Howard v. Dep't of Mgmt. Servs., 624 So. 2d 783, 784 (Fla. 1st DCA 1993).

38. Respondent next argues that even if this was not a protest of the bid specifications, Petitioner nevertheless had an obligation to object as soon as it became aware of what it perceived to be any procedural defects in the conduct of the solicitation. Respondent notes that it was apparent to Petitioner at the pre-bid conference -- or at various points after that, but prior to the announcement of intended award -- that Respondent was going to accept, or had accepted, a bid from Otis, and yet Petitioner raised no protest or objection at any of those points, but instead waited until the intended award was announced.

39. A protest to procedures followed by Respondent on June 7, 2012, during the pre-hearing conference and, especially, in subsequently failing to reject the bid from Otis, did not need to be raised until the intended award was announced. GTECH Corp. v. Dep't of the Lottery, 737 So. 2d 615 (Fla. 1st DCA 1999) (remedy for violation of contract procurement procedures is cognizable in chapter 120 hearing). The point of entry for such procedural protests is set by statute. The time for filing a protest begins to run upon the posting of the intended decision, which occurred on June 18, 2012. Petitioner needed to post a notice of protest within 72 hours, and a formal written protest

within ten days. Petitioner did this, and cannot be said to have waived its protest because it failed to complain earlier.

40. Petitioner's challenges to the intention to award the contract to Otis and to the subsequent determination to reject all bids were therefore timely filed.

41. At hearing, Mr. Vaughn appeared, requesting that he be allowed to represent First Coast Elevator or that a continuance be granted. These requests were denied. Mr. Vaughn was ineligible to represent his corporate entity in a "pro se" capacity, but having not filed a Petition to Intervene, had not been informed of this. Given the expedited nature of bid protests, and the preparation of the parties and witnesses, a last-minute continuance was found to be unfair to the parties.

42. In a bid protest proceeding brought following the rejection of all competitive proposals, the applicable standard of review is that developed in Dep't of Transp. v. Groves-Watkins Constructors, 530 So. 2d 912, 914 (Fla. 1988), a case in which the Florida Supreme Court held that the administrative law judge's "responsibility is to ascertain whether the agency acted fraudulently, arbitrarily, illegally or dishonestly." The Administrative Procedure Act was subsequently amended to provide that this was the applicable standard when an agency rejects all bids. § 120.57(3)(f).

43. This is a stringent burden. As the First District has stated, "an agency's rejection of all bids must stand, absent a showing that the 'purpose or effect of the rejection is to defeat the object and integrity of competitive bidding.'" Gulf Real Props., Inc. v. Dep't of HRS, 687 So. 2d 1336, 1338 (Fla. 1st DCA 1997).

44. Petitioner did not allege that the Department's action in rejecting all bids was fraudulent, illegal, or dishonest, and there was no evidence presented suggesting that it was. Petitioner contends that Respondent's decision to reject all bids is arbitrary.

45. Testimony at hearing indicated that Respondent based its original decision to award the contract to Otis on its belief that Respondent itself had been responsible for the failure of Otis to show up at the pre-hearing conference on time. Cf. Asphalt Pavers, Inc. v. Dep't of Transp., 602 So. 2d 558 (Fla. 1st DCA 1992) (rejection of bid for failure to include a form that the agency itself lost was clearly arbitrary). Respondent also noted that the purpose of making the conference mandatory was for all bidders to receive the same answers to questions at the same time, and that this purpose was in no way impaired because there had been no questions asked before the meeting was restarted.

46. On the other hand, Petitioner's witness at hearing testified that it took ten minutes after leaving the police guardhouse to get to the conference room, suggesting that even without the few minutes of delay occasioned by police security procedures there, the Otis representative would have been late anyway. Further, Petitioner emphasized the mandatory language in the ITB, and noted that it expressly warned potential bidders to allow ample time for security.

47. In this proceeding challenging the decision to reject all bids, however, it is neither necessary nor appropriate to determine whether the fact that Otis was late to the pre-bid conference constitutes a minor irregularity, as Respondent initially determined, or a material deviation, as Petitioner later contended. In Moore v. Department of Health and Rehabilitative Services, 596 So. 2d 759, 761 (Fla. 1st DCA 1992), it was noted that when the only responsibility of the ALJ is to determine whether an agency has acted arbitrarily, there is no authority to make a de novo evaluation of bids. While the 1996 amendments to section 120.57(3)(f) have largely superseded Moore, its statement on the limited role of the ALJ still has applicability to cases involving agency action to reject all bids.

48. Therefore, the only issue here is whether or not it was arbitrary for Respondent to reject all bids after it had weighed the arguments that it was a minor irregularity against those that it was a material deviation.

49. Section 120.57(3)(c) provides that upon the receipt of a timely formal written protest, the agency shall stop the solicitation process until the protest is resolved by final agency action. Notwithstanding this language, the awkward process of rejecting all bids after a notice of award has already been announced and bids have been made public has been upheld unless the public agency acts in an arbitrary fashion. Caber Systems v. Dep't of Gen. Servs., 530 So. 2d 325 (Fla. 1st DCA 1988).

50. An arbitrary decision is one that is not supported by facts or logic, or is despotic. Agrico Chem. Co. v. Dep't of Env'tl. Reg., 365 So. 2d 759, 763 (Fla. 1st DCA 1978).

51. Where an agency, in deciding to reject all replies, has engaged in an honest, lawful, and rational exercise of its "wide discretion in soliciting and accepting bids for public improvements" its decision will not be overturned, even if it may appear erroneous and even if reasonable persons may disagree. Dep't of Transp. v. Groves-Watkins Constructors, 530 So. 2d 912, 913 (Fla. 1988) (quoting Liberty Co. v. Baxter's Asphalt and Concrete, Inc., 421 So. 2d 505, 507 (Fla. 1982)).

52. At the time it was considering what action to take in response to Petitioner's initial protest against the intention to award the contract to Otis, Respondent faced a dilemma. Action rejecting the Otis bid would likely be considered arbitrary if it was later determined that Otis' late appearance at the pre-bid conference was only a minor irregularity. Cf. Overstreet Paving Co. v. Dep't of Transp., 608 So. 2d 851 (Fla. 2d DCA 1992) (no public benefit derives from rejecting low bidder for technical deficiency in the absence of unfair competitive advantage); Intercontinental Props. v. Dep't of HRS, 606 So. 2d 380, 386 (Fla. 3rd DCA 1992) ("There is no public interest, much less a substantial public interest, in disqualifying low bidders for technical deficiencies in form, where the low bidder did not derive any unfair competitive advantage by reason of the technical omission."). On the other hand, action awarding the contract to Otis would likely be overturned if being late to the conference was instead later determined to be a material deviation. Respondent's proposed action would then be found to be contrary to the governing bid specifications. GTECH Corp. v. Dep't of the Lottery, 737 So. 2d 615, 619 (Fla. 1st DCA 1999). In that case, Petitioner, as the second lowest bidder, would be entitled to the contract.

53. While Respondent believed that arriving late to the pre-bid conference was only a minor irregularity, it could not be certain. Even appellate courts sometimes struggle when determining what constitutes a minor irregularity as opposed to a major deviation. Baxter's Asphalt & Concrete v. Liberty Cnty, 406 So. 2d 461, 463 (Fla. 1st DCA 1981) (bid for only one of two alternatives was major deviation), rev'd, Liberty Cnty v. Baxter's Asphalt & Concrete, 421 So. 2d 505, 507 (Fla. 1982) (bid for only one of two alternatives was minor irregularity). Ms. Bowden testified that she could not be sure how this issue would ultimately be resolved. Respondent had expressly reserved the right to reject all bids, and after careful consideration and discussions with counsel, it did so.

54. Under these circumstances, it cannot be said that it is arbitrary for Respondent to simply reject all bids and start over. Petitioner offered no evidence to suggest that the rejection of all bids favors another bidder over Petitioner or that the effect of the rejection would in any way undermine the process of competitive bidding.

55. An agency's rejection of all bids must stand, absent a showing that the "purpose or effect of the rejection is to defeat the object and integrity of competitive bidding." Dep't of Transp. v. Groves-Watkins Const., 530 So. 2d 912, 913

(Fla. 1988); Gulf Real Props. v. Dep't of HRS, 687 So. 2d 1336, 1338 (Fla. 1st DCA 1997).

56. Petitioner did not meet its difficult burden of proving that Respondent's rejection of all bids is illegal, arbitrary, dishonest, or fraudulent.

RECOMMENDATION

Upon consideration of the above findings of fact and conclusions of law, it is

RECOMMENDED:

That the Florida School for the Deaf and the Blind enter a final order finding that the rejection of all bids submitted in response to Invitation to Bid 05-23-12 is not illegal, arbitrary, dishonest, or fraudulent, and dismissing Petitioner's protest.

DONE AND ENTERED this 14th day of September, 2012, in Tallahassee, Leon County, Florida.

*F. Scott Boyd*

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F. SCOTT BOYD  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 14th day of September, 2012.



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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 10 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.