

STATE OF FLORIDA
DEPARTMENT OF MANAGEMENT SERVICES

JACKSONVILLE SOUND AND
COMMUNICATIONS, INC.,
Petitioner,

Final Order No. DMS – 14-0009

vs.

DOAH Case No. 13-4590BID
DMS No.: 13-27828

DEPARTMENT OF MANAGEMENT SERVICES,

Respondent,

And

FUTURE COMPUTER SYSTEMS, LLC,

Intervenor.

2014 FEB 12 PM 11 20
DIVISION OF
ADMINISTRATIVE
HEARINGS

FILED

FINAL ORDER

PRELIMINARY STATEMENT

After being formally notified of the Department of Management Services' (DMS) Intent to Award a contract for fire system upgrade services, the Petitioner, Jacksonville Sound and Communications, Inc., (Jacksonville Sound) timely filed a petition for hearing and the case was referred to the Division of Administrative Hearings. Thereafter, on November 27, 2013, Future Computer Systems, LLC, (FCS) petitioned to intervene, which request was granted.

Pursuant to notice, the Division of Administrative Hearings, by its duly designated Administrative Law Judge, Lawrence P. Stevenson, held a formal hearing in the above-styled case on December 17, 2013.

At the final hearing, Jacksonville Sound presented the testimony of Brian K. Lockwood, its Jacksonville branch manager; Tom Milhon, its Vice President of

Operations; and Jere Lahey, the DMS procurement officer and contract manager who drafted the nontechnical specifications of the Invitation to Bid (ITB) and oversaw the procurement. Jacksonville Sound's Exhibits 1 through 3 and 5 through 8 were admitted into evidence. DMS called Mr. Lahey as its own witness and also presented the testimony of Stuart Piccolo, the DMS engineering specialist who drafted the technical specifications for the ITB. DMS offered no exhibits. FCS presented the testimony of its employees Jimmy Ray Garrard, Jr., Randy Kight, and Dean Thomas Grey, and called Mr. Lahey as its witness. FCS offered no exhibits.

A transcript of the proceeding was filed at DOAH on January 15, 2014. The parties timely filed their Proposed Recommended Orders on January 27, 2014.

A Recommended Order was entered on February 24, 2014. No Exceptions to the Recommended Order have been filed.

STATEMENT OF THE ISSUE

At issue in this proceeding is whether DMS acted contrary to its governing statutes, rules or policies, or the bid specifications in its proposed decision to award the contract for ITBid No. MSFM-13002020 to Intervenor FCS.

STANDARD OF REVIEW

Subsection 120.57(1)(l), Florida Statutes (2013), provides that an agency reviewing a DOAH recommended order may not reject or modify the findings of fact of an ALJ, "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 on competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law." Florida law defines "competent substantial

evidence" as "such evidence as is sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." DeGroot v. Sheffield, 95 So. 2d 912, 916 (Fla., 1975). Furthermore, an agency may not create or add to findings of fact because an agency is not the trier of fact. See Friends of Children v. Department of Health and Rehabilitative Services, 504 So. 2d 1345, 1347, 1348 (Fla. 1st DCA, 1987).

Subsection 120.57(1)(l), Florida Statutes (2013), provides that an agency may reject or modify an administrative law judge's conclusions of law and interpretations of administrative rules "over which it has substantive jurisdiction" whenever the agency's interpretations are "as or more reasonable" than the interpretation made by the Administrative Law Judge. Florida courts have consistently applied this subsection's "substantive jurisdiction limitation" to prohibit an agency from reviewing conclusions of law that are based upon the Administrative Law Judge's application of legal concepts such as collateral estoppel and hearsay; but not from reviewing conclusions of law containing the Administrative Law Judge's interpretation of a statute or rule over which the Legislature has provided the agency administrative authority. See Deep Lagoon Boat Club, Ltd. v. Sheridan, 784 So. 2d 1140, 1141-42 (Fla. 2d DCA, 2001); Barfield v. Department of Health, 805 So. 2d 1008, 1011 (Fla. 1st DCA, 2001). Further, an agency's interpretation of the statutes and rules that it administers is entitled to great weight, even if it is not the sole possible interpretation, the most logical interpretation, or even the most desirable interpretation. See State Board of Optometry v. Florida Society of Ophthalmology, 538 So.2d 878, 884 (Fla. 1st DCA, 1998.).

FINDINGS OF FACT

The Department of Management Services accepts the Findings of Fact set forth in the Recommended Order, which are incorporated herein by reference.

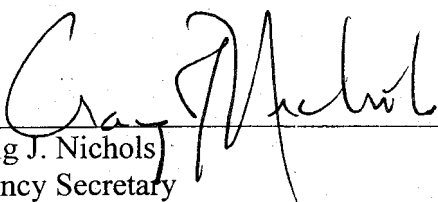
CONCLUSIONS OF LAW

The Department of Management Services accepts the Conclusions of Law set forth in the Recommended Order, which are incorporated herein by reference.

ORDER

Based on the foregoing, it is hereby ORDERED AND DIRECTED that the Petition from Jacksonville Sound and Communications, Inc., challenging the award of Invitation to Bid No. MSFM-13002020, is hereby DISMISSED.

DONE AND ORDERED this 11th day of March 2014, in Tallahassee, Leon County, Florida.



Craig J. Nichols
Agency Secretary
Department of Management Services
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NOTICE OF RIGHT TO JUDICIAL REVIEW

Unless expressly waived by a party such as in a stipulation or in other similar forms of settlement, any party substantially affected by this final order may seek judicial review by filing an original Notice of Appeal with the Agency Clerk of the Department of Management Services, and a copy, accompanied by filing fees prescribed by law, with the Clerk of the appropriate District Court of Appeal. The Notice of Appeal must be filed

within thirty (30) days of rendition of this order, in accordance with Rule 9.110, Fla. R. App. P., and section 120.68, Florida Statutes.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this Final Order was filed in the official records of the Department of Management Services, and copies distributed by U.S. Mail to the parties below, on the 11th day of March, 2014.



Michael Sivilla
Agency Clerk
Department of Management Services

Copies furnished to:

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