

BEFORE THE SCHOOL BOARD OF LEON COUNTY, FLORIDA

MARK'S LAWN MAINTENANCE, INC. **FILED**

Petitioner, 2014 AUG 21 AM 11 52

vs.

DIVISION OF
ADMINISTRATIVE
HEARINGS

DOAH Case No.: 14-2673BID
Order No. LCS 2014-001BID

LEON COUNTY SCHOOL BOARD,

Respondent.

FINAL ORDER

This matter came upon before the Board for entry of a Final Order upon entry of an Order Relinquishing Jurisdiction by June McKinney, an Administrative Law Judge of the Florida Division of Administrative Hearings, and, having reviewed the same, and all other matters of record, and being otherwise advised in the premises, the Board finds and concludes as follows:

FINDINGS OF FACT

1. On April 18, 2014, the Board issued an Invitation to Bid ("2014 ITB") for holding pond and related grounds maintenance work. The 2014 ITB specifically advised bidders that the Board reserved the right to contract "all or none, or by group to responsible and responsive bidder(s) determined to be the most advantageous to the District, taking into consideration price, product quality and other requirements as set forth in this ITB." The language in the 2014 ITB gives the Board the discretion to award the contract to one bidder, several bidders or no bidders.

2. The 2014 ITB specifically advised bidders of their right to challenge the terms and conditions of the ITB. Petitioner, Mark's Lawn Maintenance, Inc., did not challenge the terms or conditions of the 2014 ITB.

3. The 2014 ITB specifically informed bidders that local and small business certification preferences were available to bidders, where applicable. Petitioner was given a 3% local preference for having a business in an adjoining county. Val's Lawncare, Inc. ("Val's") received a 5% small business certification preference. Applying the discount, Val's was the lowest bidder.

4. In 2007 and 2010, the Board issued ITBs for holding ponds and grounds maintenance services, and, each time, the contract was awarded to multiple bidders.

5. The 2014 ITB was awarded in accordance with the terms and conditions set forth therein, and not any prior practice or any language from prior ITBs.

CONCLUSIONS OF LAW

1. This matter is governed by Section 120.57(3), Florida Statutes.

2. In order to prevail in a bid protest proceeding, one must prove that the proposed action is contrary to governing statute, the agency's rules or policies, or terms and conditions of the invitation to bid. The standard of proof is whether the proposed action was clearly erroneous, contrary to competition, arbitrary or capricious.

3. Petitioner does not allege any action that is contrary to a governing statute, the Board's policies or the terms and conditions of the 2014 ITB. Rather, Petitioner argues that the Board established a "precedent" when it awarded contracts for similar work in 2007 and 2010 to multiple bidders. However, as expressed by the

Administrative Law Judge in the Order Relinquishing Jurisdiction, the Board is not bound to continue a practice established in a prior bid process. Each solicitation is subject to the particular terms and conditions that are set forth in that solicitation's ITB. That the 2007 and 2010 bids may have resulted in awards to multiple bidders, does not bind the Board to award the 2014 ITB to multiple bidders. As set forth in the 2014 ITB, the Board may award "all" or to one bidder, "none", by rejecting all bids, or "by group" to multiple bidders. The intended award is to one bidder, Val's, which is not contrary to statutes, the Board's policies or the terms and conditions of the 2014 ITB.

ORDER

Based upon the foregoing findings of fact and conclusions of law, it is ORDERED:

1. The formal written protest of Mark's Lawn Maintenance, Inc. is dismissed.
2. The award of the contract for holding pond and grounds maintenance services to Val's Lawn Care, Inc., is approved.

This Order may be appealed within thirty (30) days by filing a notice of appeal with the School Board, and with the Florida District Court of Appeal, First District, together with the filing fee. See Section 120.68, Florida Statutes, Fla.R.App.P. 9.110(c).

DONE AND ORDERED this 19th day of August, 2014.

THE SCHOOL BOARD OF LEON COUNTY,
FLORIDA

BY: 
FORREST VAN CAMP, Chair

cc: Mark's Lawn Maintenance, Inc.
Jeff Wahlen, School Board Attorney
Clerk, Florida Division of Administrative Hearings