

**The School Board of Escambia County**  
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**Bill Slayton, Chair**  
District 5

**Donna Sessions Waters**  
General Counsel  
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September 30, 2016

Clerk of the Division  
Division of Administrative Hearings  
The Desoto Building  
1230 Apalachee Parkway  
Tallahassee, FL 32399-3060

FILED  
OCT 5 AM 10:45  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

Re: Jani-King Gulf Coast Region v. Escambia County School Board; Case No. 16-2762

Dear Clerk:

Enclosed please find a copy of the Escambia County, Florida School Board's Final Order in the above referenced case.

Please do not hesitate to contact this office should you have any questions or concerns regarding this matter.

Respectfully,



Sharon B. Goshorn, Agency Clerk  
Escambia County, Florida School District

SBG/  
Enclosures

cc: Destin Sims, Esq Counsel for Jani-King *w/encl.*  
Brian W. Hoffman, Esq. Counsel for Jani-King *w/encl.*  
David C. Willis, Esq. Counsel for School Board *w/encl.*  
Hannah D. Monroe, Esq. Counsel for School Board *w/encl.*  
Donna Sessions Waters, Esq. General Counsel for School Board *w/encl.*  
Malcolm Thomas, Superintendent *w/encl.*  
Bill Slayton, Board Chair *w/encl.*

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

JANI-KING GULF COAST REGION,

Petitioner,

v.

Case No. 16-2762BID

ESCAMBIA COUNTY SCHOOL BOARD,

Respondent.

FINAL ORDER

FILED  
2016 OCT 5 AM 10:10  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

THIS CAUSE came before the School Board of Escambia County, Florida (the "School Board") on September 20, 2016, for the purpose of addressing the Exceptions to the Administrative Law Judge's Recommended Order, and for adopting a Final Order in connection with the above-styled cause which meeting was duly noticed pursuant to Chapter 286, F.S.

Background

On August 26, 2016, W. David Watkins, the Administrative Law Judge ("ALJ"), assigned by the Division of Administrative Hearings ("DOAH") in the above-styled cause, entered a Recommended Order which was furnished to the Petitioner, Enmon Enterprises, LLC d/b/a Jani-King Gulf Coast Region, and the School Board. On September 2, 2016, the District filed its Exceptions to the Recommended Order. Jani-King filed a Response to the District's Exceptions on September 12, 2016 with the District's Reply having been filed on September 14, 2016. The School Board reviewed the foregoing together with the Superintendent's Recommendation. This review was completed prior to voting on the Exceptions. The Board has also been advised of the appropriate standards of its review of an ALJ's Findings of Fact and Conclusions of Law in the Recommended Order and consulted legal counsel to provide legal

advice in the School Board's deliberations and voting on this matter on the Exceptions and adoption of this Final Order.

In a Section 120.57(1) proceeding, the Board's Final Order is entered after a hearing is held, evidence is received, and the ALJ has submitted a Recommended Order. The ALJ's function is to consider the evidence presented, resolve conflicts, judge the credibility of witnesses, draw permissible inferences from the evidence, and reach ultimate findings of fact based on competent, substantial evidence. *Goss v. District School Board of St. Johns County*, 601 So. 2d 1232 (Fla. 5th DCA 1992). The general rule of deference to the ALJ's findings of fact is that the Board may reject or modify a finding of fact only if the finding is not supported by competent, substantial evidence. The Board has no authority to reweigh conflicting evidence. Section 120.57(1)(l), Florida Statutes. See e. g. *Heifetz v. Department of Business Regulation*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985).

The Board may adopt the ALJ's findings of fact and conclusions of law in a recommended order. The Board may reject or modify the ALJ's conclusions of law and interpretations of administrative rules over which the Board has substantive jurisdiction. When rejecting or modifying such conclusions of law or interpretations of administrative rule, the Board must state with particularity its reasons for rejecting or modifying such conclusions of law or interpretation of administrative rule and must make a finding that its substituted conclusions of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Section 120.57(1), Florida Statutes.

This cause involves a bid protest questioning the conclusions reached by the District's evaluation committee in connection with proposals for custodial services. In cases such as this, in which the ALJ makes findings of fact and conclusions of law holding that the procurement

actions were invalid, the ALJ has the option, but not the obligation to recommend a remedy. *Magnum Constr. Co. v. Broward County School Board*, Case No. 04-4252BID (Fla. DOAH March 21, 2005 (acknowledging that choice of remedy, but suggesting possible remedy); *Phil's Expert Tree Service, Inc. v. Broward County School Board*, Case No. 06-4499BID (Fla. DOAH March 19, 2007) (choice of remedy is discretionary and declining to suggest a remedy). In fact, "administrative law judges are without the authority to direct how an agency must respond once a finding is made that the procurement process violated applicable law." *James Hinson Electrical Contracting, Inc. v. Dep't of Transportation*, Case No. 13-0685BID (Fla. DOAH 2013) and the authorities cited therein. Thus, the choice of a remedy in this situation is within the School Board's discretion. As such, the School Board may adopt the ALJ's recommended remedy or adopt its own remedy.

Finally, the Board has the obligation to include in its final order an explicit ruling on each Exception, stating with particularity the grounds for the ruling. See, *Lloyd v. Department of Professional Regulation, Florida Real Estate Comm'n*, 473 So. 2d 720 (Fla. 4th DCA 1985).

#### Ruling on Exceptions

The District has timely filed Exceptions regarding the ALJ's Conclusions of Law which assume that Chapter 287, Florida Statute is applicable to the District. Exceptions are the appropriate method to challenge Conclusions of Law. In paragraph 44 and 55, the ALJ made Conclusions of Law based on Chapter 287, Florida Statutes. Florida Statute § 287.012(1) defines "Agency" to mean "any of the various state, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. 'Agency' does not include the university and college boards of trustees or the state universities and colleges." (emphasis added)

The Escambia County School Board is not a part of the executive branch of the State of Florida, but is a constitutional entity established pursuant to Article IX, Section 4 of the Florida Constitution. With the exception of Section 287.055 dealing with the acquisition of professional services, Chapter 287 does not apply to school boards. *Dunbar Elec. Supply, Inc. v. School Bd. of Dade County*, 690 So. 2d 1339 (1997); *E-Builder v. Miami-Dade County School Board*, Case No. 03-1581BID (Fla. DOAH October 10, 2003). This matter does not involve the acquisition of professional services.

Pursuant to Section 1010.04(1)(a), Florida Statutes "purchases and leases by school districts and Florida College System institutions shall comply with the requirements of law and rules of the State Board of Education. The State Board of Education has adopted Florida Administrative Code § 6A-1.012 Purchasing Policies. Pursuant to Florida Statute § 120.57(1)(l) the School Board may in its final order "reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction." The Board has substantive jurisdiction over Florida Statutes §1010.04(1)(a), and Florida Administrative Code § 6A-1.012 Purchasing Policies. As a result, the Exceptions are granted. In so ruling, the Board finds that its interpretation of the statute and administrative rule is supported by and consistent with controlling Florida appellate court case law. The Board also finds that its substituted conclusions of law and interpretation of administrative rule herein are as or more reasonable than that of the ALJ in the Recommended Order.

**IT IS ORDERED:**

1. The ALJ's Findings of Fact in the Recommended Order are adopted and incorporated by reference into this Final Order.

2. The ALJ's Conclusions of Law in the Recommended Order are adopted and incorporated by reference in this Final Order except for those contained in paragraphs 44 and 55 for the reasons stated above.

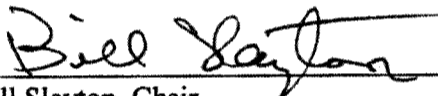
3. American Facilities Services, Inc.'s Proposal in response to RFP 161301 is determined to be non-responsive and is hereby rejected.

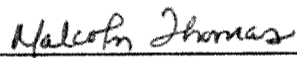
4. Given the ALJ's finding that potential vendors were likely dissuaded from and did not submit proposals because RFP 161301 required audited rather than reviewed financial statements, it is in the best interest of the District and its constituents that all proposals be rejected and the contract for custodial services for Zone Three schools be re-solicited. (The Weitz Company, LLC v. Broward School Board, Case No. 10-8182, p. 67 (October 20, 2010) (proper for school board to reject all proposals and re-bid to promote competition and to save the taxpayers money.)

5. Pursuant to section 6A-1.012(8), Florida Administrative Code, all proposals submitted in response to RFP 161301 are hereby rejected, and the District staff is directed to solicit new proposals to provide custodial services to the District's Zone Three schools.

DONE AND ORDERED this 20<sup>th</sup> day of September, 2016.

THE SCHOOL BOARD OF ESCAMBIA COUNTY, FLORIDA

  
\_\_\_\_\_  
Bill Slayton, Chair

Attest:   
\_\_\_\_\_  
Malcolm Thomas, Superintendent

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I HEREBY CERTIFY that on this the 20<sup>th</sup> day of September, 2016 a true copy of the foregoing has been furnished via e-mail only to:

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