

**THE SCHOOL BOARD OF
ESCAMBIA COUNTY, FLORIDA**

PEDIATRIC SERVICES OF AMERICA,
INC., a/k/a PSA HEALTHCARE, A
FOREIGN CORPORATION ORGANIZED
UNDER THE LAWS OF GEORGIA,

Petitioner,

vs.

CASE NO.: 18-2671BID

ESCAMBIA COUNTY SCHOOL DISTRICT,

Respondent.

FINAL ORDER

THIS CAUSE came before the School Board of Escambia County, Florida (the "School Board") on August 21, 2018, 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, Florida Statutes.

Background

A hearing was conducted before the Honorable R. Bruce McKibben, the Administrative Law Judge ("ALJ") assigned by the Division of Administrative Hearings ("DOAH") in the above-styled cause on June 28 and 29, 2018. On July 24, 2018, the ALJ entered a Recommended Order, which was furnished to the Petitioner, Pediatric Services of America, Inc., the attorney for the Escambia County School District, and the School Board. The Recommended Order (attached as Exhibit A to this Final Order) recommended that a new RFP be posted for the School District's school health services contract and that a totally new review committee should be convened to determine the award of the health services contract. The

District filed Exceptions to this Recommended Order following its entry, and PSA Healthcare filed Responses to those Exceptions.

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; *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. 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 Amended Recommended Order of the Administrative Law Judge is adopted and amended to include of the Board's response to Exceptions as noted below:

- A. Exception as to paragraph 10: Rejected.
- B. Exception as to paragraph 11: Rejected.
- C. Exception as to paragraph 14: Accepted. The record demonstrates Ms. Hanna disclosed her discussions with Ms. Kendrick to the Director of Purchasing, John Dombroskie. (See Transcript, p. 96).
- D. Exception as to paragraph 15: Accepted in part and rejected in part. The Board accepts the findings of fact contained in paragraph 15. The Board rejects the ALJ's finding that Ms. Hanna's decision not to recuse herself from further evaluation of the bids "reek[ed] of impropriety".
- E. Exception as to paragraph 17: Accepted in part and rejected in part. The exception is rejected as the record demonstrates the reviewers' experience evaluating RFP responses was minimal. The Exception is accepted to the extent that the Recommended Order's finding of fact could be read to find that the qualifications of the reviewers to serve on an evaluation committee was minimal.
- F. The District has represented that its Exception to paragraph 23 was incorrectly numbered, and the exception was directed to paragraph 22 of the Recommended Order. The Exception is rejected.

- G. Exception as to paragraph 24: Rejected. This paragraph in the Recommended Order is supported by competent substantial evidence. While the committee was not permitted to compare the submissions against each responder when scoring the responses, the ALJ (and Board) are permitted to do so when evaluating the merits of the bid protest and arguments made by Petitioner.
- H. Exception to paragraph 25: Rejected. This paragraph in the Recommended Order is supported by competent substantial evidence. While the committee was not permitted to compare the submissions against each respondent when scoring the responses, the ALJ (and Board) are permitted to do so when evaluating the merits of the bid protest and arguments made by Petitioner.
- I. Exception to paragraph 26: Rejected. However this finding has no bearing on future RFP's to define relevant criteria.
- J. Exception to paragraph 27: Accepted. The ALJ's Finding of Fact criticizing the committee for not comparing the experience of the two (2) responders is contrary to the instructions provided the committee to independently review each response.
- K. Exception to paragraph 28: Accepted in part and rejected in part. The Exception is accepted as no competent substantial evidence supports a finding of "an unearned and unwarranted bias in favor of Aloa on all accounts". In all other respects the Exception is rejected.

L. Exception to paragraph 29: Rejected. However this finding has no bearing on future RFP's to define relevant criteria.

IT IS ORDERED:

1. The ALJ's Findings of Fact in the Recommended Order are adopted and incorporated in fully by reference into this Final Order except for those contained in paragraphs 14, 15, 17, 27, 28, which are modified to the extent addressed above.

2. The ALJ's Conclusions of Law in the Recommended Order are adopted and incorporated in fully by reference into this Final Order.

3. The modifications adopted in this Final Order have no material effect on the ultimate determinations and conclusions of the ALJ.

4. Given the above findings, the Board directs the request for proposals to be re-posted allowing all interested parties to submit bids and further directs that a totally new review committee be convened in order to avoid any conflict or appearance of impropriety. The Board directs that the District reissue this request for proposals within thirty (30) days of the entry of this Order.

DONE AND ORDERED this _____ day of August, 2018.

APPROVED
ESCAMBIA COUNTY SCHOOL BOARD

AUG 21 2018


MALCOLM THOMAS, SUPERINTENDENT
VERIFIED BY RECORDING SECRETARY

ESCAMBIA COUNTY SCHOOL BOARD



Gerald W. Boone, Chair

Attest:


Malcolm Thomas, Superintendent

Filed with the Agency Clerk of the Escambia
County School District on August 23,
2018.


Sharon B. Goshorn, Agency Clerk

NOTICE OF RIGHT TO APPEAL

This Final Order constitutes final agency action. Pursuant to §120.68, F.S., a party to this proceeding may seek judicial review of this Final Order by filing a Notice of Appeal with Sharon B. Goshorn, Agency Clerk, Escambia County school District, 75 North Pace Blvd., Pensacola, FL 32505 within 30 days of the date of this Final Order. A copy of the Notice of Appeal, together with the appropriate filing fee, must also be filed with the Clerk of the First District Court of Appeal within 30 days of the date of this Final Order. Failure to file the necessary Notices of Appeal will result in loss of the right to appeal this Final Order.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by
electronic or U.S. Mail this 23rd day of August, 2018, to:

R. Bruce McKibben, Administrative Law Judge
Division of Administrative Hearings
The Desoto Bldg., 1230 Apalachee Pkwy.
Tallahassee, FL 32399-3060

Linda Wade, Esquire
Wade Palmer Shoemaker
lwade@wpslawyers.com

Joseph L. Hammons, Esquire
The Hammons Law Firm
jhlaw1@bellsouth.net