

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

RA OUTDOORS, LLC D/B/A ASPIRA,)	
)	
Petitioner,)	
)	
v.)	OGC CASE NO. 20-1103
)	DOAH CASE NO. 20-3376BID
DEPARTMENT OF ENVIRONMENTAL PROTECTION,)	
)	
Respondent,)	
)	
and)	
)	
US EDIRECT, INC.,)	
)	
Intervenor.)	
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FINAL ORDER

An Administrative Law Judge (ALJ) with the Division of Administrative Hearings (DOAH) on October 15, 2020, submitted a Recommended Order (RO) to the Department of Environmental Protection (DEP or Department) in the above captioned administrative proceeding. A copy of the RO is attached hereto as Exhibit A. No party filed exceptions to the ALJ’s RO. This matter is now before the Secretary of the Department for final agency action.

BACKGROUND

The Department issued Invitation to Negotiate (ITN) No. 2019001¹ on March 18, 2019, which sought replies from vendors to provide a Parks Business System (PBS) and a day-use

¹ The RO contains a scrivener’s error in the Statement of the Issues incorrectly identifying the ITN as “Invitation to Negotiate 2019002”; however, the correct number is Invitation to Negotiate 2019001. This Final Order corrects this scrivener’s error in the RO. (RO at p. 2); *see* Joint Trial Exhibit 1 (the Invitation to Negotiate).

Point of Sale system (POS). Following the submission of replies and the evaluation phase, the Department negotiated with three vendors: Petitioner, RA Outdoors, LLC, d/b/a Aspira (Aspira), US eDirect, and Conduent State & Local Solutions, Inc. (Conduent). On June 26, 2020, these vendors submitted their Best and Final Offers (BAFOs). On July 6, 2020, the Department held a public meeting in which the negotiators selected US eDirect for the award; and, on July 6, 2020, the Department posted its notice of intent to award the contract to US eDirect.

Aspira timely filed its notice of intent to protest the award within 72 hours of the posting of the notice of the award. On July 20, 2020, Aspira timely filed its formal written protest and petition for formal administrative hearing with the required protest bond. On July 28, 2020, the Department referred the petition to DOAH, including US eDirect's Notice of Intervention as a Specifically Named Party.

The final hearing was held on August 24 and 26 through 28, 2020. Subsequently, the ALJ entered his RO on October 15, 2020.

SUMMARY OF THE RECOMMENDED ORDER

In the RO, the ALJ recommended that the Department enter a final order dismissing the protest of Aspira. (RO at p. 29). In doing so, the ALJ concluded Aspira failed to prove by a preponderance of the evidence that the Department's proposed award of the contract to US eDirect is contrary to statute, rule, the ITN specifications, clearly erroneous, contrary to competition, arbitrary, or capricious. Moreover, the ALJ found "the greater weight of the evidence supports that the extensive negotiations in this procurement were handled properly and in a collaborative and non-biased manner with no competitive advantage given to any vendor." (RO ¶ 86).

CONCLUSION

The case law of Florida holds that parties to formal administrative proceedings, including bid protests, must alert reviewing agencies to any perceived defects in DOAH hearing procedures or in the findings of fact of ALJs by filing exceptions to DOAH recommended orders. *See, e.g., Comm'n on Ethics v. Barker*, 677 So. 2d 254, 256 (Fla. 1996); *Henderson v. Dep't of Health, Bd. of Nursing*, 954 So. 2d 77, 81 (Fla. 5th DCA 2007); *Fla. Dep't of Corrs. v. Bradley*, 510 So. 2d 1122, 1124 (Fla. 1st DCA 1987). Having filed no exceptions to any findings of fact the parties “[have] thereby expressed [their] agreement with, or at least waived any objection to, those findings of fact.” *Env'tl. Coal. of Fla., Inc. v. Broward Cty.*, 586 So. 2d 1212, 1213 (Fla. 1st DCA 1991); *see also Colonnade Med. Ctr., Inc. v. State of Fla., Agency for Health Care Admin.*, 847 So. 2d 540, 542 (Fla. 4th DCA 2003). However, even when exceptions are not filed, an agency head reviewing a recommended order is free to modify or reject any erroneous conclusions of law over which the agency has substantive jurisdiction. *See* § 120.57(1)(l), Fla. Stat. (2020); *Barfield v. Dep't of Health*, 805 So. 2d 1008, 1012, (Fla. 1st DCA 2001); *Fla. Public Emp. Council, 79 v. Daniels*, 646 So. 2d 813, 816 (Fla. 1st DCA 1994).

No party filed any exceptions to the RO objecting to the ALJ's findings, recommendations, or DOAH's hearing procedures. The Department agrees with the ALJ's legal conclusions and recommendations.

Having considered the applicable law and standards of review in light of the findings and conclusions set forth in the RO, and being otherwise duly advised, it is

ORDERED that:

A. The Recommended Order (Exhibit A) is adopted and incorporated by reference herein.

B. The protest of Petitioner, RA Outdoors, LLC, d/b/a Aspira, is DISMISSED.

C. The Department's Notice of Intended Award of the contract to US eDirect pursuant to Invitation to Negotiate No. 2019001 is AFFIRMED.

JUDICIAL REVIEW

Any party to this proceeding has the right to seek judicial review of the Final Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to rule 9.110, Florida Rules of Appellate Procedure, with the clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, M.S. 35, Tallahassee, Florida 32399-3000; and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 days from the date this Final Order is filed with the clerk of the Department.

DONE AND ORDERED this 12th day of November, 2020, in Tallahassee, Florida

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



NOAH VALENSTEIN
Secretary

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

FILED ON THIS DATE PURSUANT TO § 120.52,
FLORIDA STATUTES, WITH THE DESIGNATED
DEPARTMENT CLERK, RECEIPT OF WHICH IS
HEREBY ACKNOWLEDGED.

**Syndie
Kinsey**

CLERK

Digitally signed by
Syndie Kinsey
Date: 2020.11.12
13:36:18 -05'00'

DATE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Final Order has been sent by electronic mail on this 12th day of November, 2020, to:

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