

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

DARRYL WILLIAMS QUALITY CLEANING,

Petitioner,

vs.

Case No. 22-2018BID

LEON COUNTY SCHOOL BOARD,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted in Tallahassee, Florida, on August 15 and 17, 2022, before Administrative Law Judge Garnett W. Chisenhall of the Division of Administrative Hearings (“DOAH”).

APPEARANCES

For Petitioner: Darryl Williams, pro se
 Williams Quality Cleaning
 2843 Botany Place
 Tallahassee, Florida 32301

For Respondent: Opal L. McKinney-Williams, Esquire
 Pittman Law Group
 1028 East Park Avenue
 Tallahassee, Florida 32301

STATEMENT OF THE ISSUE

Whether the decision by Respondent, the Leon County School Board (“the School Board”), to award a contract to United States Service Industries, Inc. (“USSI”) for custodial and other cleaning services at Lincoln High School (“Lincoln High”) was clearly erroneous, arbitrary or capricious, or contrary to competition.

PRELIMINARY STATEMENT

On April 19, 2022, the Purchasing Department for the School Board issued Request for Proposal 495-2023 (“the RFP”) for custodial and other cleaning services at Lincoln High. On June 20, 2022, the School Board issued notice of its intent to award the contract to USSI. Williams Quality Cleaning (“WQC”) filed a formal written protest on June 29, 2022, and the School Board referred this matter to DOAH on July 8, 2022. WQC filed an amended formal written protest on July 20, 2022.¹

The undersigned issued a Notice on July 15, 2022, scheduling a final hearing for August 15, 2022. The final hearing was convened as scheduled but was not completed on August 15, 2022. The undersigned continued the final hearing to August 17, 2022, and it was completed that day.

WQC and the School Board offered testimony from the following witnesses: Lisa Morris, Anthony McQuade, Jason Peters, Carl Green, June Kail, and Kasey Bickley. Joint Exhibits 1 through 19 were accepted into evidence. Petitioner’s Exhibits 10 and 19 through 21 were accepted into evidence.

The three-volume transcript from the final hearing was filed on September 19, 2022. Both parties filed timely proposed recommended orders that were considered in the preparation of this Recommended Order.

¹ WQC filed its amended formal written protest without seeking leave from the undersigned, contrary to Florida Administrative Code Rule 28-106.202. Because the School Board did not move to strike the amended formal written protest, the undersigned has elected to consider the amended formal written protest and the issues raised therein.

FINDINGS OF FACT

The following findings are based on exhibits accepted into evidence, admitted facts set forth in the Joint Pre-hearing Stipulation, and matters subject to official recognition.

The Parties

1. Pursuant to section 1001.30, Florida Statutes (2022),² and Article IX, Section 4 of the Florida Constitution, the School Board governs the Leon County School District. The School Board is an “educational unit” within the meaning of section 120.52(1)(a), Florida Statutes.

2. WQC provides custodial and cleaning services in Leon County and has had a contract with the School Board to provide such services to Lincoln High since 2017.

The Request for Proposals

3. The School Board issued the RFP on April 19, 2022, in order to obtain custodial and other cleaning services for the campus of Lincoln High in Tallahassee, Florida. The contract to be awarded will have an initial term of 3 years and can be renewed for up to 3 additional years.

4. Section 3 of the RFP is entitled “Procurement Rules and Information,” and Subsection 3.1 describes the contents and format for proposals. For example, every proposal was to include “TABS.” TAB A was to include an executive summary and a list of every School Board employee or official who had a material, financial interest in the bidder. Under TAB B, a vendor was to provide at least three references along with a narrative of past experience. Under TAB C, a vendor was to include 10 separate School Board forms, such as a local preference affidavit and a drug-free workplace certification.

5. In addition to the information described above, each vendor was required to submit a “cost proposal form” indicating the price for each service to be provided.

² Unless stated otherwise, all statutory references shall be to the 2022 version of the Florida Statutes.

6. Section 3.3 was entitled “Proposal Evaluation and Criterion” and set forth the process by which proposals would be evaluated. The initial step was a “responsiveness determination” to ensure that each submitted proposal satisfied the mandatory responsiveness criteria enumerated in a different section of the RFP. The next step was for an evaluation team to individually evaluate the strength of each prospective vendor’s technical proposal based on the following criteria: (1) business experience; (2) staffing and qualifications; and (3) quality of references. This section of the RFP gave contradictory information. While stating that each criterion would be separately scored with 30 points for excellent; 22.5 for good; 15 for fair; 7.5 for poor, and 0 for unsatisfactory, the RFP also stated that “Evaluation Team members will assign a score (using **no fractions or decimals**) to each Evaluation Criterion.” (emphasis in original)

7. The RFP did not impose a page limitation on proposals, and the School Board did not discourage vendors from providing information not expressly required by the RFP.

8. The School Board’s purchasing department was to conduct a cost evaluation of each proposal based on the following components: (a) total cost per month for custodial services – 20 points; (b) cost per square foot for additional negotiated services – 5 points; (c) cost per hour for additional negotiated services – 5 points; and (d) stripping and waxing of floors – 10 points. A vendor submitting the lowest cost for one of the aforementioned components would receive the total points assigned to that category. All other vendors would receive “cost points” based on a formula set forth in Section 3.3. Afterwards, the points scored for each cost component were to be added together to determine the “total cost points awarded.” Accordingly, the RFP’s system for evaluating costs did not award points on a “winner take all” basis.

9. Prospective vendors could also receive “local preference” points. For example, vendors in Leon County were to receive 10 points, and vendors in adjacent counties³ were to receive 5 points.

10. Pursuant to School Board Policy 6325, prospective vendors could receive 5 points for “small business certification.”

11. All of the points described above were to be combined for a “grand total score,” with the contract being awarded to the vendor with the highest score.

12. The School Board issued addenda to the RFP in order to modify its terms and answer questions from prospective vendors. For example, one question asked “[a]re we to include any other information regarding the proposal response other than what’s called out in Tabs A, B, [and] C?” The School Board responded by stating “[t]he only documents required are included in Section 3.1 of the RFP.”

13. The RFP’s specifications were not challenged.

The Evaluation and Scoring of the Proposals

14. The School Board received five proposals in response to the RFP, and three were deemed responsive.

15. One of the responsive proposals was from WQC, the business that had been providing custodial and cleaning services to Lincoln High since 2017.

16. Another responsive bid was from USSI, a business incorporated in Delaware and headquartered in Bethesda, Maryland. USSI’s bid disclosed that the corporation has three regional satellite offices and warehouse space in Florida, with one of those satellite offices in Tallahassee.

17. USSI attached a “Local Preference Affidavit” form to its proposal. The form stated that

[t]o qualify for the Local Vendor Preference, a Proposer must have a physical location in Leon County (or an Adjacent County), employ at least

³ The RFP defined the term “adjacent county” as “[a]ny private independent vendor whose county abuts Leon County and has been licensed at least six (6) months preceding the bid proposal opening, as required by local, State, and Federal law, to provide the goods and services to be purchased.”

one (1) person at that location, and have been licensed, as required, for at least six (6) months before the Proposal Opening. The Proposer, on a day-to-day basis, should provide the goods/services provided under this Contract substantially from the local business address. Post Office boxes are not acceptable for purposes of obtaining this preference.

By completing this Affidavit, the Proposer affirms that it is a local or Adjacent County Business, as defined by Board Policy 6450.

18. Stephanie Nester, the chief financial officer of USSI, executed the affidavit on May 10, 2022, stating that USSI has a “local office” at 325 John Knox Road in Tallahassee. Ms. Nester also attested that USSI had been at that location for 12 years and employees more than 100 people there.

19. USSI’s proposal stated it has not been “certified as a small business enterprise through Leon County Schools.”

20. USSI’s proposal was 138 pages in length, and WQC’s was 41 pages. The difference was primarily because USSI’s proposal included documentation that was not expressly required by the RFP. Some of that superfluous documentation described USSI’s use of environmentally friendly cleaning supplies.

21. The responsive bids were evaluated by a four-person team, each of whom was a School Board employee. One of the evaluators, Anthony McQuade, was the Assistant Principal for Curriculum at Lincoln High and oversaw the school’s custodial department during the evaluation process. Other evaluators were Jason Peters, the Building Maintenance Supervisor at Lincoln High, Carl Green, the School Board’s Plant Safety and Sanitation Coordinator, and Lisa Morris, Lincoln High’s Financial Accountant.

22. In e-mail correspondence with James Cole, the School Board’s Purchasing Coordinator, Ms. Morris wrote the following statement on May 11, 2022, about WQC’s work at Lincoln High:

When he first started the contract, he had more people working on these crews than he does now. Presently the number of workers (which we see four people total) are not getting the job done. It definitely needs to be more workers. There have been many issues because there are not enough workers.

23. As noted above, each member of the evaluation team independently evaluated the strength of each prospective vendor's technical proposal based on the following criteria: (1) business experience; (2) staffing and qualifications; and (3) quality of references. Each criterion would be separately scored with 30 points for excellent; 22.5 for good; 15 for fair; 7.5 for poor, and 0 for unsatisfactory. Therefore, an evaluator could award a maximum score of 90 points to a proposal.

24. WQC's technical proposal received a score of 60 from Mr. McQuade, 52.5 from Mr. Peters, 60 from Ms. Morris, and 82.5 from Mr. Green. In total, WQC's technical proposal earned 255 points from the evaluation team, and an average score of 63.75.

25. WQC's cost proposal earned 38.12 points, the highest score for the three responsive proposals. WQC's also received 10 points for the local preference criteria, and five points for being a certified small business.

26. In sum, WQC's proposal earned the second highest score, 116.87 points ($63.75 + 38.12 + 10 + 5$).

27. USSI's technical proposal received scores of 90 each from Mr. McQuade, Mr. Peters, and Ms. Morris. Mr. Green awarded 82.5 points. In total, USSI's technical proposal earned 352.5 points from the evaluation team, and an average score of 88.13.

28. USSI's cost proposal earned 24.20 points, and that was the lowest scored cost proposal. USSI received 10 points for the local preference criteria and no small business points.

29. USSI's score of 122.32 (88.13 + 24.20 + 10)⁴ was the highest, and the School Board announced on June 20, 2022, that the contract to provide custodial and cleaning services to Lincoln High would be awarded to USSI.⁵

CONCLUSIONS OF LAW

30. DOAH has jurisdiction over the subject matter of this proceeding and of the parties hereto pursuant to sections 120.569, 120.57(1), and 120.57(3).

31. Section 120.57(3)(f) provides, in relevant part:

Unless otherwise provided by statute, the burden of proof shall rest with the party protesting the proposed agency action. In a competitive-procurement protest, other than a rejection of all bids, proposals, or replies, the administrative law judge shall conduct a de novo proceeding to determine whether the agency's proposed action is contrary to the agency's governing statutes, the agency's rules or policies, or the solicitation specifications. The standard of proof for such proceedings shall be whether the proposed agency action was clearly erroneous, contrary to competition, arbitrary, or capricious.

32. WQC, as the party challenging the proposed agency action, has the burden of proof in this proceeding and must show that the School Board's intent to award the contract at issue to USSI is clearly erroneous, arbitrary or capricious, or contrary to competition. § 120.57(3)(f), Fla. Stat.; *State Contracting and Eng'g Corp. v. Dep't of Transp.*, 709 So. 2d 607, 609 (Fla. 1st DCA 1998). "A capricious action is one taken without thought or reason or irrationally. An arbitrary decision is one not supported by facts or logic, or

⁴ The sum of these numbers is 122.33 rather than 122.32.

⁵ The School Board's initial scoring of the proposals neglected to account for the small business certification. The School Board subsequently corrected that error, and the five additional points raised WQC's score to 116.87. However, USSI's 122.32 total was still the highest score.

[one that is] despotic.” *Agrico Chem. Co. v. Dep’t of Env’tl. Reg.*, 365 So. 2d 759, 763 (Fla. 1st DCA 1978).

33. WQC raised the following issues after initiating its challenge to the School Board’s intended decision: (a) WQC should have received 40 points for its cost proposal with the other proposers receiving no points for theirs; (b) WQC should have been awarded the contract because it submitted the lowest cost proposal; (c) USSI’s proposal should have been rejected because it contained material not required by the RFP; (d) the evaluation team members used decimals in their scoring of the technical proposals; and (e) the scores from Ms. Morris, Mr. McQuade, and Mr. Peters were based on improper information.⁶

34. In Issues (a) and (b), WQC is essentially taking issue with the specifications of the RFP. Because WQC did not timely challenge those specifications, those issues are untimely and must be rejected. § 120.57(3)(b), Fla. Stat. (providing that “[w]ith respect to a protest of the terms, conditions, and specifications contained in a solicitation, including any provisions governing the methods for ranking bids, proposals, or replies, awarding contracts, reserving rights of further negotiation, or modifying or amending any contract, the notice of protest shall be filed in writing within 72 hours after the posting of the solicitation.”); *Consultech of Jacksonville, Inc. v Dep’t of Health*, 876 So. 2d 731 (Fla. 1st DCA 2004) (holding that “[b]ecause Consultech failed to file a protest to the terms and conditions of the RFP as required by section 120.57(3), Florida Statutes, its belated attempt to challenge the award to IDF on this basis must fail.”).

⁶ WQC was inconsistent with regard to what issues it raised in its written protests, the Joint Pre-Hearing Stipulation, and its Proposed Recommended Order. While any issues not raised in the Joint Pre-Hearing Stipulation could be considered to have been waived, the undersigned has elected, in an abundance of caution, to address all of the issues that WQC appears to have raised during the course of the instant proceeding. *See Palm Beach Polo Holdings, Inc. v. Broward Marine, Inc.*, 174 So. 3d 1037, 1038-39 (Fla. 4th DCA 2015) (stating that “[p]retrial stipulations prescribing the issues on which a case is to be tried are binding upon the parties and the court, and should be strictly enforced.”).

35. With regard to Issue (c), nothing in the RFP prohibited vendors from submitting more information than what was expressly required by the RFP. WQC is essentially arguing that the terms of the RFP should be rewritten or interpreted in such a manner so that the submission of any information “above and beyond” what was expressly required renders that proposal nonresponsive. This argument is meritless.

36. In Issue (d), WQC takes issue with the fact that the RFP was internally inconsistent. While instructing the evaluation team members to not use decimals in their scoring, it also instructed them to use decimals when finding particular aspects of a proposal to be “good” or “poor.” The same scoring system was applied to the responses of WQC and USSI, and there is nothing indicating that the ultimate scores would have been materially altered if decimals had not been used. Thus, WQC fails to demonstrate how the RFP’s internal inconsistency renders the School Board’s intent to award the contract at issue to USSI clearly erroneous, arbitrary or capricious, or contrary to competition.

37. As for Issue (e), WQC failed to put forth any persuasive arguments that Ms. Morris’s inclusion on the evaluation committee was clearly erroneous, arbitrary or capricious, or contrary to competition. While Ms. Morris was of the opinion that WQC had not been assigning enough people to its work at Lincoln High, her assignment of 60 points to WQC’s technical proposal was not an outlier in relation to the scores from the evaluation committee. Mr. McQuade also assigned 60 points, and Mr. Peters assigned 52.5 points. In addition, WQC failed to present any persuasive evidence that the scores from Mr. McQuade and Mr. Peters or their inclusion on the evaluation committee was improper, clearly erroneous, arbitrary or capricious, or contrary to competition.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Leon County School Board enter a final order affirming the Notice of Intent to Award RFP 495-2023 to United States Services Industries, Inc.

DONE AND ENTERED this 14th day of October, 2022, in Tallahassee, Leon County, Florida.

Garnett Chisenhall

G. W. CHISENHALL
Administrative Law Judge
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Filed with the Clerk of the
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this 14th day of October, 2022.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 10 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.