

BEFORE THE SCHOOL BOARD OF BREVARD COUNTY, FLORIDA

MORSE COMMUNICATIONS, INC.,)	BOARD AGENDA ITEM NO.
)	MARCH 10, 2009
Petitioner,)	DOAH CASE NO. 08-5079-BID
)	
vs.)	
)	
BREVARD COUNTY SCHOOL BOARD,)	
)	
Respondent.)	
)	
BREVARD BUSINESS TELEPHONE)	
SYSTEMS, INC.)	
)	
Intervenor.)	
_____)	

FINAL ORDER

THIS Bid Protest case was referred to the Division of Administrative Hearings for a formal administrative hearing. The assigned Administrative Law Judge ("ALJ") has submitted a Recommended Order to the Agency, Brevard County School Board ("School Board") recommending that the bid protest be dismissed. The Recommended Order of February 10, 2009, entered herein is incorporated by reference. Timely exceptions were filed by the Petitioner.

RULING ON EXCEPTIONS

Petitioner, Morse Communications, Inc. ("Morse"), has interposed exceptions to the ALJ's conclusions of law contained in paragraphs 37 and 42 of the Recommended Order "as contrary to record testimony." However, Morse fails to include any specific citations to the record as required by Section 120.57(1)(k), Fla.

Stat. Nonetheless, the School Board will address the exceptions below.

A. Conclusions of Law in Paragraph 37.

Morse contends that the ALJ's conclusion of law in paragraph 37 that the School Board did not violate Section 2.4.1 of the ITB is contrary to record testimony, without citing to the record testimony. In paragraphs 22 and 23 of the Recommended Order the ALJ found that Orlando Business Telephone Systems, Inc. and Intervenor, Brevard Business Telephone Systems, Inc. ("BBTS") are separate business entities, that Orlando Business Systems did not submit a bid in response to the ITB and that the bid submitted by BBTS was not a joint bid of BBTS and Orlando Business Systems. The ALJ further found that in her evaluation of BBTS's bid, Ms. Arvonio did not consider Orlando Business Systems as part of the bid and made her evaluation on the services which were to be provided by BBTS in case of a catastrophic failure.

The ALJ's findings of fact in paragraphs 22 and 23 are supported by competent substantial evidence in the record and the ALJ's conclusion of law that Morse failed to establish that BBTS violated Section 2.4.1 of the ITB is correct.

B. Conclusions of Law in Paragraph 42.

Morse contends that the ALJ's conclusions of law in paragraph 42 that the School Board waived the requirement that the contractor be certified by Molex and Siemon is contrary to record testimony, while once again failing to cite to the record testimony.

The ALJ's conclusions of law in paragraph 42 of the Recommended Order that the failure of BBTS to have a Siemon certification was a minor irregularity which could be waived is correct and supported by the findings of fact contained in paragraphs 18 through 20 which findings are supported by competent substantial evidence.

FINDINGS OF FACT

The School Board adopts the findings of fact set forth in the Recommended Order.

CONCLUSIONS OF LAW

The School Board adopts the conclusions of law set forth in the Recommended Order.

It is thereupon Ordered that:

A. Petitioner's exceptions to the conclusions of law set forth in paragraphs 37 and 42 of the Recommended Order are denied.

B. The Recommended Order is adopted as the Final Order of the School Board of Brevard County.

C. The bid protest filed by Petitioner is dismissed.

D. As the prevailing party the School Board shall recover from the bond posted by Petitioner, pursuant to Section 120.57(3)(b), Fla. Stat., and School Board Policy 6320, all costs and charges incurred by the School Board in the administrative hearing process and in any subsequent appellate court proceeding, including charges made by the Division of Administrative Hearings,

but excluding attorney's fees.

DONE AND ORDERED this 10th day of March, 2009, in Viera,
Brevard County, Florida.

THE SCHOOL BOARD OF BREVARD
COUNTY, FLORIDA

BY: _____
ROBERT L. JORDAN, JR., Chairman

RIGHT TO APPEAL

Parties to this Final Agency Action are hereby advised of their right to seek judicial review of this Final Agency Action pursuant to Section 120.68, Florida Statutes, and Florida Rules of Appellate Procedure 9.030(b)(1)(C) and 9.110. To initiate an appeal, one copy of a Notice of Appeal must be filed, within the time period stated in the Florida Rule of Appellate Procedure 9.110, with the Clerk of the School Board of Brevard County, 2700 Judge Fran Jamieson Way, Viera, Florida 32940. The second copy of the Notice of Appeal, together with the filing fee, must be filed with the appropriate District Court of Appeal.

Filed with the clerk in the office
of the Superintendent this 10th day
of March, 2009.

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing Final Order has been furnished by U. S. Mail to the persons named below on this ____ day of March, 2009.

Hon. Susan B. Harrell
Administrative Law Judge
Division of Administrative Hearings
1230 Apalachee Parkway
Tallahassee, FL 32399-1550

Maurice Arcadier, Esquire
Allen & Arcadier, P.A.
2815 West New Haven, No. 304
Melbourne, FL 32904

Douglas D. Marks, Esquire
Boyd & Marks, L.L.C.
360 North Babcock Street, Suite 104
Melbourne, FL 32935

HAROLD T. BISTLINE
School Board Attorney