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Agency for Workforce Innovation  
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**AGENCY FOR WORKFORCE INNOVATION**  
An Executive Agency of the State of Florida

In Re: FLORIDA VENTURE FOUNDATION,      AWI Case No.: GA 2004-06-00888  
          Appellant,  
and,  
SOUTH FLORIDA WORKFORCE BOARD,  
          Appellee.

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**AGENCY DECISION ON APPEAL OF LOCAL PROCUREMENT DECISION**

**BACKGROUND**

This matter has come before the undersigned pursuant to the Workforce Investment Act of 1998 (WIA), as codified at 29 United States Code (USC), sections 2802 et seq., the applicable federal regulations as contained in 20 Code of Federal Regulations (CFR), part 652 et seq., and the Florida Workforce Innovation Act, codified in Chapter 445, Florida Statutes.

The Workforce Investment Act is the federal employment and training initiative designed to increase occupational skills, improve the quality of the workforce, reduce welfare dependency and enhance the productivity and competitiveness of the national economy. The program is implemented through federal funding for the workforce systems in the states. The Florida legislation parallel to the federal program is known as the Workforce Innovation Act.

## WORKFORCE ENTITIES AND THE PARTIES

**The Agency for Workforce Innovation (AWI)** as created by section 20.50, Florida Statutes, is the grant recipient of federal workforce funds and the state entity responsible for the administration of workforce policy as established by Workforce Florida, Inc (WFI).

**South Florida Workforce (SFW)** The South Florida Workforce Board and the South Florida Employment and Training Consortium compose the SFW. The South Florida Workforce Board is the local workforce board for the state Region 23, chartered by WFI as required by 445.004 (11), Florida Statutes. The South Florida Employment and Training Consortium (SFETC) is made up of representative from Miami-Dade and Monroe Counties and Cities of Miami, Hialeah, and Miami Beach. By local agreement, the consortium represents the area's local elected officials in the governance of the Region's workforce system. The local boards are responsible for the development of the local workforce plan and the general coordination of workforce activities. The workforce services are provided through "One-Stop" centers located throughout the state. The One-Stop centers are designed to provide comprehensive employment and training and human services within the same location. The SFW procures contractors to assist in administering an integrated workforce development system.

**Florida Venture Foundation (FVF)** is the Appellant in this proceeding. FVF submitted a proposal in response to SFW's Request for Proposal for the Construction Industry One-Stop Pilot Project.

## JURISDICTION

The WIA section 181 (c) and applicable regulations in 20 CFR, part 667, subpart F, require that the State and each local area adopt a procedure for dealing with grievances and complaints. As described in section 667.600 (b) (1) of 20 CFR, the local procedures are required to accommodate the grievances and complaints of participants and other interested parties affected by the local Workforce Investment System. In the present case, FVF filed a grievance at the local level contesting the procurement of the Construction Industry One-Stop Pilot Project. Because FVF was not satisfied with the decision at the local level, it appealed that decision to the State, as provided in 20 CFR 667.600 (c). The present matter is being conducted by the State in its review capacity, as provided in the State's grievance procedures promulgated as rule chapter 60BB-1, Florida Administrative Code.

SFW and FVF jointly submitted a record of the proceeding below. The record has been Bates® stamped for easy reference. SFW has also consecutively marked the record it submitted, therefore, the following designation is used herein:

(SFW #, R #) – the Record prepared by SFW, Bates® stamp number of AWI

### **STATEMENT OF THE CASE**

This case began when FVF was denied the award of the contract for the Construction Industry One-Stop Pilot Project and SFW declared the solicitation a failure and voted to reissue the Request for Proposal. After being unsuccessful in its informal and formal local appeals, FVF brought this appeal.

### **FINDINGS OF FACT**

Based upon review and consideration of the documentation and written arguments submitted by the parties, the following have been determined to be the relevant facts.

1. The SFW created a Construction Industry Task Force (Task force) made up of board members to analyze and address needs of the construction industry. (SFW 9, R 228)
2. William Delgado is a board member and a member of the Task force that assisted SFW staff in developing the outline of a procurement to solicit the services desired by the Task force. William Delgado is the husband of the President and CEO of FVF. (SFW 10, R 229)
3. Due to the conflict of interest of Mr. Delgado, the specifications of the procurement developed by the Task force was rewritten by staff of SFW and was not seen by Task force members prior to the release of the procurement. (SFW10, R 229)
4. SFW issued a solicitation for program year 2004 on March 12, 2004, which included a solicitation for workforce services provided through one-stop facilities, services

targeting special adult populations and program for construction industry one-stop activities, hereinafter referred to as “RFP”. (SFW 14-189, R 234-409)

5. Within the RFP there was a Business Plan Template “E” which outlined the areas that the respondents to the construction industry pilot program were to use. The template outlined the following areas, requesting that the respondents describe the organizations concepts and plans and assigned point values to each area. Total points for the Business Plan was 100 points:

- E.1 Business Plan for Meeting the Unique Workforce Needs of the Construction Industry (4 points)
- E.2 Business Plan for Developing a Pipeline for the Construction Industry (3 points)
- E.3. Business Plan for Engaging Communities Seeking Opportunities for their Residents in the Construction Industry (3 points)
- E.4. Management and Staffing (15 points)
- E.5. Operational Plan/Program Design (30 points)
- E.6. Performance Management/Quality Assurance/Continuous Improvement (15 points)
- E.7. Customer Service and Customer Satisfaction (5 points)
- E.8. Financial Management (10 points)
- E.9. Budget Request (15 points) (SFW 46-48, R 266-268)

6. Another rating criteria in the RFP were Performance Ratings. New providers must attain a 70% or higher in their performance rating to be eligible for consideration and providers who fail to meet this 70% would be disqualified from consideration. The performance track rating tool used for respondents that did not have a previous year contract with SFW consisted of three areas or review: 1. Strength of performance track record and reference validation for activities comparable to proposed activities. (50 points); 2. Scale capability between track record and proposed operation (20 points); 3. Comparability of performance track record measure for predicting performance of proposed activity at levels required to meet SFW performance expectations. (30 points) The respondents were to provide a narrative on how the rating team

should evaluate the organizations submitted performance documentation based on each of the three rating dimensions. (SFW 50-51, 118, R 270-271, 338)

7. The RFP required that in order to be considered for any selection decision, fiscal qualifying conditions established by the Independent Monitoring Office (IMO) had to be met for all proposers that did not have a previous program year (PY '03) contract with SFW. (SFW 24, R 244)

8. Attachment 23 of the RFP listed the type of documentation needed by the IMO to establish fiscal due diligence by SFW. The attachment listed and described the information needed in the categories of Legal Status, Source of Revenue, Accounting System, Banking, Procurement, Personnel, Taxes, Insurance, Independent Audit and Previous Contractual Relationships. Also attached were fiscal review sheets describing the areas of review and the points assigned to each area. (SFW 137-152, R 357-372)

9. The RFP stated, among other things, that SFW reserved the right to accept or reject any or all applications in whole or in part, which it considered not to be in its best interest; change or waive any provision set forth in the solicitation and correct technical flaws. (SFW 56, R 276)

10. FVF submitted the only proposal to the Construction Industry One Stop Pilot Program portion of the RFP on April 2, 2004. (SFW 7, 192, R 223, 414)

11. Staff of the SFW reviewed the proposal submitted by FVF and made a recommendation on April 14, 2004 that FVF failed to meet the IMO fiscal review for failure to provide the most current payroll register, the most current month Case Receipt Journal, most current month Cash Disbursement Journal and lacked an audit and was disqualified under the RFP. The raters, unaware of the IMO disqualification had already rated the business plan and

demonstrated performance. The average score for the business plan was 45.8 out of 100 and 37.75 for performance out of 100, for a total of 83.55 out of 200. (SFW 502, R 14-16, 731)

12. The individual rating sheets had the following ratings:

Reviewer	Business Plan Scores	Performance Scores
#1	49	35
#2	42	26
#3	33	30
#4	60	60
#5	45	information not provided

(SFW 504-512, R 733-741)

13. On April 16, 2004, at the joint meeting of the Programmatic and Welfare to Work Committee held in the morning, staff of SFW presented their recommendation to declare the Construction Industry One-Stop Pilot Project a failed RFP and reissue the RFP. The staff recommendation was approved with a 4-3 vote. This recommendation was forwarded to the Executive Committee on the afternoon of April 16, 2004. The Executive Committee reversed the staff and Programmatic and Welfare to Work Committee by voting 3-2 to fund the FVF proposal. (R 14-16)

14. On April 28, 2004, the Executive Committee brought its recommendation to fund the FVF proposal to the full board of SFW. The results with 26 board members present 15 voted for funding, 10 opposed funding and 1 declared conflict. The vote failed due to not meeting the 2/3 requirements for passing a motion. (R 25)

15. Pursuant to the RFP appeal procedures, an informal resolution conference was held on May 4, 2004. At the informal resolution conference, FVF presented a letter from its accountants, identifying that missing information identified by the IMO was included in the proposal but under different names. This information was accepted. Additionally, FVF informed SFW that an audit was pending. (SFW 538-559, R 797-818, Informal Resolution Tape Side A)

16. At the informal conference, FVF complained that the reviewers, based upon comments on the rating sheet, did not have the expertise in the construction industry and activities of FVF was mischaracterized as outreach. FVF also criticized reviewers for having a pre-conception that FVF's construction related services did not fit into what they thought a one-stop track record should be. FVF submitted information outlining each reviewer and comments noted. (SFW 560-563, R 819-822)

18. On May 6, 2004, SFW informed FVF that the members of the informal resolution conference upheld the SFW board's decision not to fund FVF. (SFW 564, R 824)

19. On May 14, 2004, FVF filed a formal appeal to SFW alleging that the rating process for the RFP was an unfair evaluation and did not agree with the score, ranking or evaluation received. (SFW 567, R 839)

20. The formal appeal hearing was held on June 8, 2004. FVF was allowed to provide evidence of any unfairness in the evaluations. The 3 member-hearing panel voted 2-1 to affirm the decision not to fund FVF. (SFW 571- 574, R 846-849, Formal Appeal Hearing Tape Side B)

21. On June 15, 2004, FVF was informed of the Joint Formal Appeal Panel's decision to not fund the FVF proposal and advised FVF the right to file an appeal to AWI. (SFW 583, R 859)

22. On June 21, 2004, FVF filed its appeal to AWI, alleging unfair evaluation and rating process of the RFP and did not agree with the score, ranking or evaluation received.

### **CONCLUSIONS OF LAW**

The local workforce boards such as SFW are not subject to state procurement law, once they have in place procurement standards that been approved by Workforce Florida, Inc. §445.007(11), Fla. Stat. The underlying legal determination to be made in this case is whether

SFW used a fair and competitive process in its decision not to award a contract to FVF and declare a failed RFP.

The Agency's decision in TTI America, Inc. v. SFW, 2002/08-00018, (November 26, 2002) established the standard of review for these type cases as a "rational basis" determination. The Agency found in TTI that "[t]he rational basis standard is akin to the standard applied to government procurement cases where the validity of an exercise of discretion may be challenged only upon a clear showing that the agency action was arbitrary and capricious or an abuse of discretion or was not in accordance with the law. See Tackett v. Schaffer, Inc. v. U.S., 633 F. 2d 940 Ct. Cl 1980." This standard parallels closely to Florida law involving review of procurement issues. "In Florida, ... a public body has wide discretion in soliciting and accepting bids for public improvements and its decision, when based on an honest exercise of discretion, will not be overturned by a court even if it may appear erroneous and even if reasonable persons may disagree." Liberty County v. Baxter's Asphalt & Concrete, Inc., 421 So. 2d 505 (Fla. 1982). While the discretion vested in a public agency may not be exercised arbitrarily or capriciously, the court will generally not interfere with the agency's judgment as long as the agency has acted in good faith. Culpepper v. Moore, 40 So. 2d 366 (Fla. 1949).

It appears from a review of the record presented, that the action by SFW to not fund FVF proposal and declare it a failed RFP was not an arbitrary or capricious action. In fact, any other result would have violated its own terms in the RFP solicitation. The RFP specified two areas of disqualification, one for failure to pass the fiscal soundness test conducted by the IMO and the other to score at least 70% on the performance-rating tool. The record reflects that at the time the SFW Board voted on this matter, FVF was disqualified under both areas. It was not until after SFW decision to not fund the proposal and during the informal resolution appeal process was it



determined that the fiscal review was satisfactory. Therefore, potentially only the issue of the rating or scoring of the proposal remained. Nevertheless, the formal hearing panel did not re-score or re-evaluate the proposal, but rather upheld the decision to declare it a failed RFP and reissue the solicitation.

Under the terms of the RFP, SFW reserved the right to reject any or all applications. In essence, SFW rejected the sole bid to the RFP and decided to reissue the RFP. We can look to the Florida Administrative Procedures Act for guidance in situations where an agency rejects all bids. The APA requires that a challenge to an agency's decision to reject all bids is limited to a determination of whether the purpose of the competitive bidding was subverted. The hearing officer's sole responsibility is to ascertain whether the agency acted fraudulently, arbitrarily, illegally or dishonestly. Department of Transportation v. Groves-Watkins Constructors, 530 So.2d 912 (Fla. 1988). Additionally other state jurisdictions have held that a judicial intervention in an agency's decision to reject all bids are limited to occasions where fraud or corruption has influenced the conduct of officials. Law Brothers Contracting Corp. v. O'Shea, 79 A.D. 2d 1075, 435 N.Y.S.2d 812 (1981). Additionally, it has been held that a decision to reject all bids due to budgetary, financial and planning factors has rational basis and should not be disturbed. Weber v. Philadelphia, 437 Pa. 179, 262 A.2d 297 (1970). The record in this case does not reflect, nor does FVF allege, any hint of fraud, corruption, dishonesty or illegality as the basis to reject FVF's proposal.


The Appellant has alleged that the rating or evaluation process for the proposal was unfair. Appellant has based those allegations on the comments from the reviewers. FVF alleges that the reviewers did not have the expertise in the construction industry to adequately rate the proposal. FVF had an opportunity at its informal and formal appeal to address the reviewer's

comments and question the review of the proposal. The tapes of the informal and formal hearing indicate that much of the information regarding industry expertise shown by FVF was outside the proposal document and could not be considered in the evaluation. The ratings done by all 5 reviewers were universally low. However, even if SFW were to agree that the rating system was flawed in that the reviewers did not have the expertise in the construction industry, SFW still had the right to reject FVF's proposal and reissue the RFP.

WHEREFORE, the undersigned finds:

1. The record contains a "rational basis" for the actions taken by the SFW and SFW did not abuse its discretion in not funding a contract with FVF and declaring the RFP failed.
2. The appeal of FVF is dismissed.

DONE and ORDERED, this 27th day of August 2004, in Tallahassee, Florida.

  
Susan Pareigis, Director  
Agency for Workforce Innovation

**NOTICE OF RIGHTS TO APPEAL**

**FEDERAL**

This Agency Decision is rendered pursuant to Workforce Investment Act regulation 20 CFR 667.600(c)(4) and Agency for Workforce Innovation rule Chapter 60BB- 1. A party adversely affected by this decision may petition the Secretary of the United States Department of Labor within 60 days of receipt of this decision. Any appeal must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, 2000 Constitution Ave., N.W., Frances Perkins Building, Washington, DC 20210, Attention ASET. A copy of the appeal must be simultaneously provided to the ETA Regional Administrator, U. S. Department of Labor, ETA, Atlanta Federal Center, 61 Forsyth Street, S.W., Room 6M12, Atlanta, GA.

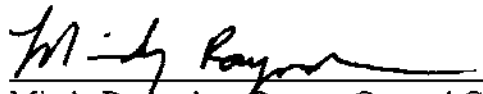
30303 and to the AWI, Office of the General Counsel, 107 E. Madison Street, Caldwell Building, MSC # 150 Tallahassee, Fl. 32399-6545.

**STATE**

THIS DECISION CONSTITUTES FINAL AGENCY ACTION, pursuant to §120.68(2), Florida Statutes, Judicial Review of this proceeding maybe instituted by filing a notice of appeal in the district court of appeal in the appellate district where the Agency maintains its headquarters or where a party resides. Such notice of appeal must be filed with the district court of appeals within thirty (30) calendar days of the date this order is filed in the Official Records of the Agency for Workforce Innovation, as indicated in the certification of the Agency Clerk, or further review will be denied.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing was provided by U. S. Mail, this 27<sup>th</sup> day of August 2004, to Ms. Alina Delgado, Florida Venture Foundation, 782 NW Le Jeune Road, Suite 348, Miami, FL 33126 and to Ms. Edith Humes-Newbold, Executive Director, South Florida Workforce, 7300 Corporate Center Drive, Suite 500, Miami, FL 33126-1234.



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