

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CHI-ADA CORPORATION,

Petitioner,

vs.

Case No. 23-3247BID

BROWARD COUNTY FLORIDA,

Respondent,

and

SUNSHINE CLEANING SYSTEMS, LLC,

Intervenor.

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was conducted by video conference via Zoom on October 3, 2023, before Administrative Law Judge June C. McKinney with the Division of Administrative Hearings ("DOAH").

APPEARANCES

For Petitioner: Joseph M. Goldstein, Esquire
Janeil A. Morgan, Esquire
Shutts & Bowen LLP
201 East Las Olas Boulevard, Suite 2200
Fort Lauderdale, Florida 33301

For Respondent: Benjamin R. Salzillo, Esquire
Sara F. Cohen, Esquire
Fernando Amuchastegui, Esquire
Broward County Attorney's Office
115 South Andrews Avenue, Suite 423
Fort Lauderdale, Florida 33301

For Intervenor: Mark J. Stempler, Esquire
Becker & Poliakoff, P.A.
625 North Flagler Drive, Floor 7
West Palm Beach, Florida 33401

STATEMENT OF THE ISSUE

Whether the Broward County ("Respondent" or "County") Director of Purchasing's determination regarding the bid protest challenging the County's Final Recommendation of Ranking regarding RFP BLD2124561P1, Janitorial Services for County Facilities ("RFP") for Agreements No. 3 and 4, was arbitrary, capricious, or unsupported by substantial competent evidence.

PRELIMINARY STATEMENT

On August 12, 2022, the County posted the RFP, seeking qualified vendors to provide comprehensive janitorial services for five Broward County facilities.

The evaluation team ranked the vendor replies. Sunshine Cleaning Systems, LLC ("Sunshine"), was the first-ranked vendor for Agreements No. 3 and 4. Chi-Ada Corporation ("Chi-Ada") was ranked the second-ranked vendor for Agreements No. 3 and 4.

On June 13, 2023, the County posted the final recommendation of ranking and award for the RFP, recommending the contract award to Sunshine.

On June 16, 2023, Chi-Ada filed its written objection letter, which was denied by the Director of Purchasing on July 7, 2023.

On July 17, 2023, Chi-Ada filed a timely Formal Protest to Final Recommendation of Ranking to the Board of County Commissioners/Director of Purchasing for Agreements [No.] 3 and 4 as to RFP BLD2124561P1,

Janitorial Services for County Facilities ("Protest"), challenging the final recommendation of ranking and award to Sunshine for Agreements No. 3 and 4.

On August 10, 2023, the Director of Purchasing denied Chi-Ada's Protest.

Thereafter, on August 21, 2023, Chi-Ada contested the Director of Purchasing's August 10, 2023, determination and filed Chi-Ada Corporation Appeal to Protest Determination to Agreements [No.] 3 and 4 of RFP BLD2124561P1, Janitorial Services for County Facilities ("Appeal"), which the County referred to DOAH on August 29, 2023. The matter was assigned to the undersigned administrative law judge.

By Order dated September 5, 2023, Sunshine was permitted to intervene in the proceedings.

The case was noticed for hearing on September 7, 2023, and proceeded as scheduled.

At the hearing, Petitioner presented the testimony of one witness: Robert Gleason. Petitioner's Exhibits numbered 2 and 8 through 67 were admitted into evidence. Respondent's Exhibits 1 through 5 were admitted into evidence. Intervenor's Exhibits 1 through 14 were admitted into evidence without objection. Joint Exhibits 1 through 6 were admitted into evidence.

The proceedings of the hearing were recorded and transcribed. A one-volume Transcript of the hearing was filed at DOAH on October 17, 2023. The parties stipulated to extend the deadline to submit proposed recommended orders and agreed to file their proposed recommended orders

by October 23, 2023. The parties timely filed proposed recommended orders, which have been considered in preparation of this Recommended Order.

Unless otherwise indicated all statutory references are to the Florida Statutes (2023).

FINDINGS OF FACT

The RFP

1. On August 12, 2022, the Broward County Purchasing Division posted the RFP, seeking qualified vendors to provide comprehensive janitorial services for various Broward County facilities.
2. The RFP encompassed a total of five separate Janitorial Service Agreements that could be awarded to separate vendors, which included four County Business Enterprises ("CBE") Reserve Agreements and one Small Business Enterprises ("SBE") Reserve Agreement.
3. Agreement No. 3 is the CBE Reserve for the South Regional Courthouse and Agreement No. 4 is for the CBE Reserve for the Broward County Judicial Complex.
4. The deadline to submit a bid for any of the five agreements was November 17, 2022, at 2:00 p.m.
5. Non-CBE vendors, like Chi-Ada and Sunshine, were permitted to bid on the RFP.
6. The RFP provided Standard Instructions to Vendors ("Standard Instructions") and Special Instructions to Vendors ("Special Instructions"), which required submission of information and documentation to respond to the solicitation requirements in the RFP.
7. Section A of the RFP's Standard Instructions listed specific criteria for responsiveness, which provided, in relevant part:

A. Responsiveness Criteria:

A Responsive (Vendor) means a vendor who submits a response to a solicitation that the Director of Purchasing determines meets all requirements of the solicitation.

The required information and applicable forms must be submitted with solicitation response, electronically through Periscope SG2 by the solicitation's due date and time. Failure to timely submit may result in Vendor being deemed non-responsive. The County reserves the right to waive minor technicalities or irregularities as is in the best interest of the County in accordance with Section 21-37(b) of the Broward County Procurement Code.

Below are the standard responsiveness criteria; refer to **Special Instructions to Vendors** for Additional Responsiveness Criteria requirement(s).

1. Lobbyist Registration Requirement Certification

Refer to **Lobbyist Registration Requirement Certification Form**. The completed form should be submitted with the solicitation response. If not submitted within solicitation response, it must be submitted within three business days of County's written request. Failure to timely submit may result in Vendor being deemed non-responsive.

2. Criminal History Screening Practices Certification

Refer to **Criminal History Screening Practices Certification Form**. The completed form should be submitted with the solicitation response. If not submitted within solicitation response, it must be submitted within three business days of County's written request. Failure to timely submit may result in Vendor being deemed non-responsive.

3. Addenda

The County reserves the right to amend this solicitation prior to the due date and time specified in the solicitation. Any change(s) to this solicitation will be conveyed through the written addenda process. Only written addenda will be binding. Vendor must follow the instructions carefully and submit the required information and applicable forms, or acknowledge addendum, electronically through Periscope S2G. It is the Vendor's sole responsibility to monitor the solicitation for any changing information, prior to submitting their solicitation response.

8. Section A of the RFP Special Instructions detailed the requirements for "Additional Responsiveness Criteria" and instructed vendors that "the following criteria shall also be evaluated in making a determination of responsiveness": price sheet(s), price submission, a Domestic Partnership Act requirement, living wage requirements, and the affidavit form.

9. Section B of the RFP Standard Instructions apprised vendors how to be a responsible vendor and the process for a determination of vendor responsibility by providing, in relevant part:

A Responsible (Vendor) means a vendor who is determined to have the capability in all respects to perform fully the requirements of a solicitation, as well as the integrity and reliability that will ensure good faith performance.

When making determinations of responsibility, the Director of Purchasing or the Evaluation Committee (as applicable) may request additional information from any vendor on matters that may affect a vendor's responsibility. The failure of a vendor to provide information requested by the County may result in a determination of non-responsibility. In addition, a vendor may submit information regarding its responsibility; provided, however, that such information shall not be considered if it contradicts or materially alters the

information provided by the vendor in its original response to the solicitation.

Failure to provide any of this required information in the manner required may result in a recommendation by the Director of Purchasing that the Vendor is non-responsible.

10. Section B also specifically identified the standard responsibility criteria as litigation history, financial information and statements, authority to conduct business in Florida, affiliated entities of the principal(s), insurance requirements, and ownership disclosure (for informational purposes only).

11. Section B of the Special Instructions provided the following "Additional Responsibility Criteria": Office of Economic and Small Business Development program information, Workforce Investment Program requirements, and license requirements (not applicable per the RFP).

12. Section F of the Standard Instructions notified vendors that their evaluation would be based on the RFP evaluation criteria, which provided, in relevant part:

1. The Evaluation Committee will evaluate Vendors as per the **Evaluation Criteria**. The County reserves the right to obtain additional information from a Vendor.

2. Unless the Evaluation Criteria is identified in the solicitation as an Additional Responsiveness or Responsibility Requirement (i.e. Special Instructions to Vendors, e.g., pricing, certifications, etc.), a Vendor's failure to respond to evaluation criteria will not be considered a matter of responsiveness or responsibility. Vendors that fail to submit any information and/or documentation required by an evaluation criteria will not be evaluated or scored or the corresponding evaluation criteria.

3. The County is not required to request, consider, or analyze Vendor's Evaluation Criteria responses received after the solicitation response due date;

however, the County reserves the right to obtain clarifying information from a Vendor in writing for the Evaluation Committee.

13. The Evaluation Criteria portion of the RFP notified the vendors how each of the six categories being rated would be scored and that a total of 100 points was possible.

14. Evaluation Criteria 1 of the RFP, titled "Ability of Personnel," instructed proposers to "submit a resume or brief biography for each of the company principal[s] highlighting their experience and the applicability to these Agreements" for Section 1.1 of the Evaluation Criteria ("Evaluation Criteria 1.1").

15. Evaluation Criteria 3 of the RFP, titled "Past Performance," allots a maximum of 10 points. The RFP states the following in Evaluation Criteria 3.1:

References – Vendor should submit completed Reference Verification Forms for previous projects referenced in its submittal. Vendor should provide the Vendor Reference Verification Form to its reference organization/firm to complete and return to the Vendor's attention. Vendor should submit the completed Vendor Reference Form with its response by the solicitation's deadline. The County will verify references provided as part of the review process. Vendor should provide five (5) non-Broward County Board of County Commissioners' janitorial contract references, but no less than three (3). If the County is unable to verify at least three (3) references, additional references may be requested by the County.

Only provide references for non-Broward County Board of County Commissioners contracts. For Broward County contracts, the County will review performance evaluations in its database for vendors with previous or current contracts with the County. The County considers references and performance

evaluations in the evaluation of Vendor's past performance.

Maximum Points Value: 10

16. In October 2022, Sunshine Cleaning Systems, Inc., notified the County that it was scheduled to be sold to another company, Pritchard Industries, Inc. ("Pritchard"), via stock sale on October 31, 2022. At the time, Sunshine Cleaning Systems, Inc., had contractual obligations to the County.

17. On November 15, 2022, Chi-Ada timely submitted its Proposal Response.

18. On November 17, 2022, Sunshine, formerly known as Sunshine Cleaning Systems, Inc., timely submitted its Proposal Response ("Proposal").
Sunshine's Proposal

19. Sunshine responded to Evaluation Criteria 1.1 by first explaining its Broward County based team, and stated:

Various members of Sunshine's corporate level staff will be active in the operations and team performance on these Agreements. All are Broward County based and have experience on these, and similar Broward County Agreements. Our Project Managers and staff will have their full support. One exceptional advantage Sunshine brings to this procurement is that our corporate headquarters is centrally located in Ft. Lauderdale. This proximity enables any of our area managers and corporate representatives to easily assist in the performance of this contract. Whether it's a routine inspection, customer meeting, backup support, or a full-scale emergency, our top team members are only minutes from any facility. We are all committed to support each Agreement in this procurement.

Sunshine then listed the following corporate leadership with job titles and provided a brief biography for each: (1) Laura Coenen ("Coenen"), senior advisor; (2) Randy Kierce ("Kierce"), chief operating officer; (3) Dave Dyrek, EVP sales and marketing; (4) Rishi Bajnath, controller; (5) Krissy Mulder,

human resources director; and (6) Mike Woodson, sales and quality control director.

20. In its Proposal, Sunshine responded to Section 3.1 of the Evaluation Criteria by stating that its "Vendor Reference Verification Forms have been distributed to our references."

21. Sunshine checked the "Limited Liability Company (LLC)" box when responding to the RFP's Vendor Questionnaire and Standard Certifications ("VQSC") form, Question 9, which required vendors to check the appropriate box for its type of business.

22. Sunshine replied to the VQSC form, Question 10, which required vendors "[l]ist Florida Department of State, Division of Corporations document number (or registration number if fictitious name)," by listing document number F47062, which was Sunshine's previous entity, Sunshine Cleaning Systems, Inc.'s, document number.

23. Sunshine responded to the VQSC form, Question 11, which required vendors to "[l]ist name and title of each principal, owner, officer, and major shareholder," by listing the following names and titles: "a) Laura Coenen, President[;] b) Randy Kierce, V.P.[;] c) Erin Calufetto, Secretary [; and] d) Jenna Auckland, Treasurer."

24. Thomas Melton ("Melton"), an officer of Pritchard, signed the price forms submitted with Sunshine's Proposal.

25. Sunshine also included in its Proposal the 2021 Florida Profit Corporation Annual Report for Sunshine Cleaning Systems, Inc.

26. Every reference in Sunshine's Proposal for its principal place of business or location listed the address 3445 Northeast 12th Terrace, Fort Lauderdale, Florida 33334,¹ including the 2021 Annual Report, the VQSC form for Questions 6 and 7, and the Location Certification Form for Option 3, which specified the address was the Local Business Location but at least

¹ In citing Sunshine's address, 3445 Northeast 12th Terrace, Fort Lauderdale and Oakland Park are interchangeable as city names for the Broward County address.

(50%) of the total equity interests in the business are owned, directly or indirectly by one or more entities with a principal place of business located outside of Broward County.

27. Sunshine also replied to Questions 6 and 7 of the VQSC form by answering "Sunshine HQ" with the 3445 Northeast 12th Terrace, Fort Lauderdale, Florida 33334, address.

28. Sunshine even answered and certified to the County that 100% of "the total equity interests in the Vendor owned, directly or indirectly, by one or more entities with a principal place of business located outside of Broward County" by choosing Option 3.

County Inquiry

29. On December 9, 2022, Mary Moss, the County's senior purchasing agent, reached out to Sunshine by email to get clarification for Sunshine's selection of Option 3, and the email stated:

Regarding your proposal, please provide information to the following:

Required Supporting Documentation (in addition to this form): Option 3 (Local Based Subsidiary):
2. Documentation identifying the Vendor's vertical organization and names of parent entities if the Vendor is a Locally Based Subsidiary.

30. On or about December 13, 2022, Sunshine's Vice President ("VP") and Chief Operating Officer Kierce responded to the request and provided the Sunshine Cleaning Systems, LLC-LLC Agreement ("LLC Agreement").

31. The executed LLC Agreement clarified that Pritchard owns subsidiary Sunshine, the bidder in the RFP.

32. The LLC Agreement outlined that Pritchard is the sole member of Sunshine with 100% stock membership interest. The LLC Agreement also identified Pritchard's initial officers as:

4.4. Initial Officers. The initial officers of the Company shall be:

President and Chief Executive Officer	Jay Leyden
Executive Vice President, Treasurer and Chief Financial Officer	David Strupinsky
Executive Vice President and Secretary	Thomas Melton
Executive Vice President and Chief Operating Officer	Robert Sokolowski

33. On December 22, 2022, Randall Plunkett ("Plunkett"), the County's senior technical purchasing agent, contacted Sunshine by email requesting documents and stated:

It has come to my attention that there is a recent change related to your company name. As I understand the change, only your company name changed, all other information including the Federal Employer Identification Number (FEI#) has not changed. If this is correct, please proceed with the following directions; otherwise, advise as to what has changed. Attached you will find an Affidavit of Change of Name Form and W-9 Form which require your immediate attention.

34. On or about December 23, 2022, Kierce responded on behalf of Sunshine to Plunkett and provided the County with the requested W-9 Form, including the Employer Identification Number, 59-2142301; an Affidavit of Change Name Form signed by Melton as executive vice president of Sunshine; and a Division of Corporations report for Sunshine showing an October 21, 2022, conversion date with the current document number of L22000452191.

35. On January 4, 2023, Angie Salinas, the County's senior contract grant administrator, requested by email that several vendors, including Sunshine, submit completed Vendor Reference Verification Forms by January 10, 2023.

36. VP Kierce, on behalf of Sunshine, complied and provided Sunshine's references the next day, which were accepted by the County's purchasing division.

37. The County determined Sunshine was a responsive vendor during the procurement evaluation.

38. On or about June 5, 2023, the Evaluation Committee met and reviewed the proposals submitted.

39. The County's Evaluation Committee ranked Sunshine as the first-ranked non-CBE vendor and Chi-Ada as the second-ranked non-CBE vendor for Agreements No. 3 and 4.

40. On June 13, 2023, the County issued the final recommendation to award the contract to Sunshine.

41. On June 16, 2023, Chi-Ada made a written objection to the ranking of Agreements No. 1, 3, and 4 following the initial ranking of the proposers.

42. On June 23, 2023, in response to the objection, the County sent Sunshine a list of 13 questions ("questionnaire") to confirm information about Sunshine's principal place of business and company organization.

43. On June 28, 2023, Sunshine provided the responses to the County's questionnaire sent on June 23, 2023, signed by VP Kierce and Senior Advisor Coenen.

44. Sunshine responded to Question 4, which asked "Who are Sunshine's corporate officers (i.e. President, Vice President, Secretary, and Treasurer)? Where is their physical work location?" by replying "There is no President operationally." Sunshine also listed local individuals, "Randy Kierce, Vice President[,] Rishi Bajnath, Secretary and Treasurer[,] and Laura Coenen, Senior Advisor," in its response with the explanation "[t]heir physical work location is 3445 NE 12th Terrace, Oakland Park, FL 33334."

45. In the questionnaire, Sunshine also clarified the roles and responsibilities between the Sunshine employees and Pritchard employees in response to Question 7 and stated:

7. Who oversees and/or coordinates Sunshine's corporate business activities (e.g., legal and regulatory filings) and from what location do they do so? Please list each person, their title, and location. Response: Randy Kierce, Vice President, 3445 NE 12th Terrace, Oakland Park FL 33334. Since the sale of Sunshine to Pritchard Industries (Southeast), Inc. ("Pritchard"), some legal and ministerial filings are handled by the parent company. To that extent, Tom Melton (Executive Vice President of Pritchard), David Strupinsky (CFO of Pritchard), and Jay Leyden (CEO of Pritchard) are the officers of Pritchard who would oversee those non-operational tasks for Sunshine.

46. In response to Question 10 of the County's questionnaire, Sunshine represented that its management personnel are Randy Kierce, vice president; Laura Coenen, senior advisor; Mike Woodson, operations manager; Rishi Bajnath, controller; and Wendy Dawson, human resources director, all locally based at 3445 Northeast 12th Terrace, Oakland Park, Florida 33334.

47. In response to Question 11 of the County's questionnaire, which asked "does management personnel have authority to execute business transactions, contracts, etc. (without any directions, control and coordination by Pritchard's officers at their New York office location)?" Sunshine replied and stated, "yes, the management personnel are authorized to exercise overall direction, control, and coordination of Sunshine's corporate administrative and business activities without any direction, control, and coordination by Pritchard's officers at their New York office location. Additional approval is not required for those activities."

48. After reviewing Sunshine's responses to the questionnaire and Sunshine's responses to Chi-Ada's objection points, the Purchasing Director for Broward County rejected Chi-Ada's objection and proceeded to the final ranking.

49. On July 17, 2023, Chi-Ada submitted its Protest, alleging among other things that the submission of the reference verification forms was a matter of

responsiveness; that the Evaluation Committee should not have scored Sunshine for Evaluation Criteria 3.1 because the forms were submitted after the deadline, and that Sunshine's response to Evaluation Criteria 1.1 rendered it non-responsible.

50. On August 10, 2023, the Purchasing Director for Broward County issued his denial of Chi-Ada's Protest.

51. On August 21, 2023, Chi-Ada submitted its Appeal of the Purchasing Director's denial of Chi-Ada's Protest.

Ultimate Findings of Fact

52. The County's Periscope bidding system generated the first page of Sunshine's Proposal that misnamed the banner Sunshine Cleaning Systems, Inc., Sunshine's former entity. Sunshine did not submit that page of its Proposal.

53. Senior Advisor Coenen signed the cover letter to Sunshine's Proposal, and the County designated Sunshine as the bidder proposing services for the RFP.

54. The County's past and current practice has been to accept Vendor Reference Verification Forms after the solicitation deadline. The RFP's instructions notified vendors that they should submit completed reference verification forms, but the RFP also provided the County the authority to reserve the right to request additional references from the vendor in Evaluation Criteria 3.1 and to obtain additional information from a vendor in Section F of the Standard Instructions.

55. The County's typical process was to contact or chase vendors that do not submit the reference verification form at the time of bid submittal, as the County did in this case requesting forms from approximately nine vendors, including Sunshine.

56. Even though the County chased down the verification forms after the bid submittal date during this procurement process, Sunshine provided its Vendor Reference Verification Forms on December 5, 2022, in response to the

County's request, which was more than six months before the Evaluation Committee met to evaluate proposers.

57. Sunshine operates from its offices at 3445 Northeast 12th Terrace, Oakland Park, Florida 33334, as it has since 1983.

58. Although Sunshine was bought by Pritchard through a stock purchase on October 31, 2022, Sunshine is operated locally. Sunshine's management and operations teams are in Broward County. All of Sunshine's operational decisions and company functions are performed from its Broward County office as described above, including accounting; payroll; accounts payable and receivable; human resources functions; decisions regarding business opportunities, including bidding or proposing for public contracts such as the RFP at issue; and other functions.

59. The record shows that the officers listed in the LLC Agreement from Sunshine's owner, Pritchard, were based in New York, and have no operational involvement in the procurement project at issue.

60. The County's purchasing division utilized Section F of the Standard Instructions to request additional information from vendors during this procurement and the County requested information and documentation from Sunshine on matters that they had questions about, including Option 3, organizational structure, parent entities, locally based subsidiary, name changes, W-9 forms, principals, and principal place of business.

61. All of Sunshine's responses, including the Proposal, email replies, and the questionnaire reply, were reviewed and considered to make any determinations regarding Sunshine.

62. The record evidence established that even though Pritchard now owns Sunshine, Sunshine still operates exclusively from its office at 3445 Northeast 12th Terrace, Oakland Park, Florida. To that end, the competent substantial evidence shows all services relating to Agreements No. 3 and 4 to be performed from 3445 Northeast 12th Terrace office, which has remained its local headquarters and principal place of business.

CONCLUSIONS OF LAW

63. DOAH has jurisdiction to determine the facts and conclusions of law pursuant to section 21.88 of the Broward County Procurement Code, which governs this matter.

64. Section 21.88(c) of the Broward County Procurement Code provides that:

The Administrative Law Judge's review shall be limited to whether the appealing party was afforded procedural due process and/or whether the Director of Purchasing's determination was arbitrary, capricious, or unsupported by substantial competent evidence. Substantial competent evidence means such relevant evidence as a reasonable person might accept as adequate to support a conclusion.

65. An action is "arbitrary if it is not supported by logic or the necessary facts," and "capricious if it is adopted without thought or reason or is irrational." *Hadi v. Liberty Behav. Health Corp.*, 927 So. 2d 34, 38-39 (Fla. 1st DCA 2006).

66. Chi-Ada has challenged the County's proposed action to award Agreements No. 3 and 4 to Sunshine.

67. The burden of proof resides with Chi-Ada, the party contesting the County's action.

Chi-Ada's Responsiveness Challenge

68. Chi-Ada contends that the submission of Sunshine's Vendor Reference Verification Form after the solicitation deadline rendered its proposal non-responsive. However, the evidence at hearing shows otherwise. The RFP's Standard Instructions and Special Instructions set forth the responsiveness criteria in this procurement, as well as outlines what information and application forms were required by the RFP for submission to be responsive. Neither the Standard Instructions nor Special Instructions identify Vendor Reference Verification Forms as a requirement of the RFP's responsiveness

criteria. Additionally, vendor reference forms were not listed among the "applicable forms" in the RFP that vendors were required to submit with their proposals. Instead, the vendor reference forms were part of the RFP Evaluation Criteria. To that end, Section F.2. of the Standard Instructions specifically excludes evaluation criteria as a matter of responsiveness and responsibility. Therefore, the record fails to provide evidence that Sunshine's submission of its Vendor Reference Verification Form at the request of the County on January 5, 2023, was non-responsive. As such, the Purchasing Director's denial of Chi-Ada's Protest regarding Sunshine's submission of vendor reference forms was based on competent substantial evidence and was neither arbitrary nor capricious.

69. Chi-Ada also alleges that the Evaluation Committee should not have evaluated and scored Sunshine's Proposal for Evaluation Criteria 3.1 because Section 3.1 instructed that the vendors should complete the form by the solicitation's deadline. The undersigned is not persuaded by Chi-Ada's claim. The plain meaning of "should" in Section 3.1, which states vendors "should submit," and "should provide," is not a mandate or requirement. Likewise, Section 21.94 of the Broward County Procurement Code denotes the term "should" as permissive in the definition section. Therefore, Section 3.1 does not require vendors to submit by the solicitation's deadline as alleged by Chi-Ada. Additionally, the Findings of Fact above show that it was a reasonable County practice of obtaining the vendor reference forms not submitted with solicitations before proposals were evaluated. Applying such a practice to this matter, the record shows the County chased about nine other vendors besides Sunshine to get the forms submitted. Furthermore, Evaluation Criteria 3.1 allowed the County to request additional references and Section F of the Standard Instructions reserves the right for the County to obtain additional information from vendors. Hence, Sunshine's Proposal was properly evaluated and scored by the Evaluation Committee pursuant to Evaluation Criteria 3.1 and the Purchasing Director's denial of Chi-Ada's Protest on this

issue was based on competent substantial evidence and was neither arbitrary nor capricious.

Chi-Ada's Responsibility Challenge

70. Chi-Ada contends that the County should have found Sunshine non-responsible because it failed to disclose all company principals contrary to the requirements of the RFP. On this point, the evidence does not support such an allegation. First, neither the Standard Instructions nor Special Instructions require a vendor to disclose principals as a matter of responsibility. Additionally, the term principal is not defined in the RFP or procurement code. On this point, however, the RFP's principal disclosure instruction, Evaluation Criteria 1.1, requests the company's principals, brief biography for each, and the "applicability to these Agreements." The evidence establishes that Sunshine apprised the County that Pritchard owned Sunshine but did not disclose Pritchard officers listed in the LLC Agreement, who were not involved in any Broward County related daily operations for the procurement. Instead, the Findings of Fact above demonstrate that Sunshine responded to Evaluation Criteria 1.1 and properly advised the County of Sunshine's local principals that oversaw the operational and company tasks for Agreements No. 3 and 4 for Sunshine.

71. Chi-Ada proved that Coenen's title varies in Sunshine's Proposal as Sunshine listed Coenen's title as president on Question 11 and identified Coenen as senior advisor in the answer to Evaluation Criteria 1.1. However, the record confirms Coenen's operational duties to be the same. Additionally, Sunshine reaffirms Coenen's senior advisor title in its response to the questionnaire on June 28, 2023. Even though there is a title contradiction, Petitioner failed to prove that such a discrepancy was a material contradiction or that the contradiction provided Sunshine an unfair competitive advantage in this procurement in any manner.

72. Chi-Ada also claims that Sunshine's listing of Sunshine's previous entity's document number F47062 in response to VQSC Question 10 instead

of the current document number L22000452191 for the newly converted entity is another contradiction of information submitted to the County, which makes Sunshine non-responsible. However, the record evidence demonstrates that listing the previous document number in Sunshine's Proposal and correcting it later is, at most, a minor irregularity waivable by the County. Section A of the Standard Instructions expressly reserves to the County the right to waive any minor irregularity concerning a reply when doing so will serve the County's best interest. *See Tropabest Foods, Inc. v Dep't of Gen. Servs.*, 493 So. 2d 50, 52 (Fla. 1st DCA 1986) (a minor irregularity is one that does not affect the price of the bid, give the bidder an advantage or benefit not enjoyed by other bidders, or adversely affect the interests of the agency).

73. In this matter, it is undisputed that Pritchard owns Sunshine. The record supports Chi-Ada's allegation that Sunshine failed to list Pritchard as its owner in Question 11. However, the evidence demonstrates that Sunshine notified the County that it was a subsidiary several times in its Proposal before explaining it in detail by providing the LLC Agreement and answering the questionnaire. In fact, the evidence shows that Sunshine replied in its initial response and informed the County in Question 9 of the Proposal that it was an LLC and responded to Option 3 that 100% of its total equity was owned by an entity outside of Broward County. Hence, the failure of Sunshine to list Pritchard's specific name in Question 11 does not materially alter the Proposal or provide Sunshine a competitive advantage. Therefore, Sunshine properly disclosed its principals in this matter. Accordingly, the Purchasing Director's determination of denial on this issue was supported by substantial competent evidence and was neither arbitrary nor capricious.

74. Chi-Ada also maintains and appeals that the County should have found Sunshine non-responsible because it failed to disclose its out-of-state principal place of business contrary to the requirements of the RFP. The undersigned is not persuaded by Chi-Ada's assertions. First, the disclosure of an out-of-state principal place of business is not an RFP criterion for

responsibility as it is neither in the Standard Instructions nor Special Instructions for responsibility. Even so, as stated in the Findings of Fact above, Sunshine disclosed Pritchard as being out of state initially, when replying to the Local Certification form and selecting Option 3, which identified Sunshine had "a principal place of business located outside of Broward County is 100%." By certifying the option, Sunshine informed the County of its out-of-state principal place of business upon its Proposal submittal. The record also shows that Sunshine had previously notified the County in October 2022 of the stock sale to Pritchard.

75. Moreover, no evidence was presented at hearing to show Pritchard being out of state having any material impact on this RFP or providing Sunshine a competitive advantage. Instead, the record evidence demonstrates that Pritchard is not involved in Sunshine's day-to-day operations, or the services provided in Agreements No. 3 and 4. Therefore, Sunshine's non-disclosure of Pritchard's name in its initial Proposal is not a material alteration of Sunshine's original response and does not yield non-responsibility to the solicitation. Furthermore, the Findings of Fact above establish that Sunshine's named local office and principal place of business for this procurement is 3445 Northeast 12th Terrace Oakland Park, Florida 33334, the Sunshine headquarters, is properly disclosed multiple times in the Proposal, questionnaire response, and on the Location Certification Form. Consequently, the Purchasing Director's denial of Chi-Ada's Protest on this issue was based on competent substantial evidence and was neither arbitrary nor capricious.

76. Accordingly, Chi-Ada has been afforded due process by virtue of its Protest, Appeal, and the formal hearing in this matter. However, Chi-Ada has not met its burden to demonstrate that the County's Director of Purchasing's determination to award Agreements No. 3 and 4 to Sunshine was arbitrary, capricious, or unsupported by competent substantial evidence, and therefore, the undersigned, hereby, denies Chi-Ada's Appeal.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Broward County enter a final order denying Chi-Ada Corporation Appeal to Protest Determination to Agreements [No.] 3 and 4 of RFP BLD2124561P1, Janitorial Services for County Facilities.

DONE AND ENTERED this 9th day of November, 2023, in Tallahassee, Leon County, Florida.



JUNE C. MCKINNEY
Administrative Law Judge
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 9th day of November, 2023.

COPIES FURNISHED:

Fernando Amuchastegui, Esquire
(eServed)

Benjamin R. Salzillo, Esquire
(eServed)

Sara F. Cohen, Esquire
(eServed)

Joseph M. Goldstein, Esquire
(eServed)

Janeil A. Morgan, Esquire
(eServed)

Mark J. Stempler, Esquire
(eServed)

Andrew J. Meyers, County Attorney
(Address of Record)

RIGHT TO SEEK REVIEW WITH CIRCUIT COURT

The administrative law judge's decision shall be final and binding on the parties, subject to review in accordance with Section 21.88(f) of the Broward County Procurement Code.