

Office of Superintendent of Schools  
Board Meeting of March 9, 2011

February 25, 2011

Office of School Board Attorney  
Walter J. Harvey, Board Attorney

**SUBJECT: AUTHORIZATION TO ENTER A FINAL ORDER IN FAVOR OF THE SCHOOL BOARD OF MIAMI-DADE FOLLOWING DISMISSAL IN THE CASE OF MUNILLA CONSTRUCTION MANAGEMENT v. MIAMI-DADE COUNTY SCHOOL BOARD - DOAH Case No. 10-009432 BID, AND TO RECOVER REASONABLE FEES**

On October 4, 2010, a petition was filed with the Division of Administrative Hearings for a formal hearing regarding a bid protest by Munilla Construction Management ("MCM"), protesting the award of an Invitation to Bid on Project No. A0101303 to Betancourt Castellon Associates ("BCA"). The invitation to Bid solicited bids for a Phase IV construction project at Miami Central Senior High School for a new facility, renovation, and remodeling and site improvement.

On November 8, 2010, a hearing was held before Administrative Law Judge, Honorable Edward J. Bauer. Subsequent to the hearing, but prior to Judge Bauer issuing a formal ruling, Petitioner, MCM, filed a Notice of Voluntary Dismissal, abandoning its Formal Bid Protest, and thereby designating the School Board as prevailing party under Section 255.0516, Fla. Stat. Judge Bauer entered an order closing the matter with the Division of Administrative Hearings and relinquished jurisdiction back to the School Board.

As prevailing party under Section 255.0516, Florida Statutes, the School Board is entitled to its reasonable attorney's fees and costs within thirty (30) days of the School Board's Final Order, or the amount shall be recovered from the bond posted by Munilla Construction Management. Legal fees and costs were expended by the School Board in the defense of MCM's claims.

A copy of the proposed Final Order is attached.

**RECOMMENDED:** That The School Board of Miami-Dade County, Florida enter an Order in favor of the School Board as prevailing party pursuant to Section 255.0516, Florida Statutes, following the dismissal of Munilla Construction Management's bid protest, which would entitle the School Board to recover its reasonable attorney's fees and costs from Munilla Construction Management.

**G-1**

MIAMI DADE COUNTY SCHOOL BOARD  
1450 NE 2nd Ave.  
Miami, FL 33132

MUNILLA CONSTRUCTION MANAGEMENT

Petitioner,

DOAH CASE NO. 10-009432  
School Board ITB. A0101303

MIAMI-DADE COUNTY SCHOOL BOARD

Respondent,

AND

BETANCOURT CASTELLON ASSOCIATES, INC.,

Intervenor.

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**FINAL ORDER**

Petitioner protested the Miami-Dade County School Board's ("School Board") decision to reject all bids submitted pursuant to Invitation to Bid on Project number A0101303, Phase IV- New facility, renovation, remodeling, site improvement Miami Central Senior High School (the "ITB"). The ITB solicited bids regarding an open and competitive contract to build a classroom building at Miami Central Senior High School. When the bids were opened and calculated the lowest dollar bid was from JCON Group, Corp. ("JCON") however, JCON was determined to be non responsive. The second lowest dollar bid was from Betancourt Castellon Associates, Inc. ("BCA"). The third lowest bid was from Munilla Construction Management ("MCM"), the Petitioner in the instant matter. The School Board's selection committee recommended awarding the contract to BCA; however, MCM protested asserting that BCA was not a responsive

bidder. While the MCM protest was pending, the School Board determined that it no longer wanted to proceed with the procurement for services in its current form as an invitation to bid. Subsequently, the School Board rejected all of the bids under the ITB and issued a new Request for Proposals ("RFP") for Construction Manager At Risk services ("CM At Risk") to construct the improvements at Miami Central High School. On October 4, 2010, Petitioner filed its Formal Bid Protest. *See Exhibit A, Formal Protest dated October 4, 2010.*

This matter came to be heard before the Honorable Edward J. Bauer, Administrative Law Judge, Department of Administrative Hearings on November 8, 2010. Appearances on behalf of the parties were as follows:

For Petitioner: J. Alfredo De Armas, Esq.  
Alvarez, Armas & Borron, P.A.  
901 Ponce de Leon Boulevard, Suite 304  
Coral Gables, Florida 33134

For Respondent: Mitchell Bierman, Esq.  
Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.  
2525 Ponce de Leon Boulevard, Suite 700  
Coral Gables, Florida 33134

Oliver Gilbert, Esq.  
Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.  
2525 Ponce de Leon Boulevard, Suite 700  
Coral Gables, Florida 33134

For Intervenor: John Shawde, Esq.  
Rasco Klock Reininger Perez Esquenazi Vigil and Nieto  
283 Catalonia Avenue, Second Floor  
Coral Gables, Florida 33314

1. At the hearing, Petitioner presented the testimony of Pedro Munilla. Respondent presented the testimony of Jaime Torrens. Intervenor presented the

testimony of Ramiro Betancourt. On November 12, 2010, subsequent to the hearing held before the Administrative Law Judge, but prior to a formal ruling being issued, Petitioner filed a Notice of Voluntary Dismissal, abandoning its Formal Bid Protest. *See Exhibit C, Notice of Voluntary Dismissal filed November 12, 2010.* Pursuant to Petitioner's Notice of Voluntary Dismissal, the Court entered an Order closing the file and relinquishing jurisdiction to the School Board. *See Exhibit D, Order dated November 17, 2010.* No exceptions were filed to this Order. Pursuant to Florida Statute 255.0516 and Florida case law, the School Board is a prevailing party entitled to fees and costs.

#### STATEMENT OF THE ISSUE

The issue presented was whether the School Board acted arbitrarily by rejecting all bids submitted pursuant to ITB.

#### FINDINGS OF FACT

2. On May 20, 2010, the Miami Dade County School Board published an Invitation to Bid on Project number A0101303, Phase IV- New facility, renovation, remodeling, site improvement Miami Central Senior High School.

3. The ITB solicited bids regarding an open and competitive contract to build Miami Central Senior High School.

4. When the bids were opened and calculated the lowest dollar bid was from JCON, however, JCON was determined to be non responsive.

5. The second lowest dollar bid was from BCA.

6. The third lowest dollar bid was from MCM, the Petitioner in the instant matter.

7. BCA's dollar bid was \$20,270,000. MCM's dollar bid was \$20,298,000.
8. The selection committee recommended awarding the contract to BCA and the office of the superintendent announced its intent to recommend awarding the contract to BCA.
9. BCA has not been declared non responsive or non responsible by the School Board with regard to the ITB.
10. MCM filed a protest of the intended award to BCA.
11. The office of the superintendent changed its recommendation and recommended that the School Board reject all bids. On September 7, 2010, the School Board voted unanimously to reject all bids.
12. The School Board has issued a new RFP for CM At Risk services to construct the improvements at Miami Central High School.
13. MCM is protesting the School Board's determination to reject all bids and issue a new RFP and the Office of the Superintendent's recommendation to reject all bids.
14. On October 15, 2010, MCM petitioned the Administrative Law Judge for an Emergency Injunction, preventing the School Board from proceeding with the solicitation or contract award process until the formal bid protest was resolved.
15. A hearing was held on MCM's Motion for Emergency Injunctive Relief and on October 19, 2010, Administrative Law Judge Edward J. Bauer entered an Order denying MCM's Motion for Emergency Injunctive Relief. In addition, Judge Bauer granted the School Board's motions to limit the trial issues to a general determination as to whether the Superintendent's recommendation and the Board's unanimous vote to reject all bids was arbitrary or capricious.

16. A hearing was held before Administrative Law Judge, Edward J. Bauer on November 8, 2010.

17. At the hearing, Petitioner presented the testimony of Pedro Munilla. Respondent presented the testimony of Jaime Torrens. Intervenor presented the testimony of Ramiro Betancourt. Additionally, all Parties submitted exhibits to the Administrative Law Judge.

18. On November 12, 2010, Petitioner filed a Notice of Voluntary Dismissal, abandoning its Formal Bid Protest.

19. The Order closing the file was entered by the Administrative Law Judge on November 17, 2010.

#### CONCLUSIONS OF LAW

1. The School Board has jurisdiction over the subject matter of this proceeding pursuant to Chapter 120 of the Florida Statutes and the Order closing the file issued by Administrative Law Judge Edward Bauer closing this matter and relinquishing jurisdiction to the School Board.

2. The School Board did not act arbitrarily by rejecting all bids submitted pursuant to Invitation to Bid on Project number A0101303, Phase IV- New facility, renovation, remodeling, site improvement Miami Central Senior High School (the "ITB").

3. Pursuant to Section 255.0516, Florida Statutes, and Florida case law, the School Board is a prevailing party and is entitled to its reasonable fees and costs due to MCM's voluntary dismissal and Judge Bauer's relinquishment of jurisdiction.

ORDER

Based upon the forgoing Findings of Facts and Conclusion of Law, it is

ORDERED that the notice of protest and formal protest filed by Munilla Construction Management challenging the School Board's rejection of all bids submitted pursuant to Invitation to Bid on Project number A0101303 are hereby dismissed. It is further

ORDERED that due to the dismissal and relinquishment of jurisdiction, the School Board is a prevailing party pursuant to Section 255.0516, Florida Statutes. It is further

ORDERED that pursuant to Section 255.0516, Florida Statutes, the Miami-Dade County School Board is entitled to recover its reasonable attorney's fees and costs within 30 days of the date of this order.

**DONE AND ORDERED** this \_\_\_\_\_ day of March, 2011.

**THE SCHOOL BOARD OF  
MIAMI-DADE COUNTY, FLORIDA**

By: \_\_\_\_\_  
Ms. Perla Tabares Hantman, Chair

Filed with the Clerk of The School Board of  
Miami-Dade County, Florida this \_\_\_\_ day of  
March, 2011.

**APPEAL OF FINAL ORDER**

This Order may be appealed by filing 2 copies of a notice of appeal accompanied by a filing fee, as set out in section 120.68(2), Florida Statutes and Florida Rules of Appellate Procedure 9.110(b) and (c), within thirty (30) days of the rendition of this Final Order.