

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE COMMISSIONER OF TRANSPORTATION AND PUBLIC FACILITIES**

BICKNELL, INC.,)	
)	
v.)	
)	
DEPARTMENT OF TRANSPORTATION)	OAH No. 11-0140-PRO
<u>AND PUBLIC FACILITIES</u>)	Project No. 51544

CORRECTED DECISION¹

I. Introduction

Bicknell, Inc., protested the proposed award of a contract by the Department of Transportation and Public Facilities (Department) to Northern Management Services, Inc. (NMS). Bicknell asserted that NMS was not eligible for the Alaska bidder preference because NMS did not submit its bid under the name shown on its current Alaska business license and because NMS was not qualified to do business in Alaska. The Department denied the protest and Bicknell appealed.

The matter was submitted for a decision on cross-motions for summary adjudication. Because the undisputed facts show that the name shown on NMS’s Alaska business license is a recognized abbreviation for the name under which the bid was submitted, and because NMS is qualified to do business in Alaska, Bicknell’s motion is denied and the Department’s cross-motion is granted. The procurement officer’s decision to deny the protest is sustained.

II. Facts

Northern Management Services, Inc. (NMS) was organized as a corporation in Idaho in 1991.² NMS’s registered agent in Alaska is CT Corporation System.³ Beginning prior to August 3, 2010, NMS was doing business in Alaska by performing a contract for maintenance services at the Federal Building in Anchorage.⁴ CT Corporation Systems’s Alaska business license lapsed for at least part of the time during which NMS was doing business in Alaska.⁵

¹ Typographical errors referencing “2 AAC 12.020(g)” rather than “12 AAC 12.020(g)” have been corrected in footnotes 14 and 20, and on page 5. Cf. 2 AAC 64.350(a).

² Comments, Attachment 1, 3 (Certificate of Existence; Certificate of Incorporation).

³ A screen print from the Division of Corporations, Business and Professional Licensing’s online database (accessed March 2, 2011) showing NMS’s registered agent was attached to the Procurement Officer’s Decision.

⁴ See Bicknell Motion, Ex. 22.

⁵ Protest, Attachment B1 (Division of Corporations, Business and Professional Licensing online records, accessed February 17, 2011).

The Department of Transportation and Public Facilities issued a solicitation for services at the Coffman Cove Maintenance Station. Under the terms of the solicitation, as well as under Alaska law, bidders meeting the qualifications stated in AS 36.30.170(b) were eligible for the Alaska bidder preference.

NMS submitted a bid for the Coffman Cove project on February 3, 2011, under the name “Northern Management Services, Inc.”⁶ At the time it submitted its bid, NMS held registration No. CON E 20979, issued in the name “Northern Management Services, Inc.” as a general contractor (limited residential) in Alaska,⁷ held a current Alaska business license, No. 152112, issued in the name “Northern Management Svcs Inc” [sic],⁸ and held a certificate of authority to transact business in Alaska, No. 72322F, issued in the name “Northern Management Services, Inc.”⁹

III. Discussion

A corporate bidder who complies with AS 36.30.170(b)(1)-(4) is eligible for the Alaska bidder preference. AS 36.30.170(b) provides:

...In this subsection, ‘Alaska bidder’ means a person who

- (1) holds a current Alaska business license;
- (2) submits a bid...under the name as appearing on the person’s current business license;
- (3) has maintained a place of business within the state staffed by the bidder or an employee of the bidder for a period of six months immediately preceding the date of the bid; [and]
- (4) is incorporated or qualified to do business under the laws of the state...

Bicknell’s protest asserted that NMS was not eligible for the Alaska bidder preference for two reasons: (1) NMS did not submit its bid under the name shown on its current business license (No. 152112, in the name “Northern Management Svcs Inc”), as required by AS

⁶ Bicknell Motion, Ex. 1; Letter of Intent to Award, February 8, 2011 (attachment to Protest Report); Email, R Saviers to C. Kautz, 3/1/2011 @ 3:19 p.m.

⁷ Protest, Attachment B6 (Division of Corporations, Business and Professional Licensing online records, accessed February 4, 2011).

⁸ Protest, Attachment A1, A2 (Division of Corporations, Business and Professional Licensing online records, accessed February 4, 2011). NMS had previously been issued Alaska business license No. 309582, which expired on December 31, 2006, and was issued in the name “Northern Management Services, Inc.” *Id.* at A3.

⁹ Protest, Attachment B6 (Division of Corporations, Business and Professional Licensing online records, accessed February 4, 2011); Comments, Attachment 1 (Certificate of Authority). A prior certificate of authority issued by the Division No. 49290F, was revoked in 1998 for failure to file the biennial report or taxes. *See* Protest, Attachment B6 (Division of Corporations, Business and Professional Licensing online records, accessed February 4, 2011); Comments, Attachment 4 (Certificate of Revocation).

36.30.170(b)(2);¹⁰ and (2) NMS is not qualified to do business in Alaska, as required by AS 36.30.170(b)(4), because it failed to continuously maintain a registered agent in Alaska, as required by AS 10.06.150.¹¹ On appeal, Bicknell raised a third issue: that NMS is not eligible for the Alaska bidder preference because (3) NMS had not maintained a place of business in Alaska as required by AS 36.30.170(b)(3).¹² Bicknell moved for summary adjudication. The Department filed a cross-motion. The relevant facts, stated above, are undisputed.

A. NMS Satisfied The Requirement Of AS 36.30.170(b)(2)

The Division of Corporations, Business and Professional Licensing (Division) is responsible for issuance of Alaska business licenses. The Division's application form and instructions provide for applicants to identify the owner of the license (the "licensee" or the "license holder")¹³ and the name of the business.¹⁴ The instructions inform applicants that they must "operate and advertise in the exact name listed on the Business Name section of your application."¹⁵

In this case it is undisputed that as of February 3, 2011, Northern Management Services, Inc., an Idaho corporation, was the licensee, or business license holder, for Alaska business license No. 152112. It is similarly undisputed that Northern Management Services, Inc., referred to in this decision as "NMS", is the entity that submitted the bid that is at issue in this case. Finally, it is undisputed that on the date the bid was submitted, the Division's online database showed the business name for NMS as "Northern Management Svcs Inc" [sic], rather than as "Northern Management Services, Inc."

Bicknell's protest asserted that NMS was not qualified for the Alaska bidder preference because it submitted its bid under the name "Northern Management Services, Inc.", rather than

¹⁰ Protest at 1-3. Bicknell's protest characterized this issue as two separate issues: (a) NMS does not hold a current business license, and (b) NMS submitted a bid under a name different than "its" business license. *Id.* The undisputed facts are that Northern Management Services, Inc., submitted the bid, and that at the time it submitted the bid, Northern Management Services, Inc. held Alaska business No. 1512112 under the name "Northern Management Svcs Inc[.]" The issue that Bicknell raised in the protest is a legal one, not a factual one: whether Northern Management Services, Inc. is eligible for the Alaska bidder preference notwithstanding that the name shown on the license is "Northern Management Svcs Inc[.]"

¹¹ Protest at 3.

¹² Appeal at 3.

¹³ See AS 43.70.020(a)(1) (providing that a business license must include "the name and address of the licensee"); 12 AAC 12.020(g), (h), 12 AAC 12.050(b)(1) (referencing "business license holder").

¹⁴ See AS 43.70.020(a)(4) (providing that a business license must include "the business name to be used by the licensee").

¹⁵ Bicknell Ex. 10. See 12 AAC 12.020(g) ("In advertising and operating, a business license holder must use the business name that appears of the business license.").

under the name “Northern Management Svcs Inc”, which Bicknell argues was the name “as appearing on the person’s current Alaska business license” within the meaning of AS 36.30.170(b)(2).

According to the Division, the reason that the business name shown on the online database was “Northern Management Svcs Inc” rather than “Northern Management Services, Inc.” is that when the license was originally issued in 1992, Division staff routinely “abbreviated business names at will due to the restraints in the database; certain fields held a specific amount of characters.”¹⁶

The original application for a business license was not submitted, and it is accordingly not possible to confirm that NMS’s application was submitted in the name “Northern Management Services, Inc.” rather than in the name that shown on the online database, “Northern Management Svcs Inc”. However, Bicknell did not submit any evidence to dispute the Division’s explanation. The Division’s explanation, unrebutted, is sufficient to establish, for purposes of summary adjudication, that the reason for the discrepancy between NMS’s corporate name and the name in the database is that Division personnel used an abbreviation.

However, the requirement stated in AS 36.30.170(b)(2) is not that the bid must be submitted in the name that the licensee stated in its application, but rather in “the name as appearing on the person’s current Alaska business license.”¹⁷ In this case, no copy of the actual business license as it was issued has been submitted. Absent any evidence that the Division’s online database does not reflect the business license held by Northern Management Service, Inc., the undisputed evidence in this case is sufficient to establish, for purposes of summary adjudication, that the name shown on the business license is the same as the name shown on the online database: “Northern Management Svcs Inc[.]”

Bicknell argues that NMS’s full name, rather than the abbreviated name shown on the business license, may not be accepted for purposes of AS 36.30.170(b)(2) because the Division has promulgated a regulation providing that a name with an abbreviated key word (*e.g.*, “svcs”) is distinguishable from a name with the key word spelled out (*e.g.*, “services”). However, the cited regulation applies for limited purposes under AS 10 and AS 32 (the general provisions of law governing Alaska corporations and partnerships, respectively); the regulation, by its own

¹⁶ Email, C. Kautz to D. Rose, February 8, 2011 @ 6:16 a.m.

¹⁷ *See also*, 12 AAC 12.020(g) (“In advertising and operating, a business license holder must use the business name that appears on the business license.”).

terms, does not apply to AS 36.30.170(b)(2) or to business licenses issued under AS 43.70.020.¹⁸ For purposes of business licenses issued under AS 43.20.070, the Division recognizes “svcs” as an abbreviation for “services” and thus in the Division’s view NMS’s use of the name “Northern Management Services, Inc.” is not in violation of 12 AAC 12.020(g).¹⁹ It is for this reason that the Division *sua sponte* corrected the online database to show NMS’s business name as “Northern Management Services, Inc. when the matter was brought to the Division’s attention.”²⁰

To apply a different standard for purposes of AS 36.30.170(b)(2) than the Division uses for purposes of AS 43.20.070 and 12 AAC 12.020(g) would subject corporations, both domestic and foreign, to different standards in the licensing context than would apply in the procurement context.²¹ Reading the use of the term “svcs” as an abbreviation for “services” comports with common sense. Finally, the Division’s use of an abbreviation rather than the full name was corrected by the Division once the discrepancy was brought to its attention. For all these reasons, the procurement officer did not abuse his discretion in deeming the bid submitted by NMS under its actual business name, rather than under the recognized abbreviation of that name entered by the Division onto its business license, to be consistent with AS 36.30.170(b)(2).

B. NMS Satisfied The Requirement Of AS 36.30.170(b)(4)

The Commissioner of Administration has previously ruled that in order to be qualified to do business in the state for purposes of AS 36.30.170(b)(4), a foreign corporation must hold a certificate of authority issued under AS 10.06.705.²² It is undisputed that NMS holds such a certificate. The Department argues that the fact that NMS holds a certificate of authority is sufficient to establish that it is qualified to do business within the meaning of AS 36.30.170(b)(4).²³ However, that a certificate of authority is necessary does not mean that it is sufficient. The prior ruling concluded that it was necessary to hold a certificate of authority, but did not address whether that is sufficient.

¹⁸ See 3 AAC 16.120(a) (providing regulation applies “[f]or purposes of the reservation, registration, or use of a name under AS 10 or 32”).

¹⁹ Email, C. Kautz to D. Rose, February 8, 2011 @ 6:16 a.m.

²⁰ *Id.* The Division’s action is consistent with the instructions on the application form, which state that business must operate “in the exact name listed on the Business Name section of your application.” This suggests that when the Division issues a license in a name other than the exact name stated in the application, the name stated in the application governs and the license should be corrected accordingly.

²¹ There is no evident purpose for the requirement stated in AS 36.30.170(b)(2) other than to implement AS 43.70.020(b)(4) and 12 AAC 12.020(g).

²² Computer Task Group, Inc. v. Division of General Services, OAH No. 07-0147-PRO (Commissioner of Administration 2007).

²³ Cross-Motion at 3-4.

In this case, Bicknell asserts that NMS should not be considered qualified to do business in the state within the meaning of AS 36.30.170(b)(4) because it failed to comply with the legal requirement to “continuously maintain” a registered agent.²⁴ Bicknell’s argument is that because NMS’s registered agent’s business license lapsed, NMS did not “continuously maintain” a registered agent as required by law.

NMS’s registered agent, CT Corporation Systems, did not go out of existence when its Alaska business license lapsed, and thus the lapse of CT Corporation Systems’s Alaska business license did not affect its status as NMS’s chosen agent. In short, Bicknell’s objection goes to CT Corporation Systems’s compliance with Alaska law, not NMS’s. Assuming, without deciding, that NMS’s certificate of authority was not sufficient to establish that it is qualified to do business in the state for purposes of AS 36.30.170(b)(4), the lapse in its registered agent’s Alaska business license does not mean that NMS failed to comply with the requirement to “continuously maintain” a registered agent. The protest on this issue was properly denied.

C. Bicknell Did Not Timely Protest NMS’s Place Of Business

Bicknell’s protest did not claim that NMS was ineligible for failure to maintain a place of business in the state; this issue was raised for the first time on appeal. Normally, an issue involving a new factual and legal objection that was not raised in a timely protest is waived on appeal, unless there is good cause to accept an untimely protest.²⁵ In this case, the Department objected that NMS’s protest on this issue was untimely, but addressed it on appeal “for informational purposes only.”²⁶ In the absence of a showing by Bicknell of good cause why its untimely protest on this issue should be considered, the appeal is denied as to this issue. However, to clarify the issue raised and provide procedural guidance in the event it arises again, a brief comment is in order.

For purposes of AS 36.30.170(b)(3), 2 AAC 12.990(e) states that a “place of business” is: [T]hat location at which normal business activities are conducted, services are rendered, or goods are made, stored and processed. A post office box, mail drop, telephone, or answering service does not, by itself, constitute a ‘place of business.’

²⁴ Bicknell’s protest and appeal reference AS 10.06.150. However, that provision applies does not apply to foreign corporations such as NMS. See AS 10.06.990(13), (22). The applicable provision for foreign corporations is AS 10.06.753.

²⁵ AS 36.30.565(a). See, e.g., Computer Task Group, Inc. v. Division of General Services, at p. 4.

²⁶ Protest Report, pp. 2-3.

The undisputed evidence is that NMS renders services on behalf of the Federal government at the Federal Building in Anchorage. The Department asserts this means that the Federal Building constitutes NMS's "place of business" within the meaning of 2 AAC 12.990(e). Read literally, that is one possible interpretation of 2 AAC 12.990(e). However, 2 AAC 12.990(e) was promulgated by the Department of Administration, and it may be that the Department of Administration interprets their regulation differently.²⁷ Accordingly, if this issue is raised in a future procurement of the Department of Transportation and Public Facilities, the procurement officer should seek guidance from the chief procurement officer in order to ensure consistency in the application of the bidder preference by the Department of Administration and the Department of Transportation and Public Facilities.²⁸

IV. Conclusion

NMS's use of its full name, rather than its abbreviated name, in its bid did not render it ineligible for the Alaska bidder preference. Similarly, a lapse in NMS's registered agent's Alaska business license did not render NMS ineligible for the Alaska bidder preference. Bicknell did not timely protest NMS's place of business. Accordingly, the procurement officer's decision to deny Bicknell's protest is sustained.

July 26, 2011.

By: Signed
Andrew M. Hemenway
Administrative Law Judge

²⁷ The general rule is that AS 36.30.170 is strictly interpreted. *See, e.g., Computer Task Group, Inc. v. Division of General Services*, OAH No. 07-0147-PRO (Commissioner of Administration 2007), at p. 11, note 42. Applying a strict construction to 2 AAC 12.990(e) could lead to a different interpretation, such as that it applies only to persons who conduct normal business activities, render services, or make, store or process goods at the person's own business premises, and that it does not include persons who perform those acts at another person's business premises (or at a job site).

²⁸ *In Re Guardian Security Systems*, No. 99-02 (Department of Administration 1999), cited by the Department, sheds no light on this issue. In that case, a foreign corporation "established an Alaska office" for purposes of bidding on a particular contract. As the Department observes, the case is authority for the proposition that the Alaska bidder preference may be applied to a foreign corporation that is present in Alaska for at least six months prior to submitting a bid, even if the presence was only "for the purpose of bidding on a particular contract." Protest Report at 3. The case says nothing, however, about what it means to "establish" a presence in Alaska sufficient to qualify for the Alaska bidder preference; more specifically it says nothing about what constitutes a "place of business" for purposes of AS 36.30.170(b)(3).

Adoption

The undersigned adopts this corrected decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 3rd day of August, 2011.

By: Signed
Signature
Marc A. Luiken
Name
Commissioner
Title

[This document has been modified to conform to the technical standards for publication.]