

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

DAVIS WRIGHT TREMAINE, LLP,)
)
 Appellant,)
)
 v.)
)
 STATE OF ALASKA , DEPARTMENT OF)
 ADMINISTRATION)
 Appellee.)
)
 _____)

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Case No. 3AN-12-04933 CI

Memorandum Decision on Appeal

I. Statement of the Case

The Department of Law (“the Department”) and the Alaska Energy Authority issued a Request for Proposals (“RFP”) for legal services needed to acquire the necessary Federal Energy Regulation Commission license for construction of the Susitna-Watana Hydroelectric Project.¹

The deadline for proposals was 3:00pm on June 17, 2011 at the Juneau Office of the Department of Law, Administrative Services Division.² Specifically, the RFP read:

It is your responsibility to ensure that the proposal arrives at the address indicated above before the deadline for receipt. Proposals received after 3:00pm on June 17, 2011 will be rejected and returned to the sender.³

Then, on June 14, 2011, the Department notified prospective offerors that the deadline was extended to 3pm Wednesday, June 29, 2011.⁴

The RFP also contained the following provision:

The State reserves the right to...[r]eject any and all proposals received and to waive deviations from the terms of the FRP if the State determines the deviations are not material.^{5 6}

¹ *Davis Wright Tremaine v. SOA, Dept. of Admin.*, OAH No. 11-0377 PRO, Pleading No. 000075 - 000095.

² *Id.*

³ *Id.*

⁴ *Id.* at 000566..

The RFP also provided for the protest of any award, in accordance with the State Procurement Code Article 8 “Legal and Contractual Remedies.”⁷

Davis Wright Tremaine, LLP (“DWT”), submitted a proposal to the Department in response to the RFP.⁸ The USPS attempted delivery of DWT’s proposal on Thursday, June 30, 2011⁹ one business day after the deadline and completed actual delivery on Friday, July 1, 2011.¹⁰ On July 1, 2011, a procurement officer investigated the facts concerning the two day delay and determined that the proposal should be considered despite the delay.¹¹ The proposal was forwarded on to the evaluation committee, along with a proposal from Van Ness Feldman (“VNF”)¹² and six other law firms.¹³

After an evaluation of all the proposals on the merits, the Department decided that DWT’s proposal was “the most advantageous.”¹⁴ The Department issued a Notice of Intent (“NOI”) to award the contract to DWT.¹⁵ On August 16, 2011, twenty five days after the Department issued the NOI to DWT, Van Ness Feldman (“VNF”), another firm competing for the government contract, filed a protest pursuant to AS 36.30.560 and the RFP.¹⁶ VNF protested DWT’s contract award on the grounds that DWT’s proposal was

⁵ *Id.* at 000076.

⁶ A “material deviation” or “immaterial deviation” is language used commonly in administrative agency contracts and proceedings. These terms refer to a document’s failure to comply, to one degree or another, with the established requirements or standards. A deviation is material if it “gives the bidder a substantial advantage over other bidders and thereby restricts or stifles competition” (*Chris Berg, Inc v. State, Dept. of Transp. And Public Facilities*, 680 P.2d 93, 94 (Alaska 1984) *citing*, *State v. Bowers Office Products, Inc.*, 621 P.2d 11, 14 n. 6 (Alaska 1980). Likewise, a deviation is immaterial if it does not give the bidder a substantial advantage over other bidders. For example, a scrivener’s error or other typographical error would be considered an “immaterial” deviation or variance because such an error does not give one party any substantial advantage over another. *See, Chris Berg, Inc* 680 P.2d at 94, *Alaska Intern. Const., Inc. v. Earth Movers of Fairbanks, Inc.* 697 P.2d 626, 628 (Alaska 1985). The Alaska Supreme Court has held that a “material variance from a bid specification requires rejection of the bid” and likewise, a deviation or variance will not compel rejection where it would not result in any competitive advantage. *Chris Berg, Inc*, 680 P.2d at 94.

⁷ *Davis Wright Tremaine v. SOA, Dept. of Admin.*, OAH No. 11-0377 PRO, Pleading No. 000083.

⁸ *Id.* at 000096 – 000120.

⁹ *Id.* at 000125.

¹⁰ *Id.* at 000035 – 000037.

¹¹ *Id.* at 000126.

¹² *Id.* at 000169 – 000171.

¹³ *Id.* at 000128.

¹⁴ *Id.* at 000128, 000154 – 000164.

¹⁵ *Id.* at 000128.

¹⁶ *Id.* at 000130 – 000139.

filed late and the RFP and administrative regulation 2 AAC 12.250 prohibited the Department from considering a late proposal.¹⁷

The procurement officer reviewed VNF's protest and the issues challenging DWT's proposal and ultimately granted VNF's protest.¹⁸ In light of VNF's protest, the procurement officer determined DWT was improperly awarded the NOI, and on August 18, 2011, the State rescinded DWT's contract award.¹⁹ The State re-reviewed and rescored the remaining proposals and issued a new NOI, awarding the contract to VNF on August 29, 2011.²⁰

II. Issues for Consideration

The appellant DWT presented three issues on appeal:

- (1) Whether the Department acted unreasonably when it interpreted the RFP and the relevant administrative regulation to prohibit DWT's late proposal;
- (2) Whether the Department was reasonable when it considered VNF's protest; and
- (3) Whether the Department acted reasonably when it accepted VNF's initial proposal, which lacked a Certificate of Authority.

III. Discussion

A. The Department of Administration Acted Reasonably When It Interpreted the RFP and 2 AAC 12.250 to Prohibit Consideration of a Late Filed Proposal.

The first issue before this Court is whether the Department, through the Commissioner, acted improperly when it failed to consider DWT's proposal. The Department based its decision to prohibit DWT's proposal on a joint reading of the RFP and 2 AAC 12.250, the applicable administrative regulation for late filed proposals. The appellant first challenges the scope and validity of 2 AAC 12.250, and then challenges the Department's interpretation of 2 AAC 12.250 and the RFP together to prohibit a late filed proposal.

Standard of Review

When an administrative agency decision involves the expertise of the agency or where the agency has made a fundamental policy decision, reviewing courts defer to

¹⁷ *Id.*

¹⁸ *Id.* at 000174 – 000177; 000202 – 000205.

¹⁹ *Id.* at 000050.

²⁰ *Id.* at 000051.

the agency decision if it is supported by a reasonable basis.²¹ Under the reasonable basis standard of review, courts review an agency decision to “determine whether [it] was arbitrary, unreasonable, or an abuse of discretion.”²²

When reviewing an administrative regulation itself, where an administrative regulation has been adopted in accordance with the Administrative Procedure Act, courts should review the regulation in the following manner:

First, we will ascertain whether the regulation is consistent with and reasonably necessary to carry out the purposes of the statutory provisions conferring rulemaking authority on the agency. This aspect of review insures that the agency has not exceeded the power delegated by the legislature. Second, we will determine whether the regulation is reasonable and not arbitrary. This latter inquiry is proper in the review of any legislative enactment.²³

In the present matter, the Court must review the scope and validity of 2 AAC 12.250 as well as the agency interpretation of 2 AAC 12.250. Since 2 AAC 12.250 is an administrative agency regulation, the Court will first ascertain whether the regulation is consistent with and reasonably necessary to carry out the purposes of the statutory provisions conferring rulemaking authority on the agency, and then determine whether the regulation is reasonable and not arbitrary.²⁴ The Court also reviews the agency interpretation of 2 AAC 12.250 under a reasonable basis standard of review.²⁵

1. 2 AAC 12.250 Is A Valid Administrative Regulation

It is established law that statutes and agency regulations, once codified, are presumptively valid.²⁶ The Administrative Procedure Act “establishes a rebuttable presumption that the procedural requirements for the promulgation of administrative regulations have been satisfied.”²⁷ Under this statutory presumption of validity, agency

²¹ *Tesoro Alaska Petroleum Co. v. Kenai Pipe Line Co.*, 746 P.2d 896, 903 (Alaska 1987); *State, Dep't of Rev. v. Debenham Elec. Supply Co.*, 612 P.2d 1001, 1003 n. 6 (Alaska 1980); *Mobil Oil Corp. v. Local Boundary Comm'n*, 518 P.2d 92, 98 (Alaska 1974).

²² *Burke v. Houston NANA, LLC*, 222 P.3d 851, 858 (Alaska 2010).

²³ *Kelly v. Zamarello*, 486 P.2d 906, 911 (Alaska 1970).

²⁴ *Id.*

²⁵ *See, Burke v. Houston NANA, LLC*, 222 P.3d 851, 858 (Alaska 2010).

²⁶ *Grunert v. State*, 109 P.3d 924, 928 (Alaska 2005), *State v. Alyeska Pipeline Service Co.*, 723 P.2d 76, 78 (Alaska 1986).

²⁷ *Kingery v. Chapple*, 504 P.2d 831, 834 (Alaska 1972) citing AS 44.62.100(a)(3).

regulations are presumed compliant with other relevant statutes and it is a challenger's burden to prove otherwise.²⁸

2 AAC 12.250 is the administrative regulation creating a general bar against late filed proposals unless an exception allowing immaterial deviances is "otherwise provided" in an RFP.²⁹ 2 AAC 12.250, in pertinent part, reads:

Unless otherwise provided in the request for proposals, a proposal, correction, modification, or withdrawal received after the date and time set for receipt of proposals is late, and may not be accepted unless the delay is due to an error of the contracting agency.³⁰

The State Procurement Code is the collection of Alaska Statutes governing the procedure for government procurement of contracts and services. The procurement code endows agencies with centralized authority over procurement decisions:

Except as otherwise provided, all rights, powers, duties, and authority relating to the procurement...and control over...professional services vested in or exercised by an agency...are transferred to the commission or the chief procurement officer. Authority granted under this subsection shall be exercised in accordance with this chapter.³¹

The procurement code also governs bids and proposals for public contracts and contains two distinct statutory schemes in the procurement code: article 2, which governs competitive sealed bidding³² and article 3, which governs competitive sealed proposals.³³ Article 2 contains a section dedicated to late bids,³⁴ but article 3 does not contain a corresponding section dedicated to late proposals.³⁵ There is no guidance in article 2, article 3, or any other Alaska Statute regarding the proper response to a late-filed proposal. However, the beginning of the chapter is notated "'for competitive sealed proposals, see 2 AAC 12, art. 4."³⁶

The Court reviews the validity and scope of 2 AAC 12.250 to "ascertain whether the regulation is consistent with and reasonably necessary to carry out the purposes of

²⁸ *Grunet* 109 P.3d at 928.

²⁹ 2 AAC 12.250.

³⁰ 2 AAC 12.250.

³¹ AS 36.30.005.

³² AS 36.30.100-190

³³ AS 36.30.200-270.

³⁴ *See*, AS 36.30.160.

³⁵ *See*, AS 36.30.200-270.

³⁶ AS 36.30.200.

the statutory provisions conferring rulemaking authority on the agency.”³⁷ Then the Court must determine whether the regulation is reasonable and not arbitrary. First, the Court finds that the Alaska Statutes, particularly AS 36.30.005 of the procurement code, confers centralized authority on the Department of Administration. Accordingly, 2 AAC 12.250 must be reviewed in light of this statutory provision.

Article 3 of the procurement code, unlike its sister provision article 2, is silent regarding the procedure for late filed proposals. The Court construes this silence to be compatible with 2 AAC 12, art.4, particularly 2 AAC 12.250. That is, the Court does not interpret the procurement code’s silence regarding late filed proposals as an inconsistency with the administrative code. In fact, the Court finds that because the procurement code is silent regarding late filed proposals, 2 AAC 12.250 is necessary to carry out the purpose of AS 36.30.200, et. seq.

Having found 2 AAC 12.250 is consistent with the Alaska Statutes and reasonably necessary to carry out the purpose of this portion of the procurement code, the Court must next review 2 AAC 12.250 to determine whether the regulation itself is reasonable and not arbitrary. This assessment begins with the rebuttable presumption that 2 AAC 12.250 is compliant with AS 36.30.200, et. seq., and shifts the burden on the appellant to prove otherwise.³⁸

The appellant challenges the validity of 2 AAC 12.250 under a theory that the Department, noticing a lack of guidance in the procurement code regarding late filed proposals, applied the portion of the procurement code dealing with late filed bids to DWT’s late filed proposal. The appellant argues that the Department’s conflation of late filed proposals to late filed bids is inconsistent with AS 36.30.200 et. seq.

The appellant’s assertions regarding the statutory scheme of the procurement code and the Department’s conflation of bids and proposals are insufficient proof to overcome the presumption that 2 AAC 12.250 is unreasonable or arbitrary. The appellant did not present sufficient proof that 2 AAC 12.250 is incompatible with AS 36.30.200, et. seq. Thus the Court finds that the 2 AAC 12.250 is valid as promulgated

³⁷ *Kelly v. Zamarello*, 486 P.2d 906, 911 (Alaska 1970).

³⁸ *See, Grunet*, 109 P.3d at 92, *Kingery* 504 P.2d at 834.

and the Department did not act unreasonably or abuse its discretion when it applied 2 AAC 12.250 to the facts underlying the current appeal.

2. The Department Reasonably Interpreted the RFP and 2 AAC 12.250 Together to Prohibit a Late Filed Proposal

2 AAC 12.250 is a strict prohibition on late filed proposals. This “late is late” rule nevertheless allows for a late filed proposal if an RFP contains a specific provision allowing for a late-filed proposal:

Unless otherwise provided in the request for proposals, a proposal, correction, modification, or withdrawal received after the date and time set for receipt of proposals is late, and may not be accepted unless the delay is due to an error of the contracting agency.³⁹

The RFP did not contain a specific waiver, but rather, the following discretionary provision was included:

The State reserves the right to...waive deviations from the terms of the RFP if the State determines the deviations are not material.⁴⁰

The Department hearing officer determined that any provisions in the RFP allowing late filed provisions must be clearly stated “explicit provisions” in order to count as an “exception otherwise provided” under 2 AAC 12.250.⁴¹ The hearing officer then found that the RFP’s immaterial deviation provision was not an explicit provision allowing the Department to waive immaterial deviations.⁴² Based on the hearing officer’s finding, the Department found there was not language “providing otherwise” in the RFP. The Department then applied 2 AAC 12.250 in light of this interpretation of the RFP and prohibited DWT’s late proposal.

The first step in determining whether the Department’s decision was an abuse of discretion is to determine whether the Department was reasonable when it determined that the immaterial deviation provision in the RFP was not an “explicit provision.” To do this, the Court reads the RFP as a whole. On the first page in section I.A., the RFP states:

³⁹ 2 AAC 12.250.

⁴⁰ *Davis Wright Tremaine v. SOA, Dept. of Admin.*, OAH No. 11-0377 PRO, Pleading No. 000076.

⁴¹ *Id.* at 000238.

⁴² *Id.*

It is your responsibility to ensure that the proposal arrives at the address indicated above before the deadline for receipt. Proposals received after 3:00pm on June 17, 2011 will be rejected and returned to the sender.⁴³

Then, several pages later, in subsection I. H. 3, the RFP lists the following provision:

The State reserves the right to...[r]eject any and all proposals received and to waive deviations from the terms of the RFP if the State determines the deviations are not material.⁴⁴

“In contracts, as in statutes, where one section deals with a subject in general terms and another deals with a part of the same subject in a more detailed way, the two should be harmonized if possible; but if there is a conflict, the specific section will control over the general.”⁴⁵ The preference for specific, exact language over general language is a maxim of legal construction.

Reading the dueling provisions in the context of the entire RFP, the Court finds that the initial provision creates a specific, strict deadline. The Court also finds that the subsequent language reserving the State’s right to waive an immaterial deviation is a general catch-all provision and is not an explicit exception. Read as a whole, the RFP imposes a strict deadline and creates a specific ban against late filed proposals and the subsequent provision reserving the agency’s discretion to consider a late filed proposal is not an explicit exception to the RFP’s strict deadline. Accordingly, the Court respects the specific strict deadline stated in section I.A. controls over the subsequent general waiver.

Under a reasonable basis standard of review, this Court reviews the Department’s decision rejecting DWT’s proposal for an abuse of discretion.⁴⁶ This Court finds the Department was reasonable when it interpreted 2 AAC 12.250 as a strict prohibition of late filed proposals. The Department was also reasonable when it interpreted 2 AAC 12.250 to mean that an RFP must include an “explicit provision” permitting acceptance of late proposals in order to overcome 2 AAC 12.250’s general bar against late proposals. Accordingly, the Department’s actions were reasonable and

⁴³ *Id* at 000076.

⁴⁴ *Id*.

⁴⁵ *Norville v. Carr-Gottstein Foods Co.*, 84 P.3d 996, 1004 (Alaska 2004) *citing Estate of Hutchinson*, 577 P.2d 1074, 1075 (Alaska 1978).

⁴⁶ *Burke v. Houston NANA, LLC*, 222 P.3d 851, 858 (Alaska 2010).

the Department did not abuse its discretion when it found the RFP did not contain an “explicit provision” permitting the acceptance of late proposals. Thus, the Department reasonably read and applied the RFP with 2 AAC 12.250 to prohibit DWT’s late filed proposal.

B. The Department of Administration Reasonably Considered VNF’s Late Filed Protest.

In the second main issue on appeal is whether the Department was reasonable when it considered VNF’s protest. VNF filed a protest to the Department’s decision to award the NOI to DWT on August 16, 2011, twenty-five days after the NOI was issued to DWT. The parties do not dispute that this protest was filed after the 10 day deadline. What remains at issue is whether the Department properly determined they had good cause to accept VNF’s late-filed protest.

Standard of Review

The reasonable basis standard of review applies to the Department’s acceptance of VNF’s late filed protest. Under the reasonable basis standard, the Court must determine whether the agency’s decision was arbitrary, unreasonable, or an abuse of discretion.”⁴⁷

Alaska law allows challenges to public contract decisions through the protest process. “A protest based upon alleged improprieties in an award of contract or a proposed award of contract must be filed within 10 days after the notice of intent to award the contract is issued by the procurement officer.”⁴⁸ This rule allows some leeway though, and the procurement officer of the contracting agency may consider a late filed protest “[i]f a protestor shows good cause.”⁴⁹

“Good cause” pertains to both good cause for the delay in filing the protest, as well as good cause for considering the merits of the protest.⁵⁰ Previous administrative decisions have identified several factors for determining whether or not there is good

⁴⁷ *Burke v. Houston NANA, LLC*, 222 P.3d 851, 858 (Alaska 2010).

⁴⁸ AS 36.30.565(a).

⁴⁹ AS 36.30.365(b).

⁵⁰ *See, Computer Task Group, Inc. v. Div. of Gen. Servs.*, OAH No.07-0147 (July 2, 2007).

cause to accept a late-filed protest: (1) the timing of the protest; (2) the nature of the objections raised; and (3) the strength of the evidence presented.⁵¹

Using the factors established in previous administrative decisions, this Court reviews the Department's determination of good cause under a reasonable basis standard. First, the timing of the protest was 15 days after the deadline, and although this is more than a few days late, this Court does not find the decision to accept a 15 day-late protest to be an arbitrary or unreasonable decision.

Next, the nature of the objections raised and the strength of the evidence asserted in the protest were previously discussed at length earlier in this decision. The Court previously determined that the Department reasonably and properly prohibited DWT's late-filed proposal. In accordance with this determination, the Court finds the nature of VNF's objections were not frivolous or harassing and VNF presented legitimate and sufficient evidence for a late protest claim.

In light of these findings, and under a reasonable basis standard of review, this Court finds that the Department did not abuse its discretion when it found good cause, nor was the decision finding good cause to accept the late protest arbitrary or unreasonable.

C. The Department of Administration Reasonably Considered VNF Initial Proposal

The final issue on appeal in this case is whether the Department was reasonable when it considered VNF's initial proposal. DWT has presented two challenges regarding this final issue: (1) whether VNF's proposal was responsive; and (2) whether VNF was legally allowed to contract for business in the State of Alaska. VNF's failure to obtain a Certificate of Authority is the appellant's basis for both of these challenges.

Standard of Review

"The determination by a public agency of the responsiveness of a bid is within the agency's discretion, subject, on judicial review, to an ascertainment that there was a reasonable basis for the agency's action."⁵² Thus, the standard of review for the Department's determination that VNF was a responsive offeror is a reasonable basis

⁵¹ See, *id.*, see also, *Payroll City v. Dept. of Environmental Conservation*, No. 05-0582 (January 30, 2006);

⁵² *Chris Berg, Inc. v. State, Dept. of Transp. And Public Facilities*, 680 P.2d 93, 94 (Alaska 1984), citing *State v. Bowers Office Products, Inc.*, 621 P.2d at 13; *Kelly v. Zamarello*, 486 P.2d 906, 917-18 (Alaska 1971).

standard.⁵³ Again, under a reasonable basis standard, the Court defers to the agency interpretation unless it is “plainly erroneous and inconsistent with the regulation.”⁵⁴ An agency’s application of its regulation to the facts of a particular case is reviewed to “determine whether the agency’s decision was arbitrary, unreasonable, or an abuse of discretion.”⁵⁵

1. A Certificate of Authority Is Not Required For a Responsive Proposal.

A responsive proposal means the proposal was submitted in accord with the invitation for proposals and within the time specified for reception of proposals.⁵⁶

Specifically, the appellant alleges that VNF’s proposal was nonresponsive because VNF had not obtained a Certificate of Authority. Although VNF did indeed fail to obtain a Certificate of Authority, this Court finds that a Certificate of Authority was not required with the document’s four corners.⁵⁷ Furthermore, DWT concedes that the RFP does not specifically require an offeror to obtain a Certificate of Authority.⁵⁸ Since the RFP does not require offerors to obtain Certificates of Authority, failing to take this step will not render a proposal nonresponsive. In other words, a proposal may accord with the RFP without containing a Certificate of Authority.

This Court finds that VNF’s failure to obtain a certificate of authority did not render their proposal nonresponsive. Reviewing the Department’s similar determination under the reasonable basis, this Court finds the Agency acted reasonably and did not abuse its discretion when it determined that VNF’s proposal was responsive.

2. Failure to Obtain a Certificate of Authority Does Not Bar VNF From Contracting Business in Alaska

Pursuant to Alaska Statutes 10.06.705, “a foreign corporation may not transact business in Alaska until it has been issued a certificate of authority by the commissioner.”⁵⁹ However this general rule is subject to several clarifications and

⁵³ See, *State, Dep’t of Admin. v. Bowers Office Prods., Inc.*, 621 P.2d 11, 13 (Alaska 1980), *Lower Kuskokwim School Dist. V. Foundation Services, Inc.* 909 P.2d 1383 (Alaska 1996), *Powercorp Alaska, LLC v. State, Alaska Energy Authority*, 171 P.3d 159, (Alaska 2007).

⁵⁴ *Lauth v. State, Dep’t of Health and Soc. Servs.*, 12 P.3d 181, 184 (Alaska 2000).

⁵⁵ See, *Burke v. Houston NANA, LLC*, 222 P.3d 851, 858 (Alaska 2010); *Chris Berg, Inc. v. State, Dept of Transp. And Pub. Facilities*, 680 P.2d 93, (Alaska 1984),

⁵⁶ McBride and Wachtel, *Government Contracts* § 10.70.

⁵⁷ RFP.

⁵⁸ See, Brief of Appellant, pp. 26

⁵⁹ AS 10.06.750.

exceptions. First, “the failure of a foreign corporation to obtain a certificate of authority...does not impair the validity of a contract or an act of the corporation.”⁶⁰ Moreover, “a foreign corporation is not considered to be transacting business in this state for the purposes in this chapter, by...transacting business in interstate commerce.”⁶¹

As discussed above, VNF is a foreign corporation and does not have a Certificate of Authority to transact business in Alaska. However in accordance with AS 10.06.715, this Court finds that VNF’s failure to obtain a Certificate of Authority does not impair the validity of any act by VNF, including the filing of a proposal or protest. Further, this Court finds that VNF’s activities in Alaska constitute interstate commerce. Thus, this Court finds that VNF is not required to have a Certificate of Authority since it is a foreign corporation involved in interstate commerce.⁶² Since VNF is covered by the exceptions in AS 10.06.715 and 10.06.718, its failure to obtain a Certificate of Authority does not bar VNF from contracting business in Alaska. Under a reasonable basis standard of review, this Court finds Agency acted reasonably and did not abuse its discretion when it determined that VNF was allowed to contract business in the state of Alaska.

IV. Decision

In light of the foregoing, this Court finds that:

- (1) 2 AAC 12.250 is a valid administrative regulation and is consistent with the relevant, governing statutes of the procurement code;
- (2) The RFP contained a specific, strict deadline for proposals in section I.A.
- (3) The RFP contained a subsequent general provision in section I.H.3 allowing the State to waive immaterial deviances, such as a minimal filing delay, for submitted proposals;
- (3) The Department acted reasonably and did not abuse its discretion when it determined the RFP lacked an explicit provision allowing for immaterial deviances;
- (4) The Department acted reasonably and properly when it read of 2 AAC 12.250 in light of the RFP and subsequently prohibited DWT’s late proposal;
- (5) The Department was reasonable when it found good cause to accept VNF’s protest;

⁶⁰ AS 10.06.715.

⁶¹ AS 10.06.718(9).


⁶² See, AS 10.06.718(9).

- (6) The Department was reasonable when it determined VNF's proposal was responsive; and
- (7) VNF's failure to obtain a Certificate of Authority does not prevent VNF from contracting for business in the State of Alaska, under the commerce clause exception in AS 10.06.718(9).

Thus, the Department acted reasonably when it interpreted the RFP and 2 AAC 12.250 to prohibit consideration of DWT's late proposal. In light of the foregoing findings, the Department's decision is therefore AFFIRMED.

IT IS SO ORDERED.

11/28/12
Date


Michael Spaan
Superior Court Judge

I certify that on 11/30/12
a copy of the above was mailed
to each of the following at their
addresses of record. Orlansky
Stewart
Witty
A. Vigil – Administrative Assistant