

THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

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February 13, 2012

<b>In re:</b>	)	
Wakefield Municipal Gas and Light	)	
Department	)	<b>ATTORNEY GENERAL</b>
Renovation of 480 North Avenue	)	<b>BID UNIT, FAIR LABOR DIVISION</b>
	)	<b>BUSINESS &amp; LABOR</b>
	)	<b>BUREAU</b>
and	)	
	)	
Quinn Brothers of Essex, Inc.	)	
<b>Protector</b>	)	<b>BID PROTEST DECISION</b>
	)	

INVESTIGATION SUMMARY

Pursuant to M.G.L. c.149, § 44H, the undersigned conducted an investigation of the captioned matter to determine if a violation of the public bidding requirements had occurred. The Protector, Quinn Brothers of Essex, Inc. (“Quinn”) argues that it submitted the lowest Miscellaneous Metals sub-bid for the Wakefield Municipal Gas and Light Department’s (“Department”) demolition and renovation of its headquarters at 480 North Avenue (“project”). The Department argues that its electronic bidding agent, BidDocs Online, Inc. (“BidDocs”) did not receive a bid from Quinn. Quinn also challenges the validity of electronic bidding.

A hearing was held on January 31, 2012, which was attended by representatives of Quinn, the Department and BidDocs. After investigation, I find that Quinn has not proven that it submitted a bid. I also find that there is no prohibition in the competitive bidding laws that would preclude an awarding authority from using electronic bidding. I therefore Deny the Protest.



## FACTS

This is the first Protest to come before this Office involving electronic bidding (“ebidding”). The Department and BidDocs argue that Quinn did not submit a bid for the Miscellaneous Metals sub-trade. They argue that Quinn neglected to click the “submit” button in the final phase of the ebidding process. BidDocs points to its ebidding computer log that shows that Quinn did not submit a bid. It also argues that it clearly advised bidders in its instructions and tutorials how to submit a bid and advised that bidders would receive an email confirmation when a bid is successfully submitted. Quinn did not receive an email confirmation. Quinn also did not review the tutorials offered by BidDocs.

Quinn’s employee, Ms. Taber, called BidDocs on January 17, 2012 to review the bid submission process. Ms. Taber and BidDocs only discussed the DCAM Update Statement and how to input data. The BidDocs program had a “glitch” with the Update Statement, but BidDocs provided a work-around for the problem. Ms. Taber had no other questions.

On January 18, 2012, after the 2:00 p.m. bid opening, Ms. Taber called BidDocs to indicate that the system did not show Quinn’s bid. She indicated that Quinn was the low bidder. Actually, Colantonio submitted a lower, self-restricted bid. BidDocs requested that she forward a copy of the confirmation email that all bidders automatically receive upon submission of their bid. Ms. Taber testified that she hit the “submit” button in the program, which turned green, but she did not receive the confirmatory email that is sent when a bid is properly submitted. Ms. Taber testified that she saw a screen that indicated that she had input her sub-bid. BidDocs reviewed the system audit log and it shows that Quinn submitted the signature

authorization form and made modifications to the DCAM Update Statement. However, the system shows no record of a bid being submitted prior to 2:00 p.m. on January 18, 2012.

BidDocs spoke with Ms. Taber again to review the bid submission. BidDocs explained to Ms. Taber that the system had no record of Quinn submitting a bid. However, the system did show activity on the DCAM form. BidDocs suggested that Quinn and BidDocs “walk through” the e-bidding process together. BidDocs requested that Quinn log-in and submit a sub-bid for the open Plumbing trade as a test. Ms. Taber entered amounts in the sub-bid form, attached a sample bid bond and confirmed that the Certificate of Eligibility was on file. She then made modifications to the DCAM form and clicked "save/exit". BidDocs then asked Ms. Taber to click the button "submit bid". She did and the button turned green and she read the pop-up message that said Quinn successfully submitted a bid. BidDocs indicated that completing the sub-bid form does not automatically submit a bid (this is confirmed in the pop-up message) and that the bidder must click the "submit bid" button. BidDocs then requested that Ms. Taber check her email. She confirmed receipt of an email from the system indicating that Quinn successfully submitted a test Plumbing bid on January 20, 2012.

BidDocs argues that, based on the computer audit record, the lack of a confirming email from BidDocs for the Miscellaneous Metals sub-trade and the fact that Quinn was able to successfully submit a test Plumbing bid, Quinn never submitted its bid for the Miscellaneous Metals sub-trade. Electronic bids from 35 contractors were successfully received by BidDocs.

Quinn questions the legality of the e-bidding system. It argues that, contrary to M.G.L. c. 149, the bids are not “publicly opened” or read “by the awarding authority” and that the awarding authority may not delegate the opening of the bids to a vendor.

## ANALYSIS

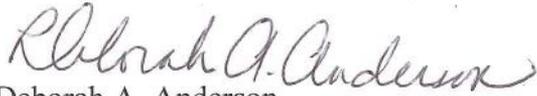
It is well settled that the Protestor has the burden to establish that the awarding authority acted in bad faith or in an arbitrary or unreasonable manner. See, *Modem Continental Constr. Co., Inc. v. Massachusetts Port Authority*, 369 Mass. 825, 828-29 (1976); *James Const. Co. v. Commissioner of Public Health*, 336 Mass. 143, 146 (1957) ("the actions of public officials are presumed to be regular and lawful"). I find that BidDocs was an agent of the Department, which is not prohibited by the statute, M.G.L. c. 149, § 44F and 44J from delegating the authority to open the bid documents to a vendor. Cf. *J.F. White Contracting Co. v. Massachusetts Port Authority*, 51 Mass.App.Ct. 811, 815 (2001), where the Court sanctioned alternative bidding even though it is not mentioned in the competitive bidding laws ("[W]e may not, by process of construction, add a prohibition to a statute when it is not contained therein.") Since BidDocs was an agent of the Department, Quinn has the burden of proving that it submitted a bid on January 18, 2012. See *C.J. Marbardy v. South Shore Charter School*, Attorney General Bid Protest Decision (June 4, 2003) (Protestor had burden to prove that it had *not* received a telephone call from the awarding authority advising it that the bid opening was postponed to a certain date.) I find that Quinn has not met its burden of proof, given BidDocs' electronic audit, which I deem reliable.

I reject Quinn's argument that the bids were not publicly opened. They were available for viewing on-line by the public immediately after the close of bidding at 2:00. The purpose of the public opening is to keep the bids secret until the time of opening. That purpose is met when the bids are revealed to no one until they become viewable on-line. I do not believe that a bid must be in a sealed envelope that is then opened in order to be valid. See *Environmental Waste Technology, Inc. v. Comm.*, 2000 WL 1531740 (Superior Court C.A. 00-4309-B) which held that

a bid submitted in a clear plastic binder, with only the bidder's name visible, was valid even though it was not in a sealed envelope and was not unsealed at bid opening.)

Accordingly, the Protest is Denied.

Respectfully submitted,



Deborah A. Anderson  
Assistant Attorney General

cc: Harvey Heafitz, Esq. (Quinn)  
Warren Hutchison, Esq. (BidDocs)  
Peter Dion (Wakefield)  
Gregg Yanchenko (BidDocs)