

BEFORE THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

LIFE INSURANCE COMPANY
OF THE SOUTHWEST, d/b/a
NATIONAL LIFE GROUP,

Petitioner,

DOAH Case No. 19-5140 BID

vs.

BROWARD COUNTY SCHOOL BOARD,

L.T. Case No. RFP FY20-013

Respondent,

and

AXA EQUITABLE LIFE INSURANCE
COMPANY,

Intervenor.

_____ /

RESPONDENT SCHOOL BOARD'S AMENDED MOTION TO AWARD COSTS

COMES NOW the Respondent, THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA (hereinafter referred to as "THE SCHOOL BOARD"), by and through its undersigned attorneys, and pursuant to Part VIII, Section N of School Board Policy 3320 – Purchasing Policies, respectfully files this Amended Motion to Award Costs in its favor and against the Petitioner, LIFE INSURANCE COMPANY OF THE SOUTHWEST, d/b/a NATIONAL LIFE GROUP ("LSW"), and would state as follows:

1. In the Recommended Order rendered on March 24, 2020 in these proceedings, the Administrative Law Judge recommended the entry of a final order dismissing the protest of Petitioner LIFE INSURANCE COMPANY OF THE SOUTHWEST, d/b/a NATIONAL LIFE GROUP causing SBBC to be the prevailing party in these proceedings.

2. Pursuant to School Board Policy 3320, Part VIII, Section N, if THE SCHOOL BOARD prevails after the completion of the administrative hearing in a bid protest, it shall recover all costs and charges which shall be included in the Final Order. The policy further

provides that THE SCHOOL BOARD shall return the protest bond posted by Petitioner LIFE INSURANCE COMPANY OF THE SOUTHWEST, d/b/a NATIONAL LIFE GROUP in the proceedings upon LSW's payment of such costs and charges. As stated in Otis Elevator Company v. Bryan, 489 So.2d 1189 (Fla. 1DCA 1986), "Costs, a compensatory monetary award to the winning party, is a judicial attempt to make the winning party as whole as he was prior to the litigation. The theory being that the prevailing party should not lose anything, at least financially, by virtue of having established the righteousness of his claim." (c.f., Gordon International Advertising, Inc. v. Charlotte County Land & Title Co., 170 So.2d 59 (Fla. 3d DCA 1965).

3. THE SCHOOL BOARD is an agency for the purposes of Florida's Administrative Act, Chapter 120, Florida Statutes, and can choose to conduct the hearing itself or refer the case to the Division of Administrative Hearings (DOAH) to appoint a hearing officer. See: Seiden v. Adams, 150 So.2d 1215 (Fla. 4th DCA 2014). Although the agency "shall refer" a formal bid protest petition to DOAH under Section 120.57(3), Florida Statutes, there is no such mandate to refer to DOAH any deliberations upon a motion to award costs to a prevailing party subsequent to the conduct of a bid protest proceeding. As such, it is respectfully requested that THE SCHOOL BOARD exercise its quasi-judicial powers and function to adjudge and determine the award of costs in these proceedings in conjunction with its action upon the DOAH administrative law judge's Recommended Order and any exceptions filed in response thereto.

4. THE SCHOOL BOARD has filed herewith an Amended Affidavit of Costs in the total amount of \$34,699.67 to be considered by the agency in its deliberations upon this Motion and incorporates said Affidavit herein by reference.

WHEREFORE, the Respondent, THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA, respectfully moves for the inclusion within the Final Order of an award of costs in its favor and against Petitioner LIFE INSURANCE COMPANY OF THE SOUTHWEST, d/b/a NATIONAL LIFE GROUP in the amount of \$34,699.67.

Respectfully submitted,

DATED: April 29, 2020.

/s/ Robert Paul Vignola

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*Counsel for Respondent The School Board
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via electronic mail on this 29th day of April 2020 to the parties listed on the below Service List.

By/s/ **ROBERT PAUL VIGNOLA**
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