

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MAE VOLEN SENIOR CENTER, INC.,)
)
 Petitioner,)
)
 vs.) Case No. 06-2291BID
)
 AREA AGENCY ON AGING PALM)
 BEACH/TREASURE COAST, INC.,)
)
 Respondent.)
)
 and)
)
 RUTH RALES JEWISH FAMILY)
 SERVICES OF SOUTH PALM BEACH)
 COUNTY,)
)
 Intervenor,)
)
 and)
)
 DEPARTMENT OF ELDER AFFAIRS,)
)
 Intervenor.)
 _____)

FINAL ORDER OF DISMISSAL
FOR LACK OF SUBJECT MATTER JURISDICTION

Pursuant to notice, a motion hearing was held in this case on July 13, 2006, with the parties attending by telephone, before Patricia M. Hart, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

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and Barbara M. Crosier, General Counsel
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DISCUSSION

This matter is submitted for decision on the State of
Florida, Department of Elder Affairs' ("Department") Motion to

Dismiss for Lack of Jurisdiction, filed July 6, 2006;
Respondent's Motion to Relinquish Jurisdiction Due to Lack of
Subject Matter Jurisdiction filed by Area Agency on Aging Palm
Beach/Treasure Coast, Inc. (AAA Palm Beach/Treasure Coast), on
July 6, 2006; and Intervenor Ruth Rales Jewish Family Service of
South Palm Beach County, Inc. ("Ruth Rales") Joinder in Motion
to Relinquish Jurisdiction Due to Lack of Subject Matter
Jurisdiction, filed July 10, 2006; the response in opposition to
the motions to dismiss and to relinquish jurisdiction filed by
Mae Volen Senior Center, Inc. ("Mae Volen") on July 12, 2006;
the reply to Mae Volen's response filed by the Department on
July 12, 2006; and a response to the reply filed on July 12,
2006, by the Department, filed by Mae Volen on July 14, 2006.
The issue presented by the Department in its motion is whether
the Division of Administrative Hearings has subject matter
jurisdiction to hear a bid protest submitted by the AAA Palm
Beach/Treasure Coast.

Simply stated, the instant case involves a challenge by Mae
Volen to the AAA Palm Beach/Treasure Coast's notice of intent to
award to Ruth Rales a contract for designation as Lead Agency
and Case Management /Case Aide pursuant to a Request for
Proposals ("RFP") issued on February 17, 2006, by the AAA Palm
Beach/Treasure Coast. Mae Volen, which had submitted a proposal
in response to the RFP, filed a Petition for Administrative

Hearing with the AAA Palm Beach/Treasure Coast "pursuant to sections 120.569, 120.57(1) and (3), Florida Statutes, and rules 28-106.201(2) and 28-110.004, Florida Administrative Code." The AAA Palm Beach/Treasure Coast transmitted the petition to the Division of Administrative Hearings with a request that an administrative law judge be assigned "to conduct the proceeding in accordance with Sections 120.57(1) and 120.57(3), Florida Statutes. Both Mae Volen and AAA Palm Beach/Treasure Coast acted based on the following provision found in Attachment 12 of the RFP, which provided in pertinent part:

If the protest is not resolved by mutual agreement within seven days . . . of receipt of the formal written protest, and if there is a disputed issue of material fact, the formal written protest shall be referred to the Division of Administrative Hearings for further proceedings.

Upon receipt by the Division of Administrative Hearings, the matter was assigned to the undersigned, who conducted a telephone conference with counsel for Mae Volen and the AAA Palm Beach/Treasure Coast to arrange a date for the hearing. Counsel for the Department joined the telephone conference and stated that the Department intended to file a motion to dismiss this administrative proceeding on the grounds that the Division of Administrative Hearings lacked subject matter jurisdiction to adjudicate the bid protest. The Department's Unopposed Petition to Intervene, filed for the limited purpose of challenging the

subject matter jurisdiction of the Division of Administrative Hearings, was granted in an order entered July 19, 2006. Oral argument was heard from all parties during the telephone hearing on July 13, 2006.

Having considered all of the written pleadings submitted with respect to the subject matter jurisdiction of the Division of Administrative Hearings to conduct an administrative hearing in this case and the arguments of counsel during the hearing, the Department's Motion to Dismiss for Lack of Subject Matter Jurisdiction is granted because AAA Palm Beach/Treasure Coast is not an "agency" for purposes of the Administrative Procedures Act, Chapter 120, Florida Statutes. The jurisdiction of administrative law judges employed by the Division of Administrative Hearings is limited to conducting "hearings required by this chapter or other law" and conducting hearings "on a contract basis to any governmental entity . . . not covered by this section." § 120.65(4) and (7), Fla. Stat.¹

The AAA Palm Beach/Treasure Coast is a private entity that is designated by, and is under contract with, the Department to provide services to the elderly pursuant to Section 20.41, Florida Statutes, which provides in pertinent part:

(5) The department shall be the state unit on aging as defined in the federal Older Americans Act of 1965, as amended, and shall exercise all responsibilities pursuant to that act.

(6) In accordance with the federal Older Americans Act of 1965, as amended, the department shall designate and contract with area agencies on aging in each of the department's planning and service areas. Area agencies on aging shall ensure a coordinated and integrated provision of long-term care services to the elderly and shall ensure the provision of prevention and early intervention services. The department shall have overall responsibility for information system planning. The department shall ensure, through the development of equipment, software, data, and connectivity standards, the ability to share and integrate information collected and reported by the area agencies in support of their contracted obligations to the state.

(7) The department shall contract with the governing body, hereafter referred to as the "board," of an area agency on aging to fulfill programmatic and funding requirements. The board shall be responsible for the overall direction of the agency's programs and services and shall ensure that the agency is administered in accordance with the terms of its contract with the department, legal requirements, established agency policy, and effective management principles. The board shall also ensure the accountability of the agency to the local communities included in the planning and service area of the agency.

(8) The area agency on aging board shall, in consultation with the secretary, appoint a chief executive officer, hereafter referred to as the "executive director," to whom shall be delegated responsibility for agency management and for implementation of board policy, and who shall be accountable for the agency's performance.

(9) Area agencies on aging are subject to chapter 119, relating to public records, and, when considering any contracts

requiring the expenditure of funds, are subject to ss. 286.011-286.012, relating to public meetings.

The statutory provisions under which the AAA Palm Beach/Treasure Coast's RFP was issued are found in Sections 430.201-.207, Florida Statutes, the Community Care for the Elderly Act. An "area agency on aging" is defined in Section 430.203(1), Florida Statutes, as

a public or non-profit private agency or office designated by the department to coordinate and administer the department's programs and to provide, through contracting agencies, services within a planning and service area. An area agency on aging serves as both the advocate and the visible focal point in its planning and service area to foster the development of comprehensive and coordinated service systems to serve older individuals.

An "agency," for purposes of the Administrative Procedures Act, is defined in Section 120.52(1), Florida Statutes, in pertinent part, as follows:

(1) "Agency" means:

(a) The Governor in the exercise of all executive powers other than those derived from the constitution.

(b) Each:

1. State officer and state department, and each departmental unit described in s. 20.04.

2. Authority, including a regional water supply authority.

3. Board.
4. Commission, including the Commission on Ethics and the Fish and Wildlife Conservation Commission when acting pursuant to statutory authority derived from the Legislature.
5. Regional planning agency.
6. Multicounty special district with a majority of its governing board comprised of nonelected persons.
7. Educational units.
8. Entity described in chapters 163, 373, 380, and 582 and s. 186.504.

(c) Each other unit of government in the state, including counties and municipalities, to the extent they are expressly made subject to this act by general or special law or existing judicial decisions.

The AAA Palm Beach/Treasure Coast does not fall within any of the categories set forth in Section 120.52(1)(a) or (b), Florida Statutes. Nothing in Section 20.41, Florida Statutes, or in Section 430.203, Florida Statutes, expressly makes the AAA Palm Beach/Treasure Coast subject to Chapter 120, Florida Statutes, and Mae Volen did not cite any judicial decision in which the AAA Palm Beach/Treasure Coast was expressly made subject to Chapter 120, Florida Statutes. In addition, in Section 20.41(9), Florida Statutes, the Florida Legislature expressly made area agencies on aging subject to the Florida Public Records Act, Chapter 119, Florida Statutes, and to the

public-meeting requirements of Sections 286.011 through .012, Florida Statutes, "when [an area agency on aging is] considering any contracts requiring the expenditure of funds." Had the Legislature wanted to make area agencies on aging subject to the public procurement laws in Chapter 287, Florida, or to the procedures set forth in Chapter 120, Florida Statutes, it could have expressly done so. Finally, the AAA Palm Beach/Treasure Coast cannot contract with the Division of Administrative Hearings to assign administrative law judges to conduct hearings to resolve protests involving its requests for proposals because it is not a governmental entity, nor can it establish a procurement procedure in which bid protests involving disputed issues of material fact can be referred to the Division of Administrative Hearings.

CONCLUSION

Based on the foregoing, it is ORDERED that the Petition for Administrative Hearing is dismissed because the Division of Administrative Hearings does not have subject matter jurisdiction over bid protests arising out of the RFP issued on February 16, 2006, by the AAA Palm Beach/Treasure Coast.

DONE AND ORDERED this 21st day of July, 2006, in
Tallahassee, Leon County, Florida.



PATRICIA M. HART
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 21st day of July, 2006.

ENDNOTE

^{1/} All references to the Florida Statutes herein are to the 2005 edition unless otherwise indicated.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original Notice of Appeal with the agency clerk of the Division of Administrative Hearings and a copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the Appellate District where the party resides. The notice of appeal must be filed within 30 days of rendition of the order to be reviewed.