

STATE OF FLORIDA
DIVISION OF EMERGENCY MANAGEMENT

2008 MAY 30 A 11:53

DIVISION OF
ADMINISTRATIVE
HEARINGS

ROAM SECURE, INC.

Petitioner,

vs.

DIVISION OF EMERGENCY
MANAGEMENT,

DOAH Case No. 07-5454BID

Respondent,

and

NTI GROUP, INC.,

Intervenor.

FINAL ORDER

This matter was considered by the Director of the Division of Emergency Management following receipt of a Recommended Order issued by an Administrative Law Judge of the Division of Administrative Hearings. A copy of the Recommended Order is appended to this Final Order as Exhibit A.

Background and Summary of Proceedings

The Division of Emergency Management (DEM) issued a Request for Proposals (RFP) on September 18, 2007, to implement an emergency notification pilot program in four counties. DEM received eleven proposals in response to the RFP, including one from Roam Secure, Inc. (Roam) and one from NTI Group, Inc (NTI). DEM ultimately gave notice of its intent to award the contract under this RFP to NTI.

Roam timely filed a notice of intent to protest this award, followed by a formal written protest and petition for administrative hearing. NTI intervened in the administrative proceeding. The Administrative Law Judge held a final hearing in this matter on February 27-28, 2008. Upon consideration of the evidence and post-hearing filings, the Administrative Law Judge entered a Recommended Order rejecting all of the allegations raised by Roam. The Order recommends that the Division award the contract to NTI. No party filed exceptions to the Recommended Order.

Standard of Review of Recommended Order

The Administrative Procedure Act contemplates that the Division will adopt an Administrative Law Judge's Recommended Order as the agency's Final Order in most proceedings. To this end, the Division has been granted only limited authority to reject or modify findings of fact in a Recommended Order.

Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

Fla. Stat. § 120.57(1) (1).

Absent a demonstration that the underlying administrative proceeding departed from essential requirements of law, "[a]n ALJ's findings cannot be rejected unless there is no competent, substantial evidence from which the findings could reasonably be inferred." Prysi v. Department of Health, 823 So. 2d 823, 825 (Fla. 1st DCA 2002) (citations omitted). In determining whether challenged findings are supported by the record in accord with this standard, the Division may not reweigh the evidence or judge the credibility of witnesses, both tasks being within the sole province of the Administrative Law Judge as the finder of fact. See Heifetz v. Department of Bus. Reg., 475 So. 2d 1277, 1281-83 (Fla. 1st DCA 1985).

The Administrative Procedure Act also specifies the manner in which the Division is to address conclusions of law in a Recommended Order.

The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified.

Fla. Stat. § 120.57(1)(1); DeWitt v. School Board of Sarasota County, 799 So. 2d 322 (Fla. 2nd DCA 2001).

The label assigned a statement is not dispositive as to whether it is a finding of fact or conclusion of law. See Kinney v. Department of State, 501 So. 2d 1277 (Fla. 5th DCA 1987). Conclusions of law labeled as findings of fact, and findings labeled as conclusions, will be considered as a conclusion or finding based upon the statement itself and not the label assigned.

ORDER

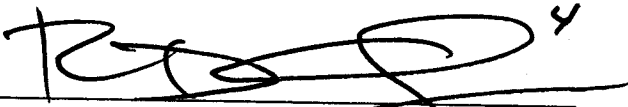
No party filed exceptions to the Recommended Order in this instance. By failing to file exceptions, the parties have "expressed [their] agreement with, or at least waived any objection to, [the] findings of fact." Environmental Coalition of Florida, Inc. v. Broward County, 586 So. 2d 1212, 1213 (Fla. 1st DCA 1991); see also Couch v. Commission on Ethics, 617 So. 2d 1119 (Fla. 5th DCA 1993).

Upon review and consideration of the entire record of this proceeding, including the Recommended Order, it is hereby ordered as follows:

1. The findings of fact and conclusions of law in the Recommended Order are adopted.

2. The Administrative Law Judge's recommendation is accepted.
3. The bid protest filed by Roam Secure, Inc. is hereby DISMISSED.

DONE AND ORDERED in Tallahassee, Florida.



Craig Fugate, Director
DIVISION OF EMERGENCY MANAGEMENT
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

NOTICE OF RIGHTS

EACH PARTY IS HEREBY ADVISED OF ITS RIGHT TO SEEK JUDICIAL REVIEW OF THIS FINAL ORDER PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND FLORIDA RULES OF APPELLATE PROCEDURE 9.030(b)(1)[©] AND 9.110.

TO INITIATE AN APPEAL OF THIS ORDER, A NOTICE OF APPEAL MUST BE FILED WITH THE DEPARTMENT'S AGENCY CLERK, 2555 SHUMARD OAK BOULEVARD, TALLAHASSEE, FLORIDA 32399-2100, WITHIN 30 DAYS OF THE DAY THIS ORDER IS FILED WITH THE AGENCY CLERK. THE NOTICE OF APPEAL MUST BE SUBSTANTIALLY IN THE FORM PRESCRIBED BY FLORIDA RULE OF APPELLATE PROCEDURE 9.900(a). A COPY OF THE NOTICE OF APPEAL MUST BE FILED WITH THE APPROPRIATE DISTRICT COURT OF APPEAL AND MUST BE ACCOMPANIED BY THE FILING FEE SPECIFIED IN SECTION 35.22(3), FLORIDA STATUTES.

YOU **WAIVE** YOUR RIGHT TO JUDICIAL REVIEW IF THE NOTICE OF APPEAL IS NOT TIMELY FILED WITH THE AGENCY CLERK AND THE APPROPRIATE DISTRICT COURT OF APPEAL.

MEDIATION UNDER SECTION 120.573, FLA. STAT., IS NOT AVAILABLE WITH RESPECT TO THE ISSUES RESOLVED BY THIS ORDER.

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that the original of the foregoing has been filed with the undersigned Agency Clerk of the Department of Community Affairs, and that true and correct copies have been furnished to the persons listed below in the manner described, on this 28th day of May, 2008.


Paula Ford
Agency Clerk

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