

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

BRIDGES OF AMERICA, INC.,

Petitioner,

vs.

Case No. 14-4743BID

DEPARTMENT OF CORRECTIONS,

Respondent,

and

UNLIMITED PATH OF CENTRAL  
FLORIDA, INC.,

Intervenor.

\_\_\_\_\_ /

RECOMMENDED ORDER

Pursuant to notice to all parties, the final hearing was conducted in this case on November 5-6, 2014, in Tallahassee, Florida, before Administrative Law Judge R. Bruce McKibben of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Amy W. Schrader, Esquire  
Daniel Kuhn, Esquire  
GrayRobinson, P.A.  
301 South Bronough Street, Suite 600  
Tallahassee, Florida 32301

For Respondent: Jonathan P. Sanford, Esquire  
Department of Corrections  
501 South Calhoun Street  
Tallahassee, Florida 32399-2500

For Intervenor: Jodi Nicole Cohen, Esquire  
Panza, Maurer and Maynard, P.A.  
3600 North Federal Highway, Third Floor  
Fort Lauderdale, Florida 33308

STATEMENT OF THE ISSUE

The issue in this case is whether, in deciding to award a contract for comprehensive re-entry services to be provided at the Baker Re-Entry Center ("Baker"), Respondent, Department of Corrections (the "Department" or "DOC"), acted contrary to one or more governing statutes, rules, policies, or procurement specifications, or any combination thereof; and if so, for each such instance, whether the misstep was clearly erroneous, arbitrary, capricious, or contrary to competition.

PRELIMINARY STATEMENT

This case commenced with the posting on September 16, 2014, of the Department's intent to award the contract for Baker to Intervenor, Unlimited Path of Central Florida, Inc. ("UPI"). Petitioner, Bridges of America, Inc. ("Bridges"), a vendor who was not approved, timely filed a formal bid protest to challenge the award. The bid protest contends that DOC acted contrary to law and to the specifications set forth in Invitation to Negotiate DC ITN 13-038 (the "ITN").

At the final hearing, Bridges presented the testimony of five witnesses: Lori Constantino-Brown, president and CEO of Bridges; Kelly Wright, purchasing analyst for DOC;

Patrick Mahoney, the Chief of Bureau of Transition and Substance Abuse Services for DOC; James Freeman, warden at Baker; and Dan Eberlein, region 2 re-entry coordinator for DOC. Bridges' Exhibit 1 was accepted into evidence. The Department called two witnesses: Debbie Miller, re-entry office liaison for DOC; and Kim Riley, director of re-entry for DOC. The Department's Exhibits 1 and 2 were admitted into evidence. UPI did not call any additional witnesses. Its Exhibit 1 was accepted into evidence. Joint Exhibits 1 through 49 were also admitted into evidence.

The parties advised that a transcript of the final hearing would be ordered. By rule the parties have ten days from the date the transcript is filed to file proposed recommended orders. The Transcript was filed on December 1, 2014. The parties each timely filed a Proposed Recommended Order. Each party's Proposed Recommended Order was duly considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. In 2014, the Florida Legislature authorized DOC to open two 432-bed substance abuse treatment, transition and vocational training centers ("Re-Entry Centers") by way of the 2014-2015 General Appropriations Act. The Department was also authorized, pursuant thereto, to issue a competitive solicitation for

comprehensive program services for the inmates at the Re-Entry Centers.

2. On June 10, 2014, the Department issued the ITN entitled, "Comprehensive Re-Entry Services at Everglades and Baker Re-Entry Centers." The stated purpose of the ITN was to select "qualified vendors to provide comprehensive criminal justice re-entry services which include substance abuse services, academic programs, vocational programs, case management, chaplaincy and other program services to a medium to high-risk inmate population" at the Baker and Everglades Re-Entry Centers.

3. On July 10, 2014, DOC issued Addendum #1 to the ITN which made changes to the original specifications in the ITN in response to some vendor inquiries. For example, in response to a vendor inquiry about the mental health classifications of inmates, the following information was contained in the Addendum:

Question #77: Will there be any inmates placed at the Everglades or Baker Re-Entry Centers with mental health psych grades? If so, is there going to be any mental health personnel on-site at either facility?

Answer #77: The Department will house Psych Grade 1\*, 2\*, at the Baker Re-Entry Center and 1\*, 2\*, and 3\* at the Everglades Re-Entry Center, however 3\*s will be housed on a limited basis. Mental Health Services will be provided by Corizon, Inc. at Baker Re-Entry Center and [by] Wexford Health Sources at Everglades Re-Entry Center. These services, which will be under the direction of a licensed psychologist, may be provided on site, or at the parent institution.

4. The Department utilizes a 1-to-5 scale to measure the level of mental illness an inmate is demonstrating to determine what kind of personnel is necessary to manage the inmate. Psych grade 3 (called "S3") is the highest grade of mental illness where the inmate does not have to be separated from the general population. S3 inmates are generally those who have been prescribed psychotropic medications.

5. On or about July 23, Replies to the ITN were submitted by Bridges; UPI; Geo Re-Entry Services, LLC; The Transition House; and Westcare Gulfcoast Florida, Inc., for the Baker contract. Bridges and Geo also submitted Replies to the Everglades ITN.

6. The Department designated Kelly Wright as the procurement manager for this ITN. Ms. Wright opened all the timely-filed Replies to the ITN. She determined whether each Reply contained the "Mandatory Documentations" identified in section 4.22.2 of the ITN, e.g., the information cost sheet, price sheet, and attestations. She then forwarded the Replies to a group of five "evaluators" for further review. Each of the evaluators was experienced in the review process. They were provided a manual and training by Ms. Wright to help focus their reviews of the Replies.

7. The evaluators individually scored each Reply using the scoring criteria set forth in revised Attachment 7 of the ITN.

As they reviewed the Replies, some of the evaluators also prepared negotiation topic sheets for use during the upcoming negotiation phase. Upon completion of their review, the evaluators scored the Replies as follows:

UPI - 940.06  
Bridges - 846.00  
Geo - 805.80  
Westcare - 710.38  
Transition - 700.83

8. The scores were presented to Ms. Wright, who forwarded them to Patrick Mahoney, DOC's bureau chief of Transition and Substance Abuse Treatment Services. Mr. Mahoney served as the lead negotiator in this ITN process as well. He reviewed the scores and decided the Department would only negotiate with UPI due to that vendor's substantially higher score than its competitors.

9. The Department then scheduled a negotiation session with UPI. In addition to Mahoney, two other negotiators (James Freeman and Dan Eberlein, both of whom had served as evaluators) took part in the process. The negotiation session with UPI was held on August 15. Thereafter, DOC was satisfied that UPI's proposal met the Department's needs and decided to close the negotiation process. The Department was ready to award a contract to UPI for the Baker Re-Entry Center.

10. Meanwhile, on or about August 20, a newspaper article was published in the *Miami Herald* which discussed possible inmate

populations at Baker and Everglades. The article seemed to infer that all inmates at the Re-Entry Centers would be inmates with significant mental health issues.

11. When DOC personnel reviewed the *Miami Herald* article, the Department's initial perception was that the mental health issue may substantially affect the ITN as posted. The Department decided to reopen the negotiation process for both Baker and Everglades to address any possible changes to the ITN caused by the change in inmate population. This time, the Department also invited Bridges and Geo to negotiate regarding the Baker contract.

12. A telephonic negotiation session was noticed and then held on September 4 between the Department and each of three vendors: Bridges, UPI, and Geo. The negotiation session for Bridges was opened by Kelly Wright who stated, "This is . . . a negotiation meeting for comprehensive re-entry services at Everglades and Baker Re-Entry Centers." Bridges (represented at the session by its CEO, Lori Constantino-Brown), was asked if it had a plan to handle S3 inmates and Bridges replied in the affirmative. Bridges' representative was specifically asked whether her responses would be any different for Baker than for Everglades (because Everglades already contemplated the presence of S3 inmates). She replied in the negative, saying "The approaches would be the same on both facilities in terms of the

types of programs we would be using. The way that we would staff pretty much is exactly the same, I think, maybe give or take one position. I mean, there are I would say about 95, 99 percent similar, you know, except, you know, where the RFP kind of dictated something different." When the Department further inquired whether Bridges had anything to add separately for Baker, the representative replied, "No." And once again when the Department asked Bridges if there were any "additional issues or anything you would like to tell us," Bridges replied, "No." Bridges had every opportunity at the negotiation session to provide information or ask questions about the Baker Re-Entry Center proposal.

13. On September 5, the Department issued its Requests for Best and Final Offer (RBAFO) to UPI and Bridges concerning their interest in offering contracts for the Baker center. A RBAFO is only sent to vendors the Department believes can adequately and efficiently meet the requirements of the ITN. Bridges would not have been part of the RBAFO process but for the negotiation having been reopened. Each vendor submitted their Best and Final Offer (BAFO) on September 11.

14. After review of the BAFOs from the vendors, the Department chose to award the contract to UPI. Bridges timely filed a formal written protest and petition for formal administrative hearing, resulting in the instant proceeding.



15. The BAFOs were independently reviewed by each of the negotiators. They used the selection criteria set forth in the ITN, specifically:

- a. Experience in similar delivery of criminal justice services;
- b. Staffing quality and schedules;
- c. Quality and flexibility of Programming; and
- d. Cost.

16. The negotiators unanimously decided that UPI's proposal best satisfied the selection criteria. During their reviews, the negotiators did not specifically refer back to the vendors' Replies to the ITN. However, the two negotiators who had also been evaluators were already familiar with the information in the Replies and considered that information as part of their evaluation review. Mahoney, who had not initially evaluated the Replies, reviewed the ITN Replies during the negotiation process. Although Bridges did not specifically direct the negotiators to review its ITN Reply, the ITN Reply had nonetheless been reviewed. By way of example, the negotiators found that Bridges' value-added services were the same in its Reply and its BAFO, a clear indication that both were considered.

17. The process for this particular ITN admittedly had some unusual but unforeseeable issues. Normally, once the Department has decided which vendors to negotiate with, it will close the process from further review. And that did in fact occur in this case. However, the publication of the article in the *Miami*

*Herald* caused an anomalous blip in procedures. Personnel within the Department at first believed that the article was correct, i.e., that all inmates to be processed through the Baker and Everglades Re-Entry Centers would be suffering from significant mental illness. If so, that would be considered a "game changer" for the ITN, requiring amendment or rescission of the ITN.

18. The article was not entirely correct. In fact, while there would be inmates at each of the centers with some level of mental illness, those would be limited to no more than 50 of the 432 inmates at Baker.

19. The Everglades contract already presupposed some level S3 inmates, those with psychiatric levels which might require psychotropic medications. The only change to the ITN after the newspaper article was that Baker might also house some level S3 inmates.

20. At any rate, the Department decided to reopen negotiations in order to allow the interested vendors to address the S3 inmate issue. Bridges was included in the reopened negotiations although it had been excluded from the prior negotiations. The Department had already deemed UPI the most qualified vendor, but decided that if Bridges could address the S3 situation better, it might warrant further review.

21. The Department also had further negotiation sessions with UPI for Baker and Everglades on September 4. The same

question--almost verbatim--was asked of UPI that had been asked of Bridges, i.e., how do you intend to handle the S3 inmates? UPI's response was more in depth than Bridges response, even though both vendors essentially said their proposals as submitted would cover the S3 inmates.

22. Bridges' claim that it was not aware the Baker contract would be discussed at the September 4 negotiation meeting is not credible; the email sent to Ms. Constantino-Brown is entitled, "Bridges of America, Inc. Negotiations for Comprehensive Re-Entry Services at Everglades and Baker Re-Entry Centers." While Ms. Constantino-Brown may have interpreted the email to address only the Everglades contract and that a session for Baker would follow, her interpretation was mistaken. That is borne out by the statements made during the session by Department representatives as set forth above.

23. As a result of the negotiation session, the Department requested BAFOs from both UPI and Bridges for the Baker facility contract. Both vendors timely submitted their BAFO for consideration by the Department. As stated previously, the Department selected UPI's proposal to the exclusion of Bridges.

24. Bridges asserts it was not given the same opportunity as the other vendor to discuss core issues within its Reply and BAFO, e.g., unit management. Again, the evidence does not support Bridges' contention.

25. Bridges suggests that the addition of the S3 inmates at the Baker Re-Entry Center substantially altered the substance of the ITN. That contention is not supported by the evidence. In fact, Bridges specifically stated that its proposal for Everglades (which already had S3 inmates) was essentially the same as its Baker proposal.

26. The totality of the evidence suggests that Bridges may have operated under a false assumption concerning the negotiation session, but its mistake does not void the Department's actions.

#### CONCLUSIONS OF LAW

27. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this proceeding. §§ 120.569, 120.57(1) and (3), Fla. Stat. Unless specifically stated otherwise herein, all references to Florida Statutes will be to the 2014 version. The Administrative Procedure Act provides the exclusive remedy for resolving disputes arising from a competitive procurement by a state agency. State, Dept. of Lottery v. Gtech Corp., 816 So. 2d 648, 651 (Fla. 1st DCA 1999).

28. An invitation to negotiate is governed by the provisions of section 287.057(1)(c), Florida Statutes, which provides in pertinent part: "After negotiations are conducted, the agency shall award the contract to the responsible and responsive vendor that the agency determines will provide the

best value to the state, based on the selection criteria." Best value is defined as "the highest overall value to the state based on objective factors that include, but are not limited to, price, quality, design and workmanship." § 287.012(4), Fla. Stat.

29. The burden of proof in this proceeding lies with the Petitioner who, as the party opposing the Department's decision, must show "a ground for invalidating the award." State Contracting and Eng'g Corp. v. Dep't of Transp., 709 So. 2d 607, 609 (Fla. 1st DCA 1998); § 120.57(3)(f), Fla. Stat. The underlying findings of fact in this case are to be determined using the preponderance of the evidence standard. See § 120.57(1)(j), Fla. Stat.

30. This is a de novo proceeding, a form of intra-agency review. The object of the proceeding is to evaluate the action taken by the agency at the time it took the action. State Contracting and Eng'g, supra, at 609. A de novo proceeding in a procurement case means a proceeding in which evidence is received, factual disputes are settled, legal conclusions are made, and prior agency action is reviewed for correctness. The Administrative Law Judge does not sit as a substitute for the Department in determining whether the right party prevailed in the proceeding. "Instead, the hearing officer sits in a review capacity and must determine whether the bid review criteria . . . have been satisfied." Intercontinental Properties, Inc. v. State

Dep't of Health and Rehab. Serv., 606 So. 2d 380, 386 (Fla. 1st DCA 1992).

31. The standard of proof used to make such a determinations is "whether the proposed agency action was clearly erroneous, contrary to competition, arbitrary, or capricious." § 120.57(3)(f), Fla. Stat. The definition of standard of proof for purposes of procurement actions is considered to be akin to a standard of review. R.N. Expertise, Inc. v. Miami-Dade County Sch. Bd., Case No. 01-2663BID ¶ 76 (DOAH Feb. 4, 2002; Miami-Dade Sch. Bd. Mar. 14, 2002).

32. The Florida Legislature expressly recognizes that "fair and open competition is a basic tenant of public procurement; that such competition reduces the appearance and opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically." § 287.001, Fla. Stat.

33. The objectives that the State seeks in having competitive procurements are the following:

[T]o protect the public against collusive contracts; to secure fair competition upon equal terms to all bidders; to remove not only collusion but temptation for collusion and opportunity for gain at public expense; to close all avenues to favoritism and fraud in various forms; to secure the best values for the [public] at the lowest possible expense; and to afford an equal advantage to all desiring to do business with the [government], by affording an opportunity for an exact comparison of bids.

Harry Pepper & Assoc. v. City of Cape Coral, 352 So. 2d 1190, 1192 (Fla. 2nd DCA 1997) (quoting Webster v. Belote, 138 So. 721, 723-24 (Fla. 1931)).

34. In the instant case, in order for Bridges to prevail it must identify and prove, by the greater weight of the evidence, an instance or instances where the agency's conduct in taking its proposed action was either:

- (a) Contrary to the Department's statutes;
- (b) Contrary to the Department's rules or policies; or
- (c) Contrary to the ITN specifications.

It is not sufficient for Bridges to prove merely that the agency violated the general standard of conduct. By virtue of the applicable standards of review, Bridges must also establish that the Department's misstep was:

- (a) Clearly erroneous;
- (b) Contrary to competition; or
- (c) Arbitrary or capricious.

R.N. Expertise, ¶ 78.

35. In order to be clearly erroneous, the decision at issue must--even if there is evidence to support it--be shown by the complete record to strongly suggest that a mistake has been committed. U.S. v. U.S. Gypsum Co., 33 U.S. 364, 395 (1948); see also Floridian Constr. & Dev. Co. v. Dep't of Env't. Reg., Case No. 09-858BID, p. 24 at ¶ 48 (Fla. DOAH May 1, 2009; Fla. DER June 1, 2009). No such evidence exists in the present case.

Even the evaluators' failure to retain copies of the Replies, though erroneous, did not constitute a mistake.

36. It has been generally stated that the "contrary to competition" standard is equivalent to the standard set out in Wester v. Belote, 138 So. 721, 723-24 (Fla. 1931), that prohibits interference with the objectives of competitive bidding. See also Cushman & Wakefield of Fla., Inc. v. Dep't of Mgt. Servs., 2014 WL 309246, p. 18, Case Nos. 13-3894BID and 13-3895BID, at ¶ 93 (Fla. DOAH, Jan. 24, 2014; Fla. DMS Feb. 5, 2014). In this case, DOC went out of its way to allow competition between all potentially approvable vendors, including Bridges.

37. An arbitrary decision has been described as one not supported by facts or logic, or is despotic. Agric. Chem. Co. v. State, Dep't of Env't. Reg., 365 So. 2d 759, 763 (Fla. 1st DCA 1978). The decision in this case was supported by the facts and by logic.

38. Bridges states as one of its issues for review that "DOC arbitrarily failed to conduct negotiations with Bridges as represented in its recommendation of award." Clearly, the Department was not required to negotiate with Bridges. See Cubic Transp. Sys., Inc. v. Dep't of Transp., 2014 WL 4410437, Case Nos. 14-2322BID and 14-2323BID, ¶ 135 (DOAH Sept. 4, 2014; Fla. DOT Oct. 6, 2014). Even so, the September 4, 2014, negotiation



session was announced as a negotiation meeting for both Baker and Everglades. The facts do not support Bridges' allegation.

39. Bridges also alleges that "DOC failed to perform an objective comparison of deliverables offered by vendors in their replies utilizing the selection criteria." Again, the evidence does not bear this out. It is clear the Department's evaluators and negotiators fully and carefully reviewed each vendor's proposal and made a decision based upon the stated criteria. That the negotiators did not compile an item-by-item comparison does not invalidate their review. It was undertaken in accordance with all applicable policies and principles.

40. Finally, Bridges alleges that DOC "impermissibly altered the specifications of the ITN by requiring vendors to serve an additional population of inmates classified as having a significant mental illness (S3 inmates) without issuing an addendum. The Department clearly explained the S3 inmate issue and provided plausible and reasonable explanations for how the erroneously interpreted media release affected the ITN. The effect was essentially nil. And even Bridges stated that its proposal as submitted could accommodate the small number of S3 inmates.

41. There is, therefore, no basis for overturning the Department's determination that UPI is the best and appropriate vendor in lieu of Bridges' proposal.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a final order be entered by the Department of Corrections upholding its award of the contract for services at the Baker Re-Entry Center to Unlimited Path of Central Florida, Inc.

DONE AND ENTERED this 31st day of December, 2014, in Tallahassee, Leon County, Florida.



---

R. BRUCE MCKIBBEN  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 31st day of December, 2014.

COPIES FURNISHED:

Jonathan P. Sanford, Esquire  
Department of Corrections  
501 South Calhoun Street  
Tallahassee, Florida 32399-2500  
(eServed)

Amy W. Schrader, Esquire  
GrayRobinson, P.A.  
301 South Bronough Street, Suite 600  
Tallahassee, Florida 32302-3189  
(eServed)

Jodi Nicole Cohen, Esquire  
Panza, Maurer and Maynard, P.A.  
3600 North Federal Highway, Third Floor  
Fort Lauderdale, Florida 33308  
(eServed)

Timothy Cannon, Interim Secretary  
Department of Corrections  
501 South Calhoun Street  
Tallahassee, Florida 32399-2500  
(eServed)

Jennifer Parker, General Counsel  
Department of Corrections  
501 South Calhoun Street  
Tallahassee, Florida 32399-2500  
(eServed)

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 10 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.