

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LOUIS BERGER GROUP, INC.,

Petitioner,

and

DISASTER STRATEGIES AND IDEAS
GROUP, LLC,

Intervenor,

vs.

Case No. 15-2537BID

FLORIDA DIVISION OF EMERGENCY
MANAGEMENT,

Respondent,

and

TRUE SOLUTIONS GROUP, LLC,

Intervenor.

_____ /

RECOMMENDED ORDER OF DISMISSAL

On June 4, 2015, an administrative hearing in this case was held in Tallahassee, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Louis Berger Group, Inc:

Thornton Williams, Esquire
Williams Law Group, P.A.
Suite 1B
800 North Calhoun Street
Tallahassee, Florida 32303-8714

Harriet W. Williams, Esquire
Williams Law Group, P.A.
Post Office Box 10109
Tallahassee, Florida 32302-2109

For Disaster Strategies and Ideas Group, LLC:

Robert H. Hosay, Esquire
Foley and Lardner, LLP
106 East College Avenue, Suite 900
Tallahassee, Florida 32301-7732

James A. McKee, Esquire
Foley and Larner, LLP
106 East College Avenue, Suite 900
Tallahassee, Florida 32301-7732

For Florida Division of Emergency Management:

David A. Yon, Esquire
Radey Law Firm, P.A.
Suite 200
301 South Bronough Street
Tallahassee, Florida 32301-1722

Brittany Adams Long, Esquire
Radey Law Firm, P.A.
Suite 200
301 South Bronough Street
Tallahassee, Florida 32301-1722

Michael T. Kennett, Chief Legal Counsel
Florida Division of Emergency Management
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

For True Solutions Group, LLC:

William Robert Vezina, Esquire
Vezina, Lawrence and Piscitelli, P.A.
413 East Park Avenue
Tallahassee, Florida 32301-1515

Eduardo S. Lombard, Esquire
Vezina, Lawrence and Piscitelli, P.A.
413 East Park Avenue
Tallahassee, Florida 32301-1515

ORDER

1. This case involves the proposed award of a contract for disaster-recovery services pursuant to an Invitation to Bid (ITB-DEM-14-15-023) issued by the Florida Division of Emergency Management (DEM).

2. The ITB provided that the contract would be awarded to "the responsible and responsive bidder who submits the lowest bid." Thirteen vendors submitted bids in response to the ITB. Ranked in order of proposed price, True Solutions Group, LLC (TSG), submitted the lowest bid. Louis Berger Group, Inc. (Berger), submitted the eighth lowest bid. DEM decided to award the contract to TSG. Berger challenged the award of the contract.

3. On May 6, 2015, DEM forwarded to the Division of Administrative Hearings the Formal Written Protest and Petition for Administrative Hearing (Petition) filed by Berger.

4. The Berger petition was consolidated with DOAH Case No. 15-2538BID, a challenge filed by Disaster Strategies & Ideas Group, LLC (DSI), another vendor who submitted a bid proposal in response to the ITB.

5. On May 7, 2015, a Notice of Hearing was issued scheduling the hearing for June 4, 2015.

6. On May 12, 2015, DSI filed a Motion to Intervene in the instant case that was granted by an Order issued on May 13, 2015.

7. On May 18, 2015, Berger filed a Motion for Leave to Amend the Petition and a First Amended Formal Written Protest and Petition for Formal Administrative Hearing (Amended Petition).

8. On May 26, 2015, TSG filed a memorandum opposing Berger's Motion for Leave to Amend. Berger's Motion for Leave to Amend was granted in an Order issued on May 27, 2015.

9. On June 1, 2015, TSG filed a Motion to Dismiss Berger's Petition for Lack of Standing (Motion to Dismiss). On June 2, 2015, DEM filed a Notice of Joining the Motion to Dismiss, and Berger filed a response in opposition to the Motion to Dismiss.

10. On June 3, 2015, TSG filed a Supplement to the Motion to Dismiss, including excerpts from a deposition of Berger's corporate representative, and DSI filed a Stipulation of Voluntary Dismissal of DOAH Case No. 15-2538BID.

11. Also on June 3, 2015, the parties filed a Pre-Hearing Stipulation, including a statement of admitted facts that are adopted in full and incorporated herein as necessary.

12. On June 4, 2015, Berger filed an additional response opposing the Motion to Dismiss and the Supplement.

13. At the commencement of the hearing on June 4, 2015, the Administrative Law Judge requested argument on the Motion to Dismiss. This Order is entered to memorialize the disposition of the Motion to Dismiss as announced at the conclusion of argument.

14. Section 120.569, Florida Statutes (2014), governs proceedings in which the substantial interests of a party are determined by an agency. To have standing to challenge the proposed award of a public contract, a bidder must have a substantial interest to be determined in the case. A bidder who submits the second lowest bid has a substantial interest, because if the lowest bidder is disqualified, the second lowest bidder may receive the award. A bidder who submits the third lowest bid does not have a substantial interest, unless the bidder can establish that the first and second lowest bids must be rejected. See Preston Carroll Co. v. Fla. Keys Aqueduct Auth., 400 So. 2d 524 (Fla. 3rd DCA 1981).

15. In order to have a substantial interest to be determined in this case, Berger, the eighth lowest bidder, must establish that the bid proposals submitted by vendors one through seven should be rejected. Therefore, for a variety of reasons, Berger's Amended Petition states that bids one through seven were not responsible or responsive to the ITB and must be rejected.

16. The Motion to Dismiss argues that Berger's challenge to the bid submitted by the seventh lowest bidder, MB3, Inc. (MB3),

is not supported by the language of the ITB or by the testimony of Berger's corporate representative.

17. In the Amended Petition, Berger asserts that the MB3 bid does not meet the requirements of section 19 of the ITB, which, in relevant part, provides as follows:

[E]ach bidder, in order to qualify as responsible, must have at least three (3) years' experience working with FEMA's Individual Assistance and Public Assistance Programs. A vendor can satisfy the three (3) year experience requirement with corporate or key personnel experience. The Division will consider the experience of all vendor employees--even if those employees obtained their experience while working for another vendor.

18. Berger alleges that "MB3 did not provide the required three (3) years of Individual experience . . . corporately or through key personnel as required by the ITB" and that, based thereon, MB3 was not a responsible vendor. This alleged deficiency is the sole rationale for Berger's assertion that the MB3 bid should be disqualified.

19. During argument on the Motion to Dismiss, Berger contended that ITB Section 19 requires that a responsible vendor must have three years of experience in each of the two referenced programs, "Individual Assistance" and "Public Assistance," and that the actual experience required must total at least six years.

20. Berger's reading of ITB Section 19 is contrary to the plain language of the requirement, which clearly references a single three-year experience requirement.

21. In deposition, Berger's corporate representative acknowledged that the MB3 bid proposal included personnel with at least three years' experience in "Public Assistance" programs and additional experience to some extent in "Individual Assistance" programs.

22. Berger's Amended Petition raised no other objection to the MB3 bid proposal. The sole assertion by Berger against the MB3 proposal is not supported by the language of the ITB or the testimony of Berger's corporate representative. Accordingly, Berger, having no substantial interest to be determined in this case, lacks standing to protest the contract award to TSG, and the Motion to Dismiss should be granted.

RECOMMENDATION

Based on the foregoing, it is RECOMMENDED that the Florida Division of Emergency Management issue a final order dismissing Berger's First Amended Formal Written Protest and Petition for Formal Administrative Hearing.

DONE AND ENTERED this 10th day of June, 2015, in
Tallahassee, Leon County, Florida.

William F. Quattlebaum

WILLIAM F. QUATTLEBAUM
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 10th day of June, 2015.

COPIES FURNISHED:

Timothy Cerio, General Counsel
Office of the Governor
The Capitol, Suite 209
Tallahassee, Florida 32399-1001
(eServed)

Mindy Dowling, Agency Clerk
Florida Division of Emergency Management
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100
(eServed)

Michael Terrence Kennett, Chief Legal Counsel
Florida Division of Emergency Management
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100
(eServed)

Thornton Williams, Esquire
Williams Law Group, P.A.
Suite 1-B
800 North Calhoun Street
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413 East Park Avenue
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Brittany Adams Long, Esquire
Radey Law Firm, P.A.
Suite 200
301 South Bronough Street
Tallahassee, Florida 32301-1722
(eServed)

James A. McKee, Esquire
Foley and Lardner, LLP
106 East College Avenue, Suite 900
Tallahassee, Florida 32301-7732
(eServed)

Benjamin J. Grossman, Esquire
Foley and Lardner, LLP
106 East College Avenue, Suite 900
Tallahassee, Florida 32301-7732
(eServed)

Robert H. Hosay, Esquire
Foley and Lardner, LLP
106 East College Avenue, Suite 900
Tallahassee, Florida 32301-7732
(eServed)

Megan S. Reynolds, Esquire
Vezina, Lawrence and Piscitelli, P.A.
413 East Park Avenue
Tallahassee, Florida 32301-1515
(eServed)

Harriet W. Williams, Esquire
Williams Law Group, P.A.
Post Office Box 10109
Tallahassee, Florida 32302-2109
(eServed)

John A. Tucker, Esquire
Foley and Lardner, LLP
Suite 1300
One Independent Drive
Jacksonville, Florida 32202-5017
(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.