

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BRIDGES OF AMERICA, INC.,

Petitioner,

vs.

Case No. 16-5237BID

DEPARTMENT OF CORRECTIONS,

Respondent.

FILED-AGENCY CLERK
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DEC 15 2016
Time <i>4:06pm</i>
Department of Corrections

FINAL ORDER

This matter comes before the State of Florida Department of Corrections ("Department"), pursuant to Section 120.57(3), Florida Statutes, for consideration and final agency action after an administrative hearing conducted before Administrative Law Judge Lisa Shearer Nelson of the Florida Division of Administrative Hearings in response to a challenge to the specifications for Request for Proposals number FDC RFP-17-108, "Community Release Center (CRC) in Orange County, Florida," ("RFP") by Petitioner, Bridges of America, Inc.

Accordingly, the Administrative Law Judge framed the issue in the case as follows: "The issue to be determined is whether the specifications for Request for Proposals number FDC RFP-17-108, "Community Release Center (CRC) in Orange County, Florida," are contrary to the governing statutes, rules or policies of the Florida Department of Corrections (the Department or DOC)."

A hearing was conducted on October 12-13, 2016. Thereafter, following submissions of Proposed Recommended Orders by all

parties, a Recommended Order was entered by the Administrative Law Judge on November 23, 2016. The Petitioner, Bridges of America, Inc. ("Petitioner" or "Bridges"), filed exceptions to the Recommended Order on December 5, 2016. On December 14, 2016, the Department filed a written response to Bridges' exceptions to the Recommended Order.

After reviewing this matter and being fully advised in the premises, it is Ordered that:

1. Pursuant to Section 120.57(1)(l), Florida Statutes, the Department is adopting the Recommended Order as its Final Order. This adoption of the Recommended Order is subject to the Department's obligation under Section 120.57(1)(k), Florida Statutes, to rule on the exceptions filed by the Petitioner, which will be addressed below. Accordingly, the Recommended Order is amended only to the extent required by a ruling on the exceptions.

2. No costs or charges are being assessed against the Petitioner by the Department. The Petitioner's bond provided as a protest bond shall promptly be returned to Petitioner by the Department following entry of this Final Order.

Wherefore, it is hereby ordered and adjudged that the specifications in RFP-17-108 are not contrary to competition, arbitrary or capricious, and do not contravene the Department's governing statutes, the agency's rules or policies. It is further ordered that the Department will issue an addendum to RFP-17-108

revising the specifications as follows: a) The Department will remove the second sentence of section 1.4 of the RFP; and b) The Department will remove Section 2.5.19 of the RFP.

RULINGS ON EXCEPTIONS

Florida case law holds that parties in formal administrative proceedings must alert reviewing agencies to any perceived defects in recommended orders by filing exceptions. Florida Dept. of Corrections v. Bradley, 510 So.2d 1122, 1124 (Fla. 1st DCA 1987); see Henderson v. Dept. of Health, Board of Nursing, 954 So.2d 77, 81 (Fla. 5th DCA 2007). However, the agency does not have to rule on exceptions that do not: (1) clearly identify the disputed portions of the Recommended Order by page number or paragraph; (2) identify the legal basis for the exception; or (3) include appropriate and specific citations to the record. §120.57(1)(k), Fla. Stat.; Rule 28-106.217(1), F.A.C.

The agency may not reject findings of fact unless the agency first determines from a review of the entire record, and states with particularity, 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. §120.57(1)(l), Fla. Stat.

Additionally, rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. §120.57(1)(l), Fla. Stat. An agency may not reject or

modify conclusions of law unless the agency states with particularity the reasons for such rejection or modification and makes a finding that its substituted conclusion of law is as or more reasonable as that which was rejected or modified. §120.57(1)(1), Fla. Stat.

In light of these requirements, and based upon the complete record submitted to the Department by DOAH, together with the Recommended Order, the exceptions to the Recommended Order and the responses thereto, the Department makes the following rulings on the Petitioner's respective exceptions.

1. Bridges' first exception seeks to modify Paragraph 4 of the Recommended Order and is directed towards the ALJ's finding that Bridges currently has slightly under 400 inmates at the Orlando campus. A review of the record reveals that there was competent, substantial evidence to support a finding of fact that Bridges has slightly under 400 inmates. At the final hearing, the following exchange took place when Ms. Costantino-Brown was questioned by her attorney on direct examination:

Q: Okay. Let me ask you briefly about The Orlando Bridge facility. How many inmates are housed there and of what type?

A: Slightly under 400 inmates there. There's three programs that operate on that -- it's a 15-acre campus. There's the transition work release center. There is what the department would refer to as a straight work release with a substance abuse overlay. And there's a diversion program. There's a 100-bed probation diversion program on that campus as well.

See Tr. Vol. 1 at 45:8-17. Additionally, Ms. Costantino-Brown testified, that the Orlando facility "is 400 beds." See Tr. Vol. 1 at 53:5. Ms. Costantino-Brown is the CEO of Bridges, and testified regarding her knowledge of The Orlando Bridge as follows: "I have complete knowledge of it, being with the organization for 35 years." Tr. Vol. 1, 26:6-9.

Based upon the foregoing, there was competent, substantial evidence to support the finding of fact in paragraph 4, and, therefore, this exception is denied.

2. Bridges' second exception concerns paragraph 42 of the Recommended Order, wherein the ALJ found that "[w]hile the Department is hoping that this model will result in savings and the ultimate increase in treatment of more needy inmates, it will result in less lucrative contracts for vendors." See Recommended Order at ¶ 42. Upon a review of the record, there was competent, substantial evidence to support this finding of fact. Testimony from Ms. Costantino-Brown supports this finding as follows:

Q: Is there a difference in what the department pays you for work release beds and for substance abuse transition beds?

A: Yes. The current transition beds are averaging roughly between \$52 and \$54 a day, and the current work release beds are running at \$21 a day. So there would be a significant loss of dollars to that.

See Tr. Vol. 1 at 53:13-19 (emphasis added). Additionally, Ms. Costantino-Brown also testified that "... you're talking about

replacing out 136 beds with 75 beds. That's not equitable under any dollar amount." Id. at 70:9-11. Therefore, based upon the evidence in the record, this exception is denied.

3. Bridges' third exception concerns paragraph 53, and challenges the ALJ's finding of fact that "... even with the expiration of the current contract, approximately 265 inmates would not be affected by either the expiration of the contract or the issuance of the RFP." See Recommended Order at ¶ 53. Bridges' reasoning for this exception is the same its rationale for its first exception. Additionally, Bridges states that the numerous contracts at Bridges' Orlando campus are "... separate contracts [that] cannot be combined and should be treated separately ...". See Exceptions at ¶ 3. A review of the record reveals that there was competent substantial evidence to support a finding of fact that Bridges has slightly under 400 inmates at the Orlando campus. As stated above, competent, substantial evidence exists to support the findings of fact through Ms. Costantino-Brown's testimony that Bridges' Orlando campus houses approximately 400 inmates. Tr. Vol. 1 at 45:8-17, 53:5.

Based upon the foregoing, there was competent, substantial evidence to support the finding of fact in paragraph 53, and, therefore, this exception is denied.

4. Bridges' fourth exception also concerns paragraph 53, and challenges the ALJ's finding of fact that: "...[s]hould

Bridges choose to bid on the RFP and be awarded the 75 work-release beds it proposes, the population at Bridges would be approximately 340 inmates, which does not amount to a substantial reduction at the institution." See Recommended Order at ¶ 53. This exception is based upon the same reasoning for Bridges' claims in exceptions 1 and 3. As stated above, competent, substantial evidence exists to support the findings of fact through Ms. Costantino-Brown's testimony that Bridges' Orlando campus houses approximately 400 inmates. Tr. Vol. 1 at 45:8-17, 53:5.

Based upon the foregoing, there was competent, substantial evidence to support the finding of fact in paragraph 53, and, therefore, this exception is denied.

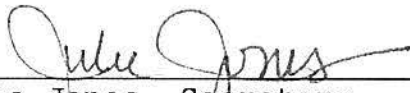
5. Bridges fifth exception concerns footnote 2 of the Recommended Order which states:

Bridges focuses on the reduction of beds in the RFP over those in the current contract, asserting that this results in a loss of 66% of its current inmate population. That is not consistent with Ms. Costantino-Brown's testimony about the total population at Orlando Bridges.

See Recommended Order at Footnote 2. Bridges claims the ALJ's finding was not supported by competent, substantial evidence. As stated above concerning Bridges' exceptions 1, 3, and 4, substantial evidence exists to support the ALJ's finding that the total population for the Bridges' Orlando campus was 400 beds with slightly under 400 inmates. Tr. Vol. 1 at 45:8-17, 53:5.

Based upon the foregoing, there was competent, substantial evidence to support the finding of fact in footnote 2, and, therefore, this exception is denied.

DONE and ORDERED this 15th day of December, 2016.



Julie Jones, Secretary
Florida Department of Corrections
501 South Calhoun Street
Tallahassee, Florida 32399-2500

Notice of Right to Appeal

This Final Order constitutes final agency action. Any party to this proceeding has the right to seek judicial review of the Final Order pursuant to Section 120.68, Florida Statutes, by filing a Notice of Appeal in accordance with Florida Rules of Appellate Procedure 9.110 and 9.190, with the Clerk of the Department of Corrections in the Office of General Counsel, 501 South Calhoun Street, Tallahassee, Florida 32399; and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees either in the First District Court of Appeal or in such other appellate district as the party appealing resides. The Notice of Appeal must be filed within 30 days from the date this Final Order is filed with the Clerk of the Department.

Filed in the official records of the Florida Department of Corrections on this

15th day of December, 2016.



Deputy Agency Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing "Final Order" has been furnished this 16th day of December, 2016, by U.S. Mail or email to:

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