

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

BOSTON CULINARY GROUP, INC.,  
d/b/a CENTERPLATE,

Petitioner,

vs.

Case No. 17-4509BID

UNIVERSITY OF CENTRAL FLORIDA,

Respondent.

\_\_\_\_\_ /

FINAL ORDER AWARDING FEES AND COSTS

Administrative Law Judge John D.C. Newton, II, of the  
Division of Administrative Hearings, conducted the final hearing  
in this matter on October 25, 2018, in Tallahassee, Florida.

APPEARANCES

For Petitioner: Cindy A. Laquidara, Esquire  
Thomas O'Neal Ingram, Esquire  
Allison M. Stocker, Esquire  
Akerman LLP  
50 North Laura Street, Suite 3100  
Jacksonville, Florida 32202

For Respondent: Michael D. Crosbie, Esquire  
Shutts & Bowen, LLP  
300 South Orange Avenue  
Orlando, Florida 32801

STATEMENT OF THE ISSUES

A. Is Petitioner, Boston Culinary Group, Inc., d/b/a  
Centerplate (Centerplate), entitled to an award of attorneys'

fees and costs under Florida Board of Governors Regulation (BOG Reg.) 18.002(22)?

B. If Centerplate is entitled to an award of fees and costs, what amount should be awarded?

PRELIMINARY STATEMENT

This is a dispute about which vendor will receive a contract of up to ten years to provide concessions services to facilities located at the University of Central Florida (University). Centerplate held the contract for ten years. After going through an Invitation to Negotiate (ITN) process, the University decided to award the contract to Ovation Food Services, L.P., d/b/a Spectra Food Services and Hospitality (Spectra). Centerplate protested that intended decision.

Centerplate requested a formal administrative hearing on its protest. The University referred the matter to the Division of Administrative Hearings (Division) to conduct the hearing. After conducting an evidentiary hearing and considering the parties' proposed recommended orders, the undersigned rendered a Recommended Order recommending that the University declare the Intent to Award invalid and reject all proposals. On February 1, 2018, the University issued its Final Order accepting the Recommended Order and adopting it in full. None of the parties appealed the Final Order.

The Recommended and Final Orders reserved jurisdiction to consider the issue of attorneys' fees and costs if the parties were unable to resolve them. The parties did not reach agreement.

The undersigned conducted a hearing on the fees and costs issues on October 25, 2018. Centerplate presented testimony from M. Christopher Bryant, Esquire, who provided credible and persuasive opinion testimony on the subject of reasonable and customary hourly rates, the reasonableness of hours expended by Centerplate's attorneys, and the quality of the legal services provided. The University did not offer any testimony to rebut Mr. Bryant's testimony.<sup>1/</sup> Joint Exhibits 1 through 30 were admitted into evidence.

The parties did not order a transcript. At the hearing's conclusion, the parties were given an opportunity to file proposed recommended orders within ten days of the date of the hearing. Each party obtained an unopposed extension of time for filing proposed recommended orders. Each party timely filed a proposed recommended order. The proposed recommended orders have been considered in preparation of this Recommended Order.

#### FINDINGS OF FACT

1. The Recommended Order details a pattern of conduct by the University to knowingly, deliberately, and surreptitiously involve Brian Hixenbaugh, a representative of the chosen vendor,

Spectra, in developing the ITN. The Recommended Order is adopted and incorporated by reference in this Order. It supports a finding that the University participated in this proceeding for an improper purpose.

2. From the outset of the ITN drafting process, University participants were aware that University of Central Florida Rules 7.130(10) and 7.130(6)(c) prohibited involvement of a would-be vendor in development of an ITN to which the vendor would be responding. Nonetheless, University participants maintained Mr. Hixenbaugh's involvement, sought to minimize it, and even sought to obtain cover from in-house counsel by describing the issue of Mr. Hixenbaugh's involvement less than accurately in a request for guidance.

3. The University continued the pattern of favoring Spectra to the very end of the process. This included giving Spectra representatives a walk-through of the facilities before a negotiation session. It also included discussing ways to avoid Centerplate remaining in place during any challenge to the ITN decision. The University ultimately elected to circumvent BOG Reg. 18.002(7), requiring the University to stop the contract award process until a protest is resolved, by using the artifice of having closely related entities contract with Spectra to provide services during the protest proceedings after Centerplate's contract ended.

4. Centerplate is the Petitioner. Nevertheless, it is engaged only because the University maintained and pursued the improper purpose of awarding a contract in violation of its own rules and the terms of its ITN. The improper purpose includes efforts to delay the consequences of the University's inclusion of Mr. Hixenbaugh in the ITN process and the frivolous purpose of supporting what the University knew from the outset was a tainted procurement process.

5. Centerplate seeks an award of \$140,769.90 in attorneys' fees and costs of \$4,809.68.

6. The law firm Akerman LLP represented Centerplate in this matter. Cindy Laquidara, Allison Stocker, and Thomas Ingram represented Centerplate in this proceeding. All three are skilled and experienced lawyers.

7. Ms. Laquidara has 35 years of litigation and trial experience. Martindale Hubbell rates her as a preeminent lawyer. Martindale Hubbell has also honored her with its Preeminent Judicial Award in 2016 and 2018. Florida Trend recognized Ms. Laquidara as one of Florida's Legal Elite each year from 2007 to 2016. Ms. Laquidara's practice includes representation of parties in bid protests. She graduated magna cum laude from Boston College Law School where she served as Managing Editor and Articles Editor for the Law Review. An hourly rate of \$500.00 for Ms. Laquidara is reasonable.

8. Ms. Stocker is a litigation associate with nearly eight years of experience in commercial disputes. Florida Trend recognized her as one of its Florida Legal Elite in 2017 and 2018. An hourly rate of \$315.00 for Ms. Stocker is reasonable.

9. Mr. Ingram has 19 years of experience as a lawyer and regularly handles administrative law matters along with his land use practice. An hourly rate of \$395.00 is reasonable for Mr. Ingram.

10. Counsel in this matter operated under severe time pressures imposed by BOG Reg. 18.002(13). That rule requires the hearing on a formal protest to be conducted within 40 days after filing of the protest. The University exacerbated the time pressure by not referring Centerplate's protest, filed July 31, 2017, for hearing until August 8, 2017. This delayed the availability of discovery tools needed to identify and examine the ITN development and response review processes.

11. In the 30 days between referral of the matter and the accompanying availability of discovery to the start of the hearing, counsel for Centerplate had to prepare for, conduct, and defend depositions; review tens of thousands of pages of documents; listen to sound files; prepare for hearing; and conduct a hearing. This short time period and the intensity of work involved required use of multiple attorneys and support personnel. It required two attorneys at some depositions, one

conducting the deposition while the other reviewed documents presented at the start of the deposition. This is a manifestation of the fact that preparing and trying complex cases within a very short time period requires more work and time than if the litigation moved at a more leisurely pace.

12. While discovery and hearing preparation were ongoing, counsel for Centerplate also had to research the governing law and respond to discovery.

13. After the hearing, counsel had to prepare a proposed recommended order within 43 days.

14. Bid disputes are not run-of-the-mill litigation. They are specialized proceedings requiring litigation expertise and are conducted in demanding circumstances. They also require familiarity with the proof and burden requirements unique to bid disputes along with understanding the complexities of the specific business involved in the matter.

15. Centerplate's counsels' billing records are clear and sufficiently detailed to determine the reasonableness of the time reported.

16. The billing records include block-billing entries. In block-billing, all of a lawyer's activities for a period are listed together with one time total. Block billing is an acceptable form of billing when accompanied by sufficient detail.

The block billing by Centerplate's counsel provides sufficient detail.

17. Also, although the reported fees of \$155,416.00 are reasonable, the discount ensures the reasonableness of the fees.

18. The total number of hours claimed for the services of the three lawyers, their hourly rates, and the total fees claimed are listed below. In addition, counsel provided a courtesy discount to Centerplate, which is also reflected in the fees claimed in this proceeding. The hours claimed, like the rates, are reasonable. The claimed total amount of fees of \$140,769.90 is reasonable, subject to the considerations in Finding of Fact 20.

19.

<b>Attorney Name</b>	<b>Total Number of Hours</b>	<b>Hourly Rate</b>	<b>Total Amount of Fees</b>
Cindy A. Laquidara	121.6	\$500	\$60,800.00
Allison M. Stocker	176.1	\$315	\$55,471.50
Thomas O. Ingram	99.3	\$395	\$39,144.50
TOTAL	397		\$155,416.00
<b>Net of 10% courtesy discount</b>			<b>\$140,769.90</b>

20. The September 5, 2017, entries for Ms. Stocker and Ms. Laquidara include block-billing entries that report travel time. Ms. Stocker's time for August 25, 2017, includes travel time, also in block billing. Consequently, the billing for those



days should be reduced. However, there is no need for that calculation because it is more than covered by the discount applied to the fees. The description of the legal work done those days establishes that the vast majority of the time billed was for legal services, not travel time.

21. Centerplate also is not seeking fees of \$9,919.65 for services rendered by paralegals.

22. If Centerplate obtained the contract with the University, it could have earned gross revenues of approximately \$30,000,000. Not obtaining the contract could exclude it from the opportunity to contract to provide the University services for ten years. The stakes in this matter were high.

23. Centerplate seeks an award of costs of \$4,809.68. Those costs are reasonable, except for \$668.05 attributed to travel expenses for counsel. Costs of \$4,141.63 are reasonable.

#### CONCLUSIONS OF LAW

##### Jurisdiction

24. The Division has jurisdiction over the parties and the subject matter of this matter by virtue of section 120.65(6), Florida Statutes (2018), and BOG Regs. 18.002(13) and (22).

25. This is a de novo proceeding to determine if the University participated in the hearing for an improper purpose, and if the University did participate in the hearing for an

improper purpose, what reasonable attorneys' fees and costs should be awarded to Centerplate. BOG Reg. 18.002(22).

Entitlement

26. BOG Reg. 18.002(22) states, "If the Quasi-Judicial Officer determines that the non-prevailing party has participated in the hearing for an improper purpose, the Quasi-Judicial Officer may award attorneys' fees and costs to the prevailing party, as appropriate." Centerplate is the prevailing party. The University is the non-prevailing party.

27. The University argues that it is not a "non-prevailing party." The University's argument relies upon Johnson v. Department of Corrections, 191 So. 3d 965 (Fla. 1st DCA 2016). The reliance upon Johnson is misplaced. The court held that Johnson, although he prevailed in the litigation, was not entitled to recover fees because the Department was not a "non-prevailing adverse party" as defined in section 120.595(1), Florida Statutes. This was because section 120.595(1)(e)(3)3. Florida Statutes,<sup>2/</sup> defined "non-prevailing adverse party" as a party that failed to substantially change the outcome of proposed or final agency action. The University reasons that, like the Department of Corrections, it was not trying to change the outcome of agency action.

28. The University's reliance on Johnson is wrong because this matter proceeds under BOG Reg. 18.002(22), not section

120.595. BOG Reg. 18.002(22) does not include a definition of "non-prevailing adverse party." It simply says that the prevailing party may recover fees, in circumstances addressed below.

29. The University relies upon the principle that similar fee provisions should be interpreted pari passu to import the definition of "non-prevailing adverse party" in section 120.595(1)(e)3. into BOG Reg. 18.002(22). The fundamental flaw of this argument is that the "non-prevailing adverse party" definition in section 120.595(1)(e)3. is not in BOG Reg. 18.002(22). There is no similar language to interpret pari passu. See Fogerty v. Fantasy, Inc., 510 U.S. 517 (1994) (explaining the pari passu principle).

30. The regulation defines improper purpose as "participation in the protest proceeding primarily to harass, cause unnecessary delay, frivolous purpose; needlessly increasing the costs of litigation, licensing, or securing the approval of an activity; or filing a meritless protest." BOG Reg. 18.002(22). The evidence proved, as described in Findings of Fact two through four, that the University participated in this proceeding for an improper purpose.

31. The University also argues that it did not know of the facts demonstrating improper purpose until the day before the hearing and therefore should not be held accountable for

participating in this matter. This argument fails because the University officials were aware of and involved in the facts relied upon for finding the University participated for an improper purpose.

Reasonableness of Fees and Costs

Basic Principles

32. Florida Patient's Compensation Fund v. Rowe, 472 So. 2d 1145 (Fla. 1985), as modified by Standard Guaranty Insurance Company v. Quanstrom, 555 So. 2d 828 (Fla. 1990), requires using a lodestar approach and considering the eight factors articulated in rule 4-1.5(a), Florida Rules of Professional Conduct. Sunshine State Ins. Co. v. Davide, 117 So. 3d 1142, 1144 (Fla. 3d DCA 2013).

33. The party seeking fees must prove that the fees claimed and the time for which they are compensation are reasonable. See City of Miami v. Harris, 490 So. 2d 69 (Fla. 3d DCA 1985). The evidence must be sufficient to show what services were performed. See Warner v. Warner, 692 So. 2d 266, 268 (Fla. 5th DCA 1997); Tucker v. Tucker, 513 So. 2d 733, 735 (Fla. 2d DCA 1987). Useful evidence includes invoices, records, testimony, and other information detailing services provided. Braswell v. Braswell, 4 So. 3d 4, 5 (Fla. 2d DCA 2009).

34. Records should permit a judge to feasibly and expeditiously engage in review. Centerplate's counsel's records fulfilled this requirement.

35. The tribunal awarding fees should review the evidence and identify the hours disallowed and the reasons for disallowance. Norman v. Housing Auth., 836 F.2d 1292, 1304 (11th Cir. 1988).<sup>3/</sup> The judge is also an expert on the issue of reasonable and proper fees and may consider his own knowledge and experience when forming a judgment on the value of services provided. Loranger v. Stierheim, 10 F.3d 776, 781 (11th Cir. 1994), citing Norman, 836 F.2d at 1303.

#### Application of the Eight Factors

36. Rowe requires first determining a lodestar fees figure by multiplying the reasonable hourly rates by the number of hours reasonably spent on the litigation, applying the eight factors of rule 4-1.5(b) of the Florida Bar Rules of Professional Conduct. Standard Guar. Ins. Co. v. Quanstrom, 555 So. 2d 828, 830 (Fla. 1990). "Reasonably expended" means the time that ordinarily would be spent by lawyers in the community to resolve this particular type of dispute. It is not necessarily the number of hours actually expended by counsel in the case. See In re Estate of Platt, 586 So. 2d 328, 333 (Fla. 1991) (discussing Rowe factors in estate case).

37. An evaluation of the eight factors of rule 4-1.5(b) of the Florida Bar Rules of Professional Conduct in light of the Findings of Fact follows.

(A) The time and labor required, the novelty and difficulty of the question involved, and the skill requisite to perform the legal service properly: This matter required significant skill because of the difficult burden a protestor must meet and the compressed time frames imposed by the regulation. Counsel have and demonstrated the requisite above-average skill level.

(B) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer: This factor does not weigh in the analysis. Centerplate was an existing firm client.

(C) The fee customarily charged in the locality for similar legal services: Expert testimony was presented and considered. The persuasive, credible evidence established that the customary rates for similar legal services in the community were as found in Findings of Fact seven through nine.

(D) The amount involved and the results obtained: The amount potentially involved was \$30,000,000. The result was success.

(E) Time limitation: The circumstances and the governing law imposed severe time limits upon the participants.

(F) The nature and length of the client relationship:

Akerman LLP had an established relationship with Centerplate.

(G) Qualifications of Counsel: Counsel were well-qualified.

(H) Whether the fee is fixed or contingent: Counsel were paid a fixed hourly rate.

38. After consideration of all the Rowe factors, the reasonable fee for representation in the proceeding before the Division is \$140,769.90.

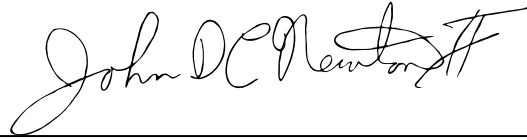
#### Costs

39. Application of the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions results in the conclusion that Centerplate should recover reasonable costs of \$4,141.63. This reflects a reduction of \$668.05 for counsel's travel expenses. They are not recoverable.

#### ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the University of Central Florida pay Petitioner, Boston Culinary Group, Inc., d/b/a Centerplate, attorneys' fees of \$140,769.90 and costs of \$4,141.63 within 35 days of the date of this Order.

DONE AND ORDERED this 10th day of January, 2019, in  
Tallahassee, Leon County, Florida.



---

JOHN D. C. NEWTON, II  
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 January, 2019.

ENDNOTES

<sup>1/</sup> The University's Proposed Recommended Order refers to statements counsel for the University made during the hearing about fees charged by his firm. These remarks were not sworn testimony and are not evidence.

<sup>2/</sup> The opinion does not identify which edition of Florida Statutes was in effect for the relevant time period. The current edition of the statute is identical in all material respects to the statute quoted by the opinion.

<sup>3/</sup> The Florida Supreme Court opinions in Florida Compensation Fund v. Rowe and Standard Guaranty Insurance Company v. Quanstrom rely upon federal court opinions. This makes consideration of federal court opinions appropriate in this Order.



COPIES FURNISHED:

Jordan P. Clark, Esquire  
University of Central Florida  
4000 Central Florida Boulevard  
Orlando, Florida 32816  
(eServed)

Alexander Powell, Esquire  
Centerplate  
2187 Atlantic Street  
Stamford, Connecticut 06902  
(eServed)

Michael D. Crosbie, Esquire  
Shutts & Bowen, LLP  
300 South Orange Avenue  
Orlando, Florida 32801  
(eServed)

Cindy A. Laquidara, Esquire  
Akerman LLP  
Suite 3100  
50 North Laura Street  
Jacksonville, Florida 32202  
(eServed)

Thomas O'Neal Ingram, Esquire  
Akerman LLP  
Suite 3100  
50 North Laura Street  
Jacksonville, Florida 32202  
(eServed)

Allison M. Stocker, Esquire  
Akerman LLP  
Suite 3100  
50 North Laura Street  
Jacksonville, Florida 32202  
(eServed)

W. Scott Cole, General Counsel  
Office of the General Counsel  
University of Central Florida  
4365 Andromeda Loop North  
Orlando, Florida 32816-0015  
(eServed)

Dr. Dale Whitaker  
President  
University of Central Florida  
Post Office Box 160002  
Orlando, Florida 32816-0002

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 administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the District Court of Appeal in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.