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IN THE CIRCUIT COURT OF THE THIRD JUDCIAL CIRCUIT,
IN AND FOR COLUMBIA COUNTY, FLORIDA

LIFEGUARD AMBULANCE SERVICE OF FLORIDA, LLC,

CASE NO. 2016-CA-000156

Petitioner/Plaintiff

vs.

COLUMBIA COUNTY, a political Subdivision of the State of Florida,

Respondent/Defendant
_____/

ORDER ON PETITION FOR WRIT OF CERTIORARI

THIS CAUSE came before the Court on August 18, 2016, for oral argument on the Petition for Writ of Certiorari and Request for Injunctive Relief filed on May 2, 2016, by Petitioner, Lifeguard Ambulance Service of Florida, LLC (‘‘Lifeguard”). This Court has considered the arguments presented, the Response of Respondent, Columbia County (“County”) filed on June 10, 2016, as well as the Reply filed by Lifeguard on June 30, 2016.

In its Petition, Lifeguard seeks a writ of certiorari to reverse the County’s decision to negotiate with Century Ambulance Service, Inc. (“Century”) for a contract to provide county-wide 911 ambulance service pursuant to the County’s Request for Proposal #2016-A (the “RFP”). Lifeguard also requests injunctive

relief to prevent the County from entering into a final contract with Century pursuant to the RFP.

The parties agree this Court has jurisdiction of this action, as quasi-judicial decisions of local governments are reviewed through a petition for writ of certiorari because such decisions are "not directly appealable under any other provision of general law." Fla. R. App. P. 9.100(c)(2). Section 5(b) of Article V of the Florida Constitution gives this Court "the power to issue writs of... certiorari... and all writs necessary or proper." *See also* Fla. R. App. P. 9.030(c)(3). Additionally, Section 304.8.6 of the County's "Purchasing Policies and Procedures" provides:

> Any bidder adversely affected by this final decision [on a bid protest] may apply to the Circuit Court having jurisdiction in the County for judicial relief within thirty (30) days after rendition of the final decision. The proceedings in the Circuit Court shall be by Petition for Writ of Certiorari, which shall be governed by the Florida Rules of Appellate Procedure.

The County's RFP solicited "Proposals and statements of qualifications from qualified reliable ambulance services providers, for county wide ambulance services at no cost to the Board." The 7-page RFP detailed the selection and evaluation process and listed the information sought in the submittals. On February 24, 2016, the County timely received proposals in "sealed packages," as requested, from three companies, including Lifeguard and Century. Century's proposal

omitted its mileage charge. Two days later, after the public bid opening, the County's Purchasing Director obtained the missing information through email communication with Century.

Pursuant to the County's Purchasing Policies, the Evaluation and Ranking Committee (the "Committee") met on March 2, 2016, and discussed the review of the proposals. The Committee ranked Lifeguard and Century as the top two proposers and requested that they make oral presentation to the Committee to provide further information and clarification regarding their proposals. Upon reconvening on March 9, 2016, and considering the written proposals and oral presentations from Lifeguard and Century, the Committee unanimously ranked Century as the top-ranked proposer.

Pursuant to the County's Purchasing Policies and Procedures, Lifeguard filed a Notice of Intent to Protest on March 11, 2016, and a Formal Written Protest with the Purchasing Director on March 18, 2016. The Purchasing Director responded to Lifeguard's Protest by letter dated March 23, 2016, addressing in detail each of the issues raised and concluding that he believed that Lifeguard's Protest was without merit. The Purchasing Director also advised Lifeguard of its option to appeal his findings directly to the Board of County Commissioners (the "Board").

On March 30, 2016, Lifeguard timely appealed to the Board pursuant to the County's Purchasing Policies. In its appeal, Lifeguard requested an opportunity to present direct testimony and to conduct cross-examination of County staff. By letter dated April 14, 2016, the County Attorney advised Lifeguard's counsel that the request to provide testimony and to conduct cross-examination was denied based upon the County Attorney's explanation that due process would be provided by the Board's review of the record and Lifeguard's opportunity to make oral argument.

At a duly noticed public meeting on April 21, 2016, the Board considered Lifeguard's appeal of the Purchasing Director's decision to deny Lifeguard's protest challenge. Lifeguard had the opportunity to address the Board through its counsel and through its president, who made a statement to the Board. After Lifeguard's presentation and lengthy discussions, the Board voted 4-1 to "reject" Lifeguard's appeal and directed staff to enter into negotiations with Century.

On May 2, 2016, Lifeguard filed its Petition for Writ of Certiorari. In its petition, Lifeguard claims that the "sealed" proposal submitted by Century was non-responsive to the County's competitive solicitation in that it failed to include either "Mileage" or "No Transport" and that it failed to list "all litigation in the past five years," as required by the RFP. Lifeguard deems these omissions to be material. Additionally, Lifeguard claims that the County's procurement decision

was contrary to competition and "arbitrary and capricious" under the County's Purchasing Policies and Procedures and state law governing competitive procurements. Furthermore, Lifeguard claims the County failed to afford due process at the hearing before the Board of its appeal of the Purchasing Director's decision by denying Lifeguard's request to present direct testimony and to conduct cross-examination of County staff.

On June 2, 2016, one month after the Petition for Writ of Certiorari was filed, the Board voted unanimously at a duly noticed meeting, and upon advice of counsel, to reject all responses to the RFP, and directed staff to issue a new, clarified and more specific RFP. As a result, the County argues that the Petition for Writ of Certiorari should be denied as moot on the grounds that the Board exercised its right to reject all proposals. The County relies on the RFP, which provides that Columbia County reserves the right to reject any and/or all proposals "as determined to be in the best interest of the Board." The RFP provides in part as follows:

> The Board reserves the right to accept or reject any and/or all submissions, to approve or reject any subcontractors, and to waive any technicalities or informalities, as determined to be in the best interest of the Board.

Thus, the County argues that the issues in the Petition are moot since the RFP process ended with the Board's rejection of all proposals and without any

award. As a result, the County contends that "there is no Board determination to reverse and no contract award to Century to prevent."

"A case is 'moot' when it presents no actual controversy or when the issues have ceased to exist." Godwin v. State, 593 So. 2d 211 (Fla. 1992). As explained by the First District Court of Appeal, "a case becomes moot, for purposes of appeal, where, by a change of circumstances prior to the appellate decision, an intervening event makes it impossible for the court to grant a party any effectual relief." Montgomery v. Dep't of Health & Rehabilitative Services, 468 So. 2d 1014, 1017 (Fla. 1st DCA 1985). Here, the alleged intervening event was the County's exercise of its right to reject all proposals.

In response to the issue of mootness, Lifeguard argues that, because the Petition for Writ of Certiorari was pending before this Court, the County lacked jurisdiction on June 2, 2016, to reject all proposals and issue a new RFP. In support of its position that the Petition automatically divested the County of jurisdiction pending the outcome of the appeal, Lifeguard cites State v, Menenses, 392 So. 2d 905 (Fla. 1981). Menenses is a criminal case in which the issue before the Supreme Court of Florida was whether the pendency of a petition for writ of certiorari before the Supreme Court arising from the affirmance on direct appeal of the judgment and sentence deprived the trial court of jurisdiction to consider a Florida Rule of Criminal Procedure 3.850 postconviction motion to vacate filed

after the certiorari petition had been filed in the Supreme Court. In holding that the trial court was deprived of jurisdiction to rule on Meneses's motion to vacate his judgment and sentence while certiorari proceedings were pending, the Supreme Court agreed with the rationale expressed by the dissenting judge at the appellate level, who very specifically addressed the "unnecessary confusion and needless expenditure of judicial time and effort" if a "busy trial judge is required to hold an evidentiary hearing on a motion to vacate, which if denied, will be a complete waste of time and effort should the Florida Supreme Court later grant certiorari.. Id. at 906. Thus, the holding of Meneses is very fact-specific and simply does not apply to the issues in the case at bar.

The other case cited by Lifeguard in support of its position that the County lacked jurisdiction to reject all proposals and issue a new RFP is Cianbro Corp. v. Jacksonville Transportation Authority, 473 So. 2d 209 (Fla. 1st DCA 1985). Cianbro Corp., also, is not applicable to the case at bar. Cianbro Corp. involved proceedings governed by Chapter 120 of the Florida Statutes, which is also known as the Administrative Procedure Act. As recognized in Cianbro Corp., "The legislature has provided a comprehensive scheme for resolving protests arising from the contract bidding process. This scheme envisions that all contract awards will be stayed until the protest is resolved." Id. at 212. In the case at bar, there is

no legislative mandate to stay the proceedings. The County is not an administrative agency and is not subject to the Administrative Procedure Act. ... Chapter 120 does not apply to the regulations enacted by a County Commission, unless the county is expressly made subject to Chapter 120 by general or special law." Hill v. Monroe County, 581 So. 2d 225, 226 (Fla. 3d DCA 1991).

Lifeguard also argues that the County's Purchasing Policies and Procedures provide that "the rejection of all bids by the Commission was inappropriate after the filing of a protest with the Purchasing Director." Purchasing Policy 304.8.5 provides that "Upon receipt of the protest notice, the Purchasing Director will suspend the process or award of the bid until the protest is resolved... Contrary to Lifeguard's argument, the process was suspended - that is, through the period of the appeal heard by the Board. Pursuant to Purchasing Policy 304.8.6, the protest proceeded to the next step of appeal, which was to the Board. Purchasing Policy 304.8.6 provides that the decision of the Board "shall be final." It wasn't until after a final decision was made by the Board on Lifeguard's protest that the Board chose to exercise its reserved right under the RFP to reject all proposals and issue a new RFP, as determined to be in the best interest of the County.

The First District Court of Appeal made it clear in Santa Rosa Island Authority and Sunset Holding Co., Inc. v. Pensacola Beach Pier, Inc., that "[T]he

decision of a public agency' ... is not subject to judicial interference, provided the decision's correctness is debatable by reasonable persons, even though the decision reached may appear to some persons to be erroneous." 834 So. 2d 261, 262 (Fla. 1st DCA 2002) *(citing* Sys. Dev. Corp. v, Dep't of Health & Rehab. Servs., 423 So.2d 433, 434 (Fla. 1st DCA 1982), *quoting* Volume Servs. Div. v. Canteen Corp., 369 So.2d 391, 395 (Fla. 2d DCA 1979); S. Fla. Limousines. Inc. v. Broward County Aviation Dep't, 512 So.2d 1059, 1062 (Fla. 4th DCA 1987) ('As long as the decision was made in good faith, the courts will not generally interfere where the agency reaches a conclusion on facts upon which reasonable men may differ.'). The remedy in such cases is at the ballot box and not in the courts. Liberty County v. Baxter's Asphalt & Concrete, 421 So.2d 505 (Fla. 1982) (stating judicial interference is warranted when the process is tainted by 'illegality, fraud, oppression, or misconduct'); Town of Riviera Beach v. State, 53 So.2d 828, 831 (Fla. 1951)).

On the narrow issue of whether the Board's decision on June 2, 2016, to reject all proposals and issue a new RFP was tainted by illegality, fraud, oppression, or misconduct, this Court finds that none of these bases exist in the record. Accordingly, the decision was not arbitrary, unreasonable or capricious. As

[1] Although the County is not an "agency" both sides cited the Santa Rosa case to support their arguments.

such, court interference would be inappropriate. As explained in Sutron Corporation v Lake County Water Authority, 870 So. 2d 930, 932-933 (Fla. 5th DAC 2004):

> It is well established in Florida that a public entity's rejection of contract bids will be affirmed when challenged in court, unless the action of the public body was arbitrary, unreasonable or capricious. Even if the public entity makes an erroneous decision about which reasonable people may disagree, the discretion of the public entity to solicit, accept and or reject contract bids should not be interfered with by the courts, absent a showing of dishonesty, illegality, fraud, oppression or misconduct. *See* Scientific Games v. Dittler Brothers, Inc. 586 So.2d 1128 (Fla. 1st DCA 1991); City of Cape Coral v. Water Services of America, Inc., 567 So.2d 510 (Fla. 2d DCA 1990); Capeletti Brothers v. State Dept. of General Services, 432 So.2d 1359 (Fla. 1st DCA 1983).

Upon a finding that this cause is moot, this Court does not address the substantive issues raised in the Petition for Writ of Certiorari and Request for Injunctive Relief:

> The rule discouraging review of moot cases is derived from the requirement of the United States Constitution, Article III, under which the existence of judicial power depends upon the existence of a case or controversy. Liner v. Jafco, Inc., 375 U.S. 301, 84 S.Ct. 391, 11 L.Ed.2d 347 (1964). It is the function of a judicial tribunal to decide actual controversies by a judgment which can be carried into effect, and not to give opinions on moot questions, or to declare principles or rules of law which cannot affect the matter in issue.

Montgomery v. Dep't of Health & Rehabilitative Services, 468 So. 2d 1014, 1016-1017 (Fla. 1st DCA 1985).

Accordingly, it is hereby ORDERED:

The Petition for Writ of Certiorari and Request for Injunctive Relief is denied as moot.

DONE AND ORDERED in Lake City, Columbia County, Florida, on August 28, 2016.

Leandra G. Johnson, Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY certify that a copy of this order has been furnished through electronic transmission on August 28, 2016, to the following:

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