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Agency for Workforce Innovation
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AGENCY FOR WORKFORCE INNOVATION
An Executive Agency of the State of Florida

In Re: TTI America Inc.,
Petitioner,
and,

AWI Case No.: 2002/08-00018

South Florida Workforce,
Respondent.

AGENCY DECISION ON APPEAL OF LOCAL PROCUREMENT DECISION

BACKGROUND

This matter has come before the undersigned pursuant to the Workforce Investment Act of 1998 (WIA), as codified at 29 United States Code (USC), sections 2802 et seq., the applicable federal regulations as contained in 20 Code of Federal Regulations (CFR), part 652 et seq., and the Florida Workforce Innovation Act, as contained in Chapter 445, Florida Statutes.

The Workforce Investment Act is the federal employment and training initiative, designed to increase occupational skills, improve the quality of the workforce, reduce welfare dependency and enhance the productivity and competitiveness of the national economy. The program is implemented through the federal funding provided for the workforce systems in the several states. The Florida legislation parallel to the federal program is known as the Workforce Innovation Act.

WORKFORCE ENTITIES AND THE PARTIES

Workforce Florida, Inc., (WFI) is the statewide board established by the Florida Legislature pursuant to WIA section 111 to oversee workforce programs. Although created by 445.004, Florida Statutes, Workforce Florida, Inc., is not a state agency. WFI is also responsible for chartering the local boards within each of the local workforce areas as designated by the Governor. (See WIA 111, 116 and 117.)

The Agency for Workforce Innovation (AWI) as created by section 20.50, Florida Statutes, is the grant recipient of federal workforce funds and the state entity responsible for the administration of workforce policy as established by Workforce Florida, Inc.

South Florida Workforce (SFW) is the local workforce board for state Region 23, chartered by WFI as required by 445.004 (11), Florida Statutes. The local boards are responsible for the development of the local workforce plan and generally coordinating workforce activities. The workforce services are provided through "One-Stop" centers located throughout the state. The One-Stop centers are designed to provide comprehensive employment and training and human services within the same location. The responsibilities of the local boards include the selection of One-Stop operators as required by 20 CFR 661.305 and 445. 009 (2)(b), Florida Statutes. The One-Stop operators coordinate services within the local centers, as provided in 20 CFR 662:400 (c). SWF operates several One-Stop centers within Region 23. A One-Stop operator may oversee more than one center within Region 23.

TTI, an incumbent One-Stop operator within Region 23, responded to a solicitation for services for One-Stop operators issued by SFW on April 19, 2002. TTI has appealed the denial by SFW of the award of two of those contracts to operate One-Stop centers within Region 23.

JURISDICTION

The WIA section 181 (c) and applicable regulations in 20 CFR, part 667, subpart F, require that the State and each local area adopt a procedure for dealing with grievances and complaints. As described in section 667.600 (b) (1) of 20 CFR, the local procedures are required to accommodate the grievances and complaints of participants and other interested parties affected by the local Workforce Investment System. In the present case, TTI filed a grievance at the local level contesting the procurement of One-Stop operators within Region 23 by SFW. Because TTI was not satisfied with the decision at

the local level, it appealed that decision to the State, as provided in 20 CFR 667.600 (c).

The present matter is being conducted by the State in its review capacity, as provided in the State's grievance procedures, promulgated as rule chapter 60BB-1, Florida Administrative Code.

The following designations will be used herein:

- R. – the Record "Item" prepared by SFW
- Ex.- exhibits provided by TTI
- SFW, p. x. – written argument submitted by SFW
- TTI, p. x. – written argument submitted by TTI

STATEMENT OF THE CASE

This case began when TTI was denied the award of contracts to operate two One-Stop centers within Region 23. After being unsuccessful in its informal and formal local appeals (R. 11-15 and 17-20, respectively), TTI brought this appeal (R. 25).

FINDINGS OF FACT

Based upon my review and consideration of the documentation and written arguments submitted by the parties, the following have been determined to be the relevant facts.

1. On April 19, 2002, the South Florida Workforce Board (SFW) issued a Request for Qualifications (RFQ) Phase 1, for the purpose of selecting One-Stop operators to provide comprehensive services at seven (7) of the One-Stop centers within Region 23. This was an open competition and incumbent operators that wished to continue to provide services were required to compete for the new contracts.

2. The RFQ contained the following regarding the selection process and evaluations of offers by SFW.

[a.] Contract awards made as a result of this solicitation will be for a one-year period, from July 1, 2002 through June 30, 2003. (R. 5, p. 4.)

[b.] **SFW reserves the right to accept or reject any or all Statements of Qualifications received as a result of this request, to contract with all qualified sources, or to cancel in part or in its entirety this solicitation if it is in the best interest of SFW to do so.**” (R. 5, p. 6.) (Emphasis supplied.)

[c.] The selection and funding of offerors will be based on the organization’s capabilities and **track record** of demonstrated effectiveness in managing and delivering one-stop services or comparable activities to comparable populations, ability to meet performance standards and operational requirements, management placement capabilities, fiscal accountability and cost effectiveness. Contract awards will be made to the most responsive and competitive offerors whose proposals are most advantageous **after considering price, technical factors and other criteria.** (See R.5, p.6.) (Emphasis supplied.)

[d.] The criteria used for evaluating RFQ submissions and fiscal capabilities are provided in Part Three and Attachment F. (See R.5, p.6.)

[e.] Programmatic and Administrative Review: The agency [vendor] must be able to meet the SFW programmatic and administrative capability requirements through on-site review and inspection of staff resumes, facilities and equipment (if appropriate), and review of **documentation of the agency’s past performance in meeting training and employment goals.** (See R.5, p.7.) (Emphasis supplied.)

[f.] This RFQ does not commit or oblige SFW to award a contract, to commit any funds identified in this RFQ, to pay any costs incurred in the preparation of an application in response to this RFQ, to pay for any costs incurred in advance of the execution of a contract, or to procure or contract for services or supplies. (See R.5, p.8.)

[g.] **SFW reserves the right to: ... Negotiate any and all proposed terms, conditions, costs, staffing level, services/activities mix, and all other specifics. ... Change specifications and modify contracts as necessary to (a) facilitate compliance with legislation, regulations, and policy directives, (b) to manage funding, and (c) to meet the needs of customers.** (See R.5, p.8.) (Emphasis supplied.)

[h.] H. Performance Requirements A number of workforce performance requirements are established in Federal and/or State Law, or established by Workforce Florida, Inc. or established by South Florida Workforce as critical measurements of program success. South Florida Workforce carefully tracks the performance of each One-Stop Career Center and its operator against standards in comparison to (a) locally required benchmarks and (b) other centers. Failure to maintain performance against the standards will result in corrective action and, if performance problems persist, contract cancellation. Additionally, all contracts will have performance payment terms with full contract payment contingent upon achievement of required performance. (See R.5, p.18.)

3. The present proceedings concern the award of contracts to operate two of the seven centers identified in the RFQ. The two centers are the Carol City One-Stop and the North Miami Beach One-Stop.

4. At the time the RFQ Phase I was issued, TTI, Inc., was a service provider, under contract for one year, effective July 1, 2001, through June 30, 2002, with the option to renew for up to one (1) year. (R.4.)

5. On September 19, 2001 (prior to the release of the RFQ), SFW adopted a recommendation of performance standards that included a "Performance Agreement" and federal measures. (R.3., SFW p.2.)

6. The recommendation adopted by SFW includes the following: " Approval is recommended for the performance standards specified in the attached table and inclusion of these performance requirements in Consolidated and Youth contracts with Service Providers. In addition, it is recommended that failure of Consolidated Providers to meet four (4) or more of the items marked with asterisks in the attached table will be defined as failed contract that will not be renewable for PY'02." (R.3, p.1.)

7. On September 20, 2001, the TTI contract through June 30, 2002, was amended by an Attachment A. (R.4., Attachment A.) The attachment is titled "PY'01

PERFORMANCE MEASURES,” and contains the following statement: “ These are the performance measures that the Service Provider is required to meet in PY’01. Failure to meet the performance requirements for four (4) or more of the items marked with asterisks will result in non-renewal of Service Provider’s contract for PY’02.”

8. The Attachment A contains the same performance measures set out in the recommendation of September 19.

9. The performance measures were specifically included as scoring criteria and assigned a value in the RFQ and were scored by reviewers. (R. 5., p. 24,25; R. 7.)

10. The term “Reds” is used to indicate that a provider has not met an established performance measure. (R. 16, SFET¹ meeting, p.7.)

11. As a measure of overall performance, prior to this matter, the SFW board adopted a policy decision that any incumbent service provider whose performance data indicated “Four Reds” would not be awarded a contract.

12. The RFQ contains the following regarding the use of performance measures. “Each package should be collated as follows: ... Capabilities/Track Record Response to items D-E.” (See R.5, p.21.)

D. NARRATIVE INFORMATION ON ORGANIZATIONAL CAPABILITIES AND TRACK RECORD OF DEMONSTRATED EFFECTIVENESS For your application to be considered responsive and to be evaluated for funding, it must address all of the following in as much as detail as possible. It is highly recommended that you respond to these items in the order specified below and number you responses accordingly. (R.5, p.22.)

¹ The South Florida Education and Training Consortium (SFETC) is a consortium of local governments organized pursuant to chapter 164, Florida Statute. For WIA purposes, SFETC is the local “chief elected official” as that term is used in section 101 (6) of WIA and as used in 20 CFR part 661, subpart C.

Track Record (100 points)

Each of the Region's One-Stops is currently held to all of the performance standards listed in Attachment F ² of these Specifications. ... If your organization currently operates in a one-stop, here in Region 23 or elsewhere, complete Table 2, which indicates the required performance level on each standard. ... (R.5, p.24.)

Note that Table 2 requires that your organization indicate the cumulative performance on each standard from July 1, 2001, to the present, if available as a cumulative measure, and data on each measure for the **three most recent reporting periods for each measure, as described below.** ... (See R.5, p.24. Emphasis added.)

In the case of welfare transition measures, we are aware of the fact that the State data are snapshots only, and not cumulative measures. We are also aware of the fact that it was possible for us to disaggregate the State's snapshot data to the level of individual one-stop for only specific months. We understand that you can use only the data that are available. In the case of WIA and Wagner Peyser data, however, the data have been available cumulatively since July 1, 2001, as well as for **recent individual months.** Offerors with any technical questions about the data that have been made available on these measures and that are usable in responding to this item should contact ... (See R.5, p.25. Emphasis added.)

13. The initial scoring by SFW staff identified ACS as the offeror with the highest score for Carol City center and SER as the offeror with the highest score in case of the North Miami Beach center.

14. On June 5, 2002, the SFW board met to consider the staff recommendations (R.10) for the award of contracts pursuant to the RFQ Phase I. (R. 16, #6.6.)

15. The SFW board approved the award of the North Miami Beach contract to SER, the incumbent operator.

16. In that at the time of the bid opening, ACS was provider at several One-Stop sites, the staff recommendation noted reservations concerning the ability of ACS to assume responsibility for additional operations.

² It is Attachment H rather than F that contains the performance standards that correspond to those made part of the PY'01 contract as Attachment A.

17. TTI was the second highest scorer for the Carol City center, but the SFW board did not award the contract to TTI because it had Four Red performance measures. (R. 10. # 6.6 and 6.7)

18. Rather than award the Carol City contract pursuant to RFQ Phase I, the SFW board voted not to award a Phase I contract, but to award an interim 90-day contract to TTI, one of two incumbent providers at the site, so as to avoid an interruption of services at the Carol City center. The interim award would provide the SFW board an opportunity to consider the legal issues raised by ACS. (R. 4., Attachment A; R.16, SFETC meeting, page 7; R.24.)

19. The board voted to include the Carol City contract as part of the Phase II RFQ. (R. 26.) Phase II was a different solicitation with its own set of selection criteria. (R.26; R.16, SFETC meeting, pp. 7,8.)

20. By letter dated June 12, 2002, SFW informed TTI of the decisions of the board and of its right to appeal the decision of the board regarding the North Miami Beach center. (R. 11.)

21. By a second letter dated June 12, 2002, (R.11) SWF advised TTI that the board's decision regarding the Carol City center was not appealable based upon that part of the "South Florida Workforce Service Provider Appeal Procedures," which in pertinent part read:

4. Issues not Subject to Appeal

No appeal shall be allowed pursuant to these Rules [emphasis supplied] if:

(b) The Service Provider agrees the process followed was fair and no error of fact was made, but does not agree with the score, ranking or evaluation it received; ...

(d) The Service Provider was awarded funding, but does not agree with amount awarded or the service delivery area to be awarded. [The procedures were an attachment of the RFQ and were attached to the June 12 letter.]

22. Although TTI missed the original deadline,³ TTI requested and was granted an informal resolution conference to discuss the action of the SFW board. As a result of that conference held on June 17, 2002, the scores of TTI were adjusted, making it the highest scorer for both the Carol City and the North Miami Beach centers. (R.15; R.20.)

23. As a result of the meeting, the scoring was adjusted by restoring to TTI 15 points that had been deducted based upon an over-expenditure by TTI in the supportive services category during the 2001-2002 contract period. TTI explained that in as much as there was no allocation in that category, it could not have been over expended. Additionally, four points were added that had been deducted from the TTI budget category.

24. In that the actions of the SFW board regarding the Carol City and the North Miami Beach contracts were based upon the Four Reds attributed to TTI (R. 17), the adjustment of the scores did not affect the actions of the boards.

25. As TTI requested by letter dated June 21, 2002, (R. 18), a formal hearing was conducted on July 23, 2002. (R.19.) The appeal board denied the appeal. (R.25.) Thereafter, TTI requested the present appeal.

26. After the filing of this appeal, TTI was awarded a nine month contract to manage the Carol City center, under the Phase II competitive process. Nevertheless, TTI maintains it should have received a contract for a year from the date of the second award

³ By letter dated May 30, 2002, the offerors were advised of the results of the scoring and were provided the opportunity to participate in the informal resolution, if requested no later June 3, 2002. (R. 11.) TTI did not request a resolution conference.

and that SFW should be required to compensate TTI for various costs incurred in prosecuting this matter and other losses.

27. The Phase II solicitation announced that the contracts awarded would be for a period of nine months, October 1, 2002, through June 30, 2003. (R. 26, p.7.)

28. By letter dated August 26, 2002, TTI submitted to SFW a public records request for a copy of the report on the system-wide audit conducted by SFW to verify placements made by providers during program year 2001-2002, and all related correspondence between SFW and its providers.

29. In response to the public records request, SFW replied that the research in as much as the research was incomplete, it would take several months to produce a completed report. (R. 28.)

30. The placement data is used to determine whether providers have met performance measures.

CONCLUSIONS OF LAW

31. The local workforce boards such as SFW are not subject to state procurement law, once they have in place procurement standards that have been approved by WFI. In that regard, the relevant state statute is section 445.007 (11), Florida Statutes, it reads:

For purposes of **procurement**, regional workforce boards and their administrative entities are not state agencies, but the boards and their administrative entities must comply with state **procurement** laws and procedures until **Workforce Florida, Inc.**, adopts the provisions or alternative **procurement** procedures that meet the requirements of federal law. **All contracts executed by regional workforce boards must include specific performance expectations and deliverables.** (Emphasis added.)

32. Regarding the selection of One-Stop operators by the regional workforce boards, Florida law reads in pertinent part: “ A regional workforce board may designate

as its One-Stop delivery system operator any public or private entity that is eligible to provide services under any state or federal workforce program that is a mandatory or discretionary partner in the region's One-Stop delivery system if approved by Workforce Florida, Inc., upon a showing by the regional workforce board that a fair and competitive process was used in the selection. ..." (Section 445.009(2)(b), Florida Statutes.)

33. In light of sections 445.007 (11) and 445.009(2)(b), Florida Statutes, the underlying legal determination to be made in this case is whether in making the contract awards in question, SFW used a fair and competitive process that is in compliance with applicable federal law and the rules and policies of SFW.

34. When, as in the present case, a review is based upon the record, without evidence beyond that in the administrative record, the reviewer must provide the usual deference owed to agencies when a review is limited to the administrative record. See Bd. of Educ. of LaGrange Sch. Dist. v. Illinois State Bd. of Educ., 184 F.3d 912, 914-15 (7th Cir.1999).

35. The deferential standard presumes the validity of agency action. Global NAPs, Inc. v. FCC, 247 F.3d 252, 257 (D.C.Cir.2001) (quoting Southwestern Bell Tel. Co. v. FCC, 168 F.3d 1344, 1352 (D.C.Cir.1999)).

36. When an agency decision is due deference in light of the discretion the agency is accorded, the decision of the agency is to be overturned only if an examination of the administrative record does not reveal a "rational basis" in support of the decision. Florida Power & Light Co. v. Lorion, 470 U.S. 729, 743-44, 105 S. Ct. 1598, 1606-07, 84 L.Ed.2d 643 (1985); MaChis Lower Creek Indian Tribe of Alabama v. U.S. Dept. of Labor, 2000-WIA-2 (ALJ, Oct. 5, 2000).

37. The “rational basis” standard is akin to that applied in government procurement cases where the validity of an exercise of discretion may be challenged only upon a clear showing that the agency action was arbitrary or capricious or an abuse of discretion or was not in accordance with the law. See Tackett v. Schaffner, Inc. v. United States, 633 F.2d 940 (Ct. Cl. 1980).

38. A decision is arbitrary or capricious for purposes of a challenge to a procurement decision only when it is so implausible that it could not be ascribed to a difference in view or the product or of expertise of the board. That is not so in the present case. See Belgarde, Jimmie Belgarde v. Department of Agriculture, 185 F.Supp.2d 647, (W.D.La. 2001).

39. Under WIA and the applicable federal regulations, local boards are accorded great discretion and flexibility in their procurement of goods and services. See WIA §102, 20 CFR 661.120 and 20 CFR 667.200.

41. Pursuant to section 445.004 (1), Florida Statutes, the regional workforce boards are subject to the Florida public records law, as found in chapter 119, Florida Statutes, subject to specific exemptions such as the records of TANF clients and employment service records that are personally identifiable to employer or employee as set out in section 443.1715, Florida Statutes.

ANALYSIS

1. WIA Confers Upon A Local Provider The Right To Seek Review By The State Entity.

SFW observes that under its rule, once an award is made, the offeror cannot appeal because of disappointment in the nature of the award. The SFW Rule applies to appeals to the SFW, but not to the right to request a review by the State pursuant to 20 CFR 667.600 and rule chapter 60BB-1, Florida Administrative Code.

The applicable regulations at 20 CFR 667.600 (b)(4) and (c) (2) require that the State have in place a process that provides either party an opportunity to appeal to the State entity any decision made at the local level. Secondly, the essence of the TTI appeal is that the process was neither fair nor factually correct; therefore, the appeal was not precluded by SFW Rule 4. (b). (Findings of Fact 20) Finally, 4. (d) of the SFW rule is not applicable on its face in that the substance of the appeal is neither disagreement with the amount awarded nor the service delivery area; but that SFW failed to follow its solicitation when it awarded a three month contract, as opposed to a contract for a full year.

2. The Program Measures Were Identified In the RFQ As Selection Criteria, And, Therefore, Properly Considered By SFW When Evaluating Offers.

The use of performance measures is mandated throughout WIA and the regulations. (See WIA sections 111, 118(b)(3), and 136(b)-(d), 172 and 20 CFR, Part 666.) The RFQ in Part Three, Item D, #2, advised offerors that the Performance Measures were among the “capabilities” that would be scored. Further, according to the third paragraph of #2, incumbent offerors were directed to indicate their “cumulative

performance on each standard from July 1, 2001, to present,” and data on “each measure for the three most recent reporting periods for each measure. ...” (R.5, p.24.) In keeping with these directions, Table 2 of the RFQ directs the offerors to include their Performance Indicators (measures) for February, March and April. The table provides the website address from which the data could be obtained. Thus, the argument of TTI that the data should not have been calculated until June 30, 2002, the termination date of its contract at the time of the scoring, is of no avail.

Having concluded that the use of Performance Measures was appropriate, the next task is to identify the standard to be used in the review of the administrative record.

3. STANDARD OF REVIEW

The standard of review to be used by state agencies in its capacity as reviewer of local decisions is not clearly spelled out in either the WIA or applicable regulations. In an effort to obtain some guidance, applicable federal cases have been consulted.

When, as in the present case, a review is based upon the record, without evidence beyond that in the administrative record, the reviewer must provide the usual deference owed to agency decisions. See Bd. of Educ. of LaGrange Sch. Dist. v. Illinois State Bd. of Educ., 184 F.3d 912, 914-15 (7th Cir.1999). See also Camp v. Pitts, 411 U.S. 138, 142, 93 S.Ct. 1241, 1244, 36 L.Ed.2d 106 (1973); Preserve Endangered Areas of Cobb's History, Inc. v. U.S. Army Corps of Engineers, 87 F.3d 1242 (C.A.11 (Ga.) 1996); and Illinois Migrant Council, Inc. v. United States Department of Labor, Case no. 84-JTP-10. The reviewer is not to conduct its own investigation or substitute its own judgment for the administrative agency's decision. Rather, the "task of the reviewing court [reviewer] is to apply the appropriate ... standard of review ... to the agency decision based on the

record the agency presents to the reviewing court." Florida Power & Light Co. v. Lorion, 470 U.S. 729, 743-44, 105 S.Ct. 1598, 1606-07, 84 L.Ed.2d 643 (1985).

The deferential standard presumes the validity of agency action. Global NAPs, Inc. v. FCC, 247 F.3d 252, 257 (D.C.Cir.2001) (quoting Southwestern Bell Tel. Co. v. FCC, 168 F.3d 1344, 1352 (D.C.Cir.1999)). The reviewer must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment. If the administrative record reveals a rational basis for the decision, the reviewer cannot overturn the decision.

The "rational basis" standard is akin to the standard applied in government procurement cases where the validity of an exercise of discretion may be challenged only upon a clear showing that the agency action was arbitrary or capricious or an abuse of discretion or was not in accordance with the law. See Tackett v. Schaffner, Inc. v. United States, 633 F.2d 940 (Ct. Cl 1980). Tennessee Opportunity Program, Inc. v. USDOL, 95-JTP-14 (ALJ June 18, 1996).

The arbitrary or capricious standard is the least demanding review of an administrative action. See Davis v. Kentucky Fin. Cos. Ret. Plan, 887 F.2d 689, 693 (6th Cir.1989). If there is any evidence in the administrative record to support the agency's decision, the agency's determination is not arbitrary or capricious. See Oakland County Bd. of Comm'rs v. U.S. Dep't of Labor, 853 F.2d 439, 442 (6th Cir.1998). Also, see MaChis Lower Creek Indian Tribe of Alabama v. U.S. Dept. of Labor, 2000-WIA-2 (ALJ, Oct. 5, 2000); Narragansett Indian Tribe v. U.S. Dept. of Labor, 2000-WIA-6 (ALJ, Dec. 20, 2000); and United Urban Indian Council, Inc. v. U.S. Dept. of Labor, 2000-WIA-4 (ALJ, Dec. 12, 2000).

The USDOL has simply and plainly iterated its philosophy that the State and local governments can better respond to the needs of the customers. In reference to procurement, WIA reads: "Sec. 102(d)(3) to develop and implement flexible procurement policies and methods that facilitate the provision of services, and that afford eligible individuals meaningful choices among the methods used to procure services, under this title; ..."

Given that it is reasonable to conclude that a procurement award is to be made to a bidder with highest scores, based upon criteria contained in bid solicitation, the question to be answered now is whether, in this case, the application of the Performance Measures in a manner that excluded the offeror with the highest score, was arbitrary and capricious, or does the record provide evidence of the "rational bases" upon which SFW determined that it was in the best interest of the workforce programs not to contract with an offeror who was not the highest scorer.

4. The Record Provides A Rational Basis In Support Of The Decision Of SWF.

SFW defends its actions as an exercise of valid discretion conferred by WIA and reserved in the RFQ.

The record establishes that the selection of the providers was not based solely upon scores, but, also upon the right of SFW to determine the ability of the offerors to perform, as indicated by, among other things, the organization's "track record of demonstrated effectiveness" (R.5, p.6). SFW also reserved the right not to award a contract at all. (See Findings of Fact two and three; R.5, #6). In the case of Carol City, SWF chose the latter in view of the issues raised and the need of the board to further consider the matter. The board decided that it would hold off awarding the Carol City

contract until Phase II. In the case of North Miami Beach, in view of the four "Reds" credited to TTI, the contract was awarded to SER.

The Position Statement of TTI characterizes the four "Reds" as flaws in the solicitation process that were illegitimately considered as disqualifies. (TTI 2.4 and 6.) The gist of TTI's arguments is that SFW had not previously identified the Reds as disqualifies. However, assuming that argument is correct does not overcome the standard of review applicable in this case. As the reviewer, the State does not have the authority to overturn the decision of SFW, if its decision is rational as supported by the evidence in the file. The administrative record shows that the SFW staff determined that the data showed that TTI had four "Reds" for the period indicated. (R. 16, STETC meeting, page 7.) Based upon its existing policy, the SFW board determined that the four "Reds" raised questions as to the ability of the operator. During the formal appeal on June 23, 2002, the hearing panel upheld the policy, after a review of the data by staff. Mr. Barranco participated in the formal appeal as the representative of TTI. (R. 20.)

It is important to note that "four Reds" as an indication of lack of achievement of Performance Measures, was not a new concept that was introduced at some late stage of the procurement process. At the latest, the use of Performance Measures was instituted by SFW on September 20, 2001. (See Findings of Fact four through nine herein.) . Thus, even though after the decisions of the board, SFW staff determined that TTI was the highest scorer in case of the Carol City and North Miami Beach centers, does not negate the basis of the SFW board's decision regarding the contracts. That is, in view of the four

“Reds,” SFW would not award the contracts to TTI. WorldTravelService v. U.S., 49 Fed.Cl. 431 (Fed.Cl. May 21, 2001).

Although not the subject of these proceedings, it is worth noting that the four “Reds” that were a factor under Phase I were not a factor under Phase II, because in each case, the designated Track Record period was different. Under Phase I, the relevant period was July 1, 2001, to the present (which would have been through April 2002), as compared to July 1, 2001, though June 30, 2002, in case of Phase II. (See R.5. p. 24 and R. 26, p.27, respectively.)

5. Public Records Request

TTI has requested that SFW provide the report from the system wide audit done by the SFW Internal Monitoring Office (IMO) to verify placements made during program year 2001-2002. TTI also requested all correspondence between the service providers, SFW, the South Florida Training and Employment Consortium and the boards that govern the respective organizations. (R.27.)

SFW responded that the research was incomplete and that given the scale of the undertaking and the limited staff resources available, it would take several months to complete the report.

Like public agencies to which the public records law is applicable, SFW “must allow reasonable access to public records, under reasonable conditions and under supervision by the custodian or his designee and may impose a special service charge, based upon the cost incurred, when the nature or volume of a public record to be inspected or copied is such as to require extensive use of information, technology resources or extensive clerical or supervisory assistance. The Florida⁴ Public Records Law

does not otherwise allow the town [e.g., SFW] to limit the nature, type or volume of public records which may be requested.” Attorney General Opinion (AGO) 92-38.

In the absence of a specific exemption from disclosure, inspection of a document subject to the public records law cannot be denied. Moreover, if records that are not otherwise exempt from public disclosure contain confidential information, section 119.07(2)(a), Florida Statutes, requires the confidential and exempt information be deleted from a record prior to its release. (See AGO 2002-73.)

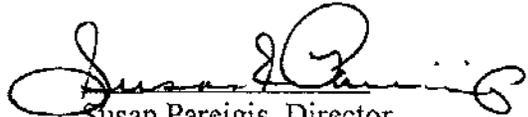
Given the nature of the request by ITT, the following quotation from AGO 79-75 is particularly instructive. The attorney general wrote, “At issue here, then, is whether the list of adverse findings, which are required by law to be submitted to the audited department and which are required by law to be explained or rebutted by that department, must be made available by the Department of Natural Resources for public inspection. Regardless of the status of preliminary findings when in the hands of the Auditor General, the list of adverse findings referred to in s. 11.45(6)(d), F. S., upon its receipt by the Department of Natural Resources, clearly falls within the statutory definition of ‘public records’ set forth in s. 119.011(1), F. S.” However, this is not to suggest that the public records law requires the creation of records where none exists.

Further, as demonstrated in WIA section 185, public access to WIA information regarding programs and activities is favored, except when the disclosure would constitute an unwarranted invasion of **personal privacy**. The Florida law adequately protects personal privacy.

WHEREFORE, the undersigned finds:

1. The record contains a "rational basis" for the actions taken by the SFW board; therefore, SFW did not abuse its discretion in not awarding TTI a contract to operate either the North Miami Beach or Carol City One-Stop centers.
2. SFW reserved the right not to make an award and exercised that right in the case of the Carol City center, when the SFW board determined that it was in the best interest of the program to award the Carol City contract under Phase I.
3. In addition to the interim three months contract to operate the Carol City center, TTI was awarded a nine months contract to operate the Carol City contract, under Phase II, as provided in the RFQ Phase II. TTI is not entitled to a contract beyond the nine months awarded under Phase II. Thus, any issue regarding the Carol City contract is moot.
4. TTI is entitled to those SFW records related to the verification of placements made during program year 2001-2002, subject to the specific statutory exemptions from public disclosure.
5. Except for the request for public records, the appeal of TTI is dismissed.

DONE and ORDER, this 25th day of November 2002, in Tallahassee, Florida.


Susan Pareigis, Director
Agency for Workforce Innovation

NOTICE OF RIGHTS TO APPEAL

FEDERAL

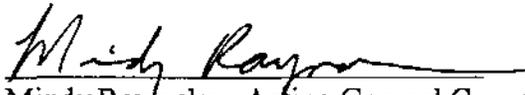
This Agency Decision is rendered pursuant to Workforce Investment Act regulation 20 CFR 667.600(c)(4) and Agency for Workforce Innovation rule Chapter 60BB- 1. A party adversely affected by this decision may petition the Secretary of the United States Department of Labor within 60 days of receipt of this decision. Any appeal must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, 2000 Constitution Ave., N.W., Frances Perkins Building, Washington, DC 20210, Attention ASET. A copy of the appeal must be simultaneously provided to the ETA Regional Administrator, U. S. Department of Labor, ETA, Atlanta Federal Center, 61 Forsyth Street, S.W., Room 6M12, Atlanta, GA. 30303 **and** to the AWI, Office of the General Counsel, 107 E. Madison Street, Caldwell Building, MSC # 150 Tallahassee, Fl. 32399-6545.

STATE

THIS DECISION CONSTITUTES FINAL AGENCY ACTION, pursuant to §120.68(2), Florida Statutes, Judicial Review of this proceeding maybe instituted by filing a notice of appeal in the district court of appeal in the appellate district where the Agency maintains its headquarters or where a party resides. Such notice of appeal must be filed with the district court of appeals within thirty (30) calendar days of the date this order is filed in the Official Records of the Agency for Workforce Innovation, as indicated in the certification of the Agency Clerk, or further review will be denied.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was provided by U. S. Mail, this 26th day of November 2002, to Mr. Charles Barranco, CEO and Representative of TTI America, Inc., 15350 Sherman Way, Suite 150, Van Nuys, CA 91406, and to Ms. Maria E. Abate, Attorney for SFW, 2000 West Commercial Blvd., Suite 232, Fort Lauderdale, Florida 33309.



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