

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT,
IN AND FOR PALM BEACH COUNTY, FLORIDA

GIDDENS SECURITY CORPORATION,

Plaintiff,

vs.

CASE NO. 50-2019-CA-011890-XXXX-MB

CITY OF WEST PALM BEACH, an Independent
Taxing District and Political Subdivision of the
State of Florida,

Defendant.

**PLAINTIFF'S MOTION FOR TEMPORARY INJUNCTIVE RELIEF
AND SUPPORTING MEMORANDUM OF LAW**

Plaintiff, Giddens Security Corporation ("*Giddens*") moves this Court, pursuant to Florida Rule of Civil Procedure 1.610, for the issuance of a temporary injunction to restrain and enjoin the Defendant, City of West Palm Beach (the "*City*"), from executing a contract for the provision of security guard services with Professional Security Consultants ("*PSC*") and states as follows:

1. This proceeding arose from the arbitrary, capricious, and illegal actions of the City as more particularly described in Giddens' Complaint filed in this cause, which is hereby adopted and incorporated herein by reference as part of this Motion. In summary, the City bypassed the City's Charter requirement that contracts be competitively procured and, in violation of the Charter's mandate, awarded a sole-source, no-bid contract to PSC, for the provision of security guard services to City facilities and other areas, worth approximately \$7.9 million over a five-year period.

2. The illegal contract was approved by the City on September 9, 2019, with a term to begin on October 1, 2019. It is not known whether the contract has been executed by the parties. A temporary injunction is critical to stay the City's actions and prohibit execution of the contract with PSC and/or any specific performance by the parties until this matter can be heard on its merits. Plaintiff has also filed, contemporaneously with this motion, a request for an expedited hearing on this motion.

3. Prior to awarding the sole-source contract to PSC on September 9th, the City issued two RFPs in late March 2019 for the competitive procurement of the security guard services (RFP #18-19-207 and RFP #18-19-208). However, on April 18, 2019, the City cancelled the RFPs without explanation. Approximately 12 vendors, including the Plaintiff, had submitted proposals to the RFPs. It is not clear whether the City reviewed and/or scored the proposals received from Plaintiff and others in response to the RFPs, but the cancellation notice clearly states the City would continue the competitive procurement process for security services. (*"The City hereby provides notice that it intends to re-issue the solicitation in near future."*)

4. There is ample evidence of favoritism, bias and unethical conduct on the part of City officials in cancelling the RFP's and issuing the no-bid contract to PSC. Mayor Keith James was elected and sworn-in as the City's Mayor just prior to the City's decision to suddenly cancel the RFPs for the security services. Mayor James is known to have a close friendship with PSC's Senior Regional Manager, Wilfredo "Willie" Perez-Borroto, as the two have been photographed drinking together at a West Palm Beach bar, Blue Martini, along with other City officials. (See, e.g., Palm Beach Post's article at: <https://www.palmbeachpost.com/news/20190915/west-palm-beach-security-contract-8m-no-bid->

deal-goes-to-city-hall-friend). In addition, Mr. Perez-Borroto (who uses the name “Willie Perez”), held a fundraiser for Mayor James in which Mr. Perez-Borroto made an in-kind donation of \$1,000.00 in food and beverages on November 13, 2017. It also appears from an itemized Campaign Treasury Report that Mr. Perez-Borroto’s wife, Hilda Perez, contributed \$500 to Mayor James campaign on June 18, 2018. Based on the relationship between PSC and the City, as well as the timing of the cancellation of the RFPs and decision to award a no-bid contract to PSC, there is evidence that the no-bid contract was the result of bias, favoritism and collusion. A temporary injunction is necessary to preserve the status quo until a formal hearing can be held on the merits.

5. The City’s failure to competitively bid the security services for competitive procurement is clearly contrary to the City’s Charter, section 4.04, which provides:

Contracts for the procurement of supplies, services and construction by the city shall be made through fair and open competition using competitive bids, requests for proposals, requests for quotations and other practices which will result in the award of contracts equitably and economically.

Section 4.04, City of West Palm Beach Charter (emphasis added). In addition, as spelled out in detail in Plaintiff’s incorporated Complaint, there is no adequate provision in the City’s Procurement Code to justify the City’s actions in bypassing the requirement for fair and open competition in the award of City contracts.

6. Giddens will suffer irreparable harm if a temporary injunction is not issued requiring the City to follow applicable law. Giddens is the current provider of security services to the City and its contract, obtained by competitive procurement in 2016 and extended by the City several times, is scheduled to terminate at the end of this month on September 30, 2019. Giddens submitted proposals to the RFPs issued by the City in March 2019, along with about 14 other vendors, including PSC. The City’s actions, in cancelling

the RFPs after the proposals were submitted and bypassing the competitive procurement process altogether, have deprived Giddens its rights to compete for a contract that is required to be competitively procured pursuant to the City's Charter.

7. As the current security services provider for the City, Giddens will suffer irreparable harm and damages if a temporary injunction is not entered to prohibit the execution and/or specific performance of the illegal, sole-source contract with PSC.

8. Giddens has no adequate remedy at law other than injunctive relief to prohibit the City from awarding a contract to PSC.

9. Because the City's actions are a direct violation of the City's charter, and no emergency exists to justify bypassing the competitive procurement process, Giddens has a strong likelihood of success on the merits of the issues raised in the Complaint and a clear legal right to temporary injunctive relief.

10. Undersigned counsel contacted City Attorney, Kimberly Rothenburg, to confer regarding the Motion for Temporary Injunctive Relief and Request for Expedited Hearing and is authorized to represent that the City objects to Plaintiff's requests.

MEMORANDUM OF LAW

11. In order to receive a temporary injunction, the plaintiff must establish four elements: (1) that Plaintiff will suffer irreparable harm unless the status quo is maintained; (2) that Plaintiff has no adequate remedy at law; (3) that Plaintiff has a clear legal right to the relief requested; and (4) a temporary injunction will serve the public interest. See, e.g., South Florida Limousines, Inc. v. Broward City Aviation Authority, 512 So. 2d 1059, 1061 (Fla. 4th DCA 1987). As described below, Giddens' Motion and its Complaint satisfy all four requirements.

I. IRREPARABLE HARM

12. With no competitive solicitation or bidding at all, the City approved the award of a public contract for security guard services, valued at approximately \$7.9 million, to a single source in violation of its own Charter, which requires that contracts for the procurement of services by the City must be made through a fair and open competitive process.

13. Although prior RFPs had been issued for the security guard services in March 2019, the City cancelled them on April 18, 2019, with a notice stating that the RFPs would be re-issued. Plaintiff Giddens, and the taxpayers at large, were unaware of the no-bid single-source award of the security services contract to PSC until September 9, when the proposal (Resolution No. 290-19) was brought before the City Commission for a vote. On September 12, 2019, within the time period prescribed by the City's Procurement Code, Giddens submitted a Notice of Protest to the City to object the City's decision to award the contract to PSC. The City responded that a Notice of Protest is not applicable to its decision to award the no-bid contract to PSC.

14. Because the City bypassed the competitive procurement process, failed to re-issue the RFPs for security services, and awarded a no-bid single-source contract to PSC, Giddens was deprived of its right to compete for the contract. But for the entry of a temporary injunction by this Court, Giddens will be permanently deprived of its right to bid on a fair and open competitive procurement for security services for the City beginning October 1, 2019.

15. The City has ignored this substantive right of Giddens and has improperly awarded a contract to PSC without any competitive procurement as required by the City's Charter and Procurement Code. As such, a temporary injunction must be issued to preserve Giddens' due process right to a stay of the contract award process pending a full hearing on the merits. This right will be irreparably lost if the City is allowed to continue to ignore its own competitive procurement requirements.

II. NO ADEQUATE REMEDY AT LAW

16. Giddens would be left with no adequate remedy at law if this Court does not enter a temporary injunction.

17. If the City is allowed to proceed with award of the Contract to PSC without providing Giddens the rights to which it is entitled to challenge the illegal award, there is no after-the-fact remedy which can provide adequate relief once the process is complete and the illegal contract award is made.

18. While an action for damages would still be available to Giddens if a temporary injunction were not issued by this Court, see, e.g., Dedmond v. Escambia City, 244 So. 2d 758, 761 (Fla. 1st DCA 1971), such action for damages would be clearly inadequate. There is substantial authority holding that if an injunction is not issued prior to the final award of a public contract in a bid dispute, the aggrieved party is limited to the recovery of "reliance damages," which includes only the costs incurred in participating in the public procurement and does not include lost profits. See, e.g., Baxter's Asphalt v. Liberty City, 406 So. 2d 461, 466 (Fla. 1st DCA 1981). Damages relating to the loss of income resulting from not being awarded the contract would not be recoverable by Giddens if an injunction is not issued. See City of Cape Coral v. Water Services of

America, Inc., 567 So. 2d 510, 514 (Fla. 2nd DCA 1990), ("[A] cause of action against a public entity by an unsuccessful bidder for lost profits by reason of its failure to become the successful bidder does not exist in Florida. . . ."); see also William J. Berbussee, Jr., Inc. v. North Broward Hosp. Dist., 117 So. 2d 550, 552 (Fla. 2nd DCA 1960).

19. In addition, if a temporary injunction is not issued, Giddens will be barred from any equitable remedy as well. The primary function of a temporary injunction is to preserve the status quo until a hearing on permanent relief is afforded to the parties. See South Florida Limousines, Inc. v. Broward City Aviation Department, 512 So. 2d 1059, 1061-62 (Fla. 4th DCA 1987) (the general function of a temporary injunction is to preserve the status quo until full relief can be granted following a final hearing); Agency for Health Care Admin. v. Continental Car Services, Inc., 650 So. 2d 173, 175 (Fla. 2nd DCA 1995); Tamiami Trail Tours, Inc. v. Greyhound Lines, Inc., 212 So. 2d 365, 366 (Fla. 4th DCA 1968). Here, the current contract for security services has been extended on a month-to-month basis to allow the City to complete the competitive procurement process for a new contract for security service, which it failed to do. If the temporary injunction is not issued, then the new sole-source, no bid contract with PSC will begin before a merit hearing on the Plaintiff's complaint.

20. In this case, the award of contract to PSC has been approved by the City, but performance of the contract term has not begun and/or the contract has not been executed. A temporary injunction would serve only to preserve Giddens' rights until a complete impartial hearing on the merits is held on the issue of whether a permanent injunction should be granted. A temporary injunction would not alter the status quo, nor prejudice the City, as they can simply extend the term of the current security services agreement as

it has done in the past six months. Temporary injunctive relief is the only complete and adequate remedy available to Giddens.

III. CLEAR LEGAL RIGHT TO INJUNCTIVE RELIEF

21. Giddens has a clear legal right to the relief requested. As mandated by the City's Charter, contracts for the procurement of services by the city "shall be made through fair and open competition using competitive bids, requests for proposals, requests for quotations and other practices which will result in the award of contracts equitably and economically." The City, by awarding a non-competitive contract to PSC, is in clear violation of the Charter. Simply, the security services contract at issue is subject to the competitive procurement requirements of the Charter, Florida decisional law and public policy to ensure a fair and open process to achieve the best value for the City's taxpayers and to discourage bias, favoritism and corruption using public funds.

22. Giddens has the absolute right to receive an injunction based on the fact that, as for the reasons detailed in Giddens' verified Complaint, the City would be issuing an illegal public contract if the contract award process is allowed to continue to conclusion. See Webster v. Belote, 138 So. 721, 724 (Fla. 1931) (allowing injunction to prevent performance of illegal public contract).

IV. PUBLIC INTEREST

23. The very purpose of all public procurement laws is to protect the public interest. Echoing the stated purpose in the City's Charter, the Legislature has expressly declared that it "recognizes that fair and open competition is a basic tenant of public procurement; that such competition reduces the appearance and opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically."

See Section 287.001, Florida Statutes, (stating legislative intent of chapter 287, Florida Statutes). This sentiment echoes long-standing holdings by Florida courts. In Hotel China & Glassware Co. v Board of Public Instruction of Alachua City, 130 So. 2d 78, 81 (Fla. 1st DCA 1961), the court held that "competitive bidding statutes are enacted for the protection of the public." Competitive bidding protects the public by "providing a means by which goods and services required by public authorities may be acquired at the lowest possible cost." See Department of Transp. v. Groves-Watkins Constructors, 530 So. 2d 912, 913 (Fla. 1988). Competitive bidding protects against "collusion, favoritism, and fraud in the award of public contracts." See id. See also Baxter's Asphalt, 421 So. 2d at 507; Belote, 138 So. at 723-24. Therefore, the issuance of a temporary injunction to preserve the integrity of the public competitive bidding laws would serve the public interest.

CONCLUSION

Through this Motion and its verified Complaint, Giddens seeks only to require that the City await a hearing under the procedural and substantive safeguards provided before executing the contract with PSC for security services and/or allowing specific performance of the contract. If a temporary injunction is not issued, Giddens will suffer irreparable harm for which there is no adequate remedy at law. There is a clear legal right to the relief requested by Giddens and the public interest would be served by entering an injunction to prevent the violation of the City's competitive procurement requirements. Accordingly, this court should grant a temporary injunction preventing the City from awarding the contract to PSC until a full and fair final hearing is held.

Respectfully submitted,

/s/ Timothy B. Elliott

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been furnished this 19th day of September 2019, to the following by email to City Attorney Kimberly Rothenburg at krothenburg@wpb.org.

/s/ Timothy B. Elliott

TIMOTHY B. ELLIOTT