MISSOURI COURT OF APPEALS
WESTERN DISTRICT

LO MANAGEMENT, LLC, et al., Respondents,
v.
OFFICE OF ADMINISTRATION, et al., Appellants.

DOCKET NUMBER WD84954 Consolidated with WD84956

DATE: December 20, 2022

Appeal From:

Cole County Circuit Court
The Honorable Cotton Walker, Judge

Appellate Judges:

Lisa White Hardwick, Presiding Judge, Thomas N. Chapman, Judge, and Janet Sutton, Judge

---

Attorneys:

Charles W. Hatfield, Alexander C. Barrett, Jefferson City; Renee E. Henson, Kansas City, for Respondent.

Craig H. Jacobs, Jefferson City for Appellant, Robert R. Harding, Lowell D. Peaerson, Jefferson City, for Intervenor.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

LO MANAGEMENT, LLC, et al., Respondents,
v.
OFFICE OF ADMINISTRATION, et al., Appellants.

WD84954 Consolidated with WD84956 Cole County

Before Division Two Judges: Lisa White Hardwick, Presiding Judge, Thomas N. Chapman, Judge, and Janet Sutton, Judge

Office of Administration, Division of Purchasing and Materials Management ("OA") appeals the judgment in favor of LO Management LLC and David Koester on their petition for declaratory judgment and injunctive relief alleging OA violated state procurement laws in awarding a license office contract to a competing vendor, the Troy Chamber of Commerce. OA contends the circuit court erred in granting LO Management and Koester relief on one of their claims because they failed to exhaust their administrative remedies. Additionally, OA asserts the court erred in finding: (1) OA needed to promulgate a rule before using proximity as one of the criteria in evaluating bids; (2) OA was required to allow LO Management to submit additional information to correct and supplement its proposal after the contract was awarded to the competing vendor; (3) OA acted arbitrarily, capriciously, and unlawfully in awarding proximity points and customer service experience points to LO Management; and (4) LO Management and Koester were entitled to attorneys' fees.

AFFIRMED IN PART, AND REVERSED IN PART.

Division Two holds:

1. The circuit court lacked the authority to entertain LO Management and Koester's claim that OA needed to promulgate a rule before using proximity as one of the criteria in evaluating bids. Koester did not establish that he had taxpayer standing to assert the claim, and LO Management failed to exhaust its administrative remedies by not raising this claim, which involves agency expertise and discretion, in its bid protest. Therefore, the judgment in favor of LO Management and Koester on this claim is reversed.

2. Because the circuit court was without the authority to entertain LO Management and Koester's claim that the OA needed to promulgate a rule before using proximity as one of the criteria in evaluating bids, and the attorneys' fees judgment was

premised entirely on the court's finding in favor of LO Management and Koester on this claim, the attorneys' fees award is reversed.

3. The circuit court did not err in finding that OA acted arbitrarily, capriciously, and unlawfully in awarding proximity points to LO Management. OA allowed a competing bidder, the Troy Chamber of Commerce, to have inappropriate contacts with state employees—a ground for suspension and/or exclusion from specific procurements under the Request for Proposal—and then used the information gleaned from those inappropriate contacts to award LO Management zero proximity points without giving LO Management the opportunity to clarify its intent in listing an erroneous address. There was no rational basis for OA's actions. The circuit court correctly declared that the contract awarded to the Troy Chamber of Commerce was void on this basis.

Opinion by: Lisa White Hardwick, Judge December 20, 2022

This summary is UNOFFICIAL and should not be quoted or cited.