

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

AJAX PAVING INDUSTRIES, INC.,)
)
 Petitioner,)
)
vs.) CASE NO. 88-1172BID
)
DEPARTMENT OF TRANSPORTATION,)
BUREAU OF CONTRACT ADMINISTRATION,)
)
 Respondent.)
_____)

RECOMMENDED ORDER

Before J. Lawrence Johnston, Hearing Officer, Division of Administrative Hearings.

Julie Gallagher, Esquire, and Reynold Meyer, Esquire, of Tallahassee, for Petitioner.

James W. Anderson, Esquire, of Tallahassee, for Respondent.

A formal administrative hearing was held in this case in Tallahassee on April 27, 1988, on the protest, 1/ filed by the Petitioner, Ajax Paving Industries, Inc. (Ajax), against the decision of the Respondent, the Department of Transportation (DOT), not to select ("shortlist") the Ajax/Hole, Montes design-build team as one of the teams eligible to submit proposals for a design-build re-paving project known as State Project No. 01050-1519.

After the hearing, parties ordered the preparation of a transcript, which was filed on May 12, 1988. The parties later agreed to extend the time for filing proposed recommended orders to May 25, 1988. Explicit rulings on the parties' proposed findings of fact may be found in the attached Appendix To Recommended Order, Case No. 88-1172BID.

FINDINGS OF FACT

1. On January 8, 1988, the DOT published a Notice To Contractors that stated in pertinent part:

The Florida Department of Transportation plans to receive bid proposals for the following design/build projects. This advertisement is issued to give advance notice of our design/build intentions; to allow interested parties to form design/build affiliations; and to submit letters of interest for specific project(s).

For the advertised design/build projects, the contracting firm shall be

prequalified with the Department in accordance with Rule 14-22 in construction class Hot Plant-Mix Bituminous Base & Surface Courses. Consultants affiliating with the contracting firm must be prequalified with the Department prior to final selection in the following types of work:

Type B (Standard Roadway Design)
Type K (Standard Contract Administration and Inspection)

Firms shall submit a separate letter of interest for each of the following projects for which they wish to be considered:

* * *

State Project No. 01050-1519
CHARLOTTE COUNTY: Level, widen, and resurfacing of S.R. 776. The limits of the project will be from approximately 750 feet west of Sunnybrook Boulevard to 650 feet east of C.R. 771. Approximate length 3.3 miles. D.B.E. Goal 10.0 percent. Bonding Requirement \$1,000,000.

* * *

Construction work may consist of resurfacing, construction of paved shoulders, extension of existing cross-drains, installation of mitered end sections on side drains, shoulder work, signing and pavement marking, sodding and grassing.

Consultant services will include, but not be limited to, Construction Engineering Inspection and the preparation of construction plans in accordance with the FDOT Plans Preparation Manual (1985) and other applicable criteria, to include as appropriate: Utility Adjustment Plans, summary of pay items, signing and pavement marking plans, maintenance of traffic details, drainage design, pavement design, and Special Provisions.

Any firm who has not been qualified by the Department and would like to be considered for these projects should request a Letter of Interest Submittal Package from the Bureau of Contractual Services in Tallahassee, 904/487-3487.

The Department shall determine the relative ability of each firm to perform the services required for each project. Determination of ability shall be based upon staff training and experience, firm experience, location, past experience with the Department, financial capacity, past performance and current and projected work load. The Department shall select

(shortlist) not less than three firms deemed to be the most highly qualified to perform the required services to proceed with preparation of bid & technical proposals.

Scope of services desired, schedules, blank contracts and special instructions will be provided at pre-bid/scope of services meeting, which will be held within 2 weeks following shortlisting.

* * *

SUBMITTAL REQUIREMENTS: Firms desiring consideration for this project must submit two (2) copies of their qualifications to the requesting unit listed below for each project that they are interested in. Information that must be included are the name of the project(s) to which the letter of interest applies, the names of the firms involved in the affiliation, firm's experience, location, past experience with the Department, and current and projected work load.

RESPONSE EVALUATION: All respondents will be evaluated and must be determined by the Department to be qualified to do business in Florida and must be prequalified to perform the advertised work requirements prior to final selection. 2/

* * *

Pursuant to DOT Rule 14-25.024(1), any person adversely affected by not being selected to provide aid proposals must file with the Clerk of Agency Proceedings, Mail Station 58, Room 562, Haydon Burns Building, 605 Suwannee Street, Tallahassee, Florida 32399-0458, a written Notice of Protest within 72 hours of the posting of the firms selected to prepare proposals. The firms selected to prepare bid proposals will be posted with the Clerk of Agency Proceedings on the 19th day of February, 1988. After filing a written Notice of Protest (within 72 hours of posting), a formal written protest setting forth a short and plain statement of the matters asserted by the Protestor shall be filed with the Clerk of Agency Proceedings within ten days after filing of the Notice of Protest. A failure to file a timely protest constitutes a waiver of Chapter 120 proceedings.

At the time of the Notice To Contractors, and until March 13, 1988, there was no DOT rule establishing design-build procedures under Section 337.11(5), Florida Statutes (1987).

2. Six design-build teams submitted letters of interest in response to the Notice To Contractors. Two teams later were eliminated, leaving four: (1) Ajax (the contractor)/Hole, Montes (the design consultant/construction engineering inspector (CEI)); (2) APAC/Harris; (3) Harper Bros./Aim Engineering; and (4) Wendel Kent-Gator Asphalt/Kunde, Sprecher, Yaskin.

3. Before February 18, 1988, both DOT's central office in Tallahassee and its district office, District I, in Bartow, compiled rankings for the firms that had submitted letters of interest. Although both offices attempted to do the same thing--compile evaluations based on certain criteria--they set about their tasks differently.

4. In Tallahassee, Mr. William Laufman and his staff developed evaluation forms complete with instructions. The forms outlined the weight to be assigned each criterion when evaluating the contractor, the design consultant, and the CEI (Construction Engineering Inspection) ability of the consultant firm. The instructions set forth the method by which the evaluations were to be done. The idea behind the evaluation forms was to promote uniformity among the evaluators.

5. The forms were developed during the two weeks before February 16, 1988, and were completed on that date. The weight to be assigned each criterion was determined by a consensus of people within the construction, design, and CEI departments. These decisions were made when the forms were developed.

6. The forms and the backup data used in Tallahassee to do the evaluations were "faxed" to the district office to be used when doing its evaluations. The letter of interest packets were also provided.

7. According to the evaluation forms used in Tallahassee to evaluate contractors, the firms' overall experience, past DOT performance grades, and current and projected workload were most heavily weighted. These items were twice as important as financial capacity and location.

8. For consultant firms and CEI ability, past performance grades on DOT jobs was most important while location was least important. The firm's experience, staff training, and current and projected workload were weighted equally.

9. The information the central office considered necessary to do the evaluations included information contained in the letter of interest packets, the prequalification file of the contractors and consultants, and DOT documents regarding DOT experience. Some information related to certain criteria could only be gleaned from a review of the prequalification file. For example, overall firm experience and staff training and experience would be detailed in that file. All of this information was available to DOT to do the evaluations.

10. The central office staff ranked APAC/Harris highest with a combined 82 score (contractor-62, design consultant-11, CEI consultant-9).

11. The central office staff ranked Wendel Kent-Gator/Kunde, Sprecher & Yaskin second highest with a 78 score (contractors-56, design consultant-11, CEI consultant-11).

12. The central office staff ranked Harper Brothers/Aim Engineering third highest with a 66 (contractor-48, design consultant-7, CEI consultant-11).

13. The central office staff ranked Ajax/Holes, Montes fourth with a 63 (contractor-50, design consultant-7, CEI consultant-6).

14. In contrast, the district office performed its evaluation and ranking on the morning of February 18, 1988, the date established for a teleconference meeting at which the "shortlist" would be determined. That morning, Mr. John Dewinkler, District I Director of Production, assigned Marshal Dougherty, District I Professional Services Engineer, the task of ranking the design-build teams. Dougherty had only a list identifying the teams from which to work. Dougherty ranked the design-CEI components of the teams and enlisted Donald Prescott, District I Assistant to District Construction Engineer, to rank the construction contractor component of the teams. Due to time constraints and problems experienced by the central office computer system that morning, neither was able to resort to information normally available in the central office. Dougherty relied on his own knowledge of team members and information available at the district office in Bartow. Prescott telephoned the four resident offices in District I for input on the relative abilities of the construction contractors.

15. Prescott and Dougherty took 1 1/2 - 2 hours to do their work. Dougherty then prepared team rankings that combined his ranking with Prescott's, giving equal weight to each. Their evaluations did not strictly follow the weighted criteria set out in the central office evaluation forms.

16. Of the four, Mr. Prescott ranked Harper Brothers first, Wendel Kent-Gator second, Gator third, APAC fourth, and Ajax fifth. The letter of interest using Gator Asphalt as the independent contractor was eliminated as a result of the competition conflict.

17. Of the four, the district's overall rankings were Wendel Kent-Gator/Kunde first, Harper/Aim second, APAC/Harris third and Ajax/Hole, Montes last.

18. On the afternoon of February 18, 1988, the Technical Committee convened by conference call to determine the shortlist for the projects listed on the Notice To Contractors.

19. The members of the committee included Wally Giddens, Director of Division of Preconstruction and Design; Murray Yates, Director of Construction; John Dewinkler, Director of Production; and Donald Prescott, Assistant to District Construction Engineer in District I, Bartow. Messrs. Dewinkler and Prescott participated by telephone from their offices in Bartow; the others were in Tallahassee.

20. Several other people were present in Tallahassee for the meeting. They included: William Laufman, Project Manager; Jack Trickey, Chief of the Bureau of Adjunct Value Engineering; Ken Morefield, Bill Dayo, and Chuck Robshaw.

21. The central office staff (Tallahassee) recommended that Ajax be among the firms to be shortlisted. However, the district people, Messrs. Dewinkler and Prescott, expressed concerns over Ajax and requested Ajax not be placed on the shortlist.

22. The district's "concerns" included lack of familiarity with Ajax's design team, present problems on current jobs with respect to performance and schedules, and the potential for claims on existing contracts.

23. The concerns expressed by the district were not apparent in the information available to the central office, and some discussion was held. Since the project was going to be performed in the district, the committee deferred to the district's request and did not shortlist Ajax.

24. The firms placed on the shortlist by the committee included: APAC/Harris; Wendell Kent-Gator/Kunde; and Harper/Aim.

25. APAC is a top rated contractor with a lot of DOT experience. It was prequalified to do the type of work required for this project when it submitted its letter of interest. Its average grade on reports on past performance as a contractor or subcontractor for the DOT is 89.81. APAC's consultant, Harris, was also rated highly and has substantial DOT experience.

26. Harper Brothers is a contractor prequalified for the work required for this project. While Harper Brothers has not done work for FDOT in the past three years, it still rates higher than any other contractor working in the Ft. Myers area based on past DOT work. Harper remains prequalified and has received an ability factor rating of 14, equating to a 93-98 ability score. Its design consultant, Aim Engineering, has DOT experience.

27. Wendell Kent is a contractor that was not prequalified for the type of work required for this project--hot bituminous asphalt mix work--when it submitted its letter of interest. Wendell Kent has DOT experience, although not in this type of work, and that experience consists of only one job within the past eight years in the district where this job will be performed.

28. Wendel Kent's average grade on reports of past performance as a contractor or subcontractor for the DOT is 93.86. Wendel Kent affiliated with Gator Asphalt, which was prequalified for this project. Gator Asphalt's average grade on reports of past performance as a contractor or subcontractor for the DOT is 89.84. Wendell Kent is to be the prime contractor on this project. It would be responsible for the overall administration of the project and construction of all items except the asphalt paving, which would be done by Gator.

29. Wendel, Kent-Gator Asphalt's design consultant, Kunde, Sprecher, Yaskin has done design work for the DOT in the past and performed well.

30. Ajax is prequalified and has DOT experience, including recent experience. In the last three years, Ajax has done eight or nine DOT jobs amounting to approximately \$11.4 million of work. The DOT concedes that Ajax is a capable contractor. But Ajax's average grade on past performance as a contractor or subcontractor for the DOT is 86, lowest of the four. In addition, comments relating to Ajax are somewhat more negative than those of other contractors. Only Ajax received negative comments on its ability to schedule construction work, a factor to be specifically considered in the selection of a design/build contractor. For example, the comment for FDOT Project #01050-3514 in Charlotte County was: "They don't provide day-to-day supervision on the project. They generally leave that up to whatever sub is working on the project. From a project engineer's standpoint, Ajax makes a good subcontractor but a poor prime contractor." For Project #12070-3513 in Lee County, the comment was: "This contractor could have taken more interest in controlling construction operations to achieve a better quality of construction."

31. Ajax's more significant scheduling problems arose during the first few years of operations in Florida. After DOT criticism, Ajax has improved in this area. Of the eight or nine DOT jobs Ajax has done in the last three years, there has been a net total of four days overtime on all jobs. (This net total is arrived at by subtracting the number of days "undertime" from the overtime days to arrive at the net number of days over the time allowed by the contracts.) But of the last 13 jobs Ajax has done for the DOT, Ajax was behind schedule on seven. On two jobs started in 1984, Ajax was considerably behind schedule (15 days) on one and extremely behind schedule (51 days) on the other.

32. Ajax knows of no potential claims on its current job. In the last three years, Ajax has had only one claim, for \$6,000, that was resolved in favor of Ajax.

33. Ajax does have a pending claim on a 1984 job that is not yet resolved. The claim is on behalf of a subcontractor. Until resolved, the claim is just a difference of opinion or a difference of contract interpretation.

34. Ajax was also involved in a potential claim on a project known as "the embankment job." There was an error in the plans for this job at the time the contract was bid. Ajax brought this to the attention of Carson Carner, the resident engineer, who advised Ajax to bid the project as it was. Ajax did and was awarded the contract. Shortly, thereafter, Ajax requested a change order to allow for extra materials considered necessary due to the error Ajax saw in the plans. Ajax pursued this because this error equalled approximately 10 percent of the job, which amounted to approximately \$200,000.

35. District DOT officials refused to see the error and denied the request for the change order. Ajax ultimately retained an attorney who convinced DOT of the error in the plans, and the change order was approved.

36. Finally, mention should be made of the non-contractor components of the design/build teams. APAC's partner, Frederick R. Harris, has done design work for FDOT in the past. Harper Brothers' partner, Aim Engineering, has construction engineering inspection (CEI) experience with the Department, including a large amount of work in the Lee County area. Wendel Kent-Gator's consultant, Kunde, Sprecher and Yaskin, had considerable design experience with the Department and also had done CEI work for the agency.

37. Ajax selected the design, CEI firm of Hole, Montes as its consultant. This firm was Ajax's second choice and was selected only when Aim Engineering was submitted by Harper Brothers. While prequalified to do so, Holes, Montes had done neither design nor CEI work for the Department.

CONCLUSIONS OF LAW

A. The New Design-Build Program.

38. Section 337.11(5), Florida Statutes (1987), enacted by Chapter 87-162, Laws of Florida (1987), effective June 30, 1987, provides:

(5)(a) If the head of the department determines that it is in the best interest of the public to combine the design and construction of a road, structure, or building and appurtenant facilities or equipment into a single contract, the

department may secure such work through a request for proposals. Factors including, but not limited to, time savings, cost reduction, experience to be gained, or use of state of the art methods shall be considered when determining the best interest of the public.

(b) The department shall adopt by rule procedure for administering combined design and construction contracts. Such procedures shall include, but not be limited to:

1. Prequalification of applicants.
2. Announcement of occasions when a design and construction contract is desired.
3. Criteria and personnel to be used for evaluation proposals and awarding contracts.

(c) If at least three responsible proposals are submitted pursuant to a request for proposals, the department may proceed to evaluate the proposals as provided herein. In evaluating proposals, the department shall consider the cost, safety, and long-term durability of the project; the feasibility of implementing the project as proposed; the ability of the design and construction teams to complete the work in a timely and satisfactory manner; and such other factors as the department deems appropriate. In evaluating the capabilities of the design and construction teams to perform in a timely and satisfactory manner, the department shall also consider such factors as the abilities of the professional personnel, past performance, capacity to meet time and budget requirements, location, recent, current, and projected workload of the firms, and the volume of work previously awarded to the firms by the department.

(d) The department may conduct a combined design and construction contract demonstration program not to exceed a total contract amount of \$50 million. Pursuant to this program, the department may award, to the qualified firm or joint venture with the lowest cost and best technical proposal, combined design-and construction contracts for projects in the department's current 5-year transportation plan in each of the following project categories:

1. Resurfacing;
2. Bridge replacement, or new bridge construction;

3. Multilane new construction or reconstruction;
and

4. Fixed capital outlay and parking garages.

Annually, the department shall submit to the transportation committees of the Senate and the House of Representatives a report outlining the results obtained from completed combined design and construction contracts awarded to that time.

B. Whether Disputes Arising Out Of The "Shortlist" Are Bid Protests.

39. Section 120.53(5), Florida Statutes (1987), provides in pertinent part:

(5) An agency which enters into a contract pursuant to the provisions of ss. 282.301-282.313, chapter 255, chapter 287, or chapters 334-349 shall adopt rules specifying procedures for the resolution of protests arising from the contract bidding process.

40. Section 120.57(1) proceedings arising out of the DOT's "shortlist" of design-build teams eligible to submit proposals under Section 337.11(5), Florida Statutes (1987), are "protests arising from the contract bidding process" and should proceed as bid protests under Section 120.57(5), Florida Statutes (1987).

C. Whether Ajax Waived Alleged Deficiencies In The Notice To Contractors.

41. The Notice To Contractors that began the bid process in this case by asking for letters of interest references Rule 14-25.024(1), Florida Administrative Code. Rule 14-25.024(1) states:

(1) Any person adversely affected by a bid solicitation shall file a notice of protest, in writing, prior to the date on which bids are to be received, and shall file a formal written protest within ten days after filing the notice of protest. The formal written protest shall state with particularity the facts and law upon which the protest is based.

Under *Capeletti Bros., Inc. v. Department of Transportation*, 499 So.2d 855 (Fla. 1st DCA 1986), Rule 14-25.024(1) has been held to require a bidder to protest deficiencies in a request for proposal within the prescribed time after issuance. But the Notice To Contractors specifies only: "Pursuant to D.O.T. Rule 14-25.024(1), any person adversely affected by not being selected to provide bid proposals must file ... a written Notice of Protest within 72 hours of the posting of the firms selected to prepare proposals." The Notice To

Contractors therefore does not provide Ajax with a clear point of entry so as to justify waiver of any protest against deficiencies in the Notice To Contractors.
3/

D. Whether The Notice To Contractors Is Fatally Deficient.

42. Section 337.14(1), Florida Statutes (1987), provides: "Any person desiring to bid for the performance of any construction contract in excess of \$250,000 which the department proposes to let must first be certified by the department as qualified pursuant to this section and rules of the department."

43. Section 337.14(2), Florida Statutes (1987), states: "Certification shall be necessary in order to bid on a road, bridge, or public transportation construction contract of more than \$250,000."

44. Section 337.105(1), Florida Statutes (1987), provides: "Before the employment of a professional consultant or other provider of services, the department shall make a finding that the person to be employed is fully qualified to render the desired service."

45. In this case, the Notice to Contractors specifically permitted responses to be submitted by persons not yet pre-qualified, requiring pre-qualification only "prior to final selection." Under the bid process initiated by the Notice To Contractors under the auspices of Section 337.11(5), only the shortlist is being determined at this time. Proposals are prepared and submitted at a later date. Therefore, the statutes do not require pre-qualification at this time, and the DOT was not prohibited from shortlisting a design-build team that included a contractor, such as Wendel, Kent, not yet pre-qualified for all aspects of the work so as to increase the number of teams capable of submitting a letter of interest to participate in the initial design-build projects.

E. Whether DOT's Omission Of Ajax From The Shortlist Should Be Upheld.

46. The parties agree that contract award decisions (to which this action is similar) ordinarily will be upheld unless the decision is arbitrary, capricious, or beyond the scope of agency discretion. *System Development Corporation v. Department of Health and Rehabilitative Services*, 423 So.2d 433 (Fla. 1st DCA 1982); *Capeletti Brothers v. State of Department of General Services*, 432 So.2d 1359 (Fla. 1st DCA 1983). In the *System Development* case, the court stated:

We are constrained to review the agency's decision under these circumstances only so far as to determine whether the decision was arbitrary, capricious, or beyond the scope of its discretion, which discretion is very broad:

So long as the public agency acts in good faith, even though they may reach a conclusion on facts upon which reasonable men may differ, the courts will not generally interfere with

their judgment, even though
the decision reached may
appear to some persons
to erroneous. Volume Services
Division v. Canteen Corporation,
369 So.2d 391, 395 (Fla. 2d DCA
1979).

This general rule assumes that the contracting agency has adhered to the material statutory requirements in conducting the procurement process, as the DOT has done in this case.

47. Accepting for purposes of this case the Systems Development standard of review to which the parties have agreed, the facts are clear in this case that the DOT's decision not to "shortlist" the Ajax/Hole, Montes design-build team, while far from being immune from criticism for weaknesses in the manner in which the decision was made, cannot be said to be arbitrary or capricious.

RECOMMENDATION

Based on the foregoing Findings Of Fact and Conclusions Of Law, it is recommended that the Respondent, the Department of Transportation, enter a final order excluding the Ajax/Hole, Montes team from the short list for State Project No. 01050-1519 if that is how the DOT chooses A exercise its discretion.

RECOMMENDED this 21st day of June, 1988, in Tallahassee, Florida.

J. LAWRENCE JOHNSTON
Hearing Officer
Division of Administrative Hearings
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Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 21st day of June, 1988.

ENDNOTES

1/ By Prehearing Order entered in this case on March 30, 1988, it was ruled that the petition in this case should be treated as a bid protest under Section 120.53(5), Florida Statutes (1987). See Conclusion Of Law 3, below.

2/ The DOT decided to permit prequalification up to the time of final selection because the DOT hoped to attract design-build teams with members who do not now do DOT work on their own, and the DOT would not have given those team members enough notice and time to get prequalified if prequalification were required before submission of a letter of interest.

3/ Without holding that it applies to the Notice To Contractors in this case, it also is noted that dicta in the Final Order, Capital Group Health Services of Florida, Inc. v. Department of Administration, DOAH Case No. 87-5387BID, entered

April 28, 1988, limited such a waiver to deficiencies in the technical aspects of plans and specifications in a bid solicitation. (The Capital Group Health Final Order held that statutory requirements are not subject to waiver.)

APPENDIX TO RECOMMENDED ORDER, CASE NO. 88-1172BID

To comply with Section 120.59(2), Florida Statutes (1987), the following explicit rulings are made on the parties' proposed findings of fact:

A. Petitioner's Proposed Findings Of Fact.

- 1.-5. Accepted. In part incorporated; in part unnecessary or subordinate.
- 6.-14. Accepted and incorporated.
15. Rejected as not proved that Wendel, Kent affiliated Gator in order to be considered. Otherwise, accepted and incorporated.
- 16.-18. Rejected as conclusions of law.
19. Rejected as contrary to facts found that Harper had "average" ratings; otherwise accepted and incorporated.
- 20.-27. Accepted and incorporated.
- 28.-32. Accepted and, except to the extent unnecessary or subordinate, incorporated.
33. Rejected that Wendel, Kent was ranked separately. Wendel, Kent was ranked in affiliation with Gator. Gator was ranked separately as the contractor for the Gator/Gee Jensen team that later was eliminated. Also rejected that the DOT's treatment of recent experience was an "apparent contradiction." The DOT simply was more concerned about recent poor negative experience than with lack of recent experience following positive prior experience.
- 34.-38. Accepted and, except to the extent unnecessary or subordinate, incorporated.
39. Rejected as contrary to facts found.
40. Rejected as not proven--the district had similar concerns about American. Besides, irrelevant and unnecessary--the Hinkle/American team was eliminated.
41. Rejected to the extent contrary to facts found; in part accepted and incorporated.
42. Second sentence, rejected as contrary to facts found; rest accepted and incorporated.
- 43.-45. Accepted and incorporated.
- 46.-47. Subordinate to facts contrary to those found.
48. First two sentences, accepted but unnecessary; rest, rejected as contrary to facts found and argument.
- 49.-50. Rejected as contrary to facts found and argument.

B. Respondent's Proposed Findings Of Fact.

1. Accepted but unnecessary.
- 2.-3. Accepted and incorporated to the extent necessary.
- 4.-13. Accepted and incorporated.
14. Accepted but unnecessary.
15. Rejected as contrary to facts found.
- 16.-24. Accepted and incorporated.
25. Accepted and, to the extent necessary, incorporated.
26. Irrelevant.
27. Accepted and, to the extent necessary and not subordinate, incorporated.
- 28.-29. Accepted and incorporated.

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