STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SOUTH FLORIDA BLOOD BANKS, INC.,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 02-0140BID
	)	
MIAMI-DADE COUNTY SCHOOL BOARD,	)	
	)	
Respondent,	)	
	)	
and	)	
	)	
COMMUNITY BLOOD CENTERS OF SOUTH FLORIDA, INC.,	)	
	)	
Intervenor.	)	
_____	)	

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted on May 22 and 23, 2002, at Miami, Florida, before Claude B. Arrington, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Mitchell A. Bierman, Esquire
Weiss, Serota, Helfman, Pastoriza & Guedes
2665 South Bayshore Drive, No. 420
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For Respondent: Pamela Young Chance, Esquire
Miami-Dade County School Board
1450 Northeast Second Avenue, Suite 400
Miami, Florida 33132

For Intervenor: J. Frost Walker, III, Esquire
100 West Sunrise Avenue
Coral Gables, Florida 33133-6910

STATEMENT OF THE ISSUES

Whether Respondent acted contrary to its governing statutes, rules, policies, or project specifications in selecting the winning response to the subject Request for Proposals and, if so, whether any such act was clearly erroneous, arbitrary, capricious, or contrary to competition within the meaning of Section 120.57(3)(f), Florida Statutes.

PRELIMINARY STATEMENT

Respondent, Miami-Dade County School Board (Respondent or School Board), issued its Request for Proposals 169-AA10 (the RFP) with a proposal return date of June 14, 2001. The RFP sought proposals to administer blood collection drives over a stated period of time with provisions for renewal terms. Only two organizations, South Florida Blood Banks, Inc. (Petitioner) and Community Blood Centers of South Florida, Inc. (Intervenor), submitted proposals.

Consistent with the evaluation provisions of the RFP, Respondent appointed a Selection Committee to evaluate the proposals and to recommend the proposal that Respondent should select. At its meeting on June 18, 2001 (the First Meeting), the Selection Committee determined that the contract should be awarded to Intervenor.

Petitioner timely protested the recommendation that resulted from the First Meeting and Respondent forwarded the protest to the Division of Administrative Hearings (DOAH). Before any hearing before an Administrative Law Judge occurred, Respondent determined that the First Meeting violated the Sunshine Law due to inadequate notice of the meeting. Thereafter, the DOAH proceeding was dismissed, and jurisdiction of the matter was relinquished to Respondent, which nullified the Selection Committee's recommendation and scheduled a second meeting for August 29, 2001 (the Second Meeting).

The Selection Committee voted to recommend that Intervenor receive the contract at the Second Meeting. Petitioner timely protested this recommendation, incorporating the grounds from its original protest and adding additional grounds based on actions that occurred during and after the Second Meeting.[1] Thereafter, the matter was referred to DOAH, and this proceeding followed. Intervenor timely filed a motion to intervene, which was granted. The parties attempted to amicably resolve this matter and waived the statutory time constraints to allow additional opportunities to attempt settlement. After settlement negotiations broke down, a final hearing was set for May 22 and 23, 2002.

Prior to the hearing Respondent, through its attorneys, determined that it would not defend the award of the contract to

Intervenor. Respondent stipulated with Petitioner that the selection process by which Intervenor was selected was materially flawed, and that the only issue to be determined by DOAH was the appropriate remedy. Petitioner did not join in that stipulation, and the undersigned has not viewed the stipulation as being evidence that the selection process was materially flawed.

Petitioner presented testimony from seven witnesses and offered 18 sequentially numbered exhibits, 17 of which were admitted into evidence. John Flynn (President and chief executive officer of Petitioner), Vanessa Fabien (a student member of the Second Selection Committee), Elda Martinez (a former School Board employee), Linda Brown (a current School Board Employee) and Bruce Lenes (Medical Director of Intervenor) appeared live. Excerpts from depositions of Alex Bromir (a former School Board employee) and Barbara Jones (a current School Board employee) were read into the record by agreement of all parties.

Respondent did not present a case in chief, but it did offer one exhibit, which was admitted into evidence.

Intervenor's case in chief consisted of additional testimony from Dr. Lenes and two sequentially numbered exhibits, both of which were admitted into evidence.

The Transcript was filed with DOAH on July 15, 2002. Petitioner and Intervenor timely filed Proposed Recommended Orders, which have been duly-considered by the undersigned in the preparation of this Recommended Order. Respondent did not file a proposed recommended order.

FINDINGS OF FACT

1. At all times material to this proceeding, Respondent was a duly-constituted School Board with the duty to operate, control, and supervise all free public schools within the School District of Miami-Dade County, Florida, pursuant to Article IX, Florida Constitution, and Section 230.03, Florida Statutes.

2. For over 25 years Respondent has used school facilities to conduct blood collection drives from students over the age of 17 years and adults. Intervenor conducted the blood drives for Respondent in the past and, at the time of the RFP at issue in this proceeding, was the incumbent provider.

3. The only previous request for proposal (the 1998 RFP) issued by Respondent for the blood collection drive occurred in 1998. Petitioner and Intervenor were the only two entities submitting responses to the 1998 RFP. Intervenor was selected as the winning proposer in 1998.

4. At times pertinent to this proceeding, Elda Martinez was Respondent's Coordinator of Special Projects for the Bureau

of Community Services, Linda Brown was the supervisor for Ms. Martinez, and Alex Bromir was the supervisor for Ms. Brown.

5. Ms. Martinez, under the supervision of Ms. Brown and Mr. Bromir, had the primary responsibility of preparing the 1998 RFP and the RFP. Barbara Jones, Director of Procurement Management and Material Testing for Respondent, assisted Ms. Martinez in the preparation of the RFP.

6. On May 21, 2001, Respondent mailed the RFP to potential proposers to solicit proposals for the administration of its blood collection drive program. Respondent received timely responses to the RFP from Petitioner and from Intervenor.

7. No timely protest to the RFP specifications was filed.[2]

8. Article II of the RFP provides that the purpose of the RFP is ". . . to designate one blood center to collect blood donations from students and staff at Miami-Dade County Public Schools [sic] facilities."

9. Article IV of the RFP provides general information about the school district and a general description of the blood collection drive program. Article IV(K) provides that the blood center must have donor and individual school recognition programs acceptable to Respondent. Article IV(L) provides that a scholarship incentive program through the College Assistance Program (CAP) is desirable.

10. Article V of the RFP sets forth certain technical requirements. Responders to the RFP were required by Article V(A) to provide the following documentation and information:

> 1. Documentation of its status as a not-for-profit organization.
> 2. The last two years of audited financial records. The blood center must agree to complete and open access by appropriate Miami-Dade School Board representatives and by the media, to the details of these financial records, if requested.
> 3. The past three years of the Federal Drug Administration (FDA) and the American Association of Blood Banks (AABB) inspection reports, including 483 forms, warning letters, or intent to revoke license correspondence with the FDA.
>
> * * *
>
> 5. Documentation that the blood center is active in the educational efforts of the school system they serve. (i.e., provide educational programs for teachers, staff, and students) [sic]
> 6. Documentation that the blood center can develop, implement, and actually execute a school-based scholarship program within a school district at no cost to the school district.
> 7. Description of existing programs in the school districts currently served. . . .

11. Article V(B) is as follows:

> B. The organization shall provide an adequate number of mobile units, personnel, materials, equipment, and supervision to carry out the estimated number of blood units to be collected in the blood drive.

12. Article V(C) is as follows:

> C. The blood center must provide sufficient trained and skilled personnel to screen the donors to insure that they will not be placed at risk by donating blood.

13. Article VII of the RFP, which pertains to evaluation of proposals, provides as follows:

> Proposals will be evaluated by representatives of the school district in order to ascertain which proposal best meets the needs of the School Board. The Selection Committee will consist of the following or their designees:
>
> -Chief Administrator, Bureau of Community Services
> -Executive Director, Community Participation
> -Representative from Risk and Benefits - Management and Services
> -Principal, Senior High
> -Principal, Adult Center
> -Coordinator of Special Projects, Bureau of Community Services
> -A school based Activities Director
> -A representative from PTSA Council
> -A representative from Student Services
> -A representative from the Student Government
> -A representative from Comprehensive Health/Health Education
> -A representative from the Division of Business Development and Assistance
> -A representative from the Division of Procurement Management and Materials Testing
>
> Evaluation considerations will include but not [be] limited to the following:
>
> A. Responsiveness of the proposal clearly stating an understanding of the work to be performed meeting all guidelines.

B. Documentation of present certification; qualification of laboratory staff members; past experience and record of performance; verification of references.

C. Primary emphasis in the selection process will be placed on the background, experience, and service of staff to be assigned to the project. Expertise in the areas addressed in the RFP, and the ability to respond in a timely, accurate manner to the district's requirements is essential.

D. An important consideration is the methodology of blood collection which takes into consideration not only expediency but the safest and least painful procedures.

E. The blood center must demonstrate commitment to the continuing education of the students and faculty.

F. The generosity of the scholarship program to be distributed by the College Assistance Program (CAP) will be another factor to be taken into account.

G. The availability of sufficient mobile units to cover all high schools, adult centers, and vocational/technical schools so that all the students have an equal opportunity to participate in the program.

The school district reserves the right to reject any and all proposals submitted. When the final selection is made, a contract acceptable to the Attorney of the Board [sic] will be entered into with the successful proposer. No debriefing or discussions will be held with unsuccessful vendors.

14. Proposals from Petitioner and Intervenor were opened on June 14, 2001. On June 18, 2001, a Selection Committee, formed in accordance with the requirements of the RFP, met to

evaluate the proposals. There was no issue at the First Meeting as to whether both proposals had satisfied the technical specifications of the RFP.

15. At the beginning of the First Meeting the Selection Committee members were given an agenda of the meeting, a chart comparing the scholarship programs being offered by the two proposals (the chart), and evaluations of the Intervenor's performance as the present provider.

16. There were 14 members of the Selection Committee. Mr. Bromir was the chairman and a voting member of the First Meeting. Ms. Martinez and Ms. Brown were also voting members of the Selection Committee.

17. Ms. Martinez had worked with Intervenor's staff for several years and thought they did a good job directing the blood drive. She believed that Intervenor's contract with Respondent (as a result of the 1998 RFP) should have been renewed without the necessity of a new RFP. Intervenor honored Ms. Martinez, who was about to retire, at an awards luncheon shortly before the First Meeting. Ms. Martinez clearly favored Intervenor throughout the selection process and greeted representatives of Intervenor with embraces prior to the start of the First Meeting.

18. Both proposals responded to the evaluation criteria set forth in Article VII(F) pertaining to the generosity of the scholarship program.

19. Ms. Martinez prepared the chart that was distributed at the beginning of the meeting. The chart purported to compare the two scholarship proposals and was the focus of considerable attention at the final hearing. The evaluation included a determination as to what could not be included in Petitioner's proposal and estimates as to what would likely be included in Intervenor's proposal.

20. Petitioner's response to the RFP committed to contribute $225,000 in direct donations to the CAP. In addition, the response reflected that participating schools would earn a minimum of $217,000 in recognition payments during the contract's initial, three-year term. A direct donation to participating schools is prohibited by School Board rule, and, consequently, a participating school could not earn such a donation. However, the RFP contained the following savings clause: "Any surplus funds not earned, as part of this guaranteed minimum funding to participating schools, will become an added donation to the College Assistance Program (CAP)." Because of the savings clause, Ms. Martinez correctly determined that the minimum guarantee to the CAP over the initial three-year term was $442,000 ($225,000 + $217,000).

21. In addition to the foregoing, Petitioner's proposal contains a bonus program that could be earned by participating schools. Because these are the type payments that are prohibited (and were not requested by the RFP) and because there was no savings clause pertaining to these funds, Ms. Martinez correctly determined that the bonus program could not be considered in evaluating Petitioner's proposal.

22. The printed agenda for the First Meeting, prepared by Ms. Martinez, included the following item:

> Before starting the discussion, explain that the RFP did not request for [sic] direct donations to the schools and that therefore the monies earmarked for this purpose will not be considered (as part of a scholarship or incentive program). However, since the agency (Petitioner) that offered it (direct donations to the schools) had a clause whereby "surplus funds that are not earned from the guaranteed minimum funding will become an added donation to the CAP", the minimum funding may be added to the CAP guaranteed donation. However, the bonus program should not be considered.

23. Ms. Martinez spent considerable time in preparing the chart and attempted to present a fair comparison between the two proposals. Unfortunately, Ms. Martinez was required to make certain assumptions as to Intervenor's proposal because it contained a bonus plan that depended on the success of future blood drives. The Intervenor's bonus plans, which neither contains a minimum nor a maximum, required Ms. Martinez to

estimate the success of future blood drives.[3] Ms. Martinez' chart set forth that Intervenor's guaranteed scholarship contribution over the initial three-year term would be $124,800 and the estimated contribution from bonuses during that period would be $325,145.00, so that the total scholarship contribution would equal $449,945.00 for the initial three-year term (compared with $442,000.00 for Petitioner). The evidence presented at the final hearing failed to establish that her estimates were reliable.

24. Because of her estimates, Ms. Martinez' chart did not provide an accurate comparison of the two proposals. In weighing the impact of the misleading chart, the undersigned has considered Ms. Martinez' leadership role in securing the procurement, the absence of specific evaluation criteria in the RFP, and the lack of instruction as to how the Selection Committee was to evaluate the scholarship proposals. Those considerations establish that the misleading chart was not a de minimis error.

25. Prior to the decision to issue the RFP, Ms. Martinez attempted to evaluate Intervenor's performance as the provider pursuant to the 1998 RFP. She solicited evaluations from personnel at the various schools at which blood drives had been conducted. In addition to distributing the misleading chart, Ms. Martinez distributed to the Selection Committee at the First

Meeting summaries of the positive evaluations of Intervenor that she had solicited from school personnel and added her own positive comments as to Intervenor's performance. Further, Ms. Martinez asked other persons on the Committee to attest to their own good experiences with Intervenor.

26. The testimonials on behalf of Intervenor came from a nurse instructor, an activities director, principals, a student, and a PTA representative. The testimonials made the following points: Intervenor stresses education; Intervenor encourages student-run blood drives; blood unit giving greatly increased during Intervenor's contract; there was excellent cooperation from all of Intervenor's staff; and the program runs smoothly in schools.

27. Ms. Martinez' acts of distributing the positive evaluation summaries and of soliciting testimonials on behalf of Intervenor tainted the Selection Committee's evaluation process at the First Meeting because it moved the focus of the evaluation from the evaluation criteria set forth in the RFP to the issues of whether the existing provider for the blood drive had been doing a good job and whether there was a need for change. Such acts were contrary to the evaluation criteria set forth in the RFP.

28. Petitioner was not given an equal opportunity to supply positive recommendations from its clients nor was it

allowed to have its clients address the Selection Committee to attest to their positive experiences with Petitioner. Intervenor was accorded an unfair competitive advantage by Ms. Martinez' acts of distributing positive evaluation summaries and soliciting testimonials on behalf of Intervenor.

29. In addition to the foregoing, the minutes of the First Meeting reflect that the Selection Committee found the following to be of significance: number of mobile units available (25 for Intervenor and 17 for Petitioner), bad donor letter (attachment 7 to its proposal),[4] personnel available (150 for Intervenor and 84 for Petitioner), the scholarships being offered, and the cash and cash equivalents at the end of the year as reflected by the financial statements ($1,800,000 for Intervenor and $26,200 for Petitioner).

30. Article V(B) of the RFP requires the proposer to provide an adequate number of mobile units, personnel, materials, equipment, and supervision to carry out the estimated number of blood units to be collected in each blood drive. The Selection Committee had not determined the number of mobile units and personnel needed to perform the contract. Because that determination had not been made, there was no basis to judge what constituted an adequate number of mobile units and personnel. It was a material error for the Selection Committee to base its decision on the relative number of mobile units and

personnel each proposer had available without first determining what constituted an adequate number of mobile units and personnel.

31. It was not error for the Selection Committee to consider attachment 7 to Petitioner's proposal. The referenced material includes negative findings and comments from regulatory authorities following inspections of Petitioner's laboratories. Petitioner's complaint that it had to submit information as to its in-house laboratories while Intervenor did not have to submit similar information as to the independent laboratories it used is a collateral attack on the specifications of the RFP that is rejected as being untimely and without merit.

32. The RFP required each proposer to submit audited financial statements as part of its response. Petitioner's assertion that it was error for the Selection Committee to consider the relative financial strengths of the two proposers is without merit.

33. At the First Meeting the committee voted 14 to 0 in favor of awarding the contract to Intervenor.

34. Thereafter Petitioner timely filed a challenge to the proposed award and the matter was referred to DOAH for formal proceedings and assigned DOAH Case No. 01-3047BID. Prior to a formal hearing before an Administrative Law Judge, Petitioner and Respondent filed a Joint Motion for Withdrawal of Petition

and Dismissal Without Prejudice on the grounds that the proceeding was not ripe for hearing because the five-day public notice requirement for the First Meeting was not observed.

35. Pursuant to the Joint Motion, DOAH Case No. 01-3047BID was closed and jurisdiction of the matter was relinquished to Respondent for further proceedings. Thereafter, Respondent invalidated the actions taken at the First Meeting and scheduled the Second Meeting.

36. Mr. Bromir and Ms. Martinez retired between the First Meeting and the Second Meeting, which occurred August 29, 2001. Ms. Brown chaired the Second Meeting, which consisted of 11 voting members. Eight of the 11 voting members at the Second Meeting had participated as voting members at the First Meeting.

37. No new instructions were given the members at the Second Meeting, other than they were to disregard the actions of the First Meeting. No financial analysis of the two proposals was distributed or discussed at the Second Meeting. Accordingly, the only analysis any of the committee considered or discussed regarding a comparison of the financial benefits offered by the two proposals was the misleading chart prepared by Ms. Martinez. In addition, no instructions were given at the Second Meeting to ensure that members who were present at the First Meeting would not be improperly swayed by the positive evaluations and testimonials presented on behalf of Intervenor.

It is clear that the Selection Committee at both the First Meeting and the Second Meeting selected Intervenor in large part because it was doing a good job as the incumbent provider. The eight members of the Selection Committee who had been at the First Meeting and improperly selected Intervenor based in part on its incumbency were not advised that they could not make their selection on that improper basis. The failure of Respondent to cure the defects of the First Meeting tainted the Second Meeting.

38. The minutes of the Second Meeting contain an incorrect fact that was a factor in the Selection Committee's evaluation of the two proposals. The minutes reflect that Petitioner had only two mobile units available to serve the school system. That reference is clearly an error because Petitioner's proposal represents that it had 17 mobile units available. According to the minutes, the number of available mobile units was a factor favoring the selection of Intervenor.[5] Consequently, the reference to the two mobile units is a material error that tainted the Second Meeting.

39. At the Second Meeting, Ms. Jones, a non-voting staff member who assisted in conducting the meeting, raised the issue as to whether Petitioner's proposal was unresponsive to one of the technical criteria, namely, the requirement of presenting “documentation” of its educational efforts in the school systems

in which it serves. There was no determination by the Selection Committee that Petitioner was not a responsive proposer, and there was no evidence that Ms. Jones raised that issue for improper motives. Since the actions of the First Meeting had been invalidated, the issue as to whether the proposals met the technical criteria was an appropriate issue for the Second Meeting. Petitioner's argument to the contrary is rejected.

40. Respondent's procurement rules require that minutes be kept of each Selection Committee meeting and that the minutes document the reasons for the recommendation coming out of the meeting. The minutes kept for the First Meeting and the Second Meeting do not accurately reflect what was discussed. For example, according to Ms. Jones, there was a discussion of the relative financial terms being offered by the proposals at the First Meeting. No such discussion is reflected in the minutes of that meeting. Additionally, there was limited discussion about financial benefits at the Second Meeting, yet minutes of the Second Meeting do not reflect that the Committee discussed or considered the relative financial merits of each proposal. There was no other written statement by either the First or Second Selection Committee of the reasons for its decisions.

41. Intervenor represented that it and the labs it use are considered by the Food and Drug Administration to be among the best in the United States. That statement is at most a minor,

waivable defect that should be considered puffery. The statement is not a material misrepresentation.

42. Intervenor represented in its response that it was the only blood bank in South Florida that had the endorsement of the Red Cross. That statement is at most a minor, waivable defect that should be considered puffery. The statement is not a material misrepresentation.

CONCLUSIONS OF LAW

43. Parties stipulated that DOAH has personal and subject matter jurisdiction in this proceeding pursuant to Florida Statutes 120.569 and 120.57(1).

44. Section 120.57(3)(f), Florida Statutes, provides as follows:

> (f) In a competitive-procurement protest, no submissions made after the bid or proposal opening amending or supplementing the bid or proposal shall be considered. Unless otherwise provided by statute, the burden of proof shall rest with the party protesting the proposed agency action. In a competitive-procurement protest, other than a rejection of all bids, the administrative law judge shall conduct a de novo proceeding to determine whether the agency's proposed action is contrary to the agency's governing statutes, the agency's rules or policies, or the bid or proposal specifications. The standard of proof for such proceedings shall be whether the proposed agency action was clearly erroneous, contrary to competition, arbitrary, or capricious. In any bid-protest proceeding contesting an intended agency action to reject all bids, the standard of review by an administrative law

> judge shall be whether the agency's intended action is illegal, arbitrary, dishonest, or fraudulent.[6]

45. The Florida Supreme Court discussed the object and purpose of competitive bidding statutes in Wester v. Belote, 103 Fla. 976, 138 So. 721 (1931). The following language, found at paragraphs 3 and 4 of the Syllabus by the Court, is frequently cited in cases involving bid disputes:

> 3. The object and purpose of competitive bidding statutes is to protect the public against collusive contracts; to secure fair competition upon equal terms to all bidders; to remove, not only collusion, but temptation for collusion and opportunity for gain at public expense; to close all avenues to favoritism and fraud in its various forms; to secure the best values at the lowest possible expense; and to afford an equal advantage to all desiring to do business with the public authorities, by providing an opportunity for an exact comparison of bids.
>
> 4. Laws requiring contracts to be let by public authorities to the lowest responsible bidder serve the object of protecting the public against collusive contracts and prevent favoritism toward contractors by public officials; because they tend to remove temptation on the part of public officers to seek private gain at the taxpayers' expense, they are of highly remedial character, and should always receive a construction which effectuates their true intent and avoids the likelihood of their being circumvented, evaded, or defeated.

46. The evidence clearly established that the First Meeting was materially flawed, that those flaws spilled over to the Second Meeting, and that the Second Meeting had material errors independent of the First Meeting. The recommendation from the Second Meeting was the result of a clearly erroneous process that stifled competition.

47. Based on the foregoing findings and conclusions, it is concluded that the evaluation and selection in this case were materially flawed, and that the award to Intervenor should be invalidated. Respondent should submit the two responses to a new Selection Committee with instructions that it should evaluate the two proposals only on the criteria set forth in the RFP.

48. The parties should not construe the recommendations and findings set forth in this Recommended Order to be a ruling on the merits of the two proposals.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Miami-Dade County School Board invalidate the award of the contract to Intervenor and conduct a new selection process.

DONE AND ENTERED this 14th day of August, 2002, in Tallahassee, Leon County, Florida.

CLAUDE B. ARRINGTON
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 14th day of August, 2002.

ENDNOTES

1/ Prior to the Second Meeting, the School Board delegated to the Superintendent the authority to enter into a contract with the entity recommended at the Second Meeting. After Petitioner's protest of the action taken at the Second Meeting, the Superintendent awarded the subject contract to Intervenor pursuant to his emergency powers and subject to the results of this bid protest.

2/ By letter dated June 5, 2001, John Flynn wrote Alex Bromir a letter complaining that the RFP required Petitioner to submit certain information pertaining to its in-house inspection laboratories, but it did not require that information from proposers, such as Intervenor, who used independent inspection laboratories. Mr. Bromir responded to that letter on June 11, 2001. Thereafter, Petitioner submitted its response to the RFP without filing a protest as to the specifications. Pursuant to Article IV of the RFP and Section 120.57(3), Florida Statutes, Petitioner waived its right to challenge the specifications of the RFP by failing to timely protest same. Petitioner's arguments in this proceeding collaterally attacking the specifications of the RFP are rejected as being untimely and without merit.

3/ Intervenor's bonus proposal contained a point system, the achievement of which would translate into scholarship

contributions. Ms. Martinez estimated the amount of the scholarship contribution from the bonus program. While she explained what she had done, she did not adequately explain why she adopted the methodology she employed and did not justify the assumptions she made. Dr. Lenes, on behalf of Intervenor, could not explain his company's bonus program and he could not confirm that the estimates were reliable.

4/ See paragraph 31, infra.

5/ Vanessa Fabien testified that she recalled the discussion during the Second Meeting that Petitioner had only two mobile units compared with Intervenor's 25 mobile units. Because of Ms. Fabien's testimony, it is found that the reference in the minutes to Petitioner's two mobile units is not merely a scrivener's error.

6/ Administrative Law Judge John Van Laningham recently addressed at length the appropriate interpretation of Section 120.57(3)(f), Florida Statutes. See R. N. Expertise, Inc. v. Miami-Dade School Board and Preventive Medical Testing Centers, Inc., d/b/a Global MRO, DOAH Case No. 01-2663BID.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 10 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.