STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MID-STATE PAVING CO., INC.,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 08-4272BID
	)	
DEPARTMENT OF TRANSPORTATION,	)	
	)	
Respondent,	)	
	)	
and	)	
	)	
KAMMINGA & ROODVOETS, INC.,	)	
	)	
Intervenor.	)	
	)	

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on October 14, 2008, in Bartow, Florida, before Lawrence P. Stevenson, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

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STATEMENT OF THE ISSUE

Whether Respondent acted contrary to the agency's governing statutes, rules or policies, or the bid specifications in its proposed decision to award Contract No. T1285 to Intervenor Kamminga & Roodvoets, Inc. ("K & R").

PRELIMINARY STATEMENT

On July 10, 2008, Respondent Department of Transportation ("Department") posted its intended award of Project No. 197593-1-52-01, Proposal No. T1285 ("Contract T1285") for the construction of the one-way pair on State Road 600 through Lake Alfred. The notice of intent to award reflected that the winning contractor was K & R. Mid-State Paving Co., Inc. ("Mid-State"), submitted the second-low bid. Mid-State filed a notice of protest on July 14, 2008, and filed a formal written protest on July 24, 2008. The case was forwarded to the Division of Administrative Hearings ("DOAH") on August 28, 2008, for assignment of an administrative law judge and the conduct of a formal hearing. The hearing was initially scheduled to be held on September 25 and 26, 2008.

On September 9, 2008, K & R filed a motion to intervene, which was granted by order dated September 17, 2008. Also on

September 9, 2008, K & R filed an unopposed motion for continuance. That motion was granted and the hearing was rescheduled for October 14 and 15, 2008. The hearing convened on October 14, 2008, and concluded on that date.

At the final hearing, Mid-State presented the testimony of Alvin Mulford, its vice president. The Department presented the testimony of Philip Davis, its state estimates engineer, and Richard D. Riles, a general engineering consultant. The Department's Exhibits 1 through 4 were admitted into evidence. The Department's Exhibit 1 was the deposition testimony of David A. Sadler, the director of the Department's office of construction, and the exhibits attached to the deposition. K & R presented the testimony of Marcus B. Tidey, Jr., the vice president in charge of its Florida division. K & R's Exhibits 1 through 5 were admitted into evidence. In addition, Joint Exhibits 1 and 2 were admitted by stipulation of all the parties. Joint Exhibit 1 consisted of Mid-State's formal written protest and 23 tabs of supporting documentation. Joint Exhibit 2 contained the details of the Department's bid tabulation.

A Transcript of the proceeding was filed at DOAH on October 29, 2008, meaning that Proposed Recommended Orders would be due on November 10, 2008. The Department timely filed its Proposed Recommended Order on November 10, 2008. Also on

November 10, 2008, Mid-State filed a motion to extend the time for filing proposed recommended orders until November 14, 2008, due to "unexpected urgent matters" that required the attention of Mid-State's counsel. Mid-State's motion contended that no party would be prejudiced by the extension because as of the time of the motion's filing, no proposed recommended orders had been filed. In fact, the Department's Proposed Recommended Order was filed roughly two hours before Mid-State's motion, but the undersigned credited Mid-State's counsel with having been unaware of that filing.

On November 12, 2008, K & R filed an objection to the motion to extend, arguing that Mid-State waited until the proposed recommended orders of the Department and K & R had been served before filing its motion, thus obtaining the benefit of reading the oppositions' proposed orders before filing its own. However, regardless of whether its proposed order was served on Mid-State on November 10, 2008, K & R had yet to file its proposed recommended order at DOAH as of the morning of November 12, 2008. Thus, only the Department had timely filed a Proposed Recommended Order.

By order dated November 12, 2008, the undersigned granted Mid-State's motion to extend the time for filing proposed recommended orders until November 14, 2008, with the proviso that the Department would be given until November 21, 2008, to

file a supplemental proposed recommended order[1] if it felt the need to address any new arguments raised in Mid-State's proposed recommended order.

K & R filed its Proposed Recommended Order on November 12, 2008. Mid-State filed its Proposed Recommended Order on November 14, 2008. By letter filed at DOAH on November 18, 2008, the Department and K & R informed the undersigned that they would not file supplements to their proposed recommended orders. The parties' submissions have been considered in the preparation of this Recommended Order.

All references to the Florida Statutes are to the 2008 edition, unless otherwise noted.

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of the proceeding, the following findings of fact are made:

1. On May 14, 2008, the Department released its bid solicitation for Contract T1285. The proposed contract was for the construction of a one-way pair through Lake Alfred, including new construction, reconstruction, milling and resurfacing, widening, drainage improvements, lighting, signalization, signing and pavement marking and landscaping on State Road 600 (U.S. 17/92). Polk County, the location of the project, lies in the Department's District 1.

2. Qualified contractors, including Mid-State and K & R, received an electronic disk containing the solicitation, bid blank, plans and specifications for Contract T1285.

3. The letting date for this project was June 18, 2008. Bids were to be submitted on or before that date via Bid Express, the electronic bidding system used by the Department.

4. No party submitted a protest of the terms, conditions, and specifications contained in the solicitation pursuant to Subsection 120.57(3)(b), Florida Statutes.

5. The work to be performed on Contract T1285 included the installation of limerock road base to be paid for in accordance with line item 0175, Optional Base Group 09 ("Base Group 09").

6. The bid documents included a set of "Supplemental Specifications." Section 6 of the Supplemental Specification was titled "Control of Materials." Subsection 6-3.3, titled "Construction Aggregates," provided as follows: "Aggregates used on Department projects must be in accordance with Florida Administrative Code Rule 14-103."[2]

7. Under the heading "Developmental Specifications" is a February 15, 2008, revision to the Construction Aggregates subsection that provides:

> Subarticle 6-3.3 (Page 54) is expanded by the following:
>
> 6-3.3.1 Department Directed Source for Aggregates: For this Contract, obtain aggregates for use in limerock base from the following

vendor: Vulcan Construction Materials LP. Upon award of the Contract, provide the vendor and the Department a schedule of project aggregate needs. Once a schedule has been provided to both the Department and vendor, the Engineer will issue written authorization, with a copy to the vendor, for the purchase of aggregates from the vendor. This authorization is required before aggregates will be released by the vendor. Pick up the required aggregate such that the project schedule will be maintained. Payment to the vendor by the Contractor will be due upon receipt of the materials pursuant to the Department's Vendor Contract No. BDH50. This rate is the unit price agreed upon by the Department and the vendor and will be made available to bid proposal holders at the time of bid at http://www.dot.state.fl.us/construction/aggregate/aggregate.htm.

The Department will make payment to the Contractor for the aggregates on progress estimates as a part of the bid unit price for the appropriate pay items. The rate is subject to change and adjustments for such changes will be made to the bid unit price of the appropriate pay items.

Disputes with the vendor concerning aggregate supply will not be cause for Contract time adjustments, time suspensions or monetary adjustments to the Contract amount. The Contractor will be solely responsible for providing the necessary advance notice to the vendor and other coordination to obtain timely aggregate supply for the project.

8. The import of Developmental Specification 6-3.3.1 was that all bidders would be required to obtain the limerock needed for Base Group 09 from a single vendor, Vulcan Construction Materials LP ("Vulcan"). The winning bidder would agree to pay

Vulcan in accordance with a separate contract negotiated between Vulcan and the Department.

9. The hyperlink provided in Developmental Specification 6-3.3.1[3] led to a document called "Aggregate Guidance" produced by the Department's State Construction Office. The front page of the Aggregate Guidance document contained "Bidder Information" consisting of a spreadsheet setting forth the Vulcan price per ton for limerock base and limestone coarse aggregate, with the price varying depending on the date and port of delivery. Between January and June 2008, the Vulcan price per ton for limerock base from both the Port of Tampa and Port Canaveral was $16.93.

10. The Aggregate Guidance page contained additional hyperlinks with the following titles: "Aggregate Vendor Contract Usage," "Aggregate Vendor Contract," "Aggregate Vendor Projects List," "Aggregate Vendor Authorization Letter," "Aggregate Vendor Contract Frequently Asked Questions," and "Aggregate Price Adjustment Sheet."

11. Alvin Mulford is the vice-president of Mid-State who, along with his estimator, put together his company's bid for Contract T1285. Mr. Mulford testified that his company has been bidding on Department work, and that he has never before seen a provision similar to Developmental Specification 6-3.3.1. Mr. Mulford directed his estimator to obtain clarification from

the Department, to be sure that the bidders were required to purchase the limerock base from Vulcan.

12. One reason for Mr. Mulford's concern was the "exorbitant" rate charged by Vulcan in comparison to other vendors. The restriction to a single supplier was so abnormal, and that supplier's rate was so out of line with the market, that Mr. Mulford decided to seek guidance from the Department through the question and response internet bulletin board provided by the Department for its projects.

13. The question posed by Mid-State was as follows:

> Does the contractor have to use Vulcan materials for the limerock base at a rate of $16.93 per ton as stated in the Developmental Specifications 6-3.3.1? If so from which location is the material to be picked up? Is it also true that payment to the vendor (Vulcan Materials) will be due immediately upon receipt of the materials? I wanted to clarify this issue as it is unusual for the contractor to be limited to the use of only one vendor.

14. The Department's response was as follows:

> The unit rate for the Material can be found at the following website: http://www.dot.state.fl.us/construction/Aggregate/Aggregate.htm
> Pickup locations for the Material can be found at the following website: http://www.dot.state.fl.us/construction/Aggregate/Aggregate.htm
> Payment should be issued by the Contractor to the Vendor (Vulcan Construction Materials LP) upon receipt of the materials as defined in Developmental Specification 6-3.3.1.

15. Because the Department's response did no more than redirect him to the Department's website, Mr. Mulford decided to look at the website in more detail. He investigated the hyperlinks, including the Vulcan contract with the Department. When he clicked on the hyperlink titled "Aggregate Vendor Contract Usage," he found a document that provided as follows, in relevant part:

> Aggregate Vendor Contract Usage by Districts
>
> With the execution of the contract with Vulcan Construction Materials LP, contract number BDH50, Vulcan has committed to provide aggregate in the types and quantities defined in the contract (attached).
>
> The process for this contract in Districts 1, 5, and 7, is as follows:
>
> 1. Include in the projects identified in the attached spreadsheet the appropriate special provision beginning with the July 2007 lettings. The District Specifications Engineer and District Construction Office will need to coordinate this effort.
>
> 2. There are two special provisions for the purpose of notifying construction contract bidders of the Department's intention toward the aggregate. The first special provision is the mandatory version that will direct the bidder to obtain aggregates for the specified work from Vulcan. The second special provision provides the bidder an option to obtain its aggregates from Vulcan.
>
> * * *
>
> 5. After these projects have been awarded, the contractor is required to notify FDOT

> and Vulcan a schedule of its aggregate needs for the project. After receiving this schedule, FDOT's Resident Engineer will issue written authorization to the contractor, with copy to Vulcan. This authorization is required before Vulcan will release aggregate to the contractor.
>
> 6. Payment to Vulcan will be from the contractor. FDOT will pay cost of aggregate on progress estimates as part of the contractor's bid price for the work. The contractor is required to include in its bid price for the work the cost of the aggregate at the Vulcan rate. The Vulcan rate will be posted on the FDOT State Construction Website showing the rate. When adjustments are made to the Vulcan rate, FDOT will make adjustments in the construction contract unit price. . . . (Emphasis added.)

16. Mr. Mulford testified that he understood the underscored language in the hyperlinked document to be a directive to the bidders and therefore a mandatory requirement of the bid specifications. He did not ask the Department for further clarification because he believed the requirement was clearly stated in the hyperlinked document.

17. David Sadler, the director of the Department's office of construction, testified that the hyperlinked document was developed by his office to offer guidance to the districts as to the concept behind and use of the aggregate vendor contract. The document was not a part of the bid solicitation document.

18. Mid-State's bid price was $7,429,398.44. Mid-State's price for Base Group 09 was $619,645.80, or $19.30 per square

yard. This price reflected the Vulcan rate for limerock base of $16.92 plus tax and Mid-State's costs for the work associated with Base Group 09.

19. K & R's bid price was $7,370,505.24, or $58,893.20 lower than the bid price of Mid-State. K & R's price for Base Group 09 was $256,848.00, based on a stated unit price of $8.00 per square yard for limerock base. K & R's price for Base Group 09 was $362,797.80 lower than that of Mid-State, accounting for more than the differential between the overall bids of Mid-State and K & R.

20. Marcus Tidey, Jr., K & R's vice president in charge of its Florida division, testified that K & R was well aware that the Vulcan price for limerock base was $16.93, and that K & R understands its obligation to pay that price to Vulcan should K & R be awarded Contract T1285. Mr. Tidey testified that at the time of bid submission, he cut K & R's bid price to $8.00 per square yard as a competitive strategy to win the contract. Mr. Tidey made a conscious decision that K & R would absorb the difference between $8.00 bid price and the Vulcan price of $16.93.

21. Mr. Tidey testified that K & R needed to win this job in order not to have its crews and equipment sit idle during the economic downturn, and therefore decided to take all of its markup, roughly $250,000, out of the bid. He could have made

the $250,000 cut on any item or items in the bid, but decided on Base Group 09 because the limerock base was a big item and therefore easy to cut by a large amount.

22. Mr. Tidey also testified that the contract provides a $400,000 incentive payment for early completion of the job, meaning that K & R will be able to work "faster and smarter" and make up for the price reduction at the end of the job.

23. Mr. Tidey testified that he obtained the Vulcan prices from the Department's website as instructed by Developmental Specification 6-3.3.1. He did not click on the hyperlinks, which appeared to reference the contract between the Department and Vulcan and therefore was of no concern to him.

24. The Department and K & R dispute Mid-State's assertion that the underscored language of the hyperlink set forth in Finding of Fact 15 was a requirement of the bid specifications, based on Mr. Sadler's direct testimony and the underlying illogic and unfairness of requiring bidders to seek out hidden specifications. The Department and K & R concede that if the bid specifications did in fact require the bidders to include in Base Group 09 the full costs associated with obtaining the limerock base from Vulcan, then K & R's bid is nonresponsive.

25. Developmental Specification 6-3.3.1 directed bidders to the Department's webpage for the purpose of obtaining the current Vulcan rate quote. It did not instruct the bidders to

investigate the hyperlinks or to assume that the information contained therein was mandatory. Absent an instruction to bidders to review the information contained in the hyperlinks, the Department could not make such information mandatory without placing less curious bidders at a competitive disadvantage. The Department had no intent to play hide-and-seek with the bid specifications in the manner suggested by Mid-State.

26. In addition, K & R points to three line items of the bid specifications in which the Department eliminates competition, instructing the bidders not to bid and inserting a fixed unit price and bid amount for all bidders as to those items. K & R reasonably asserts that the Department was fully capable of treating Base Group 09 in the same fashion, had it intended to require the bidders to pass through to the Department all the costs associated with obtaining the limerock base from Vulcan. However, the Department supplied the bid quantity (31,106 square yards) and left it to the bidders to determine the price per unit they would bid.

27. K & R's bid was responsive. Nothing in the bid specifications prevented K & R from absorbing part of the cost of the Vulcan limerock base and passing the savings on to the Department, or required bidders to pass on to the Department the full costs of complying with the bid specifications regarding Base Group 09.

28. The sole remaining issue is whether K & R's bid, though facially responsive, was materially unbalanced. The Department routinely conducts reviews of bid line items that appear "unbalanced," i.e., for which there appear to be significant differences between the price bid and the Department's cost estimate, in order to determine whether the price difference is due to a quantity error by the bidder. The Department's review confirms that the bid quantity specified on the bid blank is accurate.

29. If a quantity error is found, the bids are recalculated using the bidders' unit prices and the correct quantities to determine whether the bid rankings would change. A bid for which there is a discrepancy between the bid and the Department's estimate is termed "mathematically unbalanced." A mathematically unbalanced bid that affects the ranking of the low bid is "materially unbalanced." A mathematically unbalanced bid is acceptable, but a materially unbalanced bid affords the bidder an unfair competitive advantage and must be rejected.

30. The Department followed its usual procedure in analyzing the K & R bid to determine whether it was unbalanced. Philip Gregory Davis, the Department's state estimates engineer, testified that there were some unbalanced items in the K & R bid, but no quantity errors that would have changed the ranking of the bids.

31. Richard Ryals, the project designer who conducted the unbalanced bid review, testified that the quantities were correct for Base Group 09. As noted above, K & R's low bid for Base Group 09 was an intentional strategy, not the result of a quantity error.

32. K & R's current bonded capacity qualification with the Department is $258 million in contracts at any one time. K & R posted a bid bond, and has more than enough capacity to comfortably perform this contract. There is no economic danger to the Department in accepting K & R's low bid.

CONCLUSIONS OF LAW

33. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this cause, pursuant to Section 120.569 and Subsection 120.57(3), Florida Statutes.

34. Subsection 120.57(3)(f), Florida Statutes, provides in pertinent part:

> . . . . 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, proposals, or replies, 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 solicitation specifications. The standard of proof for such proceedings shall be whether the proposed agency action was

> clearly erroneous, contrary to competition, arbitrary, or capricious. . . .

35. Pursuant to Subsection 120.57(3)(f), Florida Statutes, the burden of proof rests with Mid-State as the party opposing the proposed agency action to prove "a ground for invalidating the award." See State Contracting and Engineering Corp. v. Department of Transportation, 709 So. 2d 607, 609 (Fla. 1st DCA 1998). Mid-State must prove by a preponderance of the evidence that the Department's proposed award of the contract to K & R is arbitrary, capricious, or beyond the scope of the Department's discretion as a state agency. Department of Transportation v. Groves-Watkins Constructors, 530 So. 2d 912, 913-914 (Fla. 1988); Department of Transportation v. J.W.C. Co., Inc., 396 So. 2d 778, 787 (Fla. 1st DCA 1981). See also § 120.57(1)(j), Fla. Stat.

36. The First District Court of Appeal has interpreted the process set forth in Subsection 120.57(3)(f), Florida Statutes, as follows:

> A bid protest before a state agency is governed by the Administrative Procedure Act. Section 120.57(3), Florida Statutes (Supp. 1996)[4] provides that if a bid protest involves a disputed issue of material fact, the agency shall refer the matter to the Division of Administrative Hearings. The administrative law judge must then conduct a de novo hearing on the protest. See § 120.57(3)(f), Fla. Stat. (Supp. 1996). In this context, the phrase "de novo hearing" is used to describe a form

> of intra-agency review. The judge may receive evidence, as with any formal hearing under section 120.57(1), but the object of the proceeding is to evaluate the action taken by the agency. See Intercontinental Properties, Inc. v. Department of Health and Rehabilitative Services, 606 So. 2d 380 (Fla. 3d DCA 1992) (interpreting the phrase "de novo hearing" as it was used in bid
>
> protest proceedings before the 1996 revision of the Administrative Procedure Act).

State Contracting and Engineering Corp., 709 So. 2d at 609.

37. As outlined in Subsection 120.57(3)(f), Florida Statutes, the ultimate issue in this proceeding is "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." In addition to proving that the Department breached this statutory standard of conduct, Mid-State also must establish that the Department's violation was either clearly erroneous, contrary to competition, arbitrary, or capricious. § 120.57(3)(f), Fla. Stat.

38. The First District Court of Appeal has described the "clearly erroneous" standard as meaning that an agency's interpretation of law will be upheld "if the agency's construction falls within the permissible range of interpretations. If, however, the agency's interpretation conflicts with the plain and ordinary intent of the law, judicial deference need not be given to it." Colbert v.

Department of Health, 890 So. 2d 1165, 1166 (Fla. 1st DCA 2004) (Citations omitted).

39. An agency decision is "contrary to competition" when it unreasonably interferes with the objectives of competitive bidding. Those objectives have been stated to be:

> [T]o 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 various forms; to secure the best values for the [public] at the lowest possible expense; and to afford an equal advantage to all desiring to do business with the [government], by affording an opportunity for an exact comparison of bids.

Harry Pepper & Associates, Inc. v. City of Cape Coral, 352 So. 2d 1190, 1192 (Fla. 2d DCA 1977), quoting Wester v. Belote, 138 So. 2d 721, 723-724 (Fla. 1931).

40. An agency action is capricious if the agency takes the action without thought or reason or irrationally. An agency action is arbitrary if is not supported by facts or logic. See Agrico Chemical Co. v. Department of Environmental Regulation, 365 So. 2d 759, 763 (Fla. 1st DCA 1978).

41. To determine whether an agency acted in an arbitrary or capricious manner, it must be determined "whether the agency: (1) has considered all relevant factors; (2) has given actual, good faith consideration to those factors; and (3) has used

reason rather than whim to progress from consideration of these factors to its final decision." Adam Smith Enterprises v. Department of Environmental Regulation, 553 So. 2d 1260, 1273 (Fla. 1st DCA 1989).

42. However, if a decision is justifiable under any analysis that a reasonable person would use to reach a decision of similar importance, the decision is neither arbitrary nor capricious. Dravco Basic Materials Co., Inc. v. Department of Transportation, 602 So. 2d 632, 634, n. 3 (Fla. 2d DCA 1992).

43. Mid-State failed to meet its burden of proof. The evidence presented at the hearing did not establish that the Department's proposed award of Contract T1285 to K & R is contrary to the bid solicitation, contrary to the Department's governing statutes, rules or policies, or that the proposed award is clearly erroneous, contrary to competition, arbitrary or capricious. The preponderance of the evidence established that K & R's proposal was responsive to the requirements of the bid solicitation and that the Department acted well within its governing statutes, rules and policies.

44. The evidence at hearing established that the Department has in place routine procedures for the review of bid items that appear mathematically imbalanced, and that the Department followed these procedures in determining that K & R's bid was not materially imbalanced.

45. The evidence established that Developmental Specification 6-3.3.1 required bidders to purchase aggregates for use in the limerock base from Vulcan, and that K & R complied with this requirement.

46. The evidence established that Mid-State misinterpreted an informational hyperlink on the Department's website to be a mandatory bid specification. The bid specifications did not require the bidders to include in Base Group 09 the full costs associated with obtaining the limerock base from Vulcan. K & R was not prohibited from bidding a discounted rate for Base Group 09.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law set forth herein, it is

RECOMMENDED that the Department of Transportation enter a final order dismissing Mid-State's formal written protest and awarding Contract T1265 to K & R.

DONE AND ENTERED this 9th day of January, 2009, in Tallahassee, Leon County, Florida.

LAWRENCE P. STEVENSON
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 9th day of January, 2009.

ENDNOTES

[1/] A typographical error in the order referenced the Department's filing as a "proposed final order."

[2/] Florida Administrative Code Rule 14-103.001 provides the scope of the referenced Chapter 14-103:

> This rule chapter provides the requirements and procedures for obtaining and maintaining Department approval of developed and operational construction aggregate sources (mines and redistribution terminals) and their individual construction aggregate products which are intended for use on Department projects. Department approval is based upon the existence of suitable raw materials; processing facilities capable of producing specified aggregate meeting Department specification requirements; and an effective Quality Control Program assuring the continuing quality and uniformity of that production.

Florida Administrative Code Rule 14-103.002(1) sets forth the purpose of Chapter 14-103:

> This rule chapter sets out a standardized method for producers of construction aggregates to apply for, receive, and maintain Department approval of construction aggregate sources for use on Department projects. Source and product approval, and maintenance of an on-going effective Quality Control Program, as monitored by the Department's Quality Assurance procedures, comprise the Department's primary methods of determining acceptability of aggregate on Department projects.

[3/] The hyperlink provided in the specification is either outdated or contained a typographical error at the time the specifications were published. The correct hyperlink is: http://www.dot.state.fl.us/construction/Aggregate/Aggregate.shtm

[4/] The meaning of the operative language has remained the same since its adoption in 1996:

> 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. . . .

§ 120.57(3)(f), Fla. Stat. (1997).

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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.