

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MORSE COMMUNICATIONS, INC.,)
)
 Petitioner,)
)
vs.) Case No. 08-5079BID
)
BREVARD COUNTY SCHOOL BOARD,)
)
 Respondent,)
)
and)
)
BREVARD BUSINESS TELEPHONE)
SYSTEMS, INC.,)
)
 Intervenor.)

)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on December 15, 2008, in Viera, Florida, before Susan B. Harrell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Maurice Arcadier, Esquire
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For Intervenor: Douglas D. Marks, Esquire
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STATEMENT OF THE ISSUE

The issue in this case is whether Respondent's intended award of a contract for telephone systems maintenance and installation services pursuant to Bid #09-005/LH is contrary to Respondent's governing statutes, Respondent's rules or policies, or the solicitation specifications.

PRELIMINARY STATEMENT

On June 17, 2008, Respondent, the Brevard County School Board (School Board), issued an invitation to bid (ITB) for telephone systems maintenance and installation services. Petitioner Morse Communications, Inc. (Morse), submitted a bid in response to the ITB. On July 31, 2008, the School Board posted its intended award of the contract to Intervenor, Brevard Business Telephone Systems, Inc. (BBTS). Morse protested the award to BBTS.

The case was received by the Division of Administrative Hearings on October 14, 2008. BBTS filed a motion to intervene on October 22, 2008. The motion was granted by order dated October 24, 2008. The parties agreed to have the final hearing on December 15, 2008.

At the final hearing, Morse called the following witnesses: Steven Koller, Raymond Jones, Kathy Arvonio, and Michael Costello. Petitioner's Exhibits 1 through 7 were admitted in evidence. The School Board did not call any witnesses or submit any exhibits. BBTS called John Fisher as its witness and did not submit any exhibits.

The one-volume Transcript was filed on January 12, 2009. On January 9, 2009, the School Board and BBTS filed a Motion for Extension of Time to Serve Proposed Recommended Order and Notice of Filing Transcript of Hearing. The motion was heard by telephonic conference call on January 13, 2009. An Order was entered on January 13, 2009, extending the time for the parties to file proposed recommended orders to February 2, 2009, and establishing the date for the issuance of the recommended order as 30 days after the filing of the Transcript. The parties timely filed their Proposed Recommended Orders, which have been considered in the writing of this Recommended Order.

FINDINGS OF FACT

1. On June 17, 2008, the School Board issued an ITB for telephone systems maintenance and installation services. The ITB was identified as Bid #09-005/LH.

2. Section 2.2 of the ITB described the scope of work as follows:

Bids will be requested for the following types of work from the qualified and awarded Contractors: Upgrades and installation of various types of Telephone Systems, including but not necessarily limited to the following: wiring, cabinet, control, and conduit installation and upgrades to existing system components, programming panels/switches, testing telephone systems, installation, replacement of devices and system components, power supplies, all other projects directly related to telephone systems, including new installations (material and labor), at any designated SBBC [School Board] site and certification of various telephone systems. The School Board of Brevard County will have salvage rights if requested for all parts and material that is [sic] removed from each project. All work/materials shall be in accordance with State Requirements for Educational Facilities (SREF), the Florida Building Code, SBBC Facilities Standards and Guide Specifications.

3. Section 2.4 of the ITB set forth the qualifications of the contractor and required the following:

2.4.1 The successful "Telephone System Contractor" shall be a person whose business includes the execution of contracts requiring the ability, experience, science and knowledge, and skill to lay out, fabricate, install, maintain, alter, repair, monitor, inspect, replace, or service telephone systems for compensation, including all types of telephone systems, for all purposes. The business shall be self-proprietary, will provide service with company employees, company owned and insured vehicles and company owned equipment. Subcontracting of Telephone System Services will not be allowed.

* * *

2.4.4 The bid will be awarded only to responsible bidders that are factory authorized dealers of the systems bid and qualified to do the work specified with manufacturer trained and certified technicians. The successful "Telephone System Contractor" shall have a minimum of two certified/trained technicians for each of the installed system [sic] bid. For systems that are manufacturer discontinued, contractor shall have a minimum of tow [sic] trained technicians, with five or more years of experience in maintaining such systems. Awarded bidder(s) shall be capable of and responsible for testing each wire, landing all wire, mounting all devices, programming panels, trouble shooting and certifying telephone system installations. In addition, the successful bidder(s) must be certified to provide support for existing structured cabling system (SCS) infrastructure. If the SCS has an existing warranty, the successful bidder(s) shall provide warranty coverage on the SCS as defined by the manufacturer. The School Board has existing SCS warranties from either Molex or Siemens^[1] certified solutions. The successful bidder(s) must also be qualified and authorized by a manufacturer to design, configure, and maintain an IP telephony multiservice network solution using QoS, Call Control clustering, H.323, MGCP, or SIP signaling protocols and shall be able to integrate legacy TDM Telephone Systems and voice mail systems into an existing data network. Awarded bidder(s) must install telephone systems to meet all State of Florida Department of Education (SREF), NFPA and NEC requirements. **The bidder shall submit the following information in 'Envelope B':**

A. Experience record and proof that bidder is a certified factory trained dealer for the system(s) being bid with at least five (5) years experience in telephone service work.

- B. Evidence that all field supervisory employees are certified manufacturer and SCS technicians.
- C. List and a brief description of similar work satisfactorily completed with location, dates of contracts, names, phone numbers and addresses of owners.
- D. List of equipment and facilities available to do the work.
- E. Names and evidence of level of competency of all personnel who will be used in District projects. The District must recognize competency certification and employees (names must appear on invoices with number of hours worked).
- F. Name(s) of project manager(s) and evidence of current "Certificate of Factory Training" of system(s) bid. Provide resume of Project Managers.
- G. Evidence that bidder's support team is located within a 75 mile radius of Brevard County.
- H. Evidence of ability to supply as-built drawings as needed.
- I. Evidence of occupational license (business tax receipt) and State of Florida Low voltage license.
- J. Letter from manufacturer stating that you are an authorized dealer/service provider for systems bid.

Failure to submit the above requested information (in Envelope "B" with Price Sheet and Questionnaire) may be cause for rejection of the proposal. (Emphasis in original)

2.4.5 The Contractor must complete the enclosed questionnaire which will be used to evaluate capabilities to perform the work during the contract period. The questionnaire must be completed and contain sufficient and specific information which directly responds to the request. The School Board reserves the right to reject bids which do not provide sufficient information to evaluate the qualifications

of the Contractor and where information provided does not demonstrate a proven past record (such as negative references, failure to complete projects, etc.).

4. Section 1.2 of the ITB stated:

THE INTENT of this bid is to establish a contract for a period of one year from date of award during which time; the successful bidder(s) shall guarantee firm-fixed pricing for telephone system maintenance and materials and firm-fixed labor, equipment and material prices for minor and major installation of the District's Telephone systems as awarded to him/her as specified in this bid. The bid shall be based on an 'All-Or-None' format per system manufacturer.

This bid will be awarded to a minimum of one contractor for each manufacturer of systems used by the District. In the best interest of the District two or more contractors may be awarded a specified system. The "lowest and best" bid will be the primary contractor and the next "lowest and best" bids will be alternate or secondary contractors. The primary contractor may be requested to perform the maintenance and work required for minor upgrades and installation projects with an estimated cost of \$6,000.00 or less. Each project estimated to be over \$6,000.00 will be given to all contractors awarded the specific system to quote as specified. At the discretion of The School Board of Brevard County, Florida the contractor providing the lowest quote meeting specifications will be awarded the project.

5. Section 8.1 of the ITB clarified the meaning of "lowest and best bid" as follows:

SCHOOL BOARD intends to accept the "lowest" and "best" bid(s) submitted to it. The term "lowest" aforesaid shall be interpreted to

mean the lowest "ALL OR NONE" Total Net Bid Price for all required tasks for each system manufacturer. In determining which is the "lowest" and "best" bid received, the SCHOOL BOARD shall also consider and weigh (a) the experience, qualifications and reputation of each BIDDER, and (b) the quality of products and services proposed by each BIDDER.

SCHOOL BOARD reserves the right to:

- a. reject any and all bids received by it,
- b. waive minor informalities in any bid,
- c. accept any bid or part thereof that in its judgment will be for the best interest of the School Board of Brevard County, Florida.

6. The ITB listed the following telephone systems for which bids were to be submitted: Hitachi, IWATSU, NEC, Nortel-BCM, Premier, Prostar, Starplus, and Toshiba. Nortel-BCM and IWATSU are systems that are currently supported by the manufacturer. Xeta Technologies had acquired the distribution rights for Hitachi and was providing support for the Hitachi systems. The School Board considered the following systems to be discontinued systems, which were not currently supported by the manufacturer: NEC, Premier, Prostar, Starplus, and Toshiba, collectively referred to as the discontinued systems.

7. Morse and BBTS were among the bidders which submitted bids in response to the ITB. BBTS bid all systems. Morse bid all systems with the exception of Nortel-BCM. Morse was not an authorized/certified dealer for Nortel-BCM systems. BBTS was

the low bidder for the IWATSU system. Morse was the low bidder for the discontinued systems and Hitachi.

8. In its bid, BBTS stated that it was a factory-authorized dealer for Hitachi, Nortel Networks, and IWATSU Voice Networks. BBTS submitted a letter from IWATSU stating that BBTS was an authorized IWATSU distributor in good standing. Contrary to the ITB specification 2.4.4J, BBTS did not submit a letter from Nortel stating that BBTS was an authorized dealer/service provider for Nortel. Instead, BBTS advised the School Board to contact Jon Gain, a field channel manager for Nortel, for information regarding the Nortel networks. BBTS provided Mr. Gain's mailing and e-mail addresses and his telephone number. BBTS submitted a letter from XETA Technologies, which stated:

Please be advised that XETA Technologies, Inc., acquired the distribution relationships of Hitachi Telecom (USA), Inc. for the HCX5000/HCX5000@ product line, effective May 5, 2006.

Per correspondence dated May 11, 2006, Orlando Business Systems was notified of XETA's assumption of Hitachi's obligations under their Authorized Distributor Agreement, and Orlando Business Systems remains an Authorized Hitachi Distributor.

9. Kathryn Arvonio, a telecommunication specialist employed by the School Board for over four years, helped to evaluate the bids submitted in response to the ITB. Ms. Arvonio

spoke with a field channel manager from Nortel on July 23, 2008. She was advised by the field channel manager that BBTS could service, maintain, and buy parts necessary for all repairs on Nortel-BCM products. Based on the information provided by Nortel, Morse was authorized by Nortel to service and maintain a Nortel system.

10. Prior to making a recommendation for contract award, Ms. Arvonio called personnel at XETA and was advised that BBTS was also an authorized distributor of Hitachi.

11. Morse included with its bid a letter from IWATSU stating that Morse was an authorized dealer for IWATSU. Morse did not include a letter from either Hitachi or XETA that Morse was an authorized dealer for Hitachi or XETA.

12. BBTS stated in its bid that it had trained/certified technicians for the discontinued systems and had maintained the discontinued systems for 20 years. In its bid, BBTS identified Arthur Love as a technician who had been employed with BBTS since 1992. The bid stated that Mr. Love "has certifications on the Hitachi PBX, Iwatsu Adix, Nortel BCM 1648 and many more. He is trained on the Premier NC616, Prostar Plus, and the Starplus Key Systems." Included with the bid were certificates from Hitachi, IWATSU, and NEC.

13. In its bid, BBTS identified Doug Chamberlin, who had been employed by BBTS as a technician since 1994, and stated

that Mr. Chamberlin "has certifications on the Hitachi PBX, Iwatsu Adix, Iwatsu Enterprise CS (IP System), Nortel BCM, Mitel SX2000 PBX and the Mitel 3300 ICP (IP System), Starplus 616, Prostar and the Toshiba DK280 and many more. He is trained on the Premier NC616, and the NEC 16/48." The bid included certificates for Mr. Chamberlin from Hitachi, IWATSU, Toshiba, and Starplus.

14. BBTS identified Troy Gaskins in its bid as being employed, as having 11 years' experience as a technician, and as having "certifications on the Iwatsu Adix, Prostar and the Norstar Key Systems." BBTS stated that Mr. Gaskins was trained on the Iwatsu ZTD, Premier NC616, Starplus, and the NEC 16/48 Key Systems. A certificate from IWATSU was included with the bid.

15. In its bid, BBTS identified Gustavo Beltran as having 12 years' experience in the telecommunications industry. BBTS stated that Mr. Beltran was "certified on the Mitel SX-200ICP (IP PBX)." The bid also stated that Mr. Beltran was trained on the Iwatsu Adix, Prostar, Premier NC616, Starplus, and the NEC 16/48.

16. In its bid, BBTS identified Kevin Krise as having over 28 years' experience in the telecommunications industry. BBTS stated that Mr. Krise was "certified on the Mitel SX-2000, Mitel SX-3300 ICP (IP PBX), Siemens, Telrad, Macro Voice and many

others" and that he was "trained on the Iwatsu Adix, Toshiba DK280, Iwatsu ZTD, Prostar, Premier NC616, Starplus and NEC 16/48 Key Systems."

17. Morse indicated in its bid that Kevin Joyce, Dale Koehler, and Jeff Pitt had successfully completed technical training through IWATSU. Morse stated in its bid that Gary Gage had in-depth knowledge of the Toshiba telephone system. Morse did not establish in its bid that it had two trained technicians with five years' or more experience in maintaining Hitachi, Prostar, Premier, Starplus, Toshiba, or NEC systems.

18. The School Board has eight to ten portable classrooms that have Siemon structured cabling. The remainder of the structured cabling used by the School Board is manufactured by Molex. Molex is the standard for the School Board, and, when the portable classrooms with Siemon structured cabling are moved, the structured cabling will be switched to the Molex brand.

19. The ITB required the bidders to be certified to provide support for existing structured cabling system (SCS) infrastructure and to provide warranty coverage on the SCS for systems under warranty. Clearly based on the ITB, the contractor awarded the contract was to be able to and expected to provide work on the SCS infrastructure when warranty work was involved. Ms. Arvonio interpreted the ITB to mean that the

bidder awarded the contract was not to work on the structured cabling, but was to be able to test the SCS and notify the School Board if there was a problem. She also was of the opinion that the ITB did not require the bidders to be certified by Molex or Siemon. According to Ms. Arvonio, if there was a problem with the structured cabling, the manufacturer would be contacted if warranty work was involved, and, if the system was not under warranty, the work would be done by separate contract. No explanation was given why the language requiring certification was included in the bid specifications.

20. In response to the ITB requirement that the contractor be certified to provide support for the School Board's existing SCS, BBTS stated in its bid:

BBTS has been a structured cabling system contractor for 20 years and currently holds installer certifications for the following manufacturers. See attached Installer Certifications.

- a. Molex
- b. Hubbel
- c. Siemons

BBTS is not a "Certified Installer" through Siemons, but we do maintain current individual designer/installer certifications for Siemons. BBTS commits to providing the manufacturer's warranty per the manufacturer's specifications.

BBTS included a certificate with its bid, certifying that BBTS was a certified installer for Molex. Also included with the bid

were certificates for four individuals showing that they were certified Molex installers. As part of its bid, BBTS submitted certificates showing that one employee of BBTS had "satisfactorily completed the recertification requirements as a Siemon Cabling System Authorized Designer/Installer" and that another BBTS employee had "completed the required training and satisfactorily met all requirements to become a Siemon Cabling System® Authorized Installer." Based on BBTS's response, BBTS had employees who could perform warranty work on the SCS, if required to do so.

21. Morse included with its bid a certificate from Molex certifying that Morse was a Molex-certified installer. Morse also included with its bid a certificate from the Siemon Company that Morse was a certified installer for the design, installation, and administration of Siemon Cabling Systems.

22. Section 3.1.3 of the ITB required the bidders to include a catastrophic failure plan with each bid. The plan was to "provide interim service for totally replacing any system(s) to be maintained if a catastrophe should occur during any applicable maintenance period." BBTS provided a catastrophic failure plan in its bid, which stated, in part:

In the event of a Catastrophic Failure, Brevard Business Telephone Systems, Inc. (BBTS), and Orlando Business Telephone Systems, Inc. (OBTS) are in a position to assist the Brevard County Public Schools in

its telecommunications requirements. We currently maintain a system capable of 100 stations and 24 trunks that could be installed in the event of a catastrophic failure.

* * *

Brevard County Public Schools would identify the sites that are priorities for continued operation of their telephone systems. BBTS would work with Bell South in restoring service to these facilities.

All supplies necessary for replacement would be moved inland to OBTS should the need arise in order to maintain the serviceability of the parts.

23. Orlando Business Telephone Systems, Inc. (Orlando Business Systems), and BBTS are separate business entities. Orlando Business Systems did not submit a bid in response to the ITB, and the bid submitted by BBTS was not a joint bid of BBTS and Orlando Business Systems. In its bid, BBTS identified Orlando Telephone Company/Orlando Business Systems as an affiliate of BBTS. In her evaluation of BBTS's bid, Ms. Arvonio did not consider Orlando Business Systems as part of the bid and made her evaluation on the services which were to be provided by BBTS.

24. BBTS is the current contractor providing telephone maintenance services to the School Board. Based on Ms. Arvonio's previous experience with BBTS, she was aware that

BBTS could maintain a telephone system consisting of 100 stations and 24 trunks during a catastrophic event.

25. On July 31, 2008, the School Board posted an intended award of all systems to BBTS as the primary contractor and an intended award of the IWATSU system to Morse as the secondary contractor. BBTS was the lowest, conforming bidder for all systems.

26. Ms. Arvonio received an e-mail dated August 19, 2008, from Jason Harrison from Nortel. The e-mail concerned the relationship between Nortel and BBTS and stated:

Brevard Business Telephone Systems, Inc. is a contracted Nortel Authorized Reseller. They have a long standing relationship with Nortel in [the] Brevard County, FL area with a dedicated Nortel Field and Inside Support Team.

When the BCM was launched BBTS was one of the first reseller's to get fully accredited. As the platform has evolved, Nortel has modified the Accreditation requirements. BBTS is in the process of completing the latest requirements and will be finished with them by August 22nd 2008. If service is required before the completion of the exams, Nortel Support Services may be implemented by BBTS. Nortel Support Services are available to BBTS as part of their contract with Nortel.

27. After the intended award was posted, staff from the School Board met with personnel from Morse to discuss Morse's protest to the intended award. Personnel from Morse were asked if Morse had trained technicians for any of the discontinued

systems. They responded that Morse had trained technicians for Hitachi, but did not provide any support for their claim. At the meeting, Steven Koller, a project manager for Morse, indicated that Morse did have trained technicians for some of the discontinued systems. He did not identify the systems nor did he identify the technicians.

28. At the final hearing, Mr. Koller testified that he had more than five years' experience with systems manufactured by Toshiba, NEC, and Hitachi. He could not identify other technicians at Morse who had more than five years' experience with the discontinued systems and deferred to Michael Costello, the owner of Morse, for that information.

29. At the final hearing, Mr. Costello, who controlled all aspects of the technician side of Morse, testified that he had over five years' experience with some of the discontinued systems and that he had two or more technicians with over five years' experience with the discontinued systems with the exception of Hitachi. Mr. Costello further testified that he could not identify the technicians without looking at their resumes. No resumes were produced at the final hearing. Finally, Mr. Costello said that Gary Gage, a long-time employee of Morse, had experience with the discontinued systems. Mr. Costello's testimony is not credible. As the person in charge of the technician side of Morse, he had very little

knowledge of exactly what experience his staff had in working with the discontinued systems at issue. If he had staff with the requisite experience, it would have been very simple for him to submit resumes of those employees in its bid or to attach certificates of training as did BBTS. Morse chose not to do that. Additionally, after the intended award was posted, Morse was given an opportunity at meetings with the School Board to identify personnel with the experience with the discontinued systems, and it failed to take advantage of that opportunity.

30. Petitioner has argued that the School Board and Ms. Arvonio, in particular, were biased toward BBTS. Ms. Arvonio had worked for BBTS for seven years prior to becoming employed by the School Board. No evidence established that either Ms. Arvonio or the School Board was biased in favor of Morse. Ms. Arvonio called companies listed by other bidders to verify the bidders' credentials. Within the last two years, the School Board has awarded a bid to Morse for structured cabling for over \$200,000.00. The School Board staff gave Morse an opportunity after the bids were opened to provide information which would establish that Morse had sufficient trained staff to service the discontinued systems.

CONCLUSIONS OF LAW

31. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat. (2008).

32. Subsection 120.57(3)(f), Florida Statutes (2008), provides:

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.

33. A decision is arbitrary if it is not supported by fact or logic. A decision is capricious if it is taken without thought or reason. In determining whether an agency has acted arbitrarily or capriciously, consideration should be given to the following factors: (1) has the agency considered all relevant factors; (2) has the agency given actual, good faith consideration to those factors; and (3) has the agency used reason rather than whim to progress from consideration of those factors to its final decision. Adam Smith Enterprises, Inc. v. State Department of Environmental Regulation, 553 So. 2d 1260,

1273 (Fla. 1st DCA 1989). A decision is neither arbitrary nor capricious if the decision is justifiable under any analysis that a reasonable person would use to reach a decision of similar importance. Dravco Basic Materials Co., Inc. v. State Department of Transportation, 602 So. 2d 632, 634 n.3 (Fla. 2nd DCA 1992).

34. An act is contrary to competition if it offends or subverts the fundamental policies underlying competitive procurement. In Wester v. Belote, 138 So. 721, 723-24 (Fla. 1931), the court described the object and purpose of such policies:

[T]he object and purpose of [the policies underlying competitive procurement] 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 for the [governmental agency] at the lowest possible expense, and to afford an equal advantage to all desiring to do business with the [governmental agency] by affording an opportunity for an exact comparison of bids.

35. The ITB provided that the School Board could waive any "minor informalities in any bid." A variance from the bid specifications is considered minor if it does not give a bidder a competitive advantage over another bidder. See Intercontinental Properties, Inc. v. Department of Health and

Rehabilitative Services, 606 So. 2d 380 (Fla. 3d DCA 1992);
Trobabest Foods, Inc. v. Department of General Services, 493 So.
2d 50 (Fla. 1st DCA 1986); and Robinson Electrical Co., Inc. v.
Dade Co., 417 So. 2d 1032 (Fla. 3d DCA 1982).

36. Morse has protested the intended contract award on the following grounds:

1. The criteria used to evaluate Bidder Qualifications were misinterpreted by the evaluator.
2. The requirement for certified technicians on discontinued systems was misapplied.
3. The Brevard Business Telephone Systems, Inc. bid is noncompliant with section 2.4.1. The last sentence in the section reads: "Subcontracting of Telephone System Services will not be allowed."
4. The Brevard Business Telephone Systems, Inc. bid is noncompliant with section 2.4.4 which specifically states: "In addition, the successful bidder(s) must be certified to provide support for existing structured cabling system (SCS) infrastructure. If the SCS has an existing warranty, the successful bidder(s) shall provide warranty coverage on the SCS as defined by the manufacturer. The School Board has existing SCS warranties from either Molex or Siemens (misspell Siemon) certified solutions."
5. Brevard Business Telephone Systems, Inc. willingly provided false and misleading information when they addressed the lack of Siemon Certification by special reference to a written commitment.
6. Section 2.4.5 makes reference to a questionnaire the Contractor (bidder) must

complete. Specific reference to the use of the questionnaire indicates "the enclosed questionnaire will be used to evaluate capabilities to perform the work during the contract period." Brevard Business Telephone Systems, Inc. is noncompliant with section 2.4.5.

7. Section 2.4.4 requires bidders to be factory authorized dealers of the systems bid. Subsection J makes specific reference to and requires a "Letter from the manufacturer stating that you are an authorized dealer/service provider for system bid." Brevard Business Telephone Systems, Inc. is noncompliant with section 2.4.4.

37. Morse has failed to establish that BBTS violated Section 2.4.1 of the ITB by intending to subcontract part of the contract to Orlando Business Systems. BBTS's bid was evaluated without consideration of references to Orlando Business Systems.

38. Morse contends that BBTS is not in compliance with Section 2.4.4 of the ITB because BBTS did not submit a letter from Nortel, but submitted the name, address, and telephone number of a person employed by Nortel who could provide the requested information. Ms. Arvonio contacted Nortel and was given information concerning BBTS's ability to service and maintain Nortel equipment. The submission of contact information rather than a letter is a minor informality which can be waived. See Bobick v. Florida Keys Aqueduct Authority, 648 So. 2d 1263 (Fla. 3d DCA 1995).

39. The information supplied by Nortel was sufficient to establish that BBTS was authorized by Nortel to service and maintain Nortel equipment. Thus, BBTS was responsive to the ITB regarding its relationship to Nortel.

40. The letter from XETA regarding certification to service Hitachi equipment referenced Orlando Business Systems rather than BBTS. However, Ms. Arvonio was able to verify that BBTS was also authorized to service and maintain Hitachi equipment by calling XETA. The failure to include a letter concerning Hitachi certification is a minor informality that can be waived.

41. Morse contends that BBTS submitted false and misleading information concerning its ability to service Siemon equipment. BBTS did not submit false or misleading information concerning its ability to service Siemon equipment. BBTS did not claim to be certified by Siemon, but it did submit information that it had two employees who were certified installers for Siemon equipment. No evidence was presented that if work was performed by these two employees on Siemon equipment that it would void any warranty by Siemon.

42. The ITB did require that the bidders be certified by Molex and Siemon and to be able to perform warranty work on either system. However, the ITB did not accurately reflect what the School Board intended regarding the SCS. The School Board

was going to rely on the manufacturers to provide the warranty work on the structured cabling. If the contractor found a problem with the structured cabling, the School Board wanted the contractor to contact the School Board and arrangements would be made through the manufacturer to have the work done. If the work was not covered by a warranty, the School Board would have the work done through a separate contractor than the one at issue. The School Board waived the requirement that the contractor be certified by Molex and Siemon. Based on the School Board's intentions not to contract for work on the SCS through the contract at issue, the failure to have Siemon certification was a minor irregularity, which could be waived.

43. The ITB required that the winning bidder have two technicians with five years' or more experience in maintaining the discontinued systems. BBTS provided sufficient information with its bid to establish that it met this requirement. Morse did not establish that it met this requirement at the time it submitted its bid, when it was given an opportunity to do so at meetings with the School Board staff after the bids were opened, or at the final hearing. Thus, Morse was not responsive to the ITB regarding the discontinued systems.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered dismissing the bid protest filed by Morse.

DONE AND ENTERED this 10th day of February, 2009, in Tallahassee, Leon County, Florida.

Susan B. Harrell

SUSAN B. HARRELL
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 10th day of February, 2009.

ENDNOTE

^{1/} The ITB referred to the cabling system as "Siemens." In their Proposed Recommended Orders, the parties have referred to the cabling system as "Siemon." For the purposes of this Recommended Order, they are considered to be the same cabling system.

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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.