

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LABORATORY CORPORATION OF)
AMERICA,)
)
Petitioner,)
) Case No. 12-3170BID
vs.)
)
DEPARTMENT OF HEALTH,)
)
Respondent,)
)
and)
)
QUEST DIAGNOSTICS CLINICAL)
LABORATORIES, INC.,)
)
Intervenor.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on October 24, 2012, in Tallahassee, Florida, before Lawrence P. Stevenson, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Robert R. Hearn, Esquire
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For Respondent: Janine Bamping Myrick, Esquire
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For Intervenor: Merle M. Delancey, Esquire
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STATEMENT OF THE ISSUE

At issue in this proceeding is whether Respondent, Department of Health ("Department"), acted contrary to the agency's governing statutes, rules or policies, or the bid specifications in its proposed decision to award the contract for Invitation to Bid No. DOH 12-007 (the "ITB") to Intervenor Quest Diagnostics Clinical Laboratories, Inc. ("Quest").

PRELIMINARY STATEMENT

On September 4, 2012, the Department posted its intended award of the contract pursuant to the ITB for the provision of clinical laboratory testing services for the Department and county health departments. The notice of intent to award reflected that the winning bidder was Quest. Laboratory Corporation of America, Inc. ("LabCorp") submitted the second-lowest bid. LabCorp filed a notice of protest on September 7, 2012, and filed a formal written protest on September 17, 2012. On September 24, 2012, Quest filed a Petition for Leave to Intervene with the Department. The case was forwarded to the

Division of Administrative Hearings ("DOAH") on September 26, 2012 for assignment of an administrative law judge and the conduct of a formal hearing. By orders dated September 27, 2012, the hearing was scheduled to be held on October 24 and 25, 2012 and Quest's petition for leave to intervene was granted.

On October 1, 2012, LabCorp filed an unopposed motion for leave to file an amended petition, which was granted by order dated October 2, 2012. On October 23, 2012, LabCorp filed an unopposed motion for leave to file a second amended petition, which was granted by order dated October 23, 2012. The second amended petition raised the single issue of whether Quest's bid should be deemed non-responsive for failure to provide the names of personnel in the staffing plan it was required to include in its bid. The final hearing convened on October 24, 2012, and concluded on that date.

At the outset of the final hearing, the parties stipulated to the admission of Joint Exhibits 1 through 10, which were admitted into evidence. LabCorp presented the testimony of Renee Gregory, the Department's assistant director of purchasing who coordinated the bid process, and Regina Taylor, the administrative service director of the Department's Bureau of Public Health Laboratories. LabCorp offered no additional exhibits into evidence. The Department and Quest called no witnesses and offered no additional exhibits into evidence.

A transcript of the proceeding was filed at DOAH on November 5, 2012. LabCorp and the Department timely filed Proposed Recommended Orders on November 15, 2012. Quest did not file a proposed recommended order.

All references to the Florida Statutes are to the 2012 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 July 10, 2012, the Department issued the ITB. The ITB solicited bids for a three-year contract for the provision of clinical laboratory services to the Department and county health departments. The ITB estimated that the winning bidder will perform approximately 861,000 tests annually, which will produce sales of \$9.3 million per year.

2. Bids were received from four vendors: LabCorp, Quest, Florida Reference Laboratory, and Ecolab Group Co. The bids were opened on August 17, 2012. The Department found all four bids responsive.

3. The ITB specified that the Department would make a single award based on the grand total of pricing for specified "core tests" for the initial three-year term and for a contingent three-year renewal term. Quest was the lowest

bidder, and LabCorp was the second lowest bidder. The sum of Quest's core test pricing for the original three-year term and the contingent three-year renewal term for the relevant laboratory services was \$29,555,864.96. The sum of LabCorp's core test pricing for the original three-year term and the contingent three-year renewal term was \$36,059,437.52.

4. Section 3.2 of the ITB provided definitions pertinent to the bid, including the following:

Mandatory Requirements or Minimum Requirements -- means that the Department has established certain requirements with respect to proposals to be submitted by Respondent.^{1/} The use of shall, must, or will (except to indicate simple futurity) in this solicitation indicates compliance is mandatory. Failure to meet mandatory requirements will cause rejection of the bid or termination of the Contract/Purchase Order.

Minor Irregularity -- used in the context of this solicitation and prospective Contract/Purchase Order, indicates a variation from the proposal terms and conditions which does not affect the price of the response, or give the respondent an advantage or benefit not enjoyed by other Bidders, or does not adversely impact the interests of the Department.^{2/}

5. Section 4.15 of the ITB, titled "Responsive and Responsible," provided as follows:

The Bidder shall complete and submit the following mandatory information or documentation as a part of the Bid Package. Any response which does not contain the

information below shall be deemed non-responsive.

* Licensures-- Centers for Medicare & Medicaid Services, Clinical Laboratory Improvement Amendments, Certificate of Compliance and State of Florida Agency for Health Care Administration Clinical Laboratory License

* Staffing Plan Attachment I
Bid Price Pages-- Attachment III Initial Term & Renewal term (including balance of line minimum volume discount and phlebotomy services

* Required Certifications, Attachment VI

6. The ITB provided no further clarification regarding the contents of the "Staffing Plan" beyond directing the bidders to "Attachment I" to the ITB. Attachment I was titled "Specifications of Clinical Laboratory Services" and contained six pages of additional specifications regarding services included in the bidders' prices, contractor liability, minimum tasks to be completed by the winning bidder, deliverables, and other requirements.

7. Attachment I included the following specifications regarding staffing:

Staffing Levels

Each prospective offeror shall include its proposed staffing for technical, administrative, and clerical support including but not limited to a Contract Representative, Quality Control Manager, Staff Pathologist, Project Manager, Technical Support Manager, Technical Support Staff and statewide field representatives.
The bidder shall provide hourly rate

pricing, as an option to the contract, for an on-site Phlebotomist. The successful offeror shall maintain an adequate administrative organizational structure and support staff sufficient to discharge its contractual responsibilities. In the event the Department determines that the successful bidder's staffing levels do not conform to those promised in the proposal, it shall advise the successful offeror in writing and the successful offeror shall have 30 days to remedy the identified staffing deficiencies.

Professional Qualification

The successful bidder will be responsible for the staff affiliated with this proposal, insuring that they have the education, any professional licensure or certification which may be required by law, and experience necessary to carry out their duties.

Staffing Changes

The successful bidder shall staff the project with key personnel identified in the bidder's proposal, which are considered by the Department to be essential to this project. The bidder shall keep the Department notified of key staffing changes that directly impact services related to this solicitation. (Textual emphasis added.)

8. The underscored language required the prospective offerer to include "proposed staffing" and required that the winning bidder staff the project with "key personnel identified in the bidder's proposal."

9. The issue is whether the "Staffing Levels" and "Staffing Changes" provisions quoted above required the bidder

to name the specific persons who would fill the "proposed staffing" and "key personnel" positions, or whether it would suffice for a bidder to indicate that it would fill those positions with qualified persons to be named after the bid is awarded.

10. The term "key personnel" is undefined by the ITB. It is unclear from the specifications whether the "key personnel" referenced in "Staffing Changes" is synonymous with the "proposed staffing" referenced in "Staffing Levels." LabCorp interpreted "key personnel" to mean those persons named in the "Staffing Levels" provision: Contract Representative, Quality Control Manager, Staff Pathologist, Project Manager, Technical Support Manager, Technical Support Staff, and statewide field representatives.

11. In its staffing plan, LabCorp provided the names of persons corresponding to each of the "Staffing Levels" positions named in the ITB, including a list of 69 field representatives and 19 sales support persons.

12. The staffing plan submitted by Quest stated as follows:

Quest Diagnostics has more than adequate staffing and capacity to meet the needs of the Florida Department of Health. Quest Diagnostics employs a Customer Solutions Manager (contract representative), Quality Assurance Manager (quality control manager), Medical Director and Senior Staff

Pathologists, Project Manager, Specimen Processing Manager (technical support manager), Lab Manager (technical support staff), and Account Managers (statewide field representatives).

Job descriptions for these positions are attached.

13. Following this statement was a series of detailed job descriptions setting forth the qualifications, experience requirements and responsibilities for each of the named positions. Thus, Quest provided the Department with a set of job qualifications corresponding to the "Staffing Levels" provision of Attachment I to the ITB, but did not provide the name of a specific person to fill any of the positions. The Department concluded that Quest had sufficiently "identified" its key personnel.

14. LabCorp did not provide the detailed job descriptions that Quest provided. For example, Sharon Kaplan is listed as "Project Manager" without further description of her qualifications, experience or duties.

15. LabCorp contends that the ITB required the vendors to name specific persons who would fill those positions. The Department counters that the requirement to "identify" key personnel does not necessarily mean that the bidder must name the persons involved, and that Quest satisfied the ITB's requirement by "identifying" the positions it intended to fill

and the qualifications for the positions named in the "Staffing Levels" section of Attachment I.

16. Regina Taylor, the administrative service director of the Department's Bureau of Public Health Laboratories, performed the "responsive and responsible" review of the bids.^{3/} Ms. Taylor testified that the ITB "left the staffing plan a bit open-ended and left it up to the vendor as to how they would present it to us." The Department found both bids responsive though Quest and LabCorp each took a different approach to describing its staffing plan.

17. Ms. Taylor stated that Quest would be able to name its personnel during the implementation process. She noted that LabCorp's bid provided the names of personnel but offered no detailed information regarding the qualifications or responsibilities of those persons beyond their job titles, whereas Quest provided detailed job descriptions without naming the persons who would fill the jobs. Ms. Taylor was not overly concerned about either company's ability to satisfy the requirements of the ITB. She stated, "Both Quest and LabCorp are national companies, so I'm sure that they have the adequate staff."

18. The "Professional Qualification" section of Attachment I provides that the successful bidder is responsible for insuring that staff is properly qualified and certified. The

"Staffing Levels" section allows the Department to review the successful bidder's staffing levels and require the bidder to remedy any deficiencies within 30 days of the Department's written notice.

19. Ms. Taylor testified that the staffing provision section of the ITB was intended to ensure that the winning bidder had within its organization certain critical positions. The Department relied on its own experience in operating the state public health laboratory to identify the staffing requirements of the ITB.

20. LabCorp points out that Quest was the only bidder that failed to submit a list of names of key personnel. Like LabCorp, Florida Reference Laboratory, and Ecolab Group Co. submitted the names of their key personnel.

21. LabCorp also points out that Ms. Taylor's initial reaction to Quest's staffing plan submission was to call it "lame." Ms. Taylor's pronouncement on the quality of the Quest staffing plan was not a part of her review or of the Department's decision. Whether or not it she found it "lame," Ms. Taylor concluded that Quest's staffing plan was responsive to the bid criteria.

22. The ITB requires the bidder to "identify" the "key personnel" with whom it proposes to staff the project. The ITB also states that the Department considers these key personnel to

be "essential to this project." However, the ITB does not expressly define the term "key personnel." LabCorp named persons to fill the positions named in the Staffing Levels provision of Attachment I, which it reasonably took to be synonymous with "key personnel" referenced in the Staffing Changes provision of Attachment I. Via its staffing plan, Quest "identified" the key personnel without naming them.

23. Given the lack of precision in these "open-ended" ITB specifications, both LabCorp and Quest made reasonable responses to the staffing requirements. Each chose a different way of "identifying" key personnel. Neither could be found to have clearly failed to comply with the bid specifications. The Department acted reasonably in finding both bids responsive.

24. If LabCorp were correct that Quest's bid response did not comply with the staffing specifications, the question would arise as to whether Quest's deviation from the ITB specifications was a "minor irregularity" that could be waived by the Department. As noted above, the ITB defines "minor irregularity" as a variation from the bid specifications that does not affect the bidder's price or give the bidder an advantage or benefit not enjoyed by other bidders, or does not adversely impact the interests of the Department.

25. LabCorp has not identified any adverse impact on the Department that Quest's failure to name its proposed staff or

key personnel would have. Indeed, LabCorp is hard pressed to state what advantage the Department gains by having the vendor name 69 field representatives and 19 sales support persons in its bid. The names are likely meaningless to the Department. "Sharon Kaplan, Project Manager" provides no more useful information than does Quest's description of the education, knowledge, and experience it requires of a project manager. The Department's concern was vendor capability to adequately staff the project, and the Department reasonably concluded that both vendors' bids demonstrated that capability.

26. The basis for award of this bid was the lowest price. There was no scored evaluation of the ITB responses, no ranking of the staffing plans, and no effort contemplated by the Department to investigate the qualifications of the named personnel. The staffing plans submitted by LabCorp and Quest were of equal value to the Department as an indication of the vendors' understanding of the bid criteria and ability to fill the necessary positions. The ITB anticipates that the Department will deal with any staffing problems after the contract is awarded and the successful bidder begins to implement its program.

27. LabCorp fails to identify any price advantage that Quest would gain by not naming the persons who would fill the key personnel positions, and none is apparent. Whether or not

the personnel are named in the bid, the key positions would have to be filled at a cost that would presumably be roughly the same for each vendor. Again, the ITB gives the Department the power to raise staffing questions with the successful bidder and to require that problems be remedied within 30 days of written notice.

28. LabCorp contends that Quest's failure to name key personnel gave it an advantage not enjoyed by other bidders. LabCorp argues that it went to the time and expense of preparing a detailed staffing plan, whereas Quest cut corners by submitting a set of generic job descriptions. Quest's method of setting forth its staffing plan may or may not have made its bid preparation easier, but did nothing to improve its competitive position in the bidding process. Quest's commitment to fill the required staffing positions was equal to LabCorp's.

29. LabCorp points out that its own staffing plan included persons who are already on its payroll. LabCorp did not offer an estimate as to the likelihood that all of the approximately 102 persons named in its staffing plan would still be on its payroll by the time the company commenced performing the contract. LabCorp has no way of guaranteeing that all of those persons will be present to perform on the contract. Under the "Staffing Changes" provision, LabCorp would be allowed to substitute other qualified LabCorp employees for the named

persons should the need arise. The virtual certainty of employee turnover supports the Department's position that the ITB did not require that bidders undertake the task of naming the employees who would fill the positions set forth in the "Staffing Levels" section of Attachment I.

30. LabCorp argues that Quest's staffing plan gives it the opportunity to delay or avoid altogether hiring the staff necessary to perform the contract to the Department's satisfaction. As noted above, the inclusion of employee names in the bid could not guarantee that the named employees would still be working for LabCorp after the bid award. Quest's commitment to staff the project was no less than LabCorp's. LabCorp's argument suggests that Quest's bid should be rejected because Quest may later choose to breach the contract, which specifically requires the vendor to provide adequate qualified staff. In any procurement, there is always a remote potential that the winning vendor will breach or default. The Department's contract provides remedies for such defaults.

31. In summary, it is found that the bids of both LabCorp and Quest met the requirements of the ITB as to staffing plans. Even if LabCorp's narrow interpretation of the ITB's requirements were correct, Quest's non-conforming response would constitute a minor irregularity.

CONCLUSIONS OF LAW

32. 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.

33. 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. . . .

34. Pursuant to subsection 120.57(3)(f), Florida Statutes, the burden of proof rests with LabCorp as the party opposing the proposed agency action to prove "a ground for invalidating the award." See State Contracting and Eng'g Corp. v. Dep't of Transp., 709 So. 2d 607, 609 (Fla. 1st DCA 1998). LabCorp must prove by a preponderance of the evidence that the Department's proposed award of the contract to Quest is arbitrary, capricious, or beyond the scope of the Department's discretion as a state agency. Dep't of Transp. v. Groves-Watkins

Constructors, 530 So. 2d 912, 913-914 (Fla. 1988); Dep't of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778, 787 (Fla. 1st DCA 1981). See also § 120.57(1)(j), Fla. Stat.

35. 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. Dep't of HRS, 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 Eng'g Corp., 709 So. 2d at 609.

36. 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, LabCorp also must establish that the Department's violation was either clearly erroneous, contrary to competition, arbitrary, or capricious. § 120.57(3)(f), Fla. Stat.

37. 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. Dep't of Health, 890 So. 2d 1165, 1166 (Fla. 1st DCA 2004) (citations omitted).

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

39. 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. Dep't of Env'tl. Reg., 365 So. 2d 759, 763 (Fla. 1st DCA 1978).

40. 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 Enter. v. Dep't of Env'tl. Reg., 553 So. 2d 1260, 1273 (Fla. 1st DCA 1989).

41. 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. Dep't of Transp., 602 So. 2d 632, n. 3 (Fla. 2d DCA 1992).

42. LabCorp failed to meet its burden of proof. The evidence presented at the hearing did not establish that the Department's proposed award of the contract for Invitation to Bid No. DOH 12-007 to Quest 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 Quest'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 issued a price-driven ITB containing four items that a bidder must provide in order to be considered "responsive and responsible." Among these items was a staffing plan with "proposed staffing for technical, administrative, and clerical support" positions including a list of specific positions. The successful bidder would be responsible for ensuring that its employees have the education and licensure required by law, and the experience necessary to carry out their duties. The ITB required the successful bidder to staff the project "with key personnel identified in the bidder's proposal."

45. LabCorp read the term "identified" as requiring the bidders to name each employee in a "key personnel" position. Quest read the term as requiring the vendor to identify and describe the duties, qualifications and experience it would require of persons in "key personnel" positions. Both readings were reasonable interpretations of the specifications, which

were not a model of clarity. In recognition of the "open-ended" nature of the staffing specifications, the Department accepted the bids of both vendors as responsive to the ITB. This decision was not contrary to the bid specifications, and was not clearly erroneous, contrary to competition, arbitrary, or capricious.

46. Even if LabCorp's reading of the staffing specifications were the only permissible interpretation, the Department would have been within its discretion to waive Quest's non-conforming response as a minor irregularity. Quest's staffing plan had no demonstrable effect on its price bid. The staffing plan did not adversely impact the interests of the Department. No perceptible competitive advantage accrued to Quest by virtue of its failure to name the employees in its proposal, and no real advantage was conveyed to the Department by LabCorp's inclusion of employee names. The Department sought assurances from the vendors that they were capable of adequately staffing the project with qualified employees. Both LabCorp and Quest provided adequate assurances in their bids.

RECOMMENDATION

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

RECOMMENDED that the Department of Health enter a final order dismissing Laboratory Corporation of America, Inc.'s

formal written protest and awarding the contract for Invitation to Bid No. DOH 12-007 to Quest Diagnostics Clinical Laboratories, Inc.

DONE AND ENTERED this 10th day of December, 2012, in Tallahassee, Leon County, Florida.

Lawrence P. Stevenson

LAWRENCE P. STEVENSON
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 10th day of December, 2012.

ENDNOTES

^{1/} "Respondent" was defined as a term interchangeable with "proposer" and "vendor," i.e., "the entity that submits materials to the Department in accordance with these instructions, or other entity responding to this solicitation."

^{2/} Section 1.0 of the ITB incorporated by reference Department of Management Services Form PUR 1001, "General Instructions to Respondents." Paragraph 16 of PUR 1001, "Minor Irregularities/Right to Reject," provided as follows, in relevant part:

The Buyer reserves the right to accept or reject any and all bids, or separate portions thereof, and to waive any minor irregularity, technicality, or omission if

the Buyer determines that doing so will serve the State's best interests. . . .

In Section 6.8 of the ITB, the Department expressly reserves the right to waive any "minor irregularity, technicality, or omission if the Department determines that doing so will serve the State's best interests."

^{3/} Ms. Taylor's review came after another Department employee, Renee Gregory, reviewed the bids to be sure the bidders had enclosed all items required by Section 4.15 of the ITB. Ms. Gregory did not engage in a qualitative review of those items, leaving that for Ms. Taylor.

^{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.