

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TRIMBLE NAVIGATION LIMITED)
CORP.,)
)
Petitioner,)
)
vs.) Case No. 12-3862BID
)
DEPARTMENT OF TRANSPORTATION,)
)
Respondent,)
)
and)
)
LEICA GEOSYSTEMS, INC.,)
)
Intervenor.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on March 18 and 19, 2013, in Tallahassee, Florida, before Suzanne Van Wyk, duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

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STATEMENT OF THE ISSUE

The issue in this case is whether Respondent's intended award of a contract to Intervenor pursuant to Request for Proposals No. RFP-DOT-12/13-9003-JP is contrary to Respondent's governing statutes, Respondent's rules and policies, or the specifications of the Request for Proposals.

PRELIMINARY STATEMENT

On August 2, 2012, Respondent, the Department of Transportation (the Department or DOT), issued a Request for Proposals, Solicitation Number RFP-DOT-12/13-9003-JP, entitled "Statewide GPS Station Network Infrastructure Upgrade" (the RFP). On August 9, 2012, the Department issued Addendum 1 to the RFP, which clarified the primary objective of the RFP and replaced the Price Proposal Form in its entirety. On August 14, 2012, the Department issued Addendum 2 to the RFP, which listed technical questions from prospective vendors, the Department's answers thereto, and amendments and modifications made to the RFP in response to prospective vendor questions.

Trimble Navigation Limited Corp. (Trimble or Petitioner) and Leica Geosystems, Inc. (Leica or Intervenor), both timely submitted proposals in response to the RFP.

As a result of the process of evaluating and scoring the proposals, the Department ranked Leica first and Trimble second. On September 6, 2012, the Department posted its intent to award the contract to Leica.

On September 11, 2012, Trimble filed its notice of intent to protest the award of the contract to Leica, and on September 21, 2012, filed its formal written protest. On November 28, 2012, the Department forwarded Trimble's Formal Written Petition of Protest to the Division of Administrative Hearings for assignment of an Administrative Law Judge to conduct the final hearing. The Department's transmittal letter indicated the parties had conferred and agreed to a waiver of the 30-day statutory timeframe in which to conduct the hearing after receipt of the petition. The parties requested the hearing be set after January 28, 2013.

On January 18, 2013, Leica filed its Petition for Leave to Intervene, which was granted by Order dated January 23, 2013.

The case was set for hearing on February 12 and 13, 2013, but was continued due to a severe winter storm which prevented Petitioner's Qualified Representative from traveling to Tallahassee in time for the scheduled final hearing. The hearing was re-scheduled for March 18 and 19, 2013, and commenced as scheduled.

At the final hearing, the parties submitted Joint Exhibits numbered 1 through 15, which were admitted into evidence. Petitioner's Exhibits P-1, P-2, and P-3 were also admitted into evidence, over objection.

The parties presented the testimony of John Krause, DOT State Surveyor; and Joyce Plummer, DOT Procurement Agent; as well as the testimony of the three members of the RFP Technical Evaluation Committee: Alex Parnes, DOT District 7 Locations Surveyor; Horace Roberts, DOT Location, Survey, and Right-of-Way Mapping Surveyor; and Scott Harris, former DOT Statewide Global Positioning System Manager. Petitioner also presented the testimony of Thomas Mackie, Global Sales Manager for Trimble's Infrastructure Division. Intervenor presented the testimony of Lee Meeks, Leica's Director of Sales for Global Navigation Satellite System Reference Networks for the NAFTA Region.

The three-volume Transcript was filed on April 3, 2013. The parties timely filed their Proposed Recommended Orders, which have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. The Department operates the Florida Permanent Reference Network (FPRN), which is a system of approximately 65 permanently fixed Global Positioning System (GPS) reference stations located throughout the state, known as Continuously Operating Reference

Stations (CORS), and a number of rover sensors assigned to each DOT district. GPS data from the CORS is accessed and manipulated by DOT district employees and consultants through rover sensors, three of which are assigned to each district. Rovers both track and record GPS data, as well as communicate with the CORS.

2. DOT surveyors, engineers, and consultants are one group of FPRN end-users. The FPRN is utilized by other state and federal agencies, such as the Department of Environmental Protection and the Army Corps of Engineers, as well as precision agricultural groups and heavy machinery control groups.

3. The FPRN relies upon three main components: the antennae through which GPS data is received; the sensors which track and record GPS data; and the software that allows access to, and manipulation of, the GPS data by end-users.

4. The FPRN was developed in 1998 to work with the United States Department of Defense (DOD) GPS system developed in the mid-1970s. The DOD GPS system is a constellation of 24 satellites in 12,000-mile orbits around Earth. Subsequent to the development of the DOD GPS system, several other countries have developed and/or deployed new constellations of GPS systems. Russia has deployed GLONASS; the European Union has proposed the Galileo constellation; the Chinese are deploying a system known as Compass; and the Japanese have deployed a system called QZSS.

Together with the DOD GPS system, these constellations are known as the Global Navigation Satellite System (GNSS).

5. FPRN sensors do not track the new constellations of satellites and, hence, FPRN users do not benefit from the wealth of data available from GNSS.

6. Leica and Trimble are both well-recognized and established manufacturers of GPS tracking hardware and software. Leica provides positioning services to state agencies across the United States, and Trimble provides those services to state agencies and private companies across the United States and in other countries. Leica and Trimble, together with a company known as Topcon, are recognized as the "Top 3" manufacturers.

7. DOT originally issued a Request for Proposals for technology to build the FPRN in 1998, which was awarded to Ashtech, a predecessor to Trimble. Ashtech purchased and installed Leica software, which is still in use in all DOT districts except District 7. District 7 uses Trimble equipment, although this was not fully explained at final hearing.

8. The existing FPRN CORS hardware is a combination of 20 Ashtech and 45 Leica CORS sensors. DOT inventory consists of older-model Ashtech Z12/3 GPS Reference sensors and newer-model Leica GRX 1200 Pro GPS Reference sensors. All of the district rovers are Leica-branded equipment and the inventory includes older-model System 300/500 rovers and newer-model System 1200

rovers. As such, Leica is the incumbent vendor to the Department for GPS services.

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9. On August 2, 2012, the Department issued the RFP for the purpose of selecting a vendor to upgrade the FPRN hardware and software to a GNSS system.

10. The RFP requires proposals in two parts: a Technical Proposal and a Price Proposal. The Technical Proposal includes three sections: the proposer's Executive Summary, Management Plan, and Technical Plan.

11. Provisions of the RFP that are material to this proceeding include, in pertinent part and by section number, the following (all emphasis is in the original):

SPECIAL CONDITIONS

22.1 Responsiveness of Proposals

A responsive proposal is an offer to perform the scope of services called for in this Request for Proposals in accordance with all the requirements of this Request for Proposal and receiving seventy (70) points or more on the Technical Proposal. Proposals found to be non-responsive shall not be considered. Proposals may be rejected if found to be irregular or not in conformance with the requirements and instructions herein contained. A proposal may be found to be irregular or non-responsive by reasons that include, but are not limited to, failure to utilize or complete prescribed forms, conditional proposals, incomplete proposals, indefinite or ambiguous proposals, and improper and/or undated signatures.

23.2 Technical Proposal (Part I)

2. PROPOSER'S MANAGEMENT PLAN

The Proposer shall provide a brief statement of the proposer's understanding of the project scope, key issues, and any other concerns that may need to be addressed.

The Proposer shall provide a brief statement of similar projects that proposer has completed in the past five years.

The proposer shall provide three (3) references of the most applicable projects. The references shall include for whom the project was done. These references shall be on the company's letterhead. Failure by the proposer to provide the requested information and letters of references with its Technical proposal package will constitute a non-responsive determination for the proposal. Proposals found to be non-responsive will not be considered.

* * *

3. PROPOSER'S TECHNICAL PLAN

The Proposer's Hardware specifications proposed shall meet or exceed specifications defined in Section 4.0 of the Scope of Services. The Software specifications shall include Update Cycles, Operating System Compatibilities and User Management. Failure by the proposer to meet the hardware and software specifications/requirements will constitute a non-responsive determination of its proposal. Proposals found to be non-responsive will not be considered.

PUR 1001

General Instructions to Respondents

16. Minor Irregularities/Right to Reject.

The Buyer reserves the right to accept or

reject any and all bids, or separable 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. The Buyer may reject any response not submitted in the manner specified by the solicitation documents.

12. Exhibit A to the RFP sets forth the Scope of Services.

Section 1.0, Introduction, provides:

The Departments [sic] primary objective is to maintain continuity with both hardware and software at the statewide and district levels. Any proposal MUST ensure these concerns are met. The Department and its Districts have each standardized on a specific platform. Responses to this proposal from vendors outside of the current standard are encouraged, but will be required to either operate entirely within the standard hardware and software regime, or replace the regime in total.

13. Section 2.0, Project Description, states:

This RFP shall be considered "All-or-None." The Department does not wish to maintain a hybrid system. Both Reference Station and Rover sensors must be of common brand and must have seamless compatibility with existing infrastructure.

14. Specific objectives for each component of the FPRN are set forth in section 3.0.

15. For both the CORS and the district rovers, the objectives are to upgrade all sensors and antennae to ensure capability of tracking all current and proposed satellite navigation systems, specifically GPS, GLONASS, and Galileo.

Additionally, section 3.1 specifies the CORS sensors must provide "active" control to the FPRN software, and the software must allow direct access to the sensors to provide "push" updates, among other requirements. Further, section 3.2 specifies all hardware must seamlessly integrate with "existing standard software."

16. The RFP notes that DOT intends to upgrade its existing newer-model Leica reference sensors and rovers to GNSS by a board-level upgrade only, and that it intends to replace older-model Ashtech reference sensors and Leica rovers with new equipment.

17. As to the FPRN GNSS software, the objective is to provide for annual maintenance of the existing FPRN software, "Leica SpiderNet."

18. Section 4.0, titled "Minimum Requirements," sets forth the more detailed technical requirements for sensors, antennae, and software associated with both GNSS CORS and district rovers.

19. With regard to the software for GNSS CORS, section 4.1.3 specifies "Leica GeoSystems SpiderNet Maintenance." With regard to rover software, section 4.2.2 specifies "Leica Geosystems LGO Pro Server License Maintenance."

20. The Price Proposal Form issued with the RFP describes specific Leica equipment to be upgraded and the specific Leica software to be installed and maintained.

21. As issued, the RFP contains an inherent contradiction: it authorizes vendors of non-standard (i.e., non-Leica) equipment to submit bids to replace the system entirely, but requires updates to, and maintenance of, the Leica hardware and software currently in use.

22. This inherent contradiction was recognized by Trimble, which submitted the following question to DOT during the time frame in which technical questions could be submitted: "Can you confirm that only Leica Branded equipment will be considered compliant for the purpose of this RFP?"

Addendum 1

23. On August 9, 2013, DOT issued Addendum 1, clarifying the objective of the RFP and replacing the Price Proposal Form in its entirety.

24. The addendum added the following language to Section 1.0:

RFP-DOT-12/13-9003-JP does indicate the Departments [sic] standard and its primary objective. This proposal does not limit nor does it impede any response from a non-standard provider. However, any provided [sic] is free to submit its proposal so long as it meets the requirement set forth within the RFP.

25. The original Price Proposal Form was replaced with a new form containing blank spaces for a non-standard provider to supply the manufacturer and model numbers of proposed equipment.

The revised Price Proposal Form also added the following footnote on references to Leica-branded equipment:

This applies to existing hardware/software standard. Alternate brand complete hardware and software replacement is accepted, if unable to propose within standard.

26. The following paragraph was also added to the Price Proposal Form:

ALTERNATES

Alternate brands will be considered for this proposal. The 'Department' reserves the right to require each proposer to demonstrate to the satisfaction of the 'Department' that the items/materials will perform in a completely acceptable manner. In the event the 'Department' judges that the demonstrated performance is unsatisfactory, the 'Department' may reject the proposal. The proposer must be prepared to demonstrate the materials within fourteen (14) days after the proposal opening date. Demonstration time and place is subject to agreement of the 'Department' and the proposer.

Addendum 2

27. On August 14, 2013, the Department issued Addendum 2, publishing all technical questions asked by potential proposers, DOT's answers thereto, and replacing Exhibit A, Scope of Services, in its entirety.

28. In response to Trimble's question regarding whether only Leica-branded equipment would be considered acceptable, DOT answered:

No. Leica is the current FDOT/FPRN standard. We have specified what we have as the standard, but other vendors are free to propose a solution. However, the solution provided must follow the 'all-in' rule. This includes all CORS hardware and software as well as all District rovers and software.

29. Addendum 2 replaced the Minimum Requirements in the Scope of Services with a list of "Minimum Evaluation Criteria" which included specific criteria for both the GNSS CORS and district rover software, rather than referencing Leica-specific software as in the originally issued Scope of Services. The purpose for this change was to provide terms to evaluate proposals of alternate software.

Evaluation Criteria

30. The following minimum evaluation criteria are a focal point of this challenge:

- 4.1 FPRN GNSS CORS
 - 4.1.3 Software
 - 4.1.3.2.10 Real Time Data Management
 - 4.1.3.2.10.8 Standard RTK formats
 - 4.1.3.2.10.8.1 RTCM 2.x/3.x
 - 4.1.3.2.10.8.2 Leica Proprietary
 - 4.1.3.2.10.8.3 CMR/CMR+
 - 4.1.3.2.10.9 Standard Network RTK Types
 - 4.1.3.2.10.9.1 FKP (RTCM 2.x/3.x)
 - 4.1.3.2.10.9.2 VRS (All formats)
 - 4.1.3.2.10.9.3 MAX (All formats)
 - 4.1.3.2.10.9.4 iMAX (All formats)

I. RTK Formats

31. A Real Time Kinematic (RTK) format is a language used to communicate between a base station and a rover. This

communication is important to real-time end-users of the FPRN, such as an agricultural operator who needs to know his or her exact location in the field. For those users, the rover must be in constant communication with the base station to determine range (wavelengths between base and rover) and rate change (the delta between wavelengths at one point and another).

32. RTK communication may be conducted via radio, cellular, or digital means.

33. The Radio Technical Commission for Maritime Services (RTCM) has developed different communication languages over the years. RTCM 2.1 is an older GPS-only standard; RTCM 2.3 is a GNSS standard; and RTCM 3.0 was developed in the early 2000s and is a more compact, efficient language. The RTCM languages are standards designed to be interoperable among all manufacturers' equipment.

34. Compact Measurement Record (CMR) is a communication language first published by a Trimble employee. CMR compressed the RTCM protocol, which was designed for communication using UHF radios. CMR is more compatible for cellular and digital communications.

35. CMR+ is a slightly more compact system, and most manufacturers have developed their own version of this evolution.

36. Criterion 4.1.3.2.10.8.2 also requires that software proposed by a non-standard vendor be compatible with Leica proprietary language.

37. Scott Harris, former DOT GPS Network Administrator, designed and built the FPRN and was the manager of the FPRN for 13 years. Mr. Harris also wrote Exhibit A, the Scope of Services for the RFP, and the changes thereto in Addendum 2. He testified that he included Leica Proprietary as a language that must be supported by a non-standard vendor's software to provide continuity of service to all FPRN end-users. Mr. Harris testified that roughly one-quarter of end-users access the FPRN via Leica equipment. Mr. Harris' familiarity with the equipment utilized by end-users to access the FPRN is based on his many years managing the system and interacting with end-users, many of whom requested his assistance to access the system with Leica equipment.

38. Petitioner attempted to undermine Mr. Harris' testimony on this issue by demonstrating that the Department's FPRN database does not identify the type of equipment being used by a particular end-user. This argument was not persuasive and Mr. Harris' testimony is accepted as credible.

II. Network RTK Types

39. The more distant a rover is from a base station, the more distortion there is in the communications between them due

to ionospheric and atmospheric interference. This distortion is known as "spatial decorrelation." To correct for spatial decorrelation, manufacturers build correction information into their software, but even that correction information becomes less applicable the further the rover is from the base. To overcome this distortion factor, short of building a base station every 10 kilometers across the state, the FPRN base stations are networked through an internet connection over which they stream data in real time. This streaming data is collected at a central location where it is processed by a software program which makes the data available to end-users through a web portal.

40. Just as real time communications between base and rover may take place in a number of different languages (RTK formats), the real time networked data can be manipulated by different methods or protocols to develop corrections to adjust for spatial decorrelation (network RTK types).

41. Section 4.1.3.2.10.9 requires the software proposed by a non-standard vendor to support four network RTK types: Virtual Reference Station (VRS); FKP (which stands for a word of German derivation which no witness was able to articulate); and MAX and iMAX, which are both Leica formats.

III. User Online Positioning Service

42. A second focal point of this challenge is the requirement in subsection 4.1.3.2.13 that the proposed software

provide a "User Online Positioning Service" function in its web application.

43. A user online positioning service allows an end-user to upload a static GPS file to a server and receive a set of coordinates that represents the user's location in the field at the time the data was gathered. This application is important to end-users who conduct post-processing, such as DOT surveyors.

44. The National Geodetic Survey offers a product known as "Online Positioning User Service (OPUS)" for post-processing. Mr. Harris chose to use the term "user online positioning service" when drafting the criteria in order to indicate the capability sought without duplicating "OPUS," which he thought might be a protected term. The term "user online positioning service" is not otherwise described or defined anywhere in the RFP.

45. The Leica software equivalent of a user online positioning service is known as a "coordinate generator." Mr. Harris wanted to ensure that any non-standard software proposed by a vendor had this post-processing capability for end-users.

46. No prospective vendor filed a protest of any of the terms, conditions, or specifications of the RFP, Addendum 1, or Addendum 2.

Proposals in Response to the RFP

47. Leica and Trimble are the only manufacturers who submitted proposals in response to the RFP. Each company proposed to install its own brand of hardware and software to provide the services described in the RFP.

I. References

48. Trimble's proposal includes three letters of reference of most applicable projects: the South Carolina Geodetic Survey, the Rashall Transportation Institute, and the Washington State Reference Network. Trimble also includes a list of 47 similar projects for clients in the United States and at least 10 other countries.

49. Leica's proposal includes only two letters of reference of most applicable projects: one from the Alabama Department of Transportation and one from the Michigan Department of Transportation. In addition to those two projects, Leica includes a list of projects for the Oregon, New York, Nevada, and Iowa Departments of Transportation.

II. RTK Formats and Network RTK Types

50. Trimble's proposal includes software compatible with standard RTK formats RTCM 2.x/3.x, CMR, and CMR+. Similarly, Trimble's proposed software supports network RTK types FKP and VRS.

51. Trimble's proposed software is not compatible with Leica proprietary RTK format as required by RFP section 4.1.3.2.10.8.2. Nor is Trimble's proposed software compatible with MAX and iMAX network RTK types. Nor could it be. As explained by Mr. Thomas Mackie, Global Sales Manager for Trimble's Infrastructure Division, "As a manufacturer that's not Leica, I can't supply Leica proprietary data." [T.283:20-21]. In fact, Mr. Mackie assumed that these provisions of the Minimum Evaluation Criteria were oversights, since the "all-in" nature of the RFP had been clarified through Addenda 1 and 2. Mr. Mackie lamented, "In theory, we should have gone back with clarifying questions. We missed that opportunity." [T.285:1-3]

III. User Online Positioning Service

52. Leica proposed to use its "coordinate generator" application, which allows an end-user to input a data file gathered in the field and receive a set of coordinates representing the exact location of the user when the data was collected.

53. According to Mr. Mackie, Trimble proposed a similar program. Trimble's proposal allows an end-user to upload a data file through the web portal, but the Trimble solution delivers to the user a RINEX file, a universal receiver data interchange protocol, which must in turn be post-processed through an office

software package. In essence, the Trimble solution requires one extra step to post-process the data.

Technical Evaluation Committee

54. DOT assigned three employees to the Technical Evaluation Committee (TEC) to review and score the proposals: Alex Parnes, DOT District 7 Locations Surveyor; Horace Roberts, DOT Location, Survey, and Right-of-Way Mapping Surveyor; and Scott Harris, then-Manager of the DOT Statewide GPS System. Each member conducted an independent evaluation of the Technical Proposals.

55. Mr. Parnes has worked with GPS systems and surveying for approximately 28 years. He is currently the DOT District 7 location surveyor, responsible for the "location side" of district surveying and mapping field work, as well as consultant contracts. Mr. Parnes previously served the Department as the District 7 GPS/ADC coordinator. District 7 utilizes Trimble equipment and Mr. Parnes was, at one time, a Trimble certified trainer.

56. Mr. Roberts has worked for the Department for approximately 42 years. He is currently the DOT Location, Survey, and Right-of-Way Mapping Surveyor, in which capacity he supervises the FPRN manager and provides oversight of FPRN operations. Mr. Roberts previously served as the primary network control manager for DOT District 5, in which capacity he provided

oversight and guidance for GPS network planning, execution of network quality control, and consultant projects. He participated in the evaluation of proposals to select the vendor, Ashtech, for the original installation of the FPRN network in 1998. District 5 operates on a combination of Leica and Trimble equipment, so he is familiar with both vendors.

57. Mr. Harris was, until recently, the Department's GPS network administrator. He is a licensed Florida surveyor. Mr. Harris designed and built the FPRN and managed it for some 12 to 13 years before recently going to work for Topcon. He is very familiar with Trimble technology because Ashtec, Trimble's predecessor, was awarded the first contract for FPRN hardware.

Review of the Proposals

58. The total maximum score available for each Technical Proposal is 100 points, broken down as follows:

Executive Summary - 10 points
Management Plan - 10 points
Technical Plan - 80 points

59. The RFP requires a Technical Proposal to receive an average of 70 points to be considered responsive. If a Technical Proposal receives an average score of less than 70 points, the Price Proposal will not be opened.

I. Responsiveness Requirements Review

60. Section 31.1 of the RFP provides:

During the evaluation process, the Procurement Office will conduct examinations of proposals for responsiveness to requirements of the RFP. Those determined to be non-responsive will be automatically rejected.

61. Ms. Joyce Plummer, DOT Procurement Agent, conducted the responsiveness review of the Leica and Trimble proposals. She examined each proposal package to determine whether it was timely received and to ensure that it included an Executive Summary, a Management Plan, a Technical Plan, signed acknowledgment of Addenda 1 and 2, a signed Drug-Free Workplace Form, a signed Minority Business Enterprises Utilization Form, and a signed Vendor Certification Regarding Scrutinized Companies Form. Ms. Plummer also checked My Florida Marketplace to determine whether each vendor was registered.

62. Ms. Plummer did not review the references provided by each respondent pursuant to RFP section 23.2.2. Ms. Plummer did not consider review of references to be within her purview, but rather within the purview of the TEC members.

63. Ms. Plummer first became aware that Leica's proposal only contained two references on letterhead when a TEC member called her and asked her how to proceed in light of one missing

letter of reference.^{1/} Ms. Plummer did not answer the question, but stated she would get back with him.

64. After consulting with Department legal staff, Ms. Plummer called the TEC member back and informed him that the proposal would not be deemed non-responsive and he should proceed to score the proposal.

65. Ms. Plummer later received calls from the other two TEC members, asking the same question regarding Leica's proposal, and she instructed them in the same manner.

66. As such, the Department waived the requirement that the Leica proposal provide three letters of reference on letterhead.

Evaluation

I. Executive Summary

67. All three TEC members scored both proposals a perfect 10 for their respective executive summaries. Evaluation and scoring of the proposers' executive summaries is not at issue in this proceeding.

II. Management Plan

68. The RFP called for three components of the Management Plan: a brief statement of the understanding of the scope of the project; a brief description of similar projects completed in the last five years; and three letters of reference of the most applicable projects on letterhead.

a) Leica

69. Mr. Parnes scored Leica's Management Plan zero out of a total possible 10 points. In his opinion, the missing reference was important enough to warrant a penalty of 10 points because the FPRN is an extensive and very important system to the State of Florida, and the lack of a reference reflected on the proposer's ability to manage the system. He acknowledged that the score "may be a little harsh." [T.62:6-7]. Curiously, while evaluating Leica's Management Plan, Mr. Parnes noted that Leica did demonstrate an understanding of the scope of the project and the concerns and key issues the Department needed addressed, the other items to be covered in the Management Plan. [T.65:21-66:2]. Further, Mr. Parnes testified that he believes Leica can provide the equipment and the upgrade solution that DOT is requesting in the RFP. [T.60:23-61:1].

70. Mr. Roberts scored Leica's Management Plan 8 out of a possible 10 points. He deducted two points for the missing reference, which he felt was appropriate in light of the overall Management Plan.

71. Mr. Harris likewise scored Leica's Management Plan 8 out of 10 points based on the missing letter of reference.

b) Trimble

72. Mr. Parnes awarded Trimble 9 out of 10 points for its Management Plan. No explanation was given for the one point deduction.

73. Both Mr. Roberts and Mr. Harris awarded Trimble the maximum 10 points for its Management Plan.

III. Technical Plan

a) Leica

74. Mr. Parnes awarded Leica 75 out 80 points for its Technical Plan. No testimony was elicited from Mr. Parnes regarding specific aspects of Leica's proposal that were inadequate in his judgment. He stated that he "had some concerns" but the score of 75 was in his judgment a very good score.

75. Mr. Roberts and Mr. Harris both awarded Leica a perfect score of 80 points on its Technical Plan.

b) Trimble

76. Mr. Harris awarded Trimble 71 out of a possible 80 points for its Technical Plan.

77. Mr. Harris deducted five points for Trimble's failure to provide software supporting the Leica proprietary RTK format, and MAX and iMAX, the Leica-specific RTK types.

78. Further, Mr. Harris deducted three points because Trimble's proposal did not provide an online user positioning

service as required by section 4.1.3.2.13. Mr. Harris acknowledged that the proposal included a map-based use location tool, but maintained that the software did not include data positioning.

79. Finally, Mr. Harris deducted one point because the proposal did not provide the ability to trap raw data from a sensor outside the particular manufacturer's solution. However, Mr. Harris admitted at hearing that the deduction was an error. The Minimum Evaluation Criteria did not request that ability.

80. Mr. Parnes awarded Trimble 75 out of 80 points for its Technical Plan. Very little testimony was elicited from Mr. Parnes to explain his concerns with Trimble's proposal or which specific Minimum Evaluation Criteria were, in his opinion, lacking. Mr. Parnes did explain that he could not find in Trimble's proposal that the proposed GNSS CORS software created multiple simultaneous file products, a requirement of section 4.1.3.2.8. Additionally, Mr. Parnes did not deduct any points for Trimble's failure to provide software that supported Leica proprietary RTK format and MAX and iMAX RTK types. He explained that Trimble was proposing to replace the Leica standard software with VRS capability, which was sufficient.

81. Mr. Roberts awarded the maximum 80 points to Trimble for its Technical Plan.

Proposed Award

82. Members of the TEC turned in their score sheets to Ms. Plummer in Procurement, who reviewed them and determined that each proposal received the threshold 70 points required to be considered responsive.

83. The TEC members' scores for each section (Executive Summary, Management Plan, and Technical Plan) were averaged for a final score on each section.

84. DOT conducted the Price Opening on September 5, 2012. Trimble proposed \$1,057,784.78, while Leica proposed \$899,762.00.

85. Pricing scores were calculated according to the following formula:

$$(\text{Low Price}/\text{Proposer's Price}) \times \text{Price Points} = \text{Proposer's Awarded Points}$$

86. The final scores were calculated and tabulated as follows:

Offeror	Price	Criteria 1	Criteria 2	Criteria 3	Subtotal	Criteria 4	Total Score
Trimble	1,057,754,78	10	9.67	75.34	95.01	25.52	120.53
Leica	899,762.00	9.67	5.34	78.34	93.35	30	123.35

87. On September 6, 2012, the Department posted its intent to award the contract to Leica.

Protest Issues

88. Trimble raises two issues in this challenge: (1) The requirement for three references on letterhead was a material responsiveness requirement, waiver of which by DOT was clearly erroneous; (2) DOT's scoring of both proposals was arbitrary,

capricious, and contrary to competition. Trimble argues that non-biased scoring would have resulted in an award to Trimble. For the purposes of discussion, the scoring of Trimble's and Leica's proposals are treated as two separate issues.

I. Issue: Waiver of Requirement for Three References

89. Trimble argues that Leica's failure to provide a third reference on letterhead, as required by section 23.2.2, was not a minor irregularity which DOT was free to waive.

90. Trimble first asserts that waiver of the requirement for three references on letterhead was contrary to competition, as evidenced by the fact that only two manufacturers responded to the RFP. At least three other manufacturers of GPS equipment, Topcon, JAVAD, and Hemisphere, are well-known in the industry, but did not submit a response to the RFP. Trimble argues that the reference requirement was intended to, and did, "winnow the field of applicants." Trimble speculated that other manufacturers did not submit because they were unable to get three references on letterhead: "It is logical to presume that the explicit requirement for 3 letters of reference for similar projects on company letterhead was a substantial reason only two proposals were submitted." Pet. PRO, ¶ 32.

91. Trimble's argument is speculative and is not supported by any evidence at the final hearing. The evidence adduced at hearing did not support a finding that other manufacturers chose

not to bid because they could not get three references on letterhead.^{2/}

92. Trimble next argues that the Department's waiver of the reference requirement provided Leica with a substantial competitive advantage as the incumbent vendor. Trimble's argument rests on the assumption that the reference requirement for Leica was only waived because Leica is the incumbent provider. Trimble argues, "It is logical to presume that if Trimble, in seeking to unseat the incumbent, Leica, had failed to provide three letters of reference required, that Trimble's Proposal would have been rejected as non-responsive for failing to comply with a mandatory, material requirement of the RFP." Id.

93. Trimble's presumptuous argument is not supported by any evidence adduced at final hearing. There is no record evidence that the TEC members were biased in favor of Leica or would have rejected Trimble's proposal for failure to provide one letter of reference on letterhead. All three TEC members were familiar with both Leica and Trimble products and considered both companies reputable and professional.

94. Mr. Parnes scored both Leica and Trimble's Technical Plans 75 out of 80.

95. Mr. Roberts scored both Leica and Trimble's Technical Plans a perfect 80. Mr. Roberts testified that, in his opinion,

both Trimble and Leica could provide the services requested in the RFP.

96. While not argued by Trimble, there is also no evidence to suggest that waiving the reference requirement either affected the price of proposals or prejudiced the Department. The Price Proposals were not opened until after the TEC scores were turned over to Procurement and averaged for assignment of final scores. The Department was certainly not deprived of opportunity to evaluate Leica's work to ensure capability. In addition to the two letters of reference on letterhead, Leica also provided a matrix of similar projects with contact names. Mr. Harris testified that he was personally familiar with many of the contacts listed for both Trimble and Leica, was aware of the professional reputation of others listed, and had no need to contact any of the references directly.

II. Issue: Arbitrary Evaluation of Trimble Proposal

97. Trimble next argues that its proposal was scored by TEC members arbitrarily and in error, and that if scored fairly, Trimble would have been awarded the contract as the highest-scoring responsible bidder.

98. Trimble takes issue with the nine points deducted by Mr. Harris in evaluating its Technical Plan.

a) RTK Formats and Network RTK Types

99. Trimble argues that Mr. Harris' deduction of five points from Trimble's proposal to support Leica proprietary RTK format and MAX and iMAX network RTK types was arbitrary in light of the numerous other criteria listed for Real-Time Data Management of the CORS software.

100. The RFP itself does not correlate any number of points with any specific section or sub-section of the Technical Plan. The only point assignment is the maximum points available (80 points).

101. As thoroughly highlighted by Petitioner, the RFP contains more criteria, and subsets thereof, for a proposer's Technical Plan than the total number of points allotted. Clearly, there can be no one-to-one correlation between any single criterion and any number of points.

102. The RTK format and network RTK format criteria were important to Mr. Harris as the manager of the FPRN. He testified that end-users contacted him for the correct IP address to access the FPRN using Leica equipment. He was aware that roughly one-quarter of end-users accessed the FPRN via Leica proprietary software. Mr. Harris drafted the Minimum Evaluation Criteria and included the criterion that a non-standard vendor support Leica proprietary language and network types in order to effect

continuity of service provided to all users of the FPRN after the update to GNSS.

103. Mr. Harris' emphasis on this criterion is consistent with the stated primary RFP objective to "maintain consistency and continuity with both hardware and software at the statewide and district levels." That objective was contained in the RFP as originally issued, and as clarified in Addendum 1.

104. Further, Mr. Harris did not arrive at the five-point deduction without thought or on a whim. Mr. Harris had allocated roughly 20 of the available 80 points to the criteria for GNSS CORS software. He deducted a quarter of those points for Trimble's failure to provide Leica proprietary capability. The evidence demonstrated that Mr. Harris was thoughtful in his scoring process and brought his considerable expertise to bear in that process. Mr. Harris' scoring may have been heavy-handed, but it was not arbitrary. There is certainly no evidence to support Petitioner's argument that "Mr. Harris arbitrarily attempted to downgrade Trimble wherever possible because he wanted to retain the incumbent Leica." Pet. PRO, ¶ 34.

105. One of Trimble's main arguments on this point is that a deduction for failure to support Leica proprietary format and types was both unfair and unreasonable because any equipment using Leica proprietary format could be reprogrammed in a matter of minutes to work with available Trimble formats. Petitioner's

argument is essentially that the criterion itself is unfair and unreasonable. Unfortunately for Trimble, the timeframe to challenge the specifications of the RFP as contrary to competition has passed.

b) User Online Positioning Service

106. Next, Trimble argues that Mr. Harris erroneously deducted three points for Trimble's failure to provide a user online positioning service as required by section 4.1.3.2.13. Essentially, Trimble maintains that the capability DOT sought in this section of the RFP -- capability for end-users to upload a file of data collected in the field and retrieve a set of coordinates representing the exact location when the data was collected -- was provided by Trimble.

107. The evidence showed that the Trimble solution for post-processing of data was different from both the OPUS solution on which the RFP was modeled and the standard solution provided by Leica.

108. Leica's SpiderNet has a built-in coordinate generator. It allows an end-user to upload a data file through the web portal to the CORS server and retrieve a set of coordinates representing the exact location, corrected for decorrelation, of the user in the field when the data was collected.

109. Trimble's proposal is different. The solution proposed by Trimble does not generate a set of coordinates

representing the exact location of the user in the field at the time the data was collected. The Trimble solution delivers to the user a RINEX file, a universal receiver data interchange protocol, which must in turn be post-processed through an office software package.

110. Trimble maintains the three-point deduction was in error because their solution provides the same end product. However, the solution was not the same as the solution sought by DOT. The evidence does not support a finding that the points were deducted arbitrarily or in error.

111. It may be unfair that the RFP did not fully explain the criterion "user online positioning service," but that issue is not before us in this proceeding. The propriety of the bid specifications is an appropriate issue for a specification challenge, which was not exercised by Petitioner in this case.

c) One-Point Deduction

112. Mr. Harris conceded at final hearing that the one-point deduction he made for Trimble's failure to include the ability to log raw data from a sensor supplied by a manufacturer other than Trimble was an error. Mr. Harris admitted the RFP did not request that capability. As such, DOT's scoring on this point was erroneous.

113. Given that error, Trimble's Technical Proposal should have been scored a total of 72 by Mr. Harris. That difference

would bring Trimble's average score on the Technical Proposal (criterion 3) to 75.67, rather than 75.34. However, even with that adjustment, the total score for Trimble is 120.86, still lower than Leica's score of 123.35.

III. Issue: Arbitrary Evaluation of Leica Proposal

114. Trimble next argues that the Department's evaluation of proposals was conducted arbitrarily in favor of Leica as evidenced by the TEC's failure to deduct points from Leica for criteria it admittedly did not meet.

115. The criteria at issue are requirements 4.2.1.6.1 and 4.2.1.6.2 for the District GNSS Rover Sensor/Antenna. Section 4.2.1.6.1 refers to an "External Oscillator" and section 4.2.1.6.2 refers to "PPS." No testimony was elicited from any witness to explain these requirements or their function in collecting data within the districts.

116. Leica's proposal contains a table listing each numbered Technical Plan criterion in the first column, a description of the criterion in the next column, and an indication of whether the proposal complies with the specified criterion in the final column. For criterion 4.2.1.6.1, the table indicates "Does Not Comply." For criterion 4.2.1.6.2, the table indicates "Does Not Comply. All on the pole system does not provide PPS port. The backpack design of the GS10 can be made available that supports PPS."

117. Neither Mr. Roberts nor Mr. Harris deducted any points from Leica's proposal because it did not comply with these criteria.

118. Mr. Harris' notes on the Minimum Evaluation Criteria sheet he used in scoring Leica's proposal indicate these criteria were "Not Applicable."

119. From these facts, Trimble draws an inference that Mr. Harris ignored areas where Leica failed to meet specifications of the RFP. Coupled with Mr. Harris' heavy-handed scoring of Trimble's proposal, Trimble argues that Mr. Harris favored Leica and scored arbitrarily to retain the incumbent provider. This argument ignores other pertinent facts.

120. Trimble's proposal contains a table similar to Leica's on which it tracks compliance with the criteria for the Technical Proposal. For criteria 4.2.1.6.1 and 4.2.1.6.2, the table indicates "Compliance with explanation." The explanation which follows indicates that the capability sought is available on the manufacturer's proposed GNSS CORS sensor rather than the rover sensor.

121. Mr. Harris' notes on the Minimum Evaluation Criteria sheet he used to score Trimble's proposal indicate "N/A included in scope in error." Therefore, Mr. Harris likewise "ignored" these criteria in scoring Trimble's proposal.

122. It appears from the evidence that Mr. Harris realized when scoring the proposals that the criteria sought in 4.2.1.6.1 and 4.2.1.6.2 was applicable to the CORS sensors, rather than the district rover sensors, and chose not to penalize either proposer.

123. Further, Mr. Parnes scored Leica's proposal 75 out of 80. No testimony was elicited from him explaining his deductions other than he "had some concerns." Mr. Parnes' notes on the Minimum Evaluation Criteria sheet he used in scoring Leica's proposal indicate "Ding" for both 4.2.1.6.1 and 4.2.1.6.2. It is possible that the noted non-compliance was a basis on which he deducted points from Leica's Technical Proposal.

124. The greater weight of the evidence does not support a finding that the Department arbitrarily scored Leica's proposal.

CONCLUSIONS OF LAW

125. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. See §§ 120.569 and 120.57(3), Fla. Stat. (2012).

126. Section 120.57(3)(f) provides that:

. . . 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.

127. The nature of the de novo review in a bid protest proceeding has been established as follows:

[T]he 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. State Department of Health and Rehabilitative Services, 606 So. 2d 380 (Fla. 3d DCA 1992).

State Contracting and Eng'g Corp. v. Dep't of Transp., 709 So. 2d, 607, 609 (Fla. 1st DCA 1998).

128. The standard of review of the agency's proposed action in a bid protest proceeding has been generally described as follows:

. . . a "public body has wide discretion" in the bidding process and "its decision, when based on an honest exercise" of the discretion, should not be overturned "even if it may appear erroneous and even if reasonable persons may disagree." Department of Transportation v. Groves-Watkins Constructors, 530 So.2d 912, 913 (Fla. 1988) (quoting Liberty County v. Baxter's Asphalt & Concrete, Inc., 421 So.2d 505 (Fla. 1982)) (emphasis in original). "The hearing officer's sole responsibility is to ascertain whether the agency acted fraudulently, arbitrarily, illegally, or dishonestly." Groves-Watkins, 530 So.2d at 914.

Scientific Games, Inc. v. Dittler Bros., 586 So. 2d 1128, 1131 (Fla. 1st DCA 1991).

129. Trimble, as the Petitioner, has the burden to establish that Leica's proposal materially deviated from the terms, conditions, and specifications of the RFP such that the Department's decision to award the contract to Leica was clearly erroneous, contrary to competition, arbitrary, or capricious. § 120.57(3)(f); Dep't of Transp. v. J. W. C. Co., 396 So. 2d 778, 787 (Fla. 1st DCA 1981).

130. Agency action will be found to be "clearly erroneous" if it is without rational support and, consequently, the Administrative Law Judge has a "definite and firm conviction that a mistake has been committed." U.S. v. U.S. Gypsum Co., 333 U.S. 364, 395 (1948); see also Pershing Indus., Inc. v. Dep't of Banking & Fin., 591 So. 2d 991, 993 (Fla. 1st DCA 1991). Agency action may also be found to be "clearly erroneous" if the agency's interpretation of the applicable law conflicts with its plain meaning and intent. Colbert v. Dep't of Health, 890 So. 2d 1165, 1166 (Fla. 1st DCA 2004). In such a case, "judicial deference need not be given" to the agency's interpretation. Id.

131. An act is "contrary to competition" if it runs contrary to the objectives of competitive bidding, which have been long held as follows:

. . . 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 various forms; to secure the best values for the [public] at the lowest possible expense

Wester v. Belote, 138 So. 2d 721, 723-24 (Fla. 1931); see also Harry Pepper & Assoc., Inc. v. City of Cape Coral, 352 So. 2d 1190, 1192 (Fla. 2d DCA 1977). In that regard, public officials do not have the power "to make exceptions, releases and modifications in the contract after it is let, which will afford opportunities for favoritism, whether any such favoritism is practiced or not." Wester v. Belote at 724. The public policy regarding exceptions and releases in contracts applies with equal force to the contract procurement.

132. Petitioner emphasizes the mandatory language of section 23.3.3 of the RFP, focusing the undersigned's attention on the words "the proposer shall provide three (3) references of the most applicable projects. The references shall include for whom the project was done. These references shall be on the company's letterhead." Petitioner elicited a great deal of witness testimony that these terms were clear, unambiguous, and mandatory.

133. Petitioner's emphasis is misplaced. The legal standard is not whether the agency deviated from mandatory terms

of the RFP, but rather whether the deviation was material or immaterial.

134. Every deviation from the RFP is not material and does not mandate rejection of the proposal. The Department reserved the right to waive minor irregularities. The standard for determining whether a variance is a material deviation or a minor irregularity is as follows:

"Although a bid containing a material variance is unacceptable, not every deviation from the invitation is material." Robinson Elec. Co. v. Dade County, 417 So. 2d 1032, 1034 (Fla. 3d DCA 1982); Tropabest Foods, Inc. v. State, Dep't of Gen. Servs., 493 So. 2d 50, 52 (Fla. 1st DCA 1986) (citation omitted); Glatstein v. Miami, 399 So. 2d 1005 (Fla. 3d DCA) review denied, 407 So. 2d 1102 (Fla. 1981). "It is only material if it gives the bidder a substantial advantage over the other bidders and thereby restricts or stifles competition." Tropabest, 493 So. 2d at 52; Harry Pepper & Assocs., Inc. v. City of Cape Coral, 352 So. 2d 1190, 1193 (Fla. 2d DCA 1977).

Procacci Commercial Realty v. Dep't of HRS, 690 So. 2d 603, 606 (Fla. 1st DCA 1997).

135. An agency action is capricious if the agency takes the action without thought or reason, or irrationally. An agency action is arbitrary if it is not supported by facts or logic. See Agrico Chemical Co. v. Dep't of Env'tl. Prot., 365 So. 2d 759, 763 (Fla. 1st DCA 1979).

136. 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).

137. However, if agency action 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. Dravo Basic Materials Co., Inc. v. Dep't of Transp., 602 So. 2d 632, 634 n.3 (Fla. 2d DCA 1992).

138. Trimble failed to meet its burden of proof. The evidence presented at the final hearing did not establish that the Department's proposed award of the contract for RFP-DOT-12/13-9003-JP to Leica Geosystems is contrary to the bid solicitation or contrary to the Department's governing statutes, rules, or policies such that the proposed award is clearly erroneous, contrary to competition, arbitrary, or capricious. The preponderance of the evidence established that Leica's proposal was responsive to the requirements of the bid solicitation and that the Department acted well within its governing statutes, rules, and policies.

139. The evidence at hearing established that the Department's decision to waive the requirement of section 23.2.2 for three references of the most applicable projects on letterhead did not provide a substantial competitive advantage to Leica. In fact, Leica was seriously penalized by one TEC member who gave Leica zero out a possible 10 points for lack of one reference on letterhead. Petitioner sought to, but did not prove, that other potential proposers chose not to participate in the RFP because they could not likewise produce three letters of reference.

140. Petitioner relies heavily upon this agency's decision in Pro-Tech Monitoring, Inc. v. Department of Corrections, Case No. 11-5794BID (Fla. DOAH Apr. 4, 2012; Fla. DOC May 2, 2012), to support its argument that DOT's waiver of the requirement for three letters of reference on letterhead was clearly erroneous and contrary to competition. The facts of Pro-Tech Monitoring are clearly distinguishable from the facts at hand. In that case, the Department of Corrections did not reject as non-responsive Intervenor's, BI Incorporated's, proposal which did not comply with the following mandatory RFP criteria:

5.3.2.3 identify all current and/or past (or within three (3) years) federal, state or government contracts for the provision of electronic monitoring services, and the number of active GPS units utilized for each.

141. Pro-Tech's decision to list only the seven contracts most similar in size and scope to that described in the RFP, rather than all 1,000 contracts, "was made with considerable forethought and calculation." Pro-Tech, Case No. 11-5794BID, RO at 54.

142. In arriving at his conclusion that the omission was a material deviation, Judge Early found that BI's omission, and the agency's after-the-fact waiver thereof, conferred two competitive advantages to BI, as follows (emphasis added):

First is the immeasurable advantage conferred by withholding information on its contracts, and possible problems related thereto. The more direct advantage is the time saved by BI as a result of its decision to forego the work necessary to compile the contracts, and provide a narrative summary of their performance. The competitive advantage conferred on BI was, in this case, significant. Petitioner's President, Mr. Chapin, testified that Pro Tech devoted two full-time employees for approximately two weeks to collect the data necessary to fully respond to section 5.2.3, in addition to the time devoted by contract account managers in verifying contract performance matters. That was time not expended by BI -- and was time that BI could use to bolster and enhance other sections of its proposal.

Pro-Tech, Case No. 11-5794BID, RO at 66.

143. The evidence in the case at hand did not demonstrate any such competitive advantage conferred on Leica from its failure to provide one of three required letters of reference of most applicable projects. No Trimble witness testified that the

time undertaken to obtain three letters of reference was protracted or that extra personnel were required for the job. There is no basis to conclude that the amount of time required to obtain a third reference was significant such that Leica gained a time advantage in preparation of its proposal by its failure to comply.

144. The evidence at hearing established that the Department made a fair and unbiased evaluation of the two proposals and used logic, and considerable expertise, to move from evaluating the proposals to awarding the contract. The evidence established that Trimble's proposal was penalized for failure to comply with criteria of the Technical Plan, regardless of whether the criteria themselves were fair.

145. The evidence did show that one point was deducted from Trimble's score in error, but that error alone did not render the proposed award to Trimble a clearly erroneous decision.

146. The evidence at hearing did not prove the Department scored Leica's proposal in an arbitrary manner to favor Leica as the incumbent vendor. Where a member of the TEC noted a criterion as "not applicable" to Leica, the same allowance was made for Trimble.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that Respondent, Department of Transportation, enter a final order dismissing Trimble Navigation Limited Corp.'s formal written protest and awarding the contract for RFP-DOT-12/13-9003-JP to Leica Geosystems.

DONE AND ENTERED this 28th day of May, 2013, in Tallahassee, Leon County, Florida.



SUZANNE VAN WYK
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Filed with the Clerk of the
Division of Administrative Hearings
this 28th day of May, 2013.

ENDNOTES

^{1/} The evidence conflicted as to whether TEC member Parnes or Roberts first contacted Ms. Plummer regarding the missing reference, but that is irrelevant.

^{2/} The greater weight of the evidence supports a finding that other manufacturers did not bid because the RFP required any non-standard vendor to replace the system entirely, giving the incumbent a substantial price advantage.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

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