

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

COOPERATIVE SERVICES OF FLORIDA,
INC.,

Petitioner,

vs.

Case No. 13-0963BID

DEPARTMENT OF MANAGEMENT
SERVICES,

Respondent,

and

MINNESOTA MULTISTATE CONTRACTING
ALLIANCE FOR PHARMACY,

Intervenor.

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was conducted in this case on October 2 and 3, 2013, in Tallahassee, Florida, before June C. McKinney, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

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STATEMENT OF THE ISSUE

The issue is whether the Department of Management Services' ("Respondent" or "Department" or "DMS") decision to issue an Intent to Award for a state term pharmaceutical Group Purchasing Organization ("GPO") contract to Minnesota Multistate Contracting Alliance for Pharmacy ("MMCAP") as contemplated in its Invitation to Negotiate ("ITN") was contrary to DMS's governing statutes, rules, policies, or ITN specifications, and whether the Department's decision was clearly erroneous, contrary to competition, arbitrary or capricious.

PRELIMINARY STATEMENT

On November 1, 2011, the Department issued an ITN for the selection of a pharmaceutical GPO to purchase pharmaceuticals on behalf of the State of Florida.

Three vendors responded to the ITN. Those vendors were Managed Healthcare Associates ("MHA"), Cooperative Services of Florida ("CSF" or "Petitioner"), and MMCAP ("vendors"). All three vendors advanced to the negotiation stage.

The Notice of Intent to Award, showing the Department's intention to award the contract to MMCAP, was posted on January 23, 2013. Petitioner timely filed its Notice of Protest on January 25, 2013.

On February 4, 2013, CSF timely filed its Petition and Formal Written Protest ("Petition") challenging the Department's intended decision, alleging that the intention to award the bid to MMCAP was contrary to DMS's governing statutes, its rules, policies, and the ITN specifications. Petitioner further alleged that Respondent's analysis criteria were flawed.

On March 1, 2013, an opportunity to resolve the protest meeting was held and an impasse was reached. On March 19, 2013, the Petition challenging the Department's Intent to Award was referred to the Division of Administrative Hearings ("DOAH"). The parties waived the 30-day final hearing requirement contained in section 120.57(3)(e), Florida Statutes. By Order dated March 29, 2013, MMCAP was permitted to intervene in the proceedings.

On July 3, 2013, CSF filed an Amended Petition and Formal Written Protest.

The parties stipulated to continue the formal hearing twice and the hearing was conducted on October 2-3, 2013, in Tallahassee, Florida.

At hearing, the parties presented Joint Exhibits 1 and 2, which were admitted into evidence. Petitioner presented four witnesses: Robert Simpson, CSF and LeeSar President and CEO; Kenneth Greco, CSF Vice President of Pharmaceutical Services; David Bennett, DMS Purchasing Specialist Supervisor and Category Manager for IT Hardware; and Ronald Hartmann, MedAssets Senior Vice President for Pharmacy. Petitioner's Exhibits numbered 1 through 31, 34 through 42, 44 through 58, 60 through 63, 65 through 67, 69 through 73, 75, and 77 through 82 were admitted into evidence.

Respondent presented the testimony of three witnesses: Clifford Nilson, Jr., DMS's Bureau Chief; Dr. Steven Douglas Whitfield, Department of Corrections Pharmaceutical Services Director; and Dr. Brandon Elliott Brantley, Department of Health Bureau Chief for Bureau of Public Health Pharmacy. Respondent's Exhibits 1 through 8 and 10 through 26 were admitted into evidence. Respondent's Exhibits 13 through 16 were offered for the limited purpose of proving possible violations of section 287.057(23).

Intervenor presented the testimony of three witnesses: Rose Jacobs Svitak, MMCAP Knowledge and Financial Management Unit Manager; Alan Dahlgren, MMCAP Managing Director; and Dr. Sara Turnbow, MMCAP Contracting and Business Operations Group

Director. Intervenor's Exhibits 1 through 6, 10, and 12 through 17 were admitted into evidence.

At the conclusion of the hearing, the parties agreed to file their proposed recommended orders within 30 days of the filing of the transcript with a 50-page limit. The proceedings were transcribed and the parties availed themselves of the right to submit proposed recommended orders after the filing of the transcript. The four-volume Transcript of the formal hearing was filed with DOAH on October 21, 2013. The parties timely filed Proposed Recommended Orders, which have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

Senate Bill 2002

1. In 2011, the Florida Legislature passed SB 2002 as the implementing bill for the 2011-2012 General Appropriations Act. Section 78 directs the Department, by November 1, 2011, to issue a competitive solicitation pursuant to chapter 287 for a pharmaceutical purchasing arrangement as a state term contract. Section 78 requires, at a minimum, that the GPO's drug purchasing system provide "transparent pricing . . . permits purchases outside the agreement if such purchases offer the best value to the state, and establishes a preferred drug list that utilizes generic drugs to the extent feasible and cost effective."

2. Section 78 further directs the Department of Health to terminate its "participation" with MMCAP upon award of a contract under the ITN, which has not taken place. Section 78 ends with the following: "Award of any contract is contingent upon the approval of the Legislative Budget Commission that the requirements of this section have been met. Upon approval of the Legislative Budget Commission, the Department of Health shall terminate its participation in the Minnesota Multistate Contracting Alliance for Pharmacy."

3. On November 1, 2011, the Department issued ITN 10/268-000-E for the selection of a pharmaceutical GPO, which will subsequently work with a procured wholesaler to provide pharmaceutical products to the State of Florida.

4. Three vendors responded to the ITN: MHA, CSF, and MMCAP. CSF's proposal was presented as a partnership model with a larger GPO, MedAssets.

Vendors' Responsiveness to ITN Criteria

5. Section 1.1.2 of the ITN provides: "[DMS] anticipates awarding a contract to the responsive and responsible [vendor] whose proposal is assessed as providing the best value to the state."

6. The ITN included a series of minimum mandatory requirement questions, the answers to which the initial determination of responsiveness was based.

7. Each of the minimum mandatory requirement questions was labeled as a "Screening Question" requiring the vendor to attach specific supporting documentation. The Evaluation Team determined responsiveness based on each vendor's responses to the criteria.

8. The terms of the ITN permitted vendors to submit questions both about the ITN and its requirements from the time of the ITN release to the deadline for submitting a proposal on November 22, 2011.

9. With the release of the ITN and each of the subsequent 11 Addenda, DMS included the following language setting a deadline to protest: "FAILURE TO FILE A PROTEST WITHIN THE TIME PRESCRIBED IN §120.57(3), FLORIDA STATUTES, OR FAILURE TO FILE A BOND OR OTHER SECURITY WITHIN THE TIME ALLOWED FOR FILING A BOND SHALL CONSTITUTE A WAIVER OF PROCEEDINGS UNDER CHAPTER 120, FLORIDA STATUTES."

GPO Experience

10. The first minimum mandatory ITN requirement in Section 2.12.1.1.1 required a minimum of four years' experience and stated: "Do you have a minimum of four (4) years of experience as a group purchasing organization?"

11. CSF responded to Section 2.12.1.1.1, "Cooperative Services of Florida organized as a Group Purchasing Organization

in 1997. CSF creates value for the members by contracting directly with manufacturers.”

12. CSF’s 1997 Articles of Incorporation filed with the Florida Department of State provide that the general nature of the subject and purpose shall be “as a cooperative, non-stock membership corporation for the promotion of the interests of its Members as patrons within the meaning of the Subchapter T of Internal Revenue Code of 1986, as amended.”

13. Even though CSF had been operating as a group purchasing organization since 1997, Petitioner amended its Articles of Incorporation’s purpose in 2010 to state: “to operate a group purchasing organization.”

14. MMCAP began its pharmaceutical cooperative purchasing venture between the states of Wisconsin and Minnesota in 1995 and has continued expanding to 46 other states, including Florida, since 2003.

Annual Pharmaceutical Purchase Volume

15. DMS set the second minimum mandatory requirement in the ITN as an annual pharmaceutical purchase volume of one billion dollars in order to adequately meet the needs of the State of Florida. Section 2.12.1.1.2 stated, “Within the last two years, have you had an annual pharmaceutical purchase volume of at least one billion dollars?”

16. CSF responded, "Cooperative Services of Florida confirms that the annual pharmaceutical purchase volume exceeds the requirement of one billion dollars. Additionally, this has been met more than the two (2) year requirement." CSF calculated its response to Section 2.12.1.1.2 by using the unsubstantiated financial data of its joint partner, MedAssets, obtained from the internet. At hearing, however, CSF clarified the dollar amounts through Hartmann's credible testimony that MedAssets exceeded the billion-dollar threshold required in both 2009 and 2010.

17. MMCAP also meets the second minimum mandatory requirement by having at least one billion dollars within the last two years.^{1/}

Government Client

18. The minimum mandatory requirement question labeled Section 2.12.1.1.3 of the ITN asked, "Do you have at least one client who is a government or governmental purchasing agency?"

19. CSF responded yes and provided DMS its governmental list entitled "Governmental Entity Customers," which itemized Lee Memorial Health System, Fort Myers, Florida; Sarasota County Public Hospital District; The Health Authority of the City of Huntsville; and Central Florida Health Alliance, Inc. At hearing, CSF reiterated that it had governmental customers and

that there is also some type of ownership interest between CSF and those entities.

20. MMCAP undisputedly meets Section 2.12.1.1.3.

Initial Pricing Exercise

21. During the evaluation phase, a pricing exercise was conducted and each vendor submitted pricing information based on the state's purchase of pharmaceuticals during fiscal year 2011. CSF's prices were the lowest during the evaluation pricing exercise.

MMCAP's Responsiveness

22. During the ITN process, MMCAP informed the Department by email on November 10, 2011, that it was constitutionally prohibited from complying with the ITN indemnification requirements, and requested guidance.

23. On November 14, 2011, DMS released Addendum No. 2 of the ITN to waive the indemnification requirements of the original ITN for governmental entity GPOs such as MMCAP.

24. The ITN also required each vendor to commit that it would be able to work with the pharmaceutical wholesaler selected by a separate state contract.

25. When MMCAP responded to the ITN, it only had contracts with three wholesalers: Cardinal, Amerisource Bergan, and Morris & Dickson. At the time, its charter provided that the state

"must use the MMCAP-contracted wholesaler selected by the home state of the Member Facility when obtaining pharmaceuticals."

26. At the hearing, MMCAP's Charter had recently been amended to allow MMCAP to work with any wholesaler and MMCAP was prepared to work with the wholesaler selected by the separate state contract.

27. The Evaluation Team reviewed each of the three vendors' proposals and determined each proposal was responsive. Subsequently, all three vendors advanced to the negotiation stage of the ITN.

Conflict of Interest

28. Jasper Watkins is a Department of Health employee who also served on MMCAP's advisory board. In order to avoid any potential conflict of interest with a future ITN being released, he resigned from the advisory board by email on September 2, 2010. Watkins continued to get MMCAP's newsletter from the distribution list through 2012.

29. On December 9, 2011, DMS's Secretary designated Jasper Watkins to serve on the Evaluation Team, which advanced all three vendors to the negotiation stage. Watkins was appointed to the Negotiation Team on February 24, 2012, and participated in several strategy sessions. On March 21, 2012, the day before the negotiations with the vendors started, Watkins was removed

from the Negotiation Team. Watkins played no further role in the ITN process after his removal.

Negotiation Stage

30. The second stage of the ITN procurement process for the three vendors was the negotiation phase. The Negotiation Team consisted of five members. During the negotiation phase, each of the members of the Negotiation Team had the opportunity to raise questions and issues with each of the participants.

31. During the Recommendation Meetings, the Negotiation Team reviewed the list of potential criteria and then, consistent with section 287.057(c)(4), identified nine criteria in selecting the vendor for award of the GPO contract: i) pricing; ii) scope and depth of contract portfolio, current and to be acquired; iii) transition; iv) ability to help change the state's purchasing behavior to save dollars; v) ability to be a strategic purchasing partner; vi) management of the wholesaler; vii) assistance in creating formularies for agencies and the state; viii) deliverables; and ix) E-audit.

32. Negotiations with the three selected vendors were conducted separately for seven months from March 2012 through October 2012. The Negotiation Team questioned each of the participants regarding all aspects of their proposals including pricing technical specifications, service level agreements, and business operations. At various instances during the

negotiation meetings, the negotiation team members properly discussed matters outside the ITN. Additional information and revisions were sought from the vendors so that the Negotiation Team could fully evaluate the services and benefits that the vendor was able to provide.

33. During the negotiation phase, a second pricing exercise was conducted based upon the state's pharmaceutical purchases for fiscal year 2012. MMCAP's prices were lower for the exercise. Like the first pricing exercise during the ITN evaluation phase, the second exercise did not establish an actual price that would be paid by the state or incorporated into the final contract.

34. The pricing exercises undertaken in this ITN process were only snapshots in time. DMS had the vendors participate in the analysis to show the best overall pricing and to demonstrate whether the vendor would be able to aggressively work on behalf of the state to maintain best pricing in the constantly changing pharmaceutical market. All vendors showed that their analysis could work successfully within the competitive environment.

35. On October 22, 2012, all three vendors submitted Best and Final Offers. On October 26 and 29, 2012, the Negotiation Team reviewed the offers to determine which vendor would provide the best value to the State of Florida. The Negotiation Team

focused on the selection criteria of the ITN "as refined during the negotiations."

36. After the negotiations were complete, three of the five Negotiation Team members, Brantley, Whitfield, and Wells, voted to recommend MMCAP receive the GPO award. Two members of the Negotiation Team, Nilson and Bennett, voted for CSF to receive the award.

37. On November 5, 2012, the Negotiation Team issued a memorandum to DMS' Secretary, which summarized the reasons^{2/} for the selection of MMCAP. The Recommendation Memo was accepted by the Secretary of DMS on January 22, 2013.

38. On January 23, 2013, DMS posted its Notice of Intent to Award the pharmaceutical GPO contract to MMCAP. CSF timely filed its Notice of Protest to the award on January 25, 2013. CSF had never previously protested any specifications or Addenda in the ITN before January 25, 2013.

39. On February 4, 2013, Petitioner filed a timely formal protest challenging the Intent to Award.

40. On March 1, 2013, a meeting for an opportunity to resolve the protest was held pursuant to section 120.57(3)(d). An impasse was reached.

41. On March 19, 2013, DMS forwarded CSF's formal protest petition to DOAH, which is before the undersigned.

CONCLUSIONS OF LAW

42. DOAH has jurisdiction of the parties and subject matter in this case pursuant to sections 120.569, 120.57(1) and (3), Florida Statutes (2013).

43. Petitioner has challenged the Department's proposed agency action to award the pharmaceutical GPO contract to MMCAP.

44. The burden of proof resides with CSF, the party contesting the agency action. This de novo proceeding was conducted for the purpose of evaluating the action that was taken by the Department in an attempt to determine whether that action is contrary to the Department's governing statutes, the Department's rules or policies, or the solicitation specifications. See § 120.57(3) (f), Fla. Stat., and State Contracting and Eng'g Corp. v. Dep't of Transp., 709 So. 2d 607 (Fla. 1st DCA 1998).

45. The standard of proof in this proceeding is whether the agency action was clearly erroneous, contrary to competition, arbitrary, or capricious. § 120.57(3) (f), Fla. Stat.

Standing

46. As a preliminary matter, the Department and MMCAP have challenged the standing of CSF. DMS alleges that CSF is not a responsive and responsible vendor regarding the minimum mandatory requirements, despite the fact that the Department

originally determined CSF's proposal to be responsive. Section 287.057(1)(c)(4) prohibits agencies from contracting with vendors that are not responsive and responsible. Also, DMS contends CSF waived its ability to challenge ITN specifications.

47. Section 287.012(25) defines a responsible vendor as "a vendor who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance."

48. Section 287.012(27) defines a responsive vendor as "a vendor that has submitted a bid, proposal, or reply that conforms in all material respects to the solicitation."

49. A party has standing to protest an intended award if that party has a "substantial interest" to be determined by the agency. Preston Carroll Co. v. Fla. Keys Aqueduct Auth., 400 So. 2d. 524, 525 (Fla. 3d DCA 1981).

50. DMS' argument that CSF is not a responsive and responsible vendor is premised on several propositions. First, DMS asserts that CSF's amendment to its corporate charter's purpose to specify that it is operating as a GPO in 2010 demonstrates CSF was not a GPO previously. Nothing in the ITN required that the primary purpose of four years as a GPO be in the vendor's charter. The testimony of CSF's CEO that CSF has been a GPO since 1997 is found to be more persuasive than any

significance attached to the 2010 charter change, and demonstrates CSF meets Section 2.12.1.1.1.

51. The Department's position that CSF would not meet the requirement of an annual pharmaceutical purchase volume of at least one billion dollars in the two years previous to the submission without MedAssets is correct. However, no evidence was presented that demonstrated that CSF is prohibited from submitting a partner model proposal with MedAssets as a vendor. Hence, the joint model vendor at issue, CSF/MedAssets, meets Section 2.12.1.1.2.

52. DMS further contends that CSF did not meet the mandatory minimum requirement to have at least one client who is a government or governmental purchasing agency because the four government entities provided are also entities with which CSF has an ownership interest. However, nothing in the ITN specifications prohibited such a client relationship or disallowed such ownership directly or indirectly. Therefore, CSF also meets Section 2.12.1.1.3.

53. For these reasons, CSF conforms to the mandatory minimum requirements of the ITN as a responsive vendor. CSF is also responsible since no evidence was presented that CSF cannot fully perform the contract. Consequently, CSF's substantial interest in obtaining the contract is affected by the intended

award of the contract to MMCAP, and Petitioner has standing to protest the award.

54. As to the price methodology standing issue, Petitioner contends that the Department's procurement process price methodology was flawed and challenges the price analysis. However, CSF failed to challenge the price analysis specifications within the proper time line. CSF challenged the issue after DMS posted the Notice of Intent to Award, not during the 72-hour protest period required pursuant to section 120.57(3) (b) to which CSF had clearly been advised. Petitioner failed to preserve its right to protest the ITN as originally posted. Therefore, CSF lacks standing to challenge the price analysis.

CSF's Challenge

55. CSF protests the intent to award the GPO contract to MMCAP and asserts that it was contrary to DMS' governing statutes, rules, policies, and solicitation specifications developed by the Negotiation Team.

56. Section 287.057(1) provides the process for ITNs in relevant part:

(c) Invitation to negotiate.—The invitation to negotiate is a solicitation used by an agency which is intended to determine the best method for achieving a specific goal or solving a particular problem and identifies one or more responsive vendors with which

the agency may negotiate in order to receive the best value.

1. Before issuing an invitation to negotiate, the head of an agency must determine and specify in writing the reasons that procurement by an invitation to bid or a request for proposal is not practicable.

2. The invitation to negotiate must describe the questions being explored, the facts being sought, and the specific goals or problems that are the subject of the solicitation.

3. The criteria that will be used for determining the acceptability of the reply and guiding the selection of the vendors with which the agency will negotiate must be specified.

4. The agency shall evaluate replies against all evaluation criteria set forth in the invitation to negotiate in order to establish a competitive range of replies reasonably susceptible of award. The agency may select one or more vendors within the competitive range with which to commence negotiations. After negotiations are conducted, the agency shall award the contract to the responsible and responsive vendor that the agency determines will provide the best value to the state, based on the selection criteria.

5. The contract file for a vendor selected through an invitation to negotiate must contain a short plain statement that explains the basis for the selection of the vendor and that sets forth the vendor's deliverables and price, pursuant to the contract, along with an explanation of how these deliverables and price provide the best value to the state.

57. Section 287.012 defines best value to mean "the highest overall value to the state based on factors that include, but are not limited to price, quality, design, and workmanship."

58. In this matter, DMS's ITN procurement process was in compliance with the governing rules, policies, and ITN specifications. No evidence to the contrary was presented at hearing. Instead, the record shows DMS acted in conformity with SB 2002 and chapter 287.

59. Section 78 of SB 2002 does not prohibit MMCAP from applying for the new GPO contract to provide pharmaceuticals for the State of Florida under a state term contract. The bill simply requires specific terms and conditions to which MMCAP must comply.

60. As to chapter 287, DMS properly followed the evaluation process of reviewing the minimum mandatory "evaluation criteria" as the starting point in this procurement. Each "evaluation criteria" was specified in the ITN. The Evaluation Team determined all three vendors had the capabilities to perform the contract by meeting the minimum mandatory requirements according to the ITN specifications and moved the three vendors to the second phase of the process "to which to commence negotiations."

61. Like CSF, MMCAP is also a responsive and responsible vendor who has met the minimum mandatory requirements. MMCAP's amended charter allows it to work with a non-contracted wholesaler and it does not have to indemnify the state under the contract because of Addendum No. 2. Additionally, MMCAP's GPO

experience far exceeded the four-year requirement and its annual pharmaceutical purchase volume was at least one billion dollars for the two-year requirement. Also, it is undisputed that MMCAP had at least one governmental entity client. Furthermore, MMCAP has the ability to perform the pharmaceutical contract.

62. Contrary to CSF's allegations, the negotiations in this procurement process were handled properly. DMS made the award based on the proper selection criteria. Section 287.057(c)(4) sets forth a two-phase process and distinguishes "evaluation criteria" from "selection criteria."

63. First, the Evaluation Team must use "evaluation criteria" that is "set forth in the [ITN]" to choose the vendors who will go to the negotiation stage, which occurred in this matter.

64. Next, the Negotiation Team properly developed "selection criteria" by which vendors would provide the "best value to the state" after negotiations. The statute clearly expands "selection criteria" parameters for the Negotiation Team further than "evaluation criteria" to allow the Negotiation Team to include objective factors because they are not limited to, "price, quality, design, and workmanship" as set forth in section 287.012.

65. In this matter, the selection criteria developed by the Negotiation Team during the negotiation phase of the ITN

process fell within the parameters of section 287.057(1)(c)(4). The team took seven months to develop the criteria based on responses received, negotiations, and Best and Final Offers. Also, during the negotiation period, the three vendors were able to clarify, enhance, and modify their proposals in an effort to demonstrate that they had the ability to provide the best service for the State of Florida. The final selection criteria the Negotiation Team chose provided the best value to the state.

66. In the Joint Pre-hearing Stipulation and Proposed Recommended Order, Petitioner alleged that the Department's intent to award the contract to MMCAP is also arbitrary and capricious. An agency action is capricious if the agency takes the action without thought, reason, or rationality. An agency decision is arbitrary if it is not supported by facts or logic. Agrico Chem. Co. v. State Dep't of Env'tl. Reg., 365 So. 2d 759, 763 (Fla. 1st DCA 1978).

67. The record is void of evidence to demonstrate any of the underlying methodology used by the negotiators was biased, flawed, or that the decision was arrived at in any manner other than based upon logic, facts, rational thought, or the individual expertise and judgment of each negotiator. Therefore, the undersigned rejects CSF's proposition that the Respondent's Intent to Award is arbitrary or capricious.

68. Likewise, the record lacks persuasive evidence to demonstrate the Department's actions were clearly erroneous.

69. Petitioner further contends that Watkins' participation on the Evaluation Team and Negotiation Team was a conflict of interest because his involvement in the process resulted in favoritism for MMCAP, because he had served on MMCAP's advisory board previously. Such a position is unfounded in that no evidence was presented at hearing to demonstrate the process was improperly affected by the inclusion of Watkins as a member of the Evaluation and Negotiation teams. Watkins neither participated in the true negotiation period nor was any conflict of interest or prejudice demonstrated by his level of participation. Therefore, Petitioner failed to demonstrate Watkins' selection or any other of the Department's actions were contrary to competition.

70. Accordingly, Petitioner has not met its burden to demonstrate that the Department's proposed action is either contrary to the Department's governing statutes, rules or policies, and ITN specifications or that DMS' actions during the procurement process were clearly erroneous, contrary to competition or arbitrary or capricious.

RECOMMENDATION

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

RECOMMENDED:

That the Department of Management Services enter a final order dismissing the bid protest filed by Petitioner.

DONE AND ENTERED this 15th day of January, 2014, in Tallahassee, Leon County, Florida.



JUNE C. MCKINNEY
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of January, 2014.

ENDNOTES

^{1/} CSF's position that MMCAP does not meet the criteria is rejected.

^{2/} CSF's Exhibit #37.

COPIES FURNISHED:

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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.