

STATE OF FLORIDA
DEPARTMENT OF REVENUE

XEROX STATE AND LOCAL
SOLUTIONS, INC.,

Petitioner,

vs.

DEPARTMENT OF REVENUE,

Respondent,

and

SYSTEMS & METHODS, INC.,

Intervenor.

DOR 2015-004 - FOF
FILED

Department of Revenue – Agency Clerk
Date Filed: *March 20, 2015*
By: *April Warner*

DOAH CASE NO. 14-002798BID
DOR SOLICITATION NO. 13/14-01

FINAL ORDER

This matter comes before the State of Florida, Department of Revenue for the purpose of issuing a Final Order in the above styled matter pursuant to Section 120.57, Florida Statutes. On February 27, 2015 the Division of Administrative Hearings (DOAH) issued its Corrected Recommended Order (“Order”), which is attached hereto as Exhibit 1. This Order was rendered after a disputed fact hearing was conducted on August 6 and 7, 2014 in Tallahassee, Florida, pursuant to Sections 120.569 and 120.57, Florida Statutes.

On March 2, 2015 the Petitioner filed timely exceptions to the recommended order, which are attached hereto as Exhibit 2. On March 11, 2015 the Intervenor filed a timely response to the Petitioner’s exceptions, which is attached hereto as Exhibit 3. On

March 12, 2015 the Respondent filed a timely response to the Petitioner's exceptions, which is attached hereto as Exhibit 4.

RULINGS ON EXCEPTIONS

The statutory requirement set forth in Subsection 120.57(1)(k), Florida Statutes, that an agency include an explicit ruling on each exception, provides that an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record. While the Petitioner's exceptions do not provide the degree of specificity, on a per paragraph basis, as would be preferred, if not required, by this statutory standard, in an abundance of caution, each exception has been ruled upon herein.

The statutory standard for agency review and processing of recommended orders issued by the Division of Administrative Hearings (DOAH) prescribed by Subsection 120.57(1)(l), Florida Statutes, is as follows:

The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that

the proceedings on which the findings were based did not comply with essential requirements of law...

Based upon the foregoing standard of review, the following rulings are made in regard to the exceptions filed by the Petitioner herein:

1. Petitioner's exception to paragraph four (4) is denied. There is competent substantial evidence in the record to support, and insufficient grounds to reject, the Administrative Law Judge's (ALJ's) findings of fact and conclusions of law set forth in paragraph four (4).

2. Petitioner's exception to paragraph nine (9) is denied. There is competent substantial evidence in the record to support the ALJ's findings of fact set forth in paragraph nine (9).

3. Petitioner's exception to paragraph thirteen (13) is denied. There is competent substantial evidence in the record to support, and insufficient grounds to reject, the ALJ's findings of fact and conclusions of law set forth in paragraph thirteen (13).

4. Petitioner's exception to paragraph fourteen (14) is denied. There is competent substantial evidence in the record to support the ALJ's findings of fact set forth in paragraph fourteen (14).

5. Petitioner's exception to paragraph fifteen (15) is denied. There is competent substantial evidence in the record to support the ALJ's findings of fact set forth in paragraph fifteen (15).

6. Petitioner's exception to paragraph sixteen (16) is denied. There is competent substantial evidence in the record to support the ALJ's findings of fact set forth in paragraph sixteen (16).

7. Petitioner's exception to paragraph seventeen (17) is denied. There is competent substantial evidence in the record to support the ALJ's findings of fact set forth in paragraph seventeen (17).

8. Petitioner's exception to paragraph eighteen (18) is denied. There is competent substantial evidence in the record to support the ALJ's findings of fact set forth in paragraph eighteen (18).

9. Petitioner's exception to paragraph nineteen (19) is denied. There is competent substantial evidence in the record to support the ALJ's findings of fact set forth in paragraph nineteen (19).

10. Petitioner's exception to paragraph twenty (20) is denied. There is competent substantial evidence in the record to support the ALJ's findings of fact set forth in paragraph twenty (20).

11. Petitioner's exception to paragraph twenty-one (21) is denied. There is competent substantial evidence in the record to support the ALJ's findings of fact set forth in paragraph twenty-one (21).

12. Petitioner's exception to paragraph twenty-two (22) is denied. There is competent substantial evidence in the record to support the ALJ's findings of fact set forth in paragraph twenty-two (22).

13. Petitioner's exception to paragraph twenty-five (25) is denied. There is competent substantial evidence in the record to support, and insufficient grounds to reject, the ALJ's findings of fact and conclusions of law set forth in paragraph twenty-five (25).

14. Petitioner's exception to paragraph twenty-six (26) is denied. There is competent substantial evidence in the record to support the ALJ's findings of fact set forth in paragraph twenty-six (26).

15. Petitioner's exception to paragraph twenty-seven (27) is denied. There is competent substantial evidence in the record to support the ALJ's findings of fact set forth in paragraph twenty-seven (27).

16. Petitioner's exception to paragraph twenty-nine (29) is denied. There is competent substantial evidence in the record to support the ALJ's findings of fact set forth in paragraph twenty-nine (29).

17. Petitioner's exception to paragraph thirty-one (31) is denied. There is competent substantial evidence in the record to support the ALJ's findings of fact set forth in paragraph thirty-one (31).

18. Petitioner's exception to paragraph thirty-two (32) is denied. There is competent substantial evidence in the record to support the ALJ's findings of fact set forth in paragraph thirty-two (32).

19. Petitioner's exception to paragraph thirty-three (33) is denied. There is competent substantial evidence in the record to support the ALJ's findings of fact set forth in paragraph thirty-three (33).

20. Petitioner's exception to paragraph thirty-four (34) is denied. There is competent substantial evidence in the record to support the ALJ's findings of fact set forth in paragraph thirty-four (34).

21. Petitioner's exception to paragraph thirty-five is denied. There is competent substantial evidence in the record to support the ALJ's findings of fact set forth in paragraph thirty-five (35).

22. Petitioner's exception to paragraph thirty-six (36) is denied. There is competent substantial evidence in the record to support the ALJ's findings of fact set forth in paragraph thirty-six (36).

23. Petitioner's exception to paragraph thirty-eight (38) is granted to the extent that the word "proportionate" is replaced with the words "inversely proportionate" based upon competent substantial evidence in the record. It is clear from the rest of the order, and the record, that the ALJ understood the Cost Data scoring formula, and it is quoted verbatim from the ITN in paragraph thirty-seven (37) of the Order.

24. Petitioner's exception to paragraph thirty-nine (39) is denied. There is competent substantial evidence in the record to support the ALJ's findings of fact set forth in paragraph thirty-nine (39). However, the portions of the record supporting this finding include both section 11.1 and 11.3 of the ITN, and this paragraph is modified to reflect the additional citation to section 11.1.

25. Petitioner's exception to paragraph forty (40) is denied. There is competent substantial evidence in the record to support the ALJ's findings of fact set forth in paragraph forty (40).

26. Petitioner's exception to paragraph forty-one (41) is denied. There is competent substantial evidence in the record to support the ALJ's findings of fact set forth in paragraph forty-one (41).

27. Petitioner's exception to paragraph forty-two (42) is denied. There is competent substantial evidence in the record to support the ALJ's findings of fact set forth in paragraph forty-two (42).

28. Petitioner's exception to paragraph forty-three (43) is denied. There is competent substantial evidence in the record to support the ALJ's findings of fact set forth in paragraph forty-three (43).

29. Petitioner's exception to paragraph forty-four (44) is denied. There is competent substantial evidence in the record to support the ALJ's findings of fact set forth in paragraph forty-four (44).

30. Petitioner's exception to paragraph forty-five (45) is denied. There is competent substantial evidence in the record to support, and insufficient grounds to reject, the ALJ's findings of fact and conclusions of law set forth in paragraph forty-five (45).

31. Petitioner's exception to paragraph forty-six (46) is denied. There is competent substantial evidence in the record to support the ALJ's findings of fact set forth in paragraph forty-six (46).

32. Petitioner's exception to paragraph forty-seven (47) is denied. There is competent substantial evidence in the record to support, and insufficient grounds to reject, the ALJ's findings of fact and conclusions of law set forth in paragraph forty-seven (47).

33. Petitioner's exception to paragraph forty-eight (48) is denied. There is competent substantial evidence in the record to support the ALJ's findings of fact set forth in paragraph forty-eight (48).

34. Petitioner's exception to paragraph forty-nine (49) is denied. There is competent substantial evidence in the record to support the ALJ's findings of fact set forth in paragraph forty-nine (49).

35. Petitioner's exception to paragraph fifty (50) is denied. There is competent substantial evidence in the record to support, and insufficient grounds to reject, the ALJ's findings of fact and conclusions of law set forth in paragraph fifty (50).

36. Petitioner's exception to paragraph fifty-one (51) is denied. There is competent substantial evidence in the record to support, and insufficient grounds to reject, the ALJ's findings of fact and conclusions of law set forth in paragraph fifty-one (51).

37. Petitioner's exceptions to paragraph fifty-two (52) are denied. There is competent substantial evidence in the record to support the ALJ's findings of fact set forth in paragraph fifty-two.

38. Petitioner's exception to paragraph fifty-three (53) is denied. There is competent substantial evidence in the record to support, and insufficient grounds to reject, the ALJ's findings of fact and conclusions of law set forth in paragraph fifty-three (53).

39. Petitioner's exception to paragraph fifty-four (54) is denied. There is competent substantial evidence in the record to support, and insufficient grounds to reject, the ALJ's findings of fact and conclusions of law set forth in paragraph fifty-four (54).

40. Petitioner's exception to paragraph fifty-five (55) is denied. There is competent substantial evidence in the record to support, and insufficient grounds to reject, the ALJ's findings of fact and conclusions of law set forth in paragraph fifty-five (55).

41. Petitioner's exceptions to paragraph fifty-six (56) are denied. There is competent substantial evidence in the record to support the ALJ's findings of fact set forth in paragraph fifty-six (56).

42. Petitioner's exception to paragraph fifty-seven (57) is denied. There is competent substantial evidence in the record to support the ALJ's findings of fact set forth in paragraph fifty-seven (57).

43. Petitioner's exception to paragraph fifty-nine (59) is denied. There is competent substantial evidence in the record to support the ALJ's findings of fact set forth in paragraph fifty-nine (59).

44. Petitioner's exception to paragraph sixty-one (61) is denied. There is competent substantial evidence in the record to support the ALJ's findings of fact set forth in paragraph sixty-one (61).

45. Petitioner's exception to paragraph sixty-two (62) is denied. There is competent substantial evidence in the record to support the ALJ's findings of fact set forth in paragraph sixty-two (62).

46. Petitioner's exception to paragraph sixty-three (63) is denied. There is competent substantial evidence in the record to support the ALJ's findings of fact set forth in paragraph sixty-three (63).

47. Petitioner's exception to paragraph sixty-four (64) is denied. There is competent substantial evidence in the record to support the ALJ's findings of fact set forth in paragraph sixty-four (64).

48. Petitioner's exception to paragraph sixty-five (65) is denied. There is competent substantial evidence in the record to support, and insufficient grounds to reject, the ALJ's findings of fact and conclusions of law set forth in paragraph sixty-five (65).

49. Petitioner's exception to paragraph sixty-six (66) is denied. There is competent substantial evidence in the record to support the ALJ's findings of fact set forth in paragraph sixty-six (66).

50. Petitioner's exception to paragraph sixty-seven (67) is denied. There is competent substantial evidence in the record to support, and insufficient grounds to reject, the ALJ's findings of fact and conclusions of law set forth in paragraph sixty-seven (67).

51. Petitioner's exception to paragraph seventy-two (72) is denied. Paragraph seventy-two (72) sets forth a reasonable summary of the "clearly erroneous" standard.

52. Petitioner's exception to paragraph seventy-four (74) is denied. There is competent substantial evidence in the record to support, and insufficient grounds to reject, the ALJ's findings of fact and conclusions of law set forth in paragraph seventy-four (74).

53. Petitioner's exception to paragraph seventy-five (75) is denied. There are insufficient grounds to reject the conclusion of law set forth in paragraph seventy-five (75).

54. Petitioner's exception to paragraph seventy-six (76) is denied. There is competent substantial evidence in the record to support, and insufficient grounds to reject, the ALJ's findings of fact and conclusions of law set forth in paragraph seventy-six (76).

55. Petitioner's exception to paragraph seventy-seven (77) is denied. There are insufficient grounds to reject the conclusion of law set forth in paragraph seventy-seven (77).

56. Petitioner's exception to paragraph seventy-eight (78) is denied. There is competent substantial evidence in the record to support, and insufficient grounds to reject, the ALJ's findings of fact and conclusions of law set forth in paragraph seventy-eight (78).

57. Petitioner's exception to paragraph eighty-one (81) is denied. There are insufficient grounds to reject the conclusion of law set forth in paragraph eighty-one (81).

58. Petitioner's exception to paragraph eighty-two (82) is denied. There are insufficient grounds to reject the conclusion of law set forth in paragraph eighty-two (82).

59. Petitioner's exception to paragraph eighty-three (83) is denied. There are insufficient grounds to reject the conclusion of law set forth in paragraph eighty-three (83).

60. Petitioner's exception to paragraph eighty-four (84) is denied. There are insufficient grounds to reject the conclusion of law set forth in paragraph eighty-four (84).

61. Petitioner's exception to paragraph eighty-five (85) is denied. There is competent substantial evidence in the record to support, and insufficient grounds to reject, the ALJ's findings of fact and conclusions of law set forth in paragraph eighty-five (85).

62. Petitioner's exception to paragraph eighty-six (86) is denied. There is competent substantial evidence in the record to support, and insufficient grounds to reject, the ALJ's findings of fact and conclusions of law set forth in paragraph eighty-six (86).

63. Petitioner's exception to paragraph eighty-seven (87) is denied. There is competent substantial evidence in the record to support, and insufficient grounds to reject, the ALJ's findings of fact and conclusions of law set forth in paragraph eighty-seven (87).

64. Petitioner's exception to paragraph eighty-eight (88) is denied. There are insufficient grounds to reject the conclusion of law set forth in paragraph eighty-eight (88).

65. Petitioner's exception to paragraph eighty-nine (89) is denied. There is competent substantial evidence in the record to support, and insufficient grounds to reject, the ALJ's findings of fact and conclusions of law set forth in paragraph eighty-nine (89).

66. Petitioner's exception to paragraph ninety (90) is denied. There are insufficient grounds to reject the conclusion of law set forth in paragraph ninety (90).

67. Petitioner's exception to paragraph ninety-one (91) is denied. There are insufficient grounds to reject the conclusion of law set forth in paragraph ninety-one (91).

68. Petitioner's exception to paragraph ninety-two (92) is denied. There are insufficient grounds to reject the conclusion of law set forth in paragraph ninety-two (92).

FINDINGS OF FACT

The Department adopts and incorporates by reference the findings of fact as set forth in the Corrected Recommended Order, as modified in paragraphs 23 and 24 above, as the factual findings herein.

CONCLUSIONS OF LAW

The Department hereby adopts and incorporates by reference the conclusions of law as set forth in the Corrected Recommended Order as the conclusions of law herein.

DETERMINATION

Accordingly, it is ORDERED:

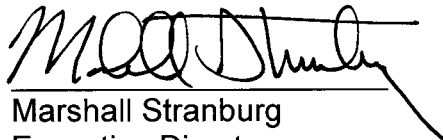
That the Petitioner's Protest is DISMISSED, the award of the contract to Systems & Methods, Inc. is upheld, and Respondent may proceed with the contract award process in this matter.

NOTICE OF RIGHT TO JUDICIAL REVIEW

Any party who is adversely affected by this final order has the right to seek judicial review of the order under section 120.68, Florida Statutes, by filing a notice of appeal under Rule 9.190 of the Florida Rules of Appellate Procedure with the Agency Clerk of the Department of Revenue in the Office of the General Counsel, POB 6668 Tallahassee, Florida 32314-6668; by FAX to (850) 488-7112; or by hand delivery to 2450 Shumard Oak Blvd. Bldg. 1 Suite 2400, Tallahassee, Florida 32399-0100, AND by filing a copy of the notice of appeal accompanied by the applicable filing fees with the District Court of Appeal, First District or with the District Court of Appeal in the appellate district where the party resides. The notice of appeal must be filed within 30 days from the date this order is filed with the clerk of the Department.

ORDERED in Tallahassee, Leon County, Florida, this 20th day of March
2015.

State of Florida
DEPARTMENT OF REVENUE


Marshall Stranburg
Executive Director

Copies Furnished: *by mail March 20, 2015* (AW)

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