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**IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT**

BLUE RAY'Z HEATING AND
AIR CONDITIONING, LLC,

Intervenor/Appellant.

CASE NO. 5D17-3374

Lower Tribunal (DOAH) Case No. 17-0003184BID
DOT Case No. 17-017

DEPARTMENT OF TRANSPORTATION,
and E.R. REEVES CORP. D/B/A ALL
SEASONS AIR CONDITIONING,

Appellees.

ON REVIEW FROM A FINAL ORDER OF
State of Florida Department of Transportation Division of Administrative Hearings

APPENDIX TO APPELLANT'S INITIAL BRIEF

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STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION
Haydon Burns Building
605 Suwannee Street
Tallahassee, Florida

E.R. REEVES CORP., d/b/a ALL
SEASONS AIR CONDITIONING,

Petitioner,

vs.

DOAH Case No. 17-3184BID
DOT Case No. 17-017

DEPARTMENT OF TRANSPORTATION,

Respondent,

and

BLUE RAY'Z HEATING AND AIR
CONDITIONING, LLC,

Intervenor.

FINAL ORDER

The Department issued ITB-DOT-16/17-8017-AC to maintain, repair, install, and replace HVAC systems and components at various facilities along Florida's Turnpike. (RO ¶ 2.) The ITB requires all labor, materials, and incidentals to maintain and repair 232 HVAC units at 65 different facilities. (RO ¶ 3.) Blue's bid was the lowest and All Seasons' was second lowest. (RO ¶ 15.) The Department posted a notice of intent to award the contract to Blue. (RO ¶ 16.)

All Seasons timely protested the proposed award and this case was referred to the Division of Administrative Hearings (DOAH). The assigned Administrative Law Judge (ALJ), The Honorable Darren A. Schwartz, entered a Recommended Order on August 28, 2017, recommending that the Department enter a final order rescinding the proposed award to Blue.

A copy of the Recommended Order is attached. The Department timely filed exceptions to the Recommended Order on September 7, 2017. Blue filed exceptions with DOAH on the same day, but not with the Department as required. Fla. Admin. Code R. 28-106.217(1). To facilitate meaningful review, the Department will treat Blue's exceptions as if they were correctly filed. All Seasons apparently did not file responses as the rule authorizes (but does not require). Fla. Admin. Code. R. 28-106.271(3).

Introduction and General Principles

Where a party timely files exceptions to a recommended order, "[t]he final order shall include an explicit ruling on each exception" § 120.57(1)(k), Fla. Stat.

"As with recommended orders in other formal hearings, the agency may reject the administrative law judge's findings of fact in a bid protest only if the findings of fact are not supported by competent and substantial evidence or if the proceedings did not comply with the essential requirements of law." Gtech Corp. v. Dep't of the Lottery, 737 So. 2d 615, 619 (Fla. 1st DCA 1999); § 120.57(1)(l), Fla. Stat. "Competent, substantial evidence is such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred or such evidence as is sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." Bill Salter Adver., Inc. v. Dep't of Transp., 974 So. 2d 548, 550-551 (Fla. 1st DCA 2008) (citations and internal quotations omitted). "Factual inferences are to be drawn by the hearing officer as trier of fact." Heifetz v. Dep't of Bus. Reg., Div. of Alcoholic Beverages & Tobacco, 475 So. 2d 1277, 1283 (Fla. 1st DCA 1985). Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. § 120.57(1)(l), Fla. Stat.

The Department may reject or modify conclusions of law over which it has substantive jurisdiction. Gtech, 737 So. 2d at 619; § 120.57(1)(I), Fla. Stat. In a bid protest, “the ALJ is charged with reviewing the agency’s proposed action against appellate-like ‘standard[s] of proof.’” J.D. v. Fla. Dep’t of Children and Families, 114 So. 3d 1127, 1132 (Fla. 1st DCA 2013) (citing § 120.57(3)(f), Fla. Stat.) (internal quotations and brackets in original). The DOAH hearing is de novo, “but its purpose is to evaluate the action taken by the agency.” Id. The ALJ does not “sit as a substitute” for the Department and make a determination whether to award the bid de novo. Id. at 1133 (citations omitted). The Department “is not bound by the ALJ’s legal conclusion as to whether the intended action was an abuse of discretion, but the agency’s review of that issue is circumscribed by the standards in section 120.57(1)(I).” Id. Thus, even if the ALJ determines as a factual matter that the protesting bidder met its burden, and concludes as a legal matter that the agency should not award the contract as proposed, the agency head retains discretion to award the contract “so long as the final order ‘states with particularity its reasons for rejecting or modifying such conclusion of law . . . and make[s] a finding that its substituted conclusion of law . . . is as or more reasonable than that which was rejected or modified.’” Id. (quoting § 120.57(1)(I), Fla. Stat.) (ellipses in original).

Rulings on the Department’s Exceptions

Exception 1: The Department takes exception to Paragraphs 26 and 27. Paragraph 26 is a finding of fact that the Department “did not review Blue’s Certification of Experience form to determine whether Blue demonstrated the necessary qualifications and experience required by the ITB.” Paragraph 27 finds that the Department’s witnesses could not testify to Blue’s demonstration of prior experience “similar in size, technical scope, and volume of work to that specified in the scope of work.” The Recommended Order’s findings vis-à-vis the “size,

technical scope, and volume of work” in the contract’s scope of work are detailed in Paragraphs 2-8, and its findings vis-à-vis Blue’s experience are in Paragraphs 17-25. These findings, which include that Blue “failed to demonstrate” experience similar in size, technical scope, and volume to that specified in the scope of work (RO ¶ 17), are unchallenged by the Department.

The Department points to testimony by a Department consultant, Trissa Thomas, that she looked at Blue’s Certification of Experience form, and that she looked at “the dates, the client project and the project description.” (Tr. 115.) The Recommended Order acknowledges this testimony, but also finds Thomas did not consider the volume of Blue’s work. (RO ¶ 30.) Paragraph 31 is a lengthy excerpt from the hearing transcript supporting this finding. The Department does not challenge either paragraph.

Paragraphs 26 and 27 are supported by competent, substantial evidence. Exception 1 is rejected. § 120.57(1)(l), Fla. Stat.

Exception 2: The Department takes exception to Paragraph 32’s finding that Santiago Alvarez, the facilities administrator of Florida’s Turnpike Enterprise, “just looked to confirm the documents were included in the bid package [submitted by Blue].” According to the Department, this finding gives a false impression because Alvarez did more than “just” confirm the documents were in the bid package.

The Department’s review of whether competent, substantial evidence supports a given finding “is not done by mechanically combing the transcript for words and phrases of testimony ... , but rather by considering the whole record, including the [ALJ’s] findings.” McDonald, 346 So. 2d at 578-579. The record reflects that Alvarez did go beyond merely confirming documents were in the bid package. For example, he testified that he reviewed the submittal for conflicts of interest, the evaluations and comments of his staff, and “ma[de] sure that they have the years of

experience and their references have been checked.” (Tr. 155-157.) But the Department does not challenge Paragraph 32’s other finding that Alvarez did not review Blue’s Certification of Experience Documentation in any detail. The ALJ’s finding that Alvarez “just” confirmed the documents were in the bid package may be an overstatement, but it is not material to the outcome.

Exception 2 is rejected. § 120.57(1)(I), Fla. Stat.

Exception 3: The Department takes exception to Paragraphs 35-38 and 49.

Paragraph 35 finds the Department established specific requirements in the ITB to determine responsiveness, but failed to determine if Blue had experience similar in size, technical scope, and volume to that specified in the scope of work.

Paragraph 36 finds the Department awarded the contract to Blue because it was the lowest bidder, without considering whether Blue had experience similar in size, technical scope, and volume to that specified in the scope of work.

Paragraph 37 is virtually identical to Paragraph 36. The main difference is that Paragraph 36 finds the Department awarded the contract “without considering” whether Blue’s experience matched the scope of work, while Paragraph 37 finds the Department awarded the contract “even though Blue failed to demonstrate” its experience matched the scope of work. The former faults the Department and the latter faults Blue.

Paragraph 38 concludes Blue is not a responsive and responsible vendor. Both Paragraphs 38 and 49 conclude the Department’s proposed action is contrary to the bid specifications, clearly erroneous, contrary to competition, arbitrary, and capricious.

Paragraphs 35-37 are findings of fact and are properly labeled as such. They are supported by competent, substantial evidence. The Department’s exception points to contrary

evidence, but the Department cannot reweigh evidence to reach a desired conclusion. Bill Salter Adver., 974 So. 2d at 551 (“In reviewing the record, neither the agency nor this court is permitted to re-weigh the evidence presented, judge the credibility of the witnesses, or otherwise interpret the evidence to fit a desired ultimate conclusion.”).

Paragraphs 38 and 49 are essentially the same. The differences are that Paragraph 38 finds Blue is not a responsive or responsible bidder (Paragraph 49 does not reach this issue) and that it is labeled a finding of fact. Unbound by the ALJ’s labels, the Department treats Paragraph 38 as if it were properly labeled as a conclusion of law. J.D., 114 So. 3d at 1134. Thus, the Department retains discretion to reject the ALJ’s legal conclusions that Blue is not responsive or responsible and that the Department’s proposed action is contrary to the bid specifications, clearly erroneous, contrary to competition, arbitrary, and capricious. See id. at 1135. To do so, the Department must explain its rationale in accordance with Section 120.57(1)(f), viz., state with particularity its reasons for rejecting or modifying the ALJ’s conclusions of law, and find that its substituted conclusions of law are as or more reasonable than the ALJ’s conclusions of law. Id.

The Department declines to reject or modify the conclusions of law in Paragraphs 38 and 49. Exception 3 is rejected. § 120.57(1)(f), Fla. Stat.

Exception 4: The Department takes exception to Paragraphs 38, 49, 50, and 54. Paragraphs 38 and 49 are summarized above. Paragraph 50 is a conclusion of law that Blue’s bid was nonresponsive and materially deviated from the ITB because Blue failed to demonstrate that it had the requisite prior experience. Paragraph 54 is a conclusion of law that this failure was material.

The Department incorporates its rulings on the Department’s exceptions to Paragraphs 38 and 49 by reference. As for the other two paragraphs identified in Exception 4, the Department

argues that any failure by Blue to demonstrate that it had the requisite experience was not material, because it did not give Blue an advantage or benefit not enjoyed by other bidders. The Department reasons that Blue will be required to perform the scope of work for the price bid, and that any failure to document its experience in its bid package did not confer a competitive leg up.

The Department is sympathetic to this view, but notes the Department does not take exception to the ALJ's conclusions explaining why it is misplaced on these facts. (RO ¶¶ 55-57.)

The Department declines to reject or modify the conclusions of law in Paragraphs 50 and 54. Exception 4 is rejected. § 120.57(1)(l), Fla. Stat.

Exception 5: The Department takes exception to Paragraphs 38, 49, and 58. Paragraphs 38 and 49 are summarized above. Paragraph 58 is a conclusion of law that the Department's "failure to consider" whether Blue's prior experience is consistent with the ITB's specifications is arbitrary and capricious.

The Department incorporates its rulings on the Department's exceptions to Paragraphs 38 and 49 by reference. As for Paragraph 58, the Department argues that its proposed action is not arbitrary because a reasonable person could take the view that Blue is a responsive bidder.

The Department agrees that it has the discretion to reject the ALJ's conclusions that its actions were arbitrary and capricious, J.D., 114 So. 3d at 1134-5, but declines to exercise that discretion on these facts. Exception 5 is rejected.

§ 120.57(1)(l), Fla. Stat.

Rulings on Blue's Exceptions

At various points, Blue contends that the recommended order is “unnerving,” (Blue’s Exceptions at 1), that the ALJ’s recommendation was “foregone,” id. at 2, and that the ALJ “demonstrated” he was “predisposed” to rule against the Department and Blue, id. at 4 (emphasis omitted).

The Department is not required to rule on exceptions that do not clearly identify the disputed portion of the recommended order by page number or paragraph, that do not identify the legal basis for the exception, or that do not include appropriate and specific citations to the record. § 120.57(1)(k), Fla. Stat. The majority of Blue’s exceptions do not meet this standard.

To facilitate meaningful review, the Department construes these contentions as an argument that the proceedings did not comply with the essential requirements of law. § 120.57(1)(l), Fla. Stat. The Department disagrees and rejects these contentions. Id.

As for the exceptions that do minimally meet the Section 120(1)(k) standard, Blue takes exception to Paragraph 38 (Blue’s Exceptions at 2), summarized above. As explained above, the Department agrees with Blue that Paragraph 38 is a mislabeled conclusion of law. Also as explained above, the Department agrees with Blue that it has discretion to reject or modify this conclusion of law that Blue is a responsive and responsible bidder, but declines to exercise that discretion on these facts. Blue’s exception to Paragraph 38 is rejected. § 120.57(1)(l), Fla. Stat.

Blue appears to take exception to Paragraphs 19, 20, and 25. (Blue’s Exceptions at 4.) Each is supported by competent, substantial evidence. If Blue takes exception to these paragraphs, the exception is rejected. § 120.57(1)(l), Fla. Stat.

Findings of Fact

The Department adopts the Findings of Fact in the Recommended Order and incorporates them by reference.

Conclusions of Law

The Department adopts the Conclusions of Law in the Recommended Order and incorporates them by reference.

Order

Based on the foregoing Findings of Fact and Conclusions of Law, the Department rescinds the proposed award to Blue Ray'z Heating and Air Conditioning, LLC.

DONE and ORDERED this 29th day of September, 2017.



Michael Dew
Secretary
Florida Department of Transportation
Haydon Burns Building
605 Suwannee Street
Tallahassee, Florida 32399

FILED D.O.T. CLERK
2017 SEP 29 AM 10:41

NOTICE OF RIGHT TO APPEAL

THIS ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RULES 9.110 AND 9.190, FLORIDA RULES OF APPELLATE PROCEDURE, BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.110(d), FLORIDA RULES OF APPELLATE PROCEDURE, BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL, ACCOMPANIED BY THE APPROPRIATE FILING FEE, AND WITH THE DEPARTMENT'S CLERK OF AGENCY PROCEEDINGS, HAYDON BURNS BUILDING, 605 SUWANNEE STREET, MS 58, TALLAHASSEE, FLORIDA 32399-0458, WITHIN 30 DAYS OF RENDITION OF THIS ORDER.

Copies furnished to:

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**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

2017 SEP -7 PM 4:55

**E.R. REEVES CORP., d/b/a ALL
SEASONS AIR CONDITIONING,**

Petitioner,

vs.

DEPARTMENT OF TRANSPORTATION,

Case No. 17-3184BID

Respondent,

and

**BLUE RAY'Z HEATING AND AIR
CONDITIONING, LLC,**

Intervenor.

**DEPARTMENT OF TRANSPORTATION'S
EXCEPTIONS TO RECOMMENDED ORDER**

Pursuant to section 120.57(1)(k), Florida Statutes, Respondent Department of Transportation (Department), files its exceptions to the Recommended Order entered in this matter on August 28, 2017. Through these exceptions, the Department requests a final order declaring that Blue Ray'z Heating and Air Conditioning, LLC's (Blue) bid was responsive to the Invitation to Bid (ITB), declaring that Blue was a responsible bidder for the project, and affirming the Department's award of the contract for the project to Blue.

Exception 1

Recommended Order Paragraphs 26, 27

The Department takes exception to the statement in paragraph 26 that "DOT did not review Blue's Certification of Experience Documentation form to determine whether Blue demonstrated the necessary qualifications and experience required by the ITB." This finding is not supported by

any competent, substantial evidence, conflicts with the record, and should read “The Department reviewed Blue’s Certification of Experience Documentation for and determined that Blue demonstrated the necessary qualifications and experience required by the ITB.”

The Department takes exception to the statement in paragraph 27 that “...none of the witnesses presented by DOT could testify as to Blue’s demonstration of prior experience, specifically related to HVAC maintenance, repair, installation, and replacement services of commercial facilities similar in size, technical scope, and volume of work to that specified in the scope of work.” This finding is not supported by competent, substantial evidence, and conflicts with the record.

Trisa Thomas, a Department consultant, testified that she verified “the dates, the client project, and the project description.” Tr. 115, 122. Ms. Thomas verified that Blue worked for three years on the listed projects. Tr. 116. Ms. Thomas reviewed the descriptions of the listed projects and the type of work Blue performed to verify that the work Blue listed was related to the scope of work in the ITB. Tr. 116-117. The findings of fact listed in paragraphs 26 and 27 of the Recommended Order are not supported by competent, substantial evidence and should be reversed.

Exception 2

Recommended Order Paragraph 32

The Department takes exception to paragraph 32 of the Recommended Order, which finds that “[Mr. Alvarez] just looked to confirm the documents were included in the bid package.” This finding gives the impression that Mr. Alvarez only made sure all the required forms were included. This finding omits the majority of Mr. Alvarez’ testimony regarding his review of Blue’s bid package. Mr. Alvarez’ review of the Blue’s bid package also included review of the bid tabulation, certifying that he had no conflict of interest, reviewing evaluations of the bid made by multiple staff, reviewing the engineer’s estimate and comparing it to the bid, conducting a post-bid

conference call, and verifying that Blue has the required years of experience and that its references were checked. Tr. 155-157.

Exception 3

Recommended Order Paragraphs 35, 36, 37, 38, 49

The Department takes exception to the finding in paragraph 35 that “DOT established specific requirements for the ITB to determine responsiveness and then failed to determine if Blue had prior work experience specifically related to HVAC maintenance, repair, installation, and replacement services of commercial facilities similar in size, technical scope, and volume of work to that specified in the scope of work”.

The Department takes exception to the finding in paragraph 36 that “DOT awarded the bid to Blue because it was the lowest bidder, without considering whether Blue demonstrated prior experience specifically related to HVAC maintenance, repair, installation, and replacement services of commercial facilities similar in size, technical scope, and volume of work to that specified in the scope of work”.

The Department takes exception to the finding in paragraph 37 that “DOT awarded the bid to Blue because it was the lowest bidder, even though Blue failed to demonstrate in the Certification of Experience Documentation form that it had prior experience specifically related to HVAC maintenance, repair, installation, and replacement services of commercial facilities similar in size, technical scope, and volume of work to that specified in the scope of work”.

The Department takes exception to paragraphs 38 and 49 which find and conclude that Blue is not a responsive and responsible bidder.

The Department considered whether Blue demonstrated prior experience specifically related to HVAC maintenance, repair, installation, and replacement services of commercial facilities similar in size, technical scope, and volume of work to that specified in the scope of

work. Both Trisa Thomas and Santiago Alvarez reviewed, in differing degrees, Blue's previous experience as reported, including verification of provided references. Tr. 115-119, 157. After Ms. Thomas and Mr. Alvarez both reviewed Blue's bid in its entirety, Mr. Alvarez concluded that Blue had demonstrated that it had prior experience specifically related to HVAC maintenance, repair, installation, and replacement services of commercial facilities similar in size, technical scope, and volume of work to that specified in the scope of work. Tr. 159.

None of the bid solicitation materials specifically indicated precisely how the Certification of Experience form should be completed and therefore did not specifically enumerate what the threshold level of detail would be to be found responsive. Blue completed the form and the Department found this level of detail to be satisfactory to determine that Blue was responsive and determined had prior work experience specifically related to HVAC maintenance, repair, installation, and replacement services of commercial facilities similar in size, technical scope, and volume of work to that specified in the scope of work.

A responsible bidder is a bidder who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance. Section 287.012(25), Florida Statutes. Blue has a Class B Air Conditioning contractor's license and the required expertise to complete the contract. Tr. 236. Mr. Alvarez, who is responsible for selecting the intended awardee, evaluated Blue's bid and concluded that Blue can fulfill the contract requirements reliably. Blue is, by definition, a responsible bidder.

Exception 4

Recommended Order Paragraphs 38, 49, 50, 54

The Department takes exception to paragraph 38 and 49, which find and conclude that the Department's proposed action is contrary to the bid specifications.

The Department takes exception to paragraph 50, in that it concludes that "Blue's bid was nonresponsive and deviated materially from the bid specifications of the ITB".

The Department takes exception to paragraph 54, which concludes that "Blue's failure to demonstrate in the Certificate of Experience Documentation form prior experience specifically related to HVAC maintenance, repair, installation, and replacement services of commercial facilities similar in size, technical scope, and volume of work to that specified in the scope of work, is material."

Pursuant to Section 287.012(26), Florida Statutes, "a responsive bid is one that conforms in all material respects to the solicitation." The Department may waive a variance from the specifications if it is nonmaterial. *Harry Pepper & Associates, Inc. v. City of Cape Coral*, 352 So.2d 1190, 1193 (Fla. 2d DCA 1978). Materiality is determined by whether the variation affects the amount of the bid by giving the bidder an advantage or benefit not enjoyed by other bidders. *Id.*

Any failure by Blue to demonstrate experience in the Certificate of Experience form was not material as it was not of such a nature as its waiver would adversely affect bidding by placing Blue in a position of advantage over other bidders or by otherwise undermining the necessary common standard of competition as Blue will have to complete the same scope of work as any of the other bidders on this contract would have to perform. Blue will be required to service all units included in the scope of the contract on the set schedule and must respond to emergencies as per the bid specifications. Blue has not gained any competitive advantage whatsoever in any failure to include information in its Certification of Experience form.

For the foregoing reasons, the conclusions reached in paragraphs 50 and 54 of the Recommended Order should be disregarded, as Blue's bid did not materially deviate from the bid specifications and was responsive.

Exception 5

Recommended Order Paragraphs 38, 49, 58

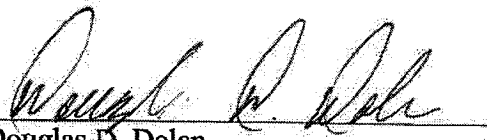
The Department takes exception to paragraphs 38, 49, and 58, as they find and conclude that the Department's "failure to consider whether Blue's prior experience is specifically related to HVAC maintenance, repair, installation, and replacement services of commercial facilities similar in size, technical scope, and volume of work to that specified in the scope of work, is arbitrary and capricious."

If the Department's action is "justifiable under any analysis that a reasonable person would use to reach a decision of similar importance ... the decision is neither arbitrary or capricious." *Dravo Basic Materials Co. v. Dept. of Transportation*, 602 So.2d 632, 634 (Fla. 2d DCA 1992).

As explained in *Agrico Chemical Co. v. Dep't of Envtl. Regulations*, 365 So. 2d 759, 763 (Fla. 1st DCA 1978) "a capricious action is one taken without thought or reason or irrationally [whereas] an arbitrary decision is one not supported by facts or logic, or despotic." The inquiry to be made in determining whether an agency has acted in an arbitrary or capricious manner is "whether the agency (1) 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 Envtl. Reg.*, 553 So. 2d 1260, 1273 (Fla. 1st DCA 1989).

Mr. Alvarez considered the totality of Blue's bid package, staff's review of Blue's bid package, and his 14 years of experience in his position, which are all relevant factors. Tr. 165-166. There is no evidence to indicate that Mr. Alvarez did not give good faith consideration to those factors. Based on the aggregation of this information, Mr. Alvarez reasonably awarded the contract to Blue, as he believes Blue can reliably perform the work under the contract and was the lowest bidder. Tr. 166. Based on the foregoing, the Department's decision to award the contract to Blue was neither arbitrary nor capricious.

RESPECTFULLY SUBMITTED this 7 day of September, 2017, in
Tallahassee, Leon County, Florida.



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CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing was furnished on August 7, 2017, by electronic mail to the following:

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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

E. R. REEVES CORP., d/b/a
ALL SEASONS AIR CONDITIONING,

Petitioner,

vs.

DEPARTMENT OF TRANSPORTATION,

CASE NO. 17-3184BID

Respondent,

and

BLUE RAY'Z HEATING AND
AIRCONDITIONING, LLC,

Intervenor.

**WRITTEN EXCEPTIONS OF INTERVENOR, BLUE RAY'Z,
TO RECOMMENDED ORDER OF ADMINISTRATIVE
JUDGE DARREN A. SCHWARTZ DATED AUGUST 28, 2017**

Intervenor, Blue Ray'Z, files the following written exceptions to the recommended order entered by the Administrative Judge. At the outset, Intervenor, Blue Ray'Z, the lowest bidder by almost 20% below the Petitioner (\$128,630.00 Blue Ray'Z, \$158,446.00 All Seasons), observes that Administrative Law Judge Schwartz attempts to mask his unnerving Recommended Order by failing to require Petitioner, All Seasons, to meet its required burden of proof by substantial, competent evidence that DOT **failed to exercise** its lawful, long-established "wide" discretion in an "honest exercise of this discretion, even if it may appear erroneous and even if reasonable persons may disagree." See Supreme Court of Florida decision *Liberty County v. Baxter's Asphalt*, 421 So.2d 505 (Fla. 1982), p.507. [This decision was followed by a later Supreme Court of Florida decision, *Department of Transportation v. Groves-Watkins*, 530 So 2d 912 (Fla.

1988), holding, “In *Liberty County*, we recognized the broad discretion legislatively accorded public agencies and held that an agency’s decision based upon an honest exercise of this discretion cannot be overturned absent a finding of ‘illegality, fraud, oppression or misconduct. In short, the hearing officer’s sole responsibility is to ascertain whether the agency acted fraudulently, arbitrarily, illegally, or dishonestly.” [p.914] The administrative law judge, in an apparently intentional mislabeling as a Finding of Fact, enters (paragraph 38 of his order) what is actually a Conclusion of Law:

“In sum, Blue is not a responsive and responsible vendor, and DOT’s proposed action is contrary to the bid specifications, clearly erroneous, contrary to competition, arbitrary and capricious.”

This ill-advised, improperly labeled “Finding of Fact,” in actuality a “Conclusion of Law,” should and must be rejected under established standards allowing agencies to reject conclusions of law in that the administrative judge’s own recitation of the several DOT witnesses’ testimony (Mr. Robinson, Mr. Chua, Ms. Trisa Thomas, Mr. Alvarez, Ms. Sheree Merting, and Ms. Amanda Cruz) fails utterly to support this Conclusion, mislabeled a Finding, or in any manner show that DOT that failed to exercise “in an honest discretion” its “wide discretion.” Equally significant, casting doubt as to the judge’s role even as a “reasonable person who may disagree” (See *Liberty* case above), as his own foregone order overturning the award of Blue’s bid, the significantly lowest bidder, flies in the face of the judge’s own acceptance (paragraph 39) that “...the burden of proof rests with All Seasons as the party opposing the proposed agency action.” There was no proof offered by the Petitioner that DOT did not act honestly, thoroughly and properly in the several persons and several layers of review of bids

including telephoning and speaking with persons and entities who used Blue's services and were completely satisfied.

What is equally **not** reasonable and, at the least improper, is the failure of the administrative judge to uphold the clear, long recognized goal of public agencies to carefully address and fulfill the saving of public funds by upholding the bids of low bidders. In the decision of *Intercontinental Properties, Inc. v. State Department of Health and Rehabilitative Services*, 606 So 2d 380 (Fla. 3rd DCA 1992) the court ruled in overturning DOT's failure to award the bid to the low bidder as "...it is arbitrary for it to accept a higher bid:"

"There is a very strong public interest in favor of saving tax dollars in awarding public contracts. There is no public interest, much less a substantial public interest, in disqualifying low bidders for technical deficiencies in form, where the low bidder did not derive any unfair competitive advantage by reason of the technical omission." P.386

Also, the court held:

"At the least, a party protesting an award to the low bidder must be prepared to show that not only that the low bid was deficient, but must also show that the protestor's own bid does not suffer from the same deficiency as the lower bid." p.384

A reading of the recommended order shows that the judge recognized that DOT awarded "...the bid to Blue because it was the lowest bidder," but without considering whether Blue "**demonstrated prior experience** specifically related to HVAC maintenance, repair, installation, and replacement services of commercial facilities similar in size, technical scope, and volume of work specified in the scope of work" (paragraph 35). However, in the next paragraph 37, the judge seems hoisted by his own petard when he concludes that the failure of Blue to "demonstrate in the **Certificate of Experience Documentation form** that it had prior experience specifically related to HVAC maintenance, repair, installation, and replacement services," while summarizing the several similar projects completed by Blue. The Judge finally concluded that

Blue's low bid should be rejected solely because of the judge's self-established standards of a sufficiently higher number of jobs, rejecting Blue's testimony, as owner operator, describing (a form of demonstrating) several jobs with DOT's confirmation of satisfaction and quality by the customers, including DOT. Also, the judge failed to consider the testimony of DOT witnesses who spoke with Blue's customers and verified satisfactory work by Blue.

[It is distressing to the Petitioner to appear before a judge who has, as the language of the Judge confirms in his use in the record "of only 12 HVAC units" (paragraph 19), "of only eight HVAC units at two locations" (paragraph 20), "of only three HVAC units in three locations" (paragraph 23) and "of only two HVAC units at one store location" (paragraph 25)], that the judge himself demonstrated that he was predisposed to rule against DOT and reject the low bid of Intervenor Blue Ray'Z. There is not a crumb of evidence in the record that a bidder must complete the Certification of Experience form by listing at least a specific number of units maintained, repaired or installed, the judge's ruling being an example of form over substance.

The overriding conclusion to be reached is that the Administrative Judge demonstrated that he acted and ruled as though he were the public agency/entity/person lawfully empowered to award or not the contract to the lowest bidder. This judge-assumed role is not proper, is contrary to Florida law and bid letting practice, would be needlessly costly to the State of Florida and is contrary to the public interest.

Although the hearing before the hearing officer was a *de novo* proceeding, that simply means that there was an evidentiary hearing during which each party had a full and fair opportunity to develop an evidentiary record for administrative review purposes. It does not mean, as the hearing officer apparently thought, that the hearing officer sits as a substitute for the Department and makes a determination whether to award the bid *de novo*. Instead, the hearing

officer sits in a review capacity, and must determine whether the bid review criteria set forth in *Baxter's Asphalt* has been satisfied...

"In the present case, there was no sound reason for the hearing officer to override the judgment of the Department in awarding this contract to Coliseum." (the low bidder) *Intercontinental Properties, Inc.* p.386. Intervener, Blue Ray'Z, urges the Department to reject the Administrative Judge's Recommended Order. The order is deficient in both form and substance and is contrary to Florida law and bid letting practice. The question/issue/ruling to be considered by DOT is whether there is any "sound reason to override the judgment of DOT in awarding the contract to" Blue Ray'Z, the low bidder with documented and verified experience. The overriding factor should be whether the judge's unsupported Conclusion of Law set forth in paragraph 58 and others should be honored by DOT and sustained:

"Moreover, as detailed above, DOT's failure to consider whether Blue's prior experience is specifically related to HVAC maintenance, repair, installation, and replacement services of commercial facilities similar in size, tactical scope and volume of work to that specified in the scope of work is **arbitrary and capricious**. (Emphasis added.) DOT simply cannot ignore the experience criteria it put in the ITB, which was required as a condition of responsiveness determination."

Intervenor Blue Ray'Z states without qualification and without resorting to unsupported, naked argument that the Recommended Order should be rejected by DOT and the contract awarded to Blue Ray'Z so that work can begin and the public interest can be honored.

CERTIFICATE OF SERVICE

I HERBY CERTIFY that I have this 7th day of September 2017, electronically filed/delivered via U.S. Mail and/or Electronic Mail a true and correct copy of the foregoing to

the parties named in the following service list.

/s/ James W. Markel

JAMES W. MARKEL, ESQUIRE

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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

E.R. REEVES CORP., d/b/a ALL
SEASONS AIR CONDITIONING,

Petitioner,

vs.

Case No. 17-3184BID

DEPARTMENT OF TRANSPORTATION,

Respondent,

and

BLUE RAY'Z HEATING AND AIR
CONDITIONING, LLC,

Intervenor.

RECOMMENDED ORDER

This case came before Administrative Law Judge Darren A. Schwartz of the Division of Administrative Hearings for final hearing on June 27, 2017, in Orlando, Florida.

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STATEMENT OF THE ISSUES

Whether Respondent, Department of Transportation's ("DOT"), notice of intent to award a contract to Intervenor, Blue Ray's Heating and Air Conditioning, LLC ("Blue"), for maintenance, repair, installation, and replacement of heating, ventilation, and air conditioning ("HVAC") equipment and components located at various facilities along Florida's Turnpike System, is contrary to DOT's governing statutes, rules, or the bid specifications, and contrary to competition, clearly erroneous, or arbitrary and capricious.

PRELIMINARY STATEMENT

On March 10, 2017, DOT published its bid solicitation for ITB-DOT-16/17-8017-AC, seeking bids from contractors for maintenance, repair, installation, and replacement of HVAC equipment and components at various facilities along Florida's Turnpike System. DOT received bids from four proposers on or before April 4, 2017. On April 11, 2017, DOT posted a notice of intent to award the contract to Blue.

On April 13, 2017, Petitioner, E.R. Reeves Corp., d/b/a All Seasons Air Conditioning ("All Seasons"), timely filed a notice of intent to protest the award. On April 19, 2017, All Seasons timely filed a separate formal written protest and protest bond. On May 10, 2017, DOT entered an Order of Dismissal without Prejudice, requiring All Seasons to file an amended petition within ten days. On May, 19, 2017, All Seasons filed its Amended Petition.

On May 31, 2017, DOT referred the matter to the Division of Administrative Hearings ("DOAH"), to assign an Administrative Law Judge to conduct the final hearing. On June 7, 2017, Blue filed a motion to intervene. On June 7, 2017, the undersigned entered an Order setting this matter for final hearing on June 27, 2017. On June 8, 2017, the undersigned entered an Order granting the motion to intervene. On June 23, 2017, the parties filed their Joint Pre-hearing Statement. On June 23, 2017, All Seasons filed a motion to amend the petition, which DOT opposed. On June 26, 2017, a telephonic hearing on the motion was held, with counsel for the parties participating in the hearing. On June 26, 2017, the undersigned entered an Order granting the motion.

The final hearing commenced as scheduled on June 27, 2017, with all parties present. At the hearing, Joint Exhibits 1 through 17 were received in evidence upon stipulation of the parties. All Seasons presented the in-person testimony of

Leonard Robinson, Alan Chua, Trisa Thomas, Santiago Alvarez, Anthony Davis, and Lee-Ann Reeves. All Seasons' Exhibits 1, 5, 6, 10, and 11 were received in evidence.^{1/} DOT presented the in-person testimony of Leonard Robinson, Alan Chua, Trisa Thomas, Santiago Alvarez, and Sheree Merting. Blue presented the in-person testimony of Anthony Davis.

The two-volume final hearing Transcript was filed at DOAH on July 27, 2017. On August 7, 2017, All Seasons and DOT timely filed proposed recommended orders, which were considered in the preparation of this Recommended Order. Blue did not file a proposed recommended order.

The stipulated facts in the parties' Joint Pre-hearing Statement have been incorporated herein as indicated below. Unless otherwise indicated, all statutory references refer to the 2016 Florida Statutes.

FINDINGS OF FACT

1. DOT is an agency of the state of Florida tasked with procuring the construction of all roads designated as part of the State Highway System, the State Park Road System, or any roads placed under DOT's supervision by law.

2. On March 10, 2017, DOT published its bid solicitation for ITB-DOT-16/17-8017-AC (the "ITB"), seeking bids from contractors for maintenance, repair, installation, and replacement of HVAC equipment and components at various

facilities along Florida's Turnpike (SR 91) milepost 172.0 to milepost 312.0; Southern Connector (SR 417) milepost 0.0 to milepost 6.5; Beachline Expressway (SR 528) milepost 0.0 to milepost 8.4; Seminole Expressway (SR 417) milepost 37.7 to milepost 55.0; and Daniel Webster Western Beltway (SR 429) milepost 0.9 to milepost 11.0.

3. The scope of work of the ITB requires all labor, materials, and incidentals necessary to provide maintenance and repair of 232 HVAC units located at 65 facilities along Florida's Turnpike System. The contract is for one year, with three one-year renewal periods.

4. The 65 facilities span the distance from Wildwood in the north at milepost 304 to past Yeehaw Junction in the south to milepost 172, and from a westernmost point on State Road 429 at milepost 11 (Orlando area) to the easternmost section of State Road 417.

5. Under the ITB, the vendor is required to conduct bimonthly preventative maintenance services on each HVAC unit; a total of five visits per site, per year. The vendor is also required during the first month of the contract and any subsequent annual renewal periods to conduct one annual preventative maintenance service. The annual maintenance is typically more extensive than the 60-day maintenance. However,

the bi-monthly and annual maintenance services require, on average, 30 minutes for each of the 232 HVAC units.

6. The vendor is also required to provide unscheduled, emergency services to diagnose problems and make necessary repairs of units that are not operating properly. An unscheduled repair could take several hours to complete, and there have been occasions where more than one unit needed a repair at the same time.

7. The vendor must be available 24 hours a day, seven days a week, 52 weeks a year, to provide unscheduled, emergency services. Most air conditioning work is treated as an emergency, which requires the vendor to respond within three hours.

8. The ITB includes specifications, schedules, a list of facilities, and other materials.

9. Section 9.1 of the ITB requires bidders to meet certain minimum qualifications, including demonstrating the experience necessary to satisfactorily perform the services within the scope of work. Of particular relevance to the instant case is the following language on page 12 of the ITB:

- Certification of Experience

The organized business enterprise (e.g. corporation, LLC or sole proprietorship) shall have been licensed and actively involved in the type of business requested for a minimum of three (3) years. Prior experience shall specifically be related to HVAC maintenance, repair, installation and

replacement services of commercial facilities similar in size, technical scope, and volume of work to that specified in the Scope of Work for this Contract. Submit documentation of the work experience with the bid package.

10. Pursuant to section 9.2, "[f]ailure by the bidder to provide the above item(s) will constitute a non-responsive determination. Bids found to be non-responsive will not be considered."

11. The Certification of Experience requirement is also referenced on page 2 of the ITB, followed by this statement: "The Department will review carefully to determine if the Vendor is responsive, responsible and qualified in the area of work contemplated by this Contract."

12. A two-page "Certification of Experience Documentation" form is located on pages 23 and 24 of the ITB. The form reiterates, in pertinent part:

Prior experience shall specifically be related to the technical scope and volume of work to that specified in the scope of work for this Contract. Submit documentation of the work experience with the bid package.

The Department will review carefully to determine if the Vendor(s) is responsive, responsible and qualified in the area of work contemplated by this Contract.

Describe your work experience in detail for the minimum period required, beginning with your current or most recent project. Use a separate block to describe each project. (Print out additional copies of the form or attach additional sheets as necessary.)

13. The form includes many lines, spaces, and separate blocks for bidders to provide the client names, addresses, and telephone numbers; dates of service; dollar value of each project; client project manager for each project; and a description of each project. The form includes enough lines and spaces for bidders to provide the required information for up to seven clients. The bidders are directed to attach additional sheets as necessary.

14. The deadline for submission of bids was Tuesday, April 4, 2017, at 2:30 p.m.

15. On April 4, 2017, DOT received and opened bids from four vendors in response to the ITB, which revealed the following bid tabulation prices: (1) All Seasons (\$158,446.00); (2) Blue (\$128,630.00); (3) Kenyon & Partners, LLC (\$279,183.00); and (4) Florida Drawbridges, Inc. (\$331,183.00).

16. On April 4, 2017, DOT posted a notice of intent to award the contract for the work described in the ITB to Blue.

17. Notwithstanding the requirement for each bidder to demonstrate prior experience "specifically . . . related to HVAC maintenance, repair, installation and replacement services of commercial facilities similar in size, technical scope, and volume of work to that specified in the Scope of Work for this Contract," Blue failed to demonstrate such experience in the Certification of Experience Documentation form.

18. The first client listed on Blue's Certification of Experience Documentation form is the Florida Department of Juvenile Justice ("DJJ"). With regard to this client, Blue indicated service dates of June 2015 to present and a project dollar value of \$5,000.00 per year. As to the project description, Blue stated: "Provide HVAC Maintenance, Repair & Service @ Orange Regional Juvenile Detention Center."

19. At hearing, Mr. Davis, the sole owner and operator of Blue, conceded the work involved a total of only 12 HVAC units, in two DJJ buildings, and at the same location.

20. The second client listed is Florida Environmental Compliance Corp. ("FECC"). With regard to this client, Blue indicated service dates of 2012 to present and no dollar value for the project was provided. As to the project description, Blue stated: "HVAC Maintenance, Repair & Service. Installation."

21. At hearing, Mr. Davis conceded the work for FECC involved a total of only eight HVAC units at two locations (Polk County-two units, and Orlando-six units).

22. The third client listed is DOT. With regard to this client, Blue indicated service dates of July through August 2015, and the dollar value of the project was \$21,300.00. As to the project description, Blue stated: "Installation of Recorder Room Ductless split system."

23. At hearing, Mr. Davis conceded the work for DOT involved the installation of only three HVAC units in three locations at a cost of \$7,100.00 each.

24. The fourth client listed is CVS. With regard to this client, Blue indicated service dates of July through August 2014, and the dollar value of the project was \$17,000.00. As to the project description, Blue stated: "Installation of Mini split system in CVS store clinics."

25. At hearing, Mr. Davis conceded the work for CVS involved the installation of only two HVAC units at one store location.^{2/}

26. DOT did not review Blue's Certification of Experience Documentation form to determine whether Blue demonstrated the necessary qualifications and experience required by the ITB.

27. At hearing, none of the witnesses presented by DOT could testify as to Blue's demonstration of prior experience, specifically related to HVAC maintenance, repair, installation, and replacement services of commercial facilities similar in size, technical scope, and volume of work to that specified in the scope of work.

28. Leonard Robinson, a contract manager for Jacobs Engineering, the consultant for the project, testified he was involved only "to a very small extent" in the review of Blue's bid. Mr. Robinson testified that "the only thing I had to do was

to award the bid per the lowest bidder as written in the contract and state the reason why I'm doing so and also sign the Conflict of Interest form. That is it." Mr. Robinson did not review Blue's qualifications or past experience, and he could not say that Blue could perform the work described in the ITB.

29. Alan Chua is the capital improvement procurement administrator for Jacobs Engineering. Mr. Chua evaluated Blue's bid to determine whether it corresponded to the engineer's estimate. He testified he reviewed the Certification of Experience Documentation form, but only as to the dates and to the limited extent necessary to determine whether the projects listed by Blue satisfied the three years of experience required by the contract. Mr. Chua conceded he did not review the project descriptions for the four referenced clients identified on the form, and he could not say whether any of the four projects identified on the form were similar in volume or technical scope to that specified in the ITB.

30. Trisa Thomas is a contracts development manager for Jacobs Engineering. Ms. Thomas testified she reviewed the Certification Experience Documentation form. Ms. Thomas testified she reviewed the dates to determine whether the projects listed by Blue satisfied the three years or more of experience required by the contract. She further testified she reviewed the dates, project manager, and project descriptions.

As to the project descriptions, Ms. Thomas testified she reviewed the type of work Blue did for the company to see if it was related to the work specified in the ITB. However, she did not consider the volume of Blue's work.

31. Significantly, Ms. Thomas testified:

Q: Okay. All right. Do you know why the dollar value of the project is on the Certification of Experience Documentation?

A: Just to get an idea what they--how much they probably performed.

Q: So would that help you get an idea of the volume of work that they performed for that client?

A: I'm not even really sure if that played a factor.

Q: And when you say, I'm not sure if that played a factor, what--what are you referring to?

A: Well I guess what I'm saying is, I'm--that's really not where my concentration is. I'm looking at the years, the project description, what they--the type of work they performed for the--for that agency, and if the references are credible or, you know, satisfactory.

Q: Okay. And when you say they're satisfactory, what do you look at to determine if they're satisfactory?

A: Based on the service that they provided to them, the vendor will let us know how pleased they were with the work that they provided to their agency.

Q: All right. Looking at this Joint Exhibit 5, pages 5 and 6, which places did

Blue Ray'z perform HVAC maintenance, repair, installation and repair services that were of the same technical scope as the Invitation to Bid?

A: I see on the Certification of Experience where they provided HVAC repair and service installation. Also I see where they provided installation of a recorder room. But the volume, there's--I don't--I wouldn't be able to determine that.

Q: And let me ask my question again. So which places did Blue Ray'z perform HVAC maintenance, repair, installation and replacement services that were of the similar technical scope?

A: I don't know.

Q: What maintenance, repair and installation or replacement services did Blue Ray'z provide to another vendor that was similar to the volume of work specified in the Invitation to Bid?

A: The volume work? I don't know.

Q: Do you know if the bid by Blue Ray'z was reviewed by anybody to determine if the experience was similar in size, technical scope and volume of work specified in the Scope of Work?

A: I don't know.

Tr., Vol. I, pp. 121-123.

32. Santiago Alvarez is the facilities and telecommunications administrator for the Turnpike Enterprise, which is part of DOT. Mr. Alvarez testified he did not review the Certification of Experience Documentation form in any detail.

He just looked to confirm the documents were included in the bid package.

33. Sheree Merting is the contract services administrator for DOT's Turnpike Enterprise. Ms. Merting testified she was not involved in the evaluation of Blue's bid.

34. Amanda Cruz is a contract analyst for DOT. She did not review Blue's bid to determine whether Blue was qualified by having the experience required by the ITB.

35. DOT established specific requirements for the ITB to determine responsiveness and then failed to determine if Blue had prior work experience specifically related to HVAC maintenance, repair, installation, and replacement services of commercial facilities similar in size, technical scope, and volume of work to that specified in the scope of work.

36. DOT awarded the bid to Blue because it was the lowest bidder, without considering whether Blue demonstrated prior experience specifically related to HVAC maintenance, repair, installation, and replacement services of commercial facilities similar in size, technical scope, and volume of work to that specified in the scope of work.

37. DOT awarded the bid to Blue because it was the lowest bidder, even though Blue failed to demonstrate in the Certification of Experience Documentation form that it had prior experience specifically related to HVAC maintenance, repair,

installation, and replacement services of commercial facilities similar in size, technical scope, and volume of work to that specified in the scope of work.

38. In sum, Blue is not a responsive and responsible vendor, and DOT's proposed action is contrary to the bid specifications, clearly erroneous, contrary to competition, arbitrary and capricious.^{3/}

CONCLUSIONS OF LAW

39. DOAH has personal and subject matter jurisdiction in this proceeding pursuant to sections 120.569 and 120.57(3), Florida Statutes.

40. Pursuant to section 120.57(3)(f), the burden of proof rests with All Seasons as the party opposing the proposed agency action. State Contracting & Eng'g Corp. v. Dep't of Transp., 709 So. 2d 607, 609 (Fla. 1st DCA 1998). All Seasons must sustain its burden of proof by a preponderance of the evidence. See Dep't of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778, 787 (Fla. 1st DCA 1981).

41. Section 120.57(3)(f) provides in part as follows:

Unless otherwise provided by statute, the burden of proof shall rest with the party protesting the proposed agency action. In a competitive-procurement protest, other than a rejection of all bids, proposals, or replies, the administrative law judge shall conduct a de novo proceeding to determine whether the agency's proposed action is contrary to the agency's governing statutes, the agency's

rules or policies, or the solicitation specifications. The standard of proof for such proceedings shall be whether the proposed agency action was clearly erroneous, contrary to competition, arbitrary, or capricious.

42. The phrase "de novo proceeding," as used in section 120.57(3)(f), describes 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." State Contracting, 709 So. 2d at 609.

43. A bid protest proceeding is not simply a record review of the information that was before the agency. Rather, a new evidentiary record based upon the facts established at DOAH is developed. J.D. v. Fla. Dep't of Child. & Fams., 114 So. 3d 1127, 1132-33 (Fla. 1st DCA 2013).

44. While facts are determined based upon new evidence, applicants are not permitted to retroactively submit information required by the ITB, but omitted from their response. Section 120.57(3) provides that "no submissions made after the bid or proposal opening which amend or supplement the bid or proposal shall be considered." The application must therefore stand on its own, as originally submitted, in light of determined facts. § 120.57(3), Fla. Stat.

45. After determining the relevant facts based on the evidence presented at hearing, the agency's intended action will be upheld unless it is contrary to the governing statutes, the agency's rules, or the bid specifications. The agency's intended action must also remain undisturbed unless it is clearly erroneous, contrary to competition, arbitrary, or capricious.

46. The Florida Supreme Court explained the clearly erroneous standard as follows:

A finding of fact is clearly erroneous when, although there is evidence to support such finding, the reviewing court upon reviewing the entire evidence is left with the definite and firm conviction that a mistake has been committed. This standard plainly does not entitle a reviewing court to reverse the finding of the trier of fact simply because it is convinced that it would have decided the case differently. Such a mistake will be found to have occurred where findings are not supported by substantial evidence, are contrary to the clear weight of the evidence, or are based on an erroneous view of the law. Similarly, it has been held that a finding is clearly erroneous where it bears no rational relationship to the supporting evidentiary data, where it is based on a mistake as to the effect of the evidence, or where, although there is evidence which if credible would be substantial, the force and effect of the testimony considered as a whole convinces the court that the finding is so against the great preponderance of the credible testimony that it does not reflect or represent the truth and right of the case.

Dorsey v. State, 868 So. 2d 1192, 1209 n.16 (Fla. 2003).

47. The contrary to competition standard precludes actions which, at a minimum: (a) create the appearance of and opportunity for favoritism; (b) erode public confidence that contracts are awarded equitably and economically; (c) cause the procurement process to be genuinely unfair or unreasonably exclusive; or (d) are unethical, dishonest, illegal, or fraudulent. Phil's Expert Tree Serv., Inc. v. Broward Cnty. Sch. Bd., Case No. 06-4499BID, 2007 Fla. Div. Admin. Hear. LEXIS 161, at *23 (Fla. DOAH Mar. 19, 2007); Care Access PSN, LLC v. Ag. for Health Care Admin., Case No. 13-4113BID, 2014 Fla. Div. Admin. Hear. LEXIS 3, at *54 (Fla. DOAH Jan. 2, 2014).

48. An action is "arbitrary if it is not supported by logic or the necessary facts," and "capricious if it is adopted without thought or reason or is irrational." Hadi v. Lib. Behavioral Health Corp., 927 So. 2d 34, 38-39 (Fla. 1st DCA 2006). 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. J.D., 114 So. 3d at 1130. Thus, under the arbitrary or capricious standard, "an agency is to be subjected only to the most rudimentary command of rationality. The reviewing court is not authorized to examine whether the agency's empirical conclusions have support in substantial evidence." Adam Smith Enters., Inc. v. Dep't of

Envtl. Reg., 553 So. 2d 1260, 1273 (Fla. 1st DCA 1989).

Nevertheless,

the reviewing court must consider 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 each of these factors to its final decision.

Id.

49. Turning to the merits of the instant case, DOT's proposed action in awarding the bid to Blue is contrary to the bid specifications, clearly erroneous, contrary to competition, and arbitrary and capricious.

50. As detailed above, Blue's bid was nonresponsive and deviated materially from bid specifications of the ITB. The plain language of the ITB required Blue to demonstrate in the Certificate of Experience Documentation form, as a condition of responsiveness, that it had prior experience specifically "related to HVAC maintenance, repair, installation and replacement services of commercial facilities similar in size, technical scope, and volume of work to that specified in the Scope of Work for this Contract." Blue failed to comply with the plain and ordinary language of the ITB to demonstrate such experience. Manor v. Redding Dev., Case No. 1D16-2553, 2017 Fla. App. LEXIS 11944, at *7 (Fla. 1st DCA Aug. 21, 2017) ("Florida

Housing was required to interpret the RFA consistently with its plain and unambiguous language.").^{4/}

51. DOT does not contend that the language within the experience requirement of the ITB or form is ambiguous. Instead, DOT argues that Blue met the experience requirement or, in the alternative, the requirement constituted a minor irregularity that DOT could waive.

52. It has long been recognized that "[a]lthough a bid containing a material variance is unacceptable, not every deviation from the invitation to bid is material. It is only material if it gives the bidder a substantial advantage over the other bidders and thereby restricts or stifles competition." Tropabest Foods, Inc. v. State Dep't of Gen. Servs., 493 So. 2d 50, 52 (Fla. 1st DCA 1986).

53. In addition, courts have considered the following criteria in determining whether a variance is material and thus non-waivable:

[F]irst, whether the effect of a waiver would be to deprive the municipality of its assurance that the contract will be entered into, performed and guaranteed according to its specified requirements, and second, whether it is of such a nature that its waiver would adversely affect competitive bidding by placing a bidder in a position of advantage over other bidders or by otherwise undermining the necessary common standard of competition.

[S]ometimes it is said that a bid may be rejected or disregarded if there is a material variance between the bid and the advertisement. A minor variance, however, will not invalidate the bid. In this context a variance is material if it gives the bidder a substantial advantage over the other bidders, and thereby restricts or stifles competition.

Phil's Expert Tree Serv., Inc., 2007 Fla. Div. Admin. Hear. LEXIS 161, at *33 (quoting Robinson Elec. Co. v. Dade Cnty., 417 So. 2d 1032, 1034 (Fla. 3d DCA 1982)).

54. In the present case, Blue's failure to demonstrate in the Certificate of Experience Documentation form prior experience specifically related to HVAC maintenance, repair, installation, and replacement services of commercial facilities similar in size, technical scope, and volume of work to that specified in the scope of work, is material.

55. The experience requirement, which was designed to winnow the field, should rarely, if ever, be waived as immaterial. This is because an experience requirement acts as a barrier to access into the competition, discouraging some would-be bidders who lack a required characteristic, from submitting a bid. Phil's Expert Tree Serv., Inc., 2007 Fla. Div. Admin. Hear. LEXIS 161, at *34.

56. The experience specification prescribes an attribute that the successful bidder must possess: three years of experience specifically related to HVAC maintenance, repair,

installation, and replacement services of commercial facilities similar in size, technical scope, and volume of work to that specified in the scope of work. The obvious intent of this provision is to weed out unwanted potential bidders who lack such experience. Id.

57. To waive this experience requirement lowers the bar for the low bidder, giving the appearance of preferential treatment which compromises the integrity of the competitive bidding process. Id.^{5/}

58. Moreover, as detailed above, DOT's failure to consider whether Blue's prior experience is specifically related to HVAC maintenance, repair, installation, and replacement services of commercial facilities similar in size, technical scope, and volume of work to that specified in the scope of work, is arbitrary and capricious. DOT simply cannot ignore the experience criteria it put in the ITB, which was required as a condition of responsiveness, and which DOT stated it would carefully review as part of its responsiveness determination.

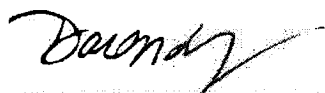
59. DOT purports to justify its intended action based on testimony at hearing indicating that the specifications in the current ITB were boiler-plate and simply borrowed from language in other project bid specifications. The fact that DOT may have used boiler-plate language from other project bid specifications

does not excuse DOT's failure to consider the criteria required to be met and reviewed in response to the ITB.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Respondent, Department of Transportation, enter a final order rescinding the proposed award to Intervenor, Blue Ray'z Heating and Air Conditioning, LLC.

DONE AND ENTERED this 28th day of August, 2017, in Tallahassee, Leon County, Florida.



DARREN A. SCHWARTZ
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 28th day of August, 2017.

ENDNOTES

^{1/} All Seasons' Exhibit 11 is the transcript of the deposition of Amanda Cruz and accompanying exhibits to the deposition. At the hearing, the parties offered the deposition of Ms. Cruz in lieu of her in-person testimony.

^{2/} At hearing, Mr. Davis conceded that Blue has no employees. Blue operates out of two vehicles, one of which is a van owned by Mr. Davis, individually. All of Blue's equipment and supplies are stored in these two vehicles.

All Seasons was the vendor for DOT for four years under the prior contract before its expiration and the subject rebid. All Seasons had seven employees and seven vehicles dedicated to performing services for DOT.

^{3/} In paragraph 11 of its Proposed Recommended Order, DOT states that the "vendor to which this contract is awarded is permitted to subcontract up to 40% of the work to another entity qualified to perform the work, including emergencies which demand a three-hour response time." DOT also contends that Blue is a "Class B air conditioning contractor." That a vendor holds a certain license that allows it to do certain work and might be permitted to subcontract up to 40 percent of the work after receiving the award does not excuse the requirement of the ITB that a bidder demonstrate its minimum experience in its response to the bid as required by the ITB.

In other sections of its Proposed Recommended Order, DOT attempts to bolster Blue's lack of experience in response to the ITB by referring to the following testimony of Mr. Davis presented at the hearing that: (1) "Blue plans on hiring at least one additional full-time employee and one additional part-time employee if it is awarded the contract. . . ." (paragraph 45); (2) "Blue owns or has access to all equipment necessary to fulfill the terms of the contract" (paragraph 46); (3) "Blue routinely maintains over 500 units simultaneously, with multiple customers" (paragraph 48); and (4) "Blue's dollar value in receipts in 2016 was approximately \$180,000.00" (paragraph 50).

The undersigned finds Mr. Davis's testimony unpersuasive, and it is not credited. In determining whether Blue's bid is responsive to the ITB, DOT and Blue are bound by the information Blue submitted to DOT in the Certificate of Experience Documentation form in response to the ITB before the bids were opened. To allow the aforementioned information to be considered once the bids are opened would violate section 120.57(3)(f), Florida Statutes, which specifically provides, that "[i]n a protest to an invitation to bid or request for proposals procurement, no submissions made after the bid or proposal opening which amend or supplement the bid or proposal shall be considered"

^{4/} In Manor, the First District Court of Appeal recently addressed the Florida Housing Finance Corporation's reversal of its prior determination that Brownsville was eligible for federal low-income tax credits following an evidentiary hearing before an Administrative Law Judge ("ALJ") at DOAH. The court held that

Brownsville's application for affordable housing credits "clearly complied with all of the RFA requirements at the application stage by submitting the required forms, providing a DLP, and providing the appropriate assurances that it intended to comply with all of the RFA terms." The court found the ALJ erred in focusing on the fact that Brownsville had not commenced the "clustering process" at the time of application, and there was no guarantee that clustering would be approved. In reaching this conclusion, Judge Roberts found:

However, nothing in the RFA required Brownsville to begin the clustering process or guarantee approval as of the application stage. This is underscored by the fact that an applicant was not required to submit a costly site plan at the application stage. Instead, the configuration of a proposed development would be fleshed out in the final site plan approval process, which occurs after the application stage during the credit underwriting. The RFA's plain language clearly recognized the distinct stages in the process by providing that a scattered site applicant must demonstrate compliance with the RFA "during the credit underwriting process."

Manor, 2017 Fla. App. LEXIS 11944, at *8-10.

Thus, central to the Manor court's holding was that the RFA did not require the information the ALJ determined was non-responsive to the RFA. In fact, the plain language of the RFA in Manor recognized that the information could be provided during the credit underwriting process after the response to the RFA. In the instant case, Blue was required, as a condition of responsiveness, to demonstrate its prior experience specifically related to HVAC maintenance, repair, installation, and replacement services of commercial facilities similar in size, technical scope, and volume of work to that specified in the scope of work in the Certification of Experience Documentation form submitted to DOT in response to the ITB. Blue's failure to demonstrate the required experience, required by the plain language of the ITB, makes its bid nonresponsive and a material deviation.

^{5/} In its amended petition, All Seasons contends that Blue's bid is also nonresponsive because Blue failed to submit with its bid

Addendum #2. Addendum #2 was merely an acknowledgement of receipt of notice of a non-mandatory site visit and served as a mechanism to assure potential bidders were notified that a site visit would be available, should those bidders later claim they were not notified of the option. All Seasons' argument in this regard is rejected.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

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

EXHIBIT "A"
SCOPE OF SERVICE

**HEATING, VENTILATION AND AIR CONDITIONING (HVAC)
EQUIPMENT MAINTENANCE, REPAIR AND INSTALLATION, REPLACEMENT SERVICES**

**FLORIDA'S TURNPIKE (SR 91) MILEPOST 172.0 TO MILEPOST 312.0
SOUTHERN CONNECTOR (SR 417) MILEPOST 0.0 TO MILEPOST 6.5
BEACHLINE EXPRESSWAY (SR 528) MILEPOST 0.0 TO MILEPOST 8.4
SEMINOLE EXPRESSWAY (SR 417) MILEPOST 37.7 TO MILEPOST 55.0 AND
DANIEL WEBSTER WESTERN BELTWAY (SR 429) MILEPOST 0.9 TO MILEPOST 11.0**

ESTIMATED QUANTITIES CONTRACT

1.0 Introduction

1.1 Description of Services

The work specified under this Contract shall consist of providing all labor, materials, equipment and incidentals necessary to perform routine maintenance, repair, soldering/welding, installation and replacement of Heating, Ventilation and Air Conditioning (HVAC) equipment, and components located at various facilities along Florida's Turnpike System.

1.2 Definition of Terms

For the purpose of this Contract, whenever the following terms appear, their intent and meaning shall, unless specifically stated otherwise, be interpreted as shown hereunder:

Contract: The term "Contract" means the entire and integrated agreement between the parties thereunder and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract Documents form the Contract between the Department and the Vendor setting forth the obligations of the parties thereunder, including, but not limited to, the performance of the Work and the basis of payment.

Department: State of Florida Department of Transportation.

Vendor: The firm selected through the competitive bid process to provide the services requested herein.

Department's Project/Contract Manager: The individual employee(s) of the Department responsible for the management of the Contract, scheduling and monitoring of work being performed, inspection and acceptance of services provided, and approval for payment of services requested herein.

Vendor's Project Manager: The individual employee of the Vendor responsible for the management of the Contract, scheduling and monitoring of work being performed, inspection of services provided, and the submission of payment documents for all services requested herein. The Vendor's Project Manager is responsible for all communication with the Department and the Department's Contract Manager.

Supplemental Agreement: A written agreement between the Vendor and the Department modifying the Original Contract within the limitations set forth in the Original Contract, and as provided by law.

Work Document / Authorization: A work request issued periodically to the Vendor for work required at the Contract locations, describing work and specify pay item quantities authorized to the Vendor to proceed with the work.

Turnpike Facilities: Turnpike facilities include but are not limited to administrative office, communications buildings, law enforcement offices, maintenance facilities, storage buildings, pump houses, services plazas, office buildings, hub buildings, and toll plazas which included toll buildings, tollbooths, canopies, tech shop buildings, generator buildings, concrete walls, barriers, curbs, walkways, and other related buildings and structures within the Department's Right of Way.

2.0 Location and Site Description

All existing locations are listed in Attachment "B," Air Conditioning/Heating Equipment Inventory, attached hereto and hereby made a part of this Contract. A number of locations may be added or deleted from the Contract by a supplemental agreement during the course of the Contract. Such addition or deletion shall not affect or impact the hourly rates or the mark-up for parts allowance bid by the Vendor.

3.0 Vendor's Qualifications

The Vendor shall maintain and keep in force throughout the life of the Contract, renewals, and extensions, the requirements specified below. Failure of the Vendor to comply with these requirements will be sufficient grounds for the Department to declare the Contract in default and will be subject to the terms of Chapter 6; Termination and Default, of the Standard Written Agreement.

3.1 Certification and Registration

The Vendor shall be currently registered with the State of Florida authorized to do business and licensed by Department of Business and Professional Regulation as an Air Conditioning Vendor (Class "A" and/or Class "B") or Mechanical Contractor, in accordance with the State of Florida laws.

A copy of all required license (s) and/or certification(s) for this Contract shall be submitted and included with the Vendor's bid package.

3.2 Business Location

The Vendor shall have a current and valid Business Tax Receipt which states the name of the Vendor, street address of the business where all the work covered under the Contract will be handled, and the type of work that the Business Tax Receipt is issued for (which must be for the same type of services required in the Contract). If awarded the Contract, the Vendor shall be required to provide the Department verification of a Business Tax Receipt in the counties the services are being provided prior to Contract execution.

3.3 Certification of Experience

The organized business enterprise (e.g. corporation, LLC or sole proprietorship) shall have been licensed and actively involved in the type of business requested for a minimum of three (3) years. Prior experience shall specifically be related to HVAC maintenance, repair, installation and replacement services of commercial facilities similar in size, technical scope, and volume of work to that specified in the Scope of Work for this Contract. Submit documentation of the work experience with the bid package.

The Department will review carefully to determine the Vendor is responsive, responsible and qualified in the area of work contemplated by this Contract.

**EXHIBIT "C" - BID BLANK
HEATING, VENTILATION AND AIR CONDITIONING (HVAC)
EQUIPMENT MAINTENANCE, REPAIR AND INSTALLATION, REPLACEMENT SERVICES**

FLORIDA'S TURNPIKE (SR 91) MILEPOST 172.0 TO MILEPOST 312.0
SOUTHERN CONNECTOR (SR 417) MILEPOST 0.0 TO MILEPOST 6.5
BEACHLINE EXPRESSWAY (SR 528) MILEPOST 0.0 TO MILEPOST 8.4
SEMINOLE EXPRESSWAY (SR 417) MILEPOST 37.7 TO MILEPOST 55.0 AND
DANIEL WEBSTER WESTERN BELTWAY (SR 428) MILEPOST 0.9 TO MILEPOST 11.0

ESTIMATED QUANTITIES CONTRACT

FORMULA (FOR FILLING IN BID BLANK PAY ITEM: QUANTITY OF ITEM X (times) THE UNIT RATE (\$) = PAY ITEM TOTAL(S))

PAY ITEM NO.	DESCRIPTION	UNIT	QUANTITY OF ITEM*	UNIT RATE	PAY ITEM TOTAL
1	Bi-Monthly (60 Days) Preventive Maintenance Services	Each	1160	\$ 55 ⁰⁰	\$ 63,800 ⁰⁰ ✓
2	Annual Preventive Maintenance Services	Each	232	\$ 65 ⁰⁰	\$ 15,080 ⁰⁰ ✓
3	Technician	Per Hour	500	\$ 35 ⁰⁰	\$ 17,500 ⁰⁰ ✓
4	Helper	Per Hour	125	\$ 15 ⁰⁰	\$ 1,875 ⁰⁰ ✓
5	Refrigerant R-22	Per Pound	75	\$ 0	\$ 0 ✓

Name of Business Blue Ray's Heating & A/C Subtotal Amount of Pay Item Nos. 1-5: \$ 98,255⁰⁰ ✓
* All quantities, including allowance for profit, represent estimated quantities. If the actual is less than or greater than what is identified, the unit rate shall remain unchanged.

C-1

P-11 EXH 7-2

000481

**EXHIBIT "C" - BID BLANK
HEATING, VENTILATION AND AIR CONDITIONING (HVAC)
EQUIPMENT MAINTENANCE, REPAIR AND INSTALLATION, REPLACEMENT SERVICES**

FLORIDA'S TURNPIKE (SR 91) MILEPOST 172.0 TO MILEPOST 312.0
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DANIEL WEBSTER WESTERN BELTWAY (SR 429) MILEPOST 0.9 TO MILEPOST 11.0

ESTIMATED QUANTITIES CONTRACT

FORMULA (FOR FILLING IN BID BLANK PAY ITEM): QUANTITY OF ITEM X (Times) THE UNIT RATE (\$) = PAY ITEM TOTAL(S)

PAY ITEM NO.	DESCRIPTION	UNIT	QUANTITY OF ITEM	UNIT RATE	PAY ITEM TOTAL
6	Refrigerant R-410A	Per Pound	75	\$ 10 ⁰⁰	\$ 750 ⁰⁰
7	Refrigerant R-407C	Per Pound	10	\$ 0	\$ 0
8	A/C Welding Repair	Each	30	\$ 0	\$ 0
9	Mobilization (Emergency Response)	Each	3	\$ 0	\$ 0
10	Portable A/C 1-ton (12,000 BTU)	Per Each Per Day	25	\$ 100 ⁰⁰	\$ 2,500 ⁰⁰

Name of Business Blue Ray's Heating & A/C Subtotal Amount of Pay Item Nos. 6-10: \$ 3,250⁰⁰

* All quantities, including allowance for parts, represent estimated quantities. If the actual is less than or greater than what is identified, the unit rate shall remain unchanged.

C-2

P-11 EXH 7 - 3

000482

EXHIBIT "C" - BID BLANK
HEATING, VENTILATION AND AIR CONDITIONING (HVAC)
EQUIPMENT MAINTENANCE, REPAIR AND INSTALLATION, REPLACEMENT SERVICES

FLORIDA'S TURNPIKE (SR 91) MILEPOST 172.0 TO MILEPOST 312.0
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SEMINOLE EXPRESSWAY (SR 417) MILEPOST 37.7 TO MILEPOST 55.0 AND
DANIEL WEBSTER WESTERN BELTWAY (SR 429) MILEPOST 0.9 TO MILEPOST 11.0

ESTIMATED QUANTITIES CONTRACT

Subtotal Amount Pay Item Nos. 1 - 5 \$ 98,255 00 ✓

Subtotal Amount Pay Item Nos. 6 - 10 \$ 3,250 00 ✓

Subtotal Amount Pay Item Nos. 11C-14 \$ 27,125 00 ✓

Total Amount of Bid for this Contract \$ 128,630 00 ✓^{AC}
(Add together all above Subtotals) ✓_{JB}

* All quantities, including parts allowance, represent estimated quantities. If the actual is less than or greater than what is identified, the unit rate shall remain unchanged.

Name of Business BLUE RAY'S HEATING & A/C.

MFMP TRANSACTION FEE: All payment(s) to the Vendor resulting from this competitive solicitation WILL be subject to the MFMP Transaction Fee in accordance with the referenced Form PUR 1000 General Condition #14. However, all vendors should be aware, that effective July 1, 2016 through June 30, 2017, in accordance with House Bill 5003 Sec.73, the Transaction Fee will be seven-tenths of one percent (0.7%) of the payment issued. The Transaction Fee imposed shall be based upon the date of issuance of the payment

C-4

P-11 EXH 7 - 5

000484

**EXHIBIT "C" - BID BLANK
HEATING, VENTILATION AND AIR CONDITIONING (HVAC)
EQUIPMENT MAINTENANCE, REPAIR AND INSTALLATION, REPLACEMENT SERVICES**

FLORIDA'S TURNPIKE (SR 91) MILEPOST 172.0 TO MILEPOST 312.0
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SEMINOLE EXPRESSWAY (SR 417) MILEPOST 37.7 TO MILEPOST 55.0 AND
DANIEL WEBSTER WESTERN BELTWAY (SR 428) MILEPOST 0.9 TO MILEPOST 11.0

ESTIMATED QUANTITIES CONTRACT

FORMULA (FOR FILLING IN BID BLANK PAY ITEMS: QUANTITY OF ITEM X (Three) THE UNIT RATE (\$) = PAY ITEM TOTAL (\$))

PAY ITEM NO.	DESCRIPTION	UNIT	QUANTITY OF ITEM*	UNIT RATE	PAY ITEM TOTAL
6	Refrigerant R-410A	Per Pound	75	\$ 10 ⁰⁰	\$ 750 ⁰⁰
7	Refrigerant R-407C	Per Pound	10	\$ 0	\$ 0
8	A/C Welding Repair	Each	30	\$ 0	\$ 0
9	Mobilization (Emergency Response)	Each	3	\$ 0	\$ 0
10	Portable A/C 1-ton (12,000 BTU)	Per Each Per Day	25	\$ 100 ⁰⁰	\$ 2,500 ⁰⁰

Name of Business: Blue Ray's Heating & A/C Subtotal Amount of Pay Item Nos. 6-10: \$ 3,250⁰⁰

* All quantities, including allowance for parts, represent estimated quantities. If the actual is less than or greater than what is identified, the unit rate shall remain unchanged.

C-2

P-11 EXH 7 - 3

000482

BID TABULATION**BID NUMBER:** ITB-DOT-16/17-8017-AC**REQUESTING UNIT:**
TURNPIKE ENTERPRISE

FAILURE TO FILE A PROTEST WITHIN THE TIME PRESCRIBED IN SECTION 120.57(3), FLORIDA STATUTES, OR FAILURE TO POST THE BOND OR OTHER SECURITY REQUIRED BY LAW WITHIN THE TIME ALLOWED FOR FILING A BOND SHALL CONSTITUTE A WAIVER OF PROCEEDINGS UNDER CHAPTER 120, FLORIDA STATUTES.

OPENING DATE: 4/4/17**TIME:** 2:30pm**OPENED BY:** A. Cruz**WITNESSED BY:** R. Morgan

DESCRIPTION: HEATING, VENTILATION AND AIR CONDITIONING (HVAC) EQUIPMENT MAINTENANCE, REPAIR, INSTALLATION, AND REPLACEMENT SERVICES for FLORIDA'S TURNPIKE (SR 91) MILEPOST 172.0 TO MILEPOST 312.0 SOUTHERN CONNECTOR (SR 417) MILEPOST 0.0 TO MILEPOST 6.5 BEACHLINE EXPRESSWAY (SR 528) MILEPOST 0.0 TO MILEPOST 8.4 SEMINOLE EXPRESSWAY (SR 417) MILEPOST 37.7 TO MILEPOST 55.0 AND DANIEL WEBSTER WESTERN BELTWAY (SR 429) MILEPOST 0.9 TO MILEPOST 11.0

EVALUATED BY: Santiago Alvarez**POSTING DATE:** From: 4/11/17 5:00 pmUntil: 4/14/17 5:00 pm

Page: 1 of 1

NAME OF BIDDERS		AMOUNT OF BID	X INDICATES AWARD
1.	E R Reeves Db. All Seasons	\$158,446.00	
2.	Kenyon & Partners, Inc.	\$279,190.00	
3.	Florida Drawbridges, Inc.	\$331,183.00	
4.	Blue Ray'z Heating & Air Conditioning	\$128,630.00	X
5.			
6.			
7.			
8.			
9.			
10.			

____ Receipt of No Competitive Sealed Bids

Justification for Award of Single Bid: _____

☐ Intended Award was determined by utilizing an In-State Preference in accordance with s.287.084, Florida Statutes (check box when applicable).

"X" Indicates apparent awarded vendor, but does not constitute an acceptance of any offer created by vendor's bid. No binding contract will be deemed to exist until such time as a Purchase Order or written acceptance by the Department has been issued. If irregularities are subsequently discovered in the vendor's bid or if the vendor fails to submit required Bonds and Insurance, or otherwise fails to comply with the bid requirements, the Department has the Right to Award to the vendor that is the second low, reject all bids, or act in the best interest of the Department.

Exhibit "A"

TURNPIKE CONTRACTS BID REVIEW EVALUATION FORM

(Handwritten: *Final # 2*)

LETTING DATE 4/4/2017

BID REVIEW DATE: 4/6/2017

PROJECT DESCRIPTION: HVAC Maintenance/Repair Services - North Region

CONTRACT NO.
ITB-DOT-16/17-8817

CONTRACTOR
Blue Ray's Heating & Air Conditioning
E.R. Reeves/All Seasons
Kenyon & Partners, Inc.
Florida Drawbridges, Inc.

AMOUNT
\$128,630.00
\$158,446.00
\$279,190.00
\$331,183.00

(Redacted)

ENGINEERS COST ESTIMATE: (Redacted)

1. ONLY ONE BID RECEIVED:

YES

NO X

COMMENTS:

2. SIGNIFICANT IRREGULARITIES IN LOW BIDDERS UNIT BID PRICES:

YES

NO X

COMMENTS:

3. EXCEEDS THE ENGINEER'S ESTIMATE BY MORE THAN 15% OR
BELOW THE ENGINEER'S ESTIMATE BY MORE THAN 25%:

YES

NO X

COMMENTS:



4. DECISION:

AWARD ☒

REJECT

SIGNATURE

Leonard Robinson

(Handwritten signature: *Robinson*)

COMMENTS:

Blue Ray's Heating & air conditioning submitted a bid representing 10% of the Engineer's estimate. They are the lowest bidder and is thus the winner of the contract.

AWARD TO: Blue Ray's Heating & Air Conditioning
(CONTRACTOR'S NAME)

DATE: 04/10/17

COMMITTEE RECOMMENDS AWARD TO:

(CONTRACTOR'S NAME)

DATE:

TURNPIKE CONTRACTS BID REVIEW EVALUATION FORM

LETTING DATE 4/4/2017

BID REVIEW DATE: 4/6/2017

PROJECT DESCRIPTION: HVAC Maintenance/Repair Services - North Region

CONTRACT NO.	CONTRACTOR	AMOUNT	% OF EST.
ITB-DOT-16/17-8017	Blue Rayz Heating & Air Conditioning	\$128,630.00	___ % ☒
	E.R. Reeves/All Seasons	\$158,446.00	___ % ☒
	Kenyon & Partners, Inc.	\$279,190.00	___ % ☒
	Florida Drawbridges, Inc.	\$331,183.00	___ % ☒

ENGINEERS COST ESTIMATE:

1. ONLY ONE BID RECEIVED: YES _____ NO X

COMMENTS: _____

2. SIGNIFICANT IRREGULARITIES IN LOW BIDDERS UNIT BID PRICES: YES _____ NO X

COMMENTS: _____

3. EXCEEDS THE ENGINEER'S ESTIMATE BY MORE THAN 15% OR
BELOW THE ENGINEER'S ESTIMATE BY MORE THAN 25%: YES _____ NO X

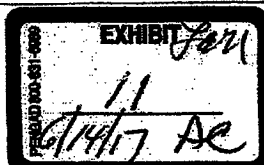
COMMENTS: _____

4. DECISION:

Alan Chua AWARD REJECT SIGNATURE

COMMENTS: Although Blue Rayz unit prices were significantly lower than the engineer's estimate, I believe they can perform the work effectively per the unit prices they bid on.

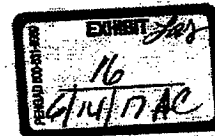
AWARD TO: Blue Rayz Heating & Air Cond - DATE: 04/10/17
(CONTRACTOR'S NAME)



Bid Package Check-list

ITB-DOT-16/17-8017-AC

		Form 1	Form 2	Form 3	Form 4	Form 5				
Vendor Name	Bid Blank Ex. "C"	3 Years Cert. of Exp.	Drug-Free Work Place	Asbestos Warning	Scrutinized Companies List	Corporate Resolution	Business Tax Receipt	Certificate/L icense	Valid W9 On File	Division of Corp.
E R Reeves Dba. All Seasons	X	X	X	X	X	X	X	X	X	X
Kenyon & Partners, Inc.	X	X	X	X	X	X	X	X	X	X
Florida Drawbridges, Inc.	X	X	X	X			X	X	X	X
Blue Ray'z Heating & Air Conditioning	X	X	X	X	X	X	X	X	X	X



P-11 EXH 16 - 1

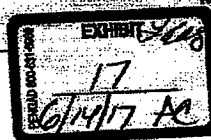
000507

Name	LegacyID	Company	Street	City	State	Country	Woman-Owned / FVBE Status	Vendor Designation	W9 Status	Pcard	ASN	Rating
002_Main Office	F274678801002	Blue Bayz Heating & Air Conditioning LLC	9128 Shafter Dr	Kissimmee	FL	United States	Non Woman-owned, FVBE Certified	African American Certified	Valid W-9 on File	No	No	Not Rated Select

Name	LegacyID	Company	Street	City	State	Country	Woman-Owned / FVBE Status	Vendor Designation	W9 Status	Pcard	ASN	Rating
003_All Seasons Heating and Cooling	F882623035001	All Seasons Air Conditioning	1512 Vassar Street	Orlando	FL	United States	Non Woman-owned, Non-FVBE	Non Minority	Valid W-9 on File	No	No	Not Rated Select
002_Orlando	F592623035002	All Seasons Air Conditioning	1512 Vassar Street	Orlando	FL	United States	Non Woman-owned, Non-FVBE	Non Minority	Valid W-9 on File	No	No	Not Rated Select

Name	LegacyID	Company	Street	City	State	Country	Woman-Owned / FVBE Status	Vendor Designation	W9 Status	Pcard	ASN	Rating
003_Florida Drawbridges Inc.	F658946504001	Florida Drawbridges Inc.	1901 E Atlantic Blvd.	Pompano Beach	FL	United States	Woman-Owned, Non-FVBE Certified	Non Minority	Valid W-9 on File	Yes	No	Not Rated Select
002_Corporate Office	F658946504002	Florida Drawbridges Inc.	1901 E Atlantic Blvd	Pompano Beach	FL	United States	Woman-Owned, Non-FVBE Certified	Non Minority	Valid W-9 on File	No	No	Not Rated Select

Name	LegacyID	Company	Street	City	State	Country	Woman-Owned / FVBE Status	Vendor Designation	W9 Status	Pcard	ASN	Rating
002_Kenyon & Partners Inc.	F593742046002	Kenyon & Partners Inc.	3243 Queen Palm Dr.	Tampa	FL	United States	Non Woman-owned, Non-FVBE	Non Minority	Valid W-9 on File	No	No	Not Rated Select



P-11 EXH 17 - 1

000508

MEMORANDUM



DATE: April 6, 2017
TO: Santiago Alvarez
FROM: Amanda Cruz

SUBJECT: BID OPENING FOR ITB-DOT-16/17-8017-AC

HEATING, VENTILATION AND AIR CONDITIONING (HVAC) EQUIPMENT
MAINTENANCE, REPAIR, INSTALLATION, AND REPLACEMENT SERVICES for
FLORIDA'S TURNPIKE (SR 91) MILEPOST 172.0 TO MILEPOST 312.0 SOUTHERN
CONNECTOR (SR 417) MILEPOST 0.0 TO MILEPOST 6.5 BEACHLINE
EXPRESSWAY (SR 528) MILEPOST 0.0 TO MILEPOST 8.4 SEMINOLE
EXPRESSWAY (SR 417) MILEPOST 37.7 TO MILEPOST 55.0 AND DANIEL
WEBSTER WESTERN BELTWAY (SR 429) MILEPOST 0.9 TO MILEPOST 11.0

Please review the enclosed bids that were opened Tuesday, April 4, 2017 at 2:30 pm. Please advise if you approve awarding the job to the firm below or if you prefer to readvertise for more competitive bids. When the decision has been made, check the appropriate spaces immediately below and then sign and return this memo by email or fax to me at (407) 264-3058 by no later than 12:00 p.m., Tuesday, April 11, 2017.

X
X
X
X
X
N/A

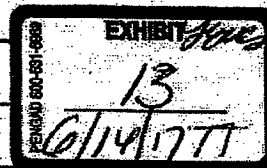
Proposer submitted all required State/Occupational Licenses
Proposer submitted all required Certifications for special job training / special education
Proposer met minimum years working experience required
Prior work references were favorable
Proposer submitted all required Forms
Proposer submitted required valid MBE Certification (where applicable)

APPROVED AMOUNT NOT APPROVED READVERTISE

✓ Blue Ray's
Heating & Air
Conditioning

✓ \$128,630.00

Comments: _____



Reviewed by: _____

Santiago Alvarez

Date

4/11/17

▶▶ PLEASE GIVE THE ORIGINAL OF THIS MEMO TO TRISA THOMAS ◀◀
▶▶ FOR THE PROJECT FILE. ◀◀

P. O. Box 613069, Ocoee, Florida 34761

P-11 EXH 13 - 1

APPENDIX065

000500

CERTIFICATION OF EXPERIENCE DOCUMENTATION

I, RAYMOND DAVIS PRESIDENT of
(Print Type Name) (Title)
BLUE RAYZ HEATING & AIR CONDITIONING hereby certify that this Company has been in
(Name of Business)

business for a minimum of 3 years and has the experience to perform the services requested by ITB-DOT-16/17-8017-AC.

As I have indicated experience above, I now submit the following list of business and client references that will attest to our services and business relationships for the periods indicated and I hereby give permission to the Turnpike Enterprise to inquire for references as to my performance.

Signature: Raymond Davis Date: 3.24.17

Name of Business: BLUE RAYZ HEATING & AIR CONDITIONING LLC

Note: In addition to being in business for the minimum number of years indicated above, the organized business enterprise (e.g. corporation, LLC or sole proprietorship) shall have been actively involved in the type of business requested for a minimum of three (3) years. Prior experience shall specifically be related to the technical scope and volume of work to that specified in the scope of work for this Contract. Submit documentation of the work experience with the bid package.

The Department will review carefully to determine if the Vendor(s) is responsive, responsible and qualified in the area of work contemplated by this Contract.

Describe your work experience in detail for the minimum period required, beginning with your current or most recent project. Use a separate block to describe each project. (Print out additional copies of the form or attach additional sheets as necessary.)

Date: (Mo. & Yr.): From JUNE/2015 To PRESENT Dollar Value of Project: \$ 5000 + yearly
Client Name: FL DEPT. OF JUVENILE JUSTICE Client's Project Manager: SHEARY BARKSDALE
Address: 2800 S. BUNBY AVE City: ORLANDO
State: FL Zip: 32806 Phone: (407) 897-2800 Fax: () X102
Project Description: PROVIDE HVAC MAINTENANCE, REPAIR & SERVICE @ ORANGE REGIONAL JUVENILE DETENTION CENTER.

Date: (Mo. & Yr.): From 2012 To PRESENT Dollar Value of Project: \$ _____
Client Name: FL ENVIRONMENTAL COMPLIANCE CORP Client's Project Manager: DAVE BREEDING
Address: 3652 OLD WINTER GARDEN RD City: ORLANDO
State: FL Zip: 32805 Phone: (407) 962-8686 Fax: () _____
Project Description: HVAC MAINTENANCE, REPAIR & SERVICE INSTALLATION

Date: (Mo. & Yr.): From JULY/2015 To AUG/2015 Dollar Value of Project: \$ 21,300
Client Name: FDOT FLORIDA DEPT OF TRANSPORTATION Client's Project Manager: LEONARD ROBINSON
Address: P.O BOX 613069 City: OCFEE
State: FL Zip: 34761 Phone: (407) 264-3321 Fax: () _____
Project Description: INSTALLATION OF RECORDED ROOM DUCTLESS split SYSTEM.

Date: (Mo. & Yr.): From Jul/2014 To Aug/2014 Dollar Value of Project: \$ 17,000
Client Name: CVS (87022 *2476) / PHARM WEST Client's Project Manager: ARON ANDERSON
Address: 9896 ROSEMONT AVE City: LONG TREE
State: CO Zip: 80124 Phone: (303) 798 5001 Fax: () -
Project Description: INSTALLATION OF MINI SPLIT SYSTEM IN CVS
STORE CLINICS.

Date: (Mo. & Yr.): From _____ To _____ Dollar Value of Project: \$ _____
Client Name: _____ Client's Project Manager: _____
Address: _____ City: _____
State: _____ Zip: _____ Phone: () - _____ Fax: () -
Project Description: _____

Date: (Mo. & Yr.): From _____ To _____ Dollar Value of Project: \$ _____
Client Name: _____ Client's Project Manager: _____
Address: _____ City: _____
State: _____ Zip: _____ Phone: () - _____ Fax: () -
Project Description: _____

Date: (Mo. & Yr.): From _____ To _____ Dollar Value of Project: \$ _____
Client Name: _____ Client's Project Manager: _____
Address: _____ City: _____
State: _____ Zip: _____ Phone: () - _____ Fax: () -
Project Description: _____

Name of Business: BLUE RAY'S HEATING & AIR CONDITIONING

FORM MUST BE EXECUTED AND SUBMITTED WITH BID PACKAGE



Florida Department of Transportation

RICK SCOTT
GOVERNOR

Florida's Turnpike Enterprise
P.O. Box 9828, Fort Lauderdale, FL 33310
954-975-4855

RACHEL D. CONE
INTERIM SECRETARY

TELEPHONE REFERENCE CHECK

Contract No.: ITB-DOT-16/17-8017

Date: 4/7/17

Project Name: HVAC Maintenance Services

Financial Project No.: 192562-1-7B-04

Reference Name: Dave Breeding

Phone Number: 407-963-8686

Project Work Description: Hvac Maintenance Services at various locations. The
Vendor also provide some HVAC installations. Have provided various services
for them many years and have recommend the Vendor to others.

Date/Time of Service: 04/10/17 @9:55a.m.

Was the Services Provided? ☒ Excellent ☐ Good ☐ Poor

Remarks: Highly Recommend this Vendor for the project.

Conducted by: Trisa Thomas

www.dot.state.fl.us

FDOT

Florida Department of Transportation

RICK SCOTT
GOVERNOR

Florida's Turnpike Enterprise
P.O. Box 9828, Fort Lauderdale, FL 33310
954-975-4855

RACHEL D. CONE
INTERIM SECRETARY

Facilities and Telecommunications Maintenance Post Bid Conference Call

Contract Number: FTB-DOT-16/17-8017
Date: 4/10/17
Time: 3:52 PM

Raymond Davis - (407) 436-2554
email: blue-rayz-air@gmail.com

Apparent/Responsive Low Bidder: Blue Ray's Heating & Air Cond.

1. Do you fully understand the Scope of Work under this contract? Yes
2. Do you have any questions about the Scope of Work or the pay items under this contract? No
3. Are you confident that you can complete the work according to specifications with the unit prices of your bid? Yes
4. Are you prepared to proceed if we recommend the award of this contract to your firm? (If you are not prepared to proceed, and would like to request your bid be withdrawn, please submit a letter to that effect.) Yes
5. Do you have any questions? No
6. Please forward a letter to this office verifying that you are satisfied with and stand by your bid for this contract. Yes

Reviewed by: Trisha Thomas Witnessed by: ALAN CHUA
Signature: Trisha Thomas Signature: [Signature]

www.dot.state.fl.us

Revised 03/15/17



Florida Department of Transportation

RICK SCOTT
GOVERNOR

Florida's Turnpike Enterprise
P.O. Box 9828, Fort Lauderdale, FL 33310
954-975-4855

JIM BOXOLD
SECRETARY

October 20, 2015

Mr. Raymond Davis
Blue Rayz Heating & Air Conditioning LLC
4128 Shelter Bay Drive
Kissimmee, FL 34746

Contract: PR8779692

FPN #: 190736-1-93-17

Install of Recorder Room Dedicated A/C Ductless Split Systems - Florida's Turnpike

Dear Mr. Davis:

Attached is your Final Contractor Field Performance Report (CFPR) for Contract PR8779692. Please sign the CFPR and send it back to Trisa Thomas at Department of Transportation, Turnpike Operation Center, P.O. Box 9828, Ft. Lauderdale, Florida 33310-9828, within (10) business days.

If you desire a meeting to discuss the results of the Report, please submit your written request to the Contract Leonard Robinson at Department of Transportation Turnpike Headquarters, Milepost 263.0, Florida's Turnpike, Turkey Lake Service Plaza, Ocoee, Florida 34761 or Fax Number (407) 264-3350.

Written request for a meeting must be received by the Department within ten (10) business days from your receipt of this letter. If requested, the Contract Manager will schedule the meeting based on a mutually agreed upon time and date at a location selected by the Department. If a meeting is not requested, or you fail to attend the meeting that is scheduled to discuss the CFPR, you will be deemed to have accepted the Final CFPR and forfeit your dispute rights.

If you have questions about this process, please call Santiago Alvarez at (954) 954-1261.

Sincerely,


Santiago Alvarez

Facilities and Telecommunications Administrator

AA/ Attachment (Final Contractor Field Performance Report)

www.dot.state.fl.us

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
CONTRACTOR
FIELD PERFORMANCE REPORT

375-000-10
 MAINTENANCE
 09/14

Contractor: Blue Rayz Heating & Air Conditioning LLC.

Contract: PR5776692-R0

Evaluation Date: 10-19-2015

Type of Evaluation: ☐ Periodic ☒ Final

Category One

Pursuit and Timely Completion of Work

	Performance
The Contractor performed all work in an effective and expedient manner. The Department's expectations regarding timely pursuit and completion of the work were often exceeded.	Excellent ⊕
Except for a few occasions, the Contractor completed all of the work within authorized timeframes. The Contractor consistently demonstrated sufficient efforts to complete work in a timely fashion. The Department's expectations regarding timely pursuit and completion of the work were usually met and sometimes exceeded.	Satisfactory ○
The Contractor occasionally completed the work in a timely manner, but efforts were consistently less than adequate. Department involvement was required on more than one occasion to prompt the Contractor to complete the work.	Unsatisfactory ○
The Contractor failed to complete the work in a timely fashion. On several occasions the Contractor failed to begin work in a timely fashion, and the Contractor made little effort to correct deficiencies. Substantial Department involvement was required to prompt completion of the work, including written correspondence advising the Contractor of potential default. Expectations were not met.	Poor ○
Notes & Comments	
The Contractor performed all work in an effective and expedient manner. The Contract end date was set for October 4, 2015 but the Contract was completed on September 21st - a full nine (9) days ahead of schedule.	

Category Two

Maintenance of Traffic (MOT) & Safety Operations

	Performance
MOT setups and compliance were proper with no correctable complaints from Department personnel and/or traveling public. No incidents or injuries occurred within work zones due to improper MOT. Qualified MOT personnel were present at all times. Expectations were exceeded. Contractor often went above and beyond FDOT Design Standard requirements to ensure safety for both work crews and traveling public.	Excellent ⊕
MOT setups and compliance were mostly proper with few correctable complaints from Department personnel and/or traveling public. No incidents or injuries occurred within work zones due to improper MOT. Qualified MOT personnel were present. Expectations were met and exceeded occasionally.	Satisfactory ○
MOT setups and compliance were at times achieved, but there were several complaints and/or incidents of non-compliance. No major incidents or injuries occurred within work zones due to improper MOT. Qualified MOT personnel were usually present. Some involvement from Department personnel was required on a few occasions. Expectations were not consistently met.	Unsatisfactory ○
Proper MOT deployment and overall compliance was lacking. Numerous correctable complaints from Department personnel and/or traveling public were noted. An incident with injuries may have occurred within the work zone due to improper MOT. Qualified MOT personnel were seldom on site or in close proximity to the work site. Expectations were not met.	Poor ○
N/A (To be used when MOT was not necessary or included in the contract).	N/A ○
Notes & Comments	
The Contractor's work involved the excavation of deep holes that needed to be protected from the public or the Plaza personnel falling into them. For the safety of the public, caution tapes were installed around the excavated area and cones were put in place to prevent unauthorized personnel entry into the work zone.	

Contractor: Blue Rayz Heating & Air Conditioning LLC.

Contract: PR8778692-R0

Evaluation Date: 10-19-2015

Category Three

Timely and Complete Submittal of Documents and Reports

	Performance
Written correspondence and documentation were error free and critical dates were met.	Excellent ⊕
Contractor adequately followed the contract from a written correspondence perspective. Quality in relation to written correspondence was good with few errors.	Satisfactory ⊙
Department personnel encountered issues with the overall quality of the written correspondence or overall timeliness of contract document submittal.	Unsatisfactory ○
Overall quality control from a correspondence/paperwork aspect was not met. Excessive prompting from Department personnel for required documentation was required and the correction of substandard/low quality work was necessary. Contractor failed to submit required documents such as Form 21-A within allowable time.	Poor ○
Notes & Comments	
The Contractor adequately followed the Contract from a written correspondence perspective. This was the Contractor's first experience in providing Documents to the Department so some assistance was provided to the Contractor by the Department personnel to ensure all correspondence were good and error free. The Contractor followed the directions given and submitted the Documents free of errors.	

Category Four

Overall Quality Control, Environmental Compliance, and Compliance with Contract Requirements

	Performance
Contractor followed all of the requirements/conditions of the contract with superior quality in accordance with FDOT Standards and Specifications (including environmental issues if applicable). Contractor was self-sufficient requiring no help from the Department.	Excellent ⊕
Contractor consistently performed quality work operations according to the contract with few errors.	Satisfactory ⊙
Overall quality control in the field was not consistently met. Department personnel were often required to prompt the Contractor for correction of substandard or low quality work.	Unsatisfactory ○
The Department identified notable errors and failures to meet contract requirements. Overall quality control was only met on occasion.	Poor ○
Notes & Comments	
The Contractor demonstrated excellent and consistent quality control, environmental compliance and adhered strictly to the requirements of the Contract. Their work exceeded the Department personnel's expectation.	

Contractor: Blue Rayz Heating & Air Conditioning LLC.

Contract: PR8778892-R0

Evaluation Date: 10-18-2015

Category Five

Interaction, coordination, and cooperation with Department personnel, traveling public, other contractors, property owners and other Governmental agencies

	Performance
Interaction with Department personnel was outstanding; no complaints from the traveling public or adjacent property owners were noted. The Contractor handled any issues that arose, notifying the Department of the outcome. Positive feedback from the public was noted. Expectations were often exceeded.	Excellent ⊕
Few, if any, complaints from the traveling public or adjacent property owners were noted. When a concern was expressed, the Contractor was quick to resolve it. Positive interaction with Department personnel with some positive feedback from the public was noted. Expectations were always met and occasionally exceeded.	Satisfactory ○
Some complaints from outside parties and Department personnel were noted (mostly minor in nature). Most complaints were handled in a timely manner. Expectations were not consistently met.	Unsatisfactory ○
Numerous complaints were received about work operations, staging of equipment, and/or poor attitude. The Contractor repeatedly failed to follow instructions; communication and cooperation was inadequate.	Poor ○
Notes & Comments:	
The Department Personnel was most impressed with the high level of cooperation, coordination and interaction experienced with the Contractor. All matters arising with the Contract was promptly brought to the attention of the Department Personnel. There was never an instance where there was a single complaint from the Toll Plaza representatives.	

Category Six

Disadvantaged Business Enterprise (DBE) Reporting

	Performance
Contractor's staff was very well qualified and capable to address sufficient utilization of the Equal Opportunity Compliance (EOC) System application to collect, review, and report any DBE commitments/payments. Periodic checks of the EOC System by Department personnel revealed no issues and no follow up with the Contractor in regard to DBE issues was required.	Excellent ○
Contractor's staff sufficiently utilized the Equal Opportunity Compliance (EOC) System to adequately collect, review and report DBE commitments/payments. Periodic checks of the EOC System by Department personnel revealed very few issues and minimal follow up with the Contractor in regard to DBE issues was required.	Satisfactory ○
Contractor demonstrated little interest in utilizing the EOC system to collect, review, and report any DBE commitments/payments. Requests for the Contractor to utilize the system were repeatedly made by Department personnel and follow up with the Contractor was often required.	Unsatisfactory ○
Contractor failed to adequately report DBE commitments/payments. Requests for the Contractor to correct errors within the system were repeatedly made by the Department; excessive/recurring assistance to the Contractor was necessary.	Poor ○
N/A (To be used when the Contractor is exempt from DBE reporting requirements.)	N/A ⊕
Notes & Comments:	

Overall Score 87

Contractor: Blue Rayz Heating & Air Conditioning LLC.

Contract: PR8779632-RD

Evaluation Date: 10-10-2015

Summary

This Contractor clearly exceeded all expectations. They completed the work assigned well ahead of schedule, followed the requirements of the Contract and delivered an excellent product that was of a very high standard. It was truly a pleasure working with Blue Rayz Heating & Air Conditioning LLC.

Pursuit and Timely Completion of Work

Excellent

Maintenance of Traffic (MOT) & Safety Operations

Excellent

Timely and Complete Submittal of Documents and Reports

Satisfactory

Overall Quality Control, Environmental Compliance, and Compliance with Contract Requirements

Excellent

Interaction, coordination, and cooperation with Department personnel, traveling public, other contractors, property owners and Government agencies

Excellent

Disadvantaged Business Enterprise (DBE) Reporting

N/A

Submitted By:

Leonard S. Robinson 10/14/15
Project Manager Date

Raymond 10-26-15
CONTRACTOR Date

(Signature does not indicate concurrence)

Reviewed By:

John W. [Signature] 10/19/15
Cost Center Manager Date

Reviewed By:

Anthony [Signature] 10/22/15
District Maintenance Engineer Date

COPIES:

Contractor
Project File
District Maintenance Engineer - Original
Cost Center Manager

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on January 25, 2018, I electronically filed a true and correct copy of the foregoing and served by Electronic Mail, pursuant to Florida Rule of Judicial Administration Rule 2.516, to the following:

Mark H. Jamieson, Esquire
MHJ Law, PLLC
Counsel for Petitioner,
E.R. Reeves Corporation, d/b/a
All Seasons Air Conditioning
425 W. Colonial Drive, Suite 204
Orlando, Florida 32804

Douglas D Dolan, Esquire
Assistant General Counsel
Department of Transportation
Haydon Burns Building
605 Suwannee Street, M.S. 58
Tallahassee, Florida 32399

Andrea Shulthiess
Clerk of Agency Proceedings
Department of Transportation
Haydon Burns Building
605 Suwannee Street, Mails Station 58
Tallahassee, Florida 32399-0450

Michael J. Dew, Secretary
Department of Transportation
Haydon Burns Building
605 Suwannee Street, Mail Station 57
Tallahassee, Florida 32399-0450

Tom Thomas, General Counsel
Department of Transportation
Haydon Burns Building
605 Suwannee Street, Mail Station 57
Tallahassee, Florida 32399-0450

/s/ Benjamin S. Boutty
Benjamin S. Boutty, Esq.
Florida Bar No. 88561
THE BOUTTY LAW FIRM, P.A.

/s/ James W. Markel
James W. Markel, Esq.
Florida Bar No. 98710
JAMES WAYLAND MARKEL, P.A.

1150 Louisiana Avenue, Suite 5
Winter Park, Florida 32789
Telephone: 407/883-1024
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E-Mail: Shane@bouttylaw.com
Primary service: Service@bouttylaw.com
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Telephone: 407/466-2817
E-Mail: jwmarkel@gmail.com
Primary service: jwmarkel@gmail.com
Secondary E-Mail: Lisa@bouttylaw.com
Co-Counsel for Appellants

CERTIFICATE OF COMPLIANCE

WE HEREBY CERTIFY that this response complies with the font requirements of Rule 9.100(l) of the Florida Rules of Appellate Procedure.

/s/ Benjamin S. Boutty
Benjamin S. Boutty, Esq.
Florida Bar No. 88561
THE BOUTTY LAW FIRM, P.A.
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Counsel for Appellants

/s/ James W. Markel
James W. Markel, Esq.
Florida Bar No. 98710
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Co-Counsel for Appellants

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