

**STATE OF FLORIDA
DEPARTMENT OF MANAGEMENT SERVICES**

BLUE SKY EMERGENCY
MANAGEMENT, LLC, d/b/a THE
INTEGRITY GROUP,

Petitioner,

RFP No. 06-80101500-J

vs.

STATE OF FLORIDA,
DEPARTMENT OF MANAGEMENT
SERVICES,

Respondent.

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**FORMAL WRITTEN PROTEST PETITION &
REQUEST FOR FORMAL ADMINISTRATIVE HEARING**

Petitioner, Blue Sky Emergency Management, LLC, d/b/a The Integrity Group (“Integrity Group”), pursuant to sections 120.569 and 120.57, Florida Statutes, and chapter 28-110, Florida Administrative Code, files this formal written protest with respect to Respondent, the State of Florida, Department of Management’s (the “Department”) Request for Proposals No. 06-80101500-J for Management Consulting Services (“RFP”). In support of its petition, the Integrity Group states:

1. This is a formal written protest filed pursuant to sections 120.569 and 120.57, Florida Statutes, and chapter 28-110 Florida Administrative Code.
2. Pursuant to section 287.042(2)(c), Florida Statutes, and Rule 28-110.005, Florida Administrative Code, the Integrity Group has submitted a cashier’s check in lieu of a bond in the amount of \$38,500.00 concurrently with the filing of this formal written protest petition on December 14, 2020. A copy of the cashier’s check submitted in lieu of a bond is attached hereto as **Exhibit A**.

THE PARTIES

3. The Department is an agency of the State of Florida with its principal business address at 4050 Esplanade Way, Tallahassee, FL 32399-0950.

4. The Integrity Group is a Florida corporation with its principal business address at 2120 Killarney Way, Tallahassee, FL 32309. For the purposes of this proceeding, the Integrity Group's contact information is that of the undersigned attorneys.

5. The Integrity Group provides top quality professional services to local, state, and federal government agencies and private entities in several critical public safety and financial quality assurance areas. Of particular relevance to this RFP, the Integrity Group's Emergency Management Services sector provides a highly-experienced and successful team of disaster recovery and mitigation experts and are well versed in the Stafford Act and other laws related to public assistance and hazard mitigation.

INTRODUCTION

6. The Integrity Group has previously provided services to the Department and the State of Florida, and does not wish to be in a position of having to protest the Department's procurement and resulting Supplemental Notice of Intent to Award. However, the procurement and Supplemental Notice of Intent to Award do not further the policies of the State to procure contracts in a manner that provides fair and open competition for all Respondents and based upon the published evaluation criteria. Unfortunately, the Department's procurement process and Supplemental Award decision were clearly erroneous, arbitrary and capricious, contrary to competition, and were contrary to the specifications of the RFP, Florida law, and the Department's own governing statutes, rules, policies, and principles.

7. The purpose of the RFP at issue was to determine which vendors were qualified to provide the Services to the state agencies and other eligible users that are the beneficiaries of the resulting state term contracts. Accordingly, the Department reserved the right to make multiple awards so that the users of the state term contracts could determine their best option for the services needed unique to each user's needs through a Request for Quotes system.

8. After protests were filed challenging the Department's scoring of the proposals, the Department recognized that it did not conduct an appropriate evaluation of the proposals. It appears that the Department re-scored, at least in part, the protestors' proposals, and determined it should make additional awards to the protestors. However, the Department failed to adequately address the overall issues with its evaluation, and did not re-evaluate all of the Respondents' proposals.

9. Thus, while the flaws in the Department's procurement process resulted in additional awards being made, such awards were made to Respondents who were less qualified than the Integrity Group. In fact, the Integrity Group received higher scores and proposed lower prices than Respondents that received awards in the Supplemental Notice of Intent to Award. An additional award to the Integrity Group would be aligned with the intent of the RFP and Florida procurement policy to ensure that the state agencies and other users of the state term contracts have multiple options to choose from and have increased competition amongst the selected Respondents to provide the services at a price that offers the best value or most advantageous solution to meet the various users' needs.

PROCEDURAL BACKGROUND

10. On March 17, 2020, the Department issued an RFP seeking proposals from vendors to provide services in two categories, management consulting services ("MCS") and

financial and performance audit services (“FPA”), for state term contracts. *See* RFP at 5. A copy of the RFP and subsequent addenda is attached hereto as **Exhibit B**. This protest involves only the procurement for the MCS Service Category and does not implicate the procurement for the FPA Service Category.

11. The purpose of the MCS state term contracts is to provide eligible end-users of the resulting contracts, including state agencies and other eligible users as defined by Florida statutes and administrative rules, with the capability to issue a Request for Quotes (“RFQ”) to contracted vendors to ultimately select a contracted vendor to provide management consulting services to the end-user. Accordingly, while the award of a state term contract does not guarantee an awarded vendor business, state term contract awards to qualified vendors increase competition so that state agencies and other users have choice and may select the contracted vendor to provide management consulting services at a price that offers the best value or most advantageous solution to the individual state agency or other user in need of the services. Thus, this procurement primarily serves as a preliminary evaluation of the vendors’ qualifications and pricing, but it is up to the state agencies and other eligible users to ultimately choose which vendor they would like to provide the services. As such, the Department is permitted to enter into multiple contracts with different vendors to provide state agencies and other users multiple options to obtain the services.

12. Proposals were due on June 9, 2020, and the Department held a public opening of the submitted proposals. *See* Addendum 4 at p. 2.

13. The RFP detailed information and documents that were required to be submitted to be responsive to the RFP. *See* RFP at p. 10. The proposals were required to contain the Section 4.1.1 (Attachment G) documentation and a Cost Proposal (Attachment A). *Id.* Proposals

that did not include such documentation would be deemed non-responsive and would not be evaluated. *Id.*

14. The Department received 132 proposals for the MCS Service Category and deemed five of the proposals non-responsive. *See* MCS Non-Responsive, attached hereto as **Exhibit C**. The rest of the proposals, including the Integrity Group's proposals, were evaluated.

15. Upon completion of the evaluation of the proposals, the Department posted a Notice of Intent to Award on September 29, 2020, selecting the Respondents with the highest scores for each Service within the MCS Service Category.

16. The RFP, as amended in Addendum 5, represents that the Department intended to award contract(s) to the "responsible and responsive Respondent(s) for each Service in each Service Category whose Proposal(s) is determined in writing to be the most advantageous to the State, taking into consideration the Cost Proposal and Technical Proposal." *See* Addendum 5 at p. 15. The Department intended to award a contract to the Respondent with the highest total score for each Service within the MCS Service Category and reserved the right to award additional contracts to Respondents whose total final score was within 25% of the highest total final score for each Service. *Id.*

17. Between October 9-12, 2020, the Department received formal protests from four vendors that were not initially awarded contracts: MGT of America Consulting, LLC, TEKsystems Global Services, LLC, Slalom, LLC, and Tidal Basin Government Consulting, LLC. These Respondents did not receive the highest score for the Services they proposed and their scores were not within 25% of the highest score.

18. Apparently recognizing that the protestors' challenges to the Department's scoring of the proposals presented legitimate reasons to invalidate the procurement and the initial

awards, it appears from records produced to date that new scores were generated for one evaluator, Paul Baker, while these protests remained pending. *See* Evaluator Score Sheet (Baker) (10-14-20), attached hereto as **Exhibit D**; *see also* MCS Award Re-Calculations, attached hereto as **Exhibit E**. However, the Department never took appropriate action to correct the broader issues with its evaluation, such as re-scoring any of the other Respondents' proposals or requiring the other evaluators to review and revise their scores. At this time, the records made available to the Integrity Group do not reflect why only certain of Mr. Baker's scores were changed.

19. The Department did not inform the other non-awarded Respondents that protests had been filed. The Department likewise did not inform such Respondents that one evaluator would re-score only the protestors' proposals, or that it intended to enter into settlement agreements with the protestors to issue additional awards.

20. On December 1, 2020, the Department issued a Supplemental Notice of Intent to Award, which added awards to MGT of America Consulting, LLC for Services a, c, d, f, h, j, and k; to TEKsystems Global Services, LLC for Services a, b, c, d, e, f, and k; to Slalom, LLC for Service e; and to Tidal Basin Government Consulting, LLC for Service l. *See* Supplemental Notice of Intent to Award, attached hereto as **Exhibit F** and Supplemental Award List by Service, attached hereto as **Exhibit G**. The Supplemental Notice was the first time the Integrity Group received notice that additional awards were made to Respondents who did not initially receive the highest score and were not within 25% of the highest score. The Supplemental Notice contained a notice of protest rights, *see* Exhibit F, and the Integrity Group timely submitted its Notice of Intent to Protest and now this formal protest, which challenges the Department's procurement and resulting Supplemental Awards as clearly erroneous, arbitrary

and capricious, contrary to the specifications of the RFP, and contrary to Florida law and the Department's governing statutes, rules, policies, and principles.

21. Despite submitting a competitive proposal for all of the services in the MCS Service Category, and initially receiving higher scores for some Services and proposing lower rates than the protestors, and despite receiving awards for the FPA portion of the procurement, the Integrity Group was not selected for an award for any of the services in the MCS Service Category, and was not added as an awardee in the Supplemental Notice of Intent to Award. In addition, had the Integrity Group's proposal been rationally scored and scored in accordance with the terms of the RFP and evaluation criteria, the Integrity Group would have been awarded contracts.

Proposal Requirements & Evaluation

22. The RFP required Respondents to submit a Technical Proposal and a Cost Proposal. *See* Addendum 5 at p. 15-16.

23. The Technical Proposal included the Respondent's submission for "Experience" and the "Proposed Solution" for the Services which the Respondent was proposing to provide if awarded a contract. The Services the Respondents could propose included: a) Consulting on management strategy; b) Project management; c) Program research, planning, and evaluations; d) Provision of studies, analyses, scenarios, and reports relating to a Customer's mission-oriented business programs or initiatives; e) Executive/management coaching services; f) Customized training as needed to achieve a management consulting objective; g) Assistance with policy and regulation development; h) Assistance with process and productivity improvement; i) Expert witness services in support of litigation, claims, or other formal cases relating to management consulting; j) Advisory and assistance services relating to a Customer's mission-oriented

business programs or initiatives; k) Systems alignment and consolidation; and l) Comprehensive grants management services related to the Stafford Disaster Relief and Emergency Assistance Act and other related State and Federal grant programs. *See* Addendum 5 at p. 16.

24. The Experience portion of the Technical Proposal was required to be a “narrative on the Respondent’s relevant experience, including diverse knowledge and skillsets (preferably with demonstrated experience in providing services relevant to governmental entities), applicable to Service Category 1.” *See* Addendum 5 at p. 17. The Respondents’ submissions for Experience had a maximum point value of 75 points and the evaluators were required to evaluate Experience on the basis of:

The Evaluator will evaluate the quality, depth, and relevance of the experience (preferably with demonstrated experience in providing services relevant to governmental entities) in providing Management Consulting Services in accordance with the following guidelines and must base his or her score on the information provided in the Technical Proposal (note: if an Evaluator reviews a Technical Proposal from a Respondent for Financial and Performance Audits, the Evaluator must not consider any of the information provided in that Technical Proposal when evaluating the Respondent’s Technical Proposal for Management Consulting Services).

Id. In addition, the evaluators were constrained to awarding a score based on a rubric provided in the RFP:

Evaluation Criteria	Points
Respondent does not demonstrate that it has quality, depth, or relevance in experience in providing Management Consulting Services.	0
Respondent demonstrates a minimal level of quality, depth, or relevance in experience in providing Management Consulting Services.	25
Respondent demonstrates a good level of quality, depth, or relevance in experience in providing Management Consulting Services.	50
Respondent demonstrates an extensive level of quality, depth, or relevance in experience in providing Management Consulting Services.	75

25. For the Proposed Solution portion of the Technical Proposal, each Service had a maximum point value of 55 points and its own evaluation criteria and scoring rubric. *See* Addendum 5 pp. 18-26. By way of example, for Service “a) Consulting on Management Strategy,” the RFP provided the following instructions and scoring rubric to the evaluators:

The Evaluator will evaluate the Respondent’s proposal for carrying out Consulting on Management Strategy services in accordance with the following guidelines and must base his or her score on the information provided in the Technical Proposal (note: if an Evaluator reviews a Technical Proposal from a Respondent for Financial and Performance Audits, the Evaluator must not consider any of the information provided in that Technical Proposal when evaluating the Respondent’s Technical Proposal for Management Consulting Services).

Evaluation Criteria	Points
Respondent’s proposal does not demonstrate the Respondent’s ability to provide Consulting on Management Strategy services statewide and to offer diverse knowledge and skillsets.	0
Respondent’s proposal demonstrates that the Respondent has minimal ability to provide Consulting on Management Strategy services statewide and to offer diverse knowledge and skillsets.	18
Respondent’s proposal demonstrates that the Respondent has a good ability to provide Consulting on Management Strategy services statewide and to offer diverse knowledge and skillsets.	36
Respondent’s proposal demonstrates that the Respondent has exceptional ability to provide Consulting on Management Strategy services statewide and to offer diverse knowledge and skillsets.	55

See Addendum 5 at p. 18.

26. For the Cost Proposal, Respondents were required to submit their pricing on Attachment A. *See* Attachment A of the RFP. The Cost Proposal had a total point value of 70 points and would be scored in accordance with a formula set forth on page 14 of the RFP.

27. In addition to the evaluation criteria and scoring rubrics set forth in the RFP, the “Evaluators Guide” reminded evaluators that “[f]air and open competition is a basic tenet of public procurement [and] transparent and unbiased procurement practices are essential to the

evaluation process,” and instructed the evaluators that they “must not deviate from the evaluation requirements of the RFP.” *See* Evaluators Guide, attached hereto as **Exhibit H**. Furthermore, the Evaluators Guide also provided that evaluators should “use [their] best judgement and score consistently to promote and safeguard fair consideration of all of the vendors.” *Id.*

28. Accordingly, the evaluators were required to score the proposals in a consistent and fair manner that did not deviate from the evaluation criteria and scoring rubrics in the RFP.

29. The Department designated five individuals to evaluate the proposals, whom the Department claimed to “collectively have experience and knowledge in the program areas and service requirements for which commodities or contractual services are sought” as required by section 287.057(16)(a), Florida Statutes. *See* Evaluator Designation Memorandum, attached hereto as **Exhibit I**. The evaluators included Stefanie Higgins, the Chief of the Bureau of Contract Management for the Department; Frederick “Buck” Dickinson, the Interim State Public Assistance Officer for the Division of Emergency Management; Paul Baker, the State Purchasing Administrator for the Department of Transportation; Jeffrey Dykes, the Contract Manager Supervisor for the Department; and Toletha Sylvester, the Budget Analyst for the Department’s Division of State Group Insurance. *Id.*

30. To determine the total final score for each Respondent, the Department was to combine the average of the evaluators’ technical scores for each Service, which included the point score for Experience and the Proposed Solution per Service, with the score for the Cost Proposal, for a total maximum point value of 200 points. *See* Addendum 5 at p. 15.

31. Unfortunately, the evaluators’ scoring of the proposals was not conducted in a rational manner or in accordance with the terms of the RFP. To give just one example, Toletha Sylvester inexplicably assigned a score of 0 for the Integrity Group’s Proposed Solutions for

Services b through l, which, in accordance with the evaluation criteria and scoring rubrics provided in the RFP, indicated that the Integrity Group’s proposal did “not demonstrate the [Integrity Group’s] ability to provide the [services.]” *See* Evaluator Score Sheet (Sylvester), attached hereto as **Exhibit J**. This in stark contrast to how the other evaluators scored the Integrity Group’s proposal. For example, Frederick Dickinson assigned the highest score, 55 points, to the Integrity Group’s proposal for Services b through l, meaning that the Integrity Group’s proposal demonstrated that the Integrity Group “has **exceptional** ability to provide [the services].” *See* Evaluator Score Sheet (Dickinson), attached hereto as **Exhibit K (emphasis in original)**.

32. The Department issued its Notice of Intent to Award on September 29, 2020, and identified the awardees for each Service based on the total final scores awarded to each Respondent and those whose scores were within 25% of the highest total final score for each Service. *See* Notice of Intent to Award, attached hereto as **Exhibit L**, and Award List by Service, attached hereto as **Exhibit M**.

Protests & Supplemental Notice of Intent to Award

33. After the Department published its intended awards, MGT of America Consulting, LLC, TEKsystems Global Services, LLC, Slalom, LLC, and Tidal Basin Government Consulting, LLC, submitted protests challenging the scoring of the proposals.

34. After receiving the protests, the Department apparently recognized that its initial evaluation and scoring of proposals was erroneous and flawed. Upon review of the documents provided to the Integrity Group, it appears that during the pendency of the protest revised scores for one evaluator, Mr. Baker, were generated for only the protestors’ proposals. *See* Exhibits D and E. It does not appear that other evaluators were asked or given the opportunity to review and

change their scores, and the Department ultimately did not take appropriate action to attempt to correct the broader issues with its evaluations implicating the scoring by other evaluators and the scores awarded to other Respondents.

35. The Department thereafter entered into settlement agreements with each of the protestors, and issued a Supplemental Notice of Intent to Award, which made additional awards to the protestors.

36. The Integrity Group was not informed of the protests or the Department's intent to settle with the protestors, who received lower scores for some Services than Integrity Group and proposed higher prices than did Integrity Group.

37. Unfortunately, due to irregularities in the Department's procurement process, the Department's failure to follow the criteria published in the RFP, the evaluators' irrational scoring of the proposals, and the Department's erroneous Supplemental Awards, the Integrity Group is now forced to protest the procurement and resulting Supplemental Notice of Intent to Award to ensure that the procurement was conducted in accordance with Florida procurement law.

38. The Integrity Group timely files this formal protest, which has the effect of staying the Department's procurement process and the intended awards until the protest is resolved.

SUBSTANTIAL INTERESTS

39. The Integrity Group incorporates by reference Paragraphs 1-38 as fully stated herein.

40. As a responsible and responsive vendor that submitted a competitive proposal in response to the RFP that offers the most advantageous solution to the Department and the State, the Integrity Group is substantially and adversely affected by the Department's improper and

fundamentally flawed procurement process and erroneous decision to exclude the Integrity Group from receiving any awards. *See* § 120.569(1), Fla. Stat. (affording standing to parties whose substantial interests are determined by the agency); *see also Advocacy Ctr. for Pers. With Disab., Inc. v. State, Dep't of Child. & Fam. Servs.*, 721 So. 2d 753, 755 (Fla. 1st DCA 1998) (“standing will inhere in a person who at least has some potential stake in the contract to be awarded.”). Therefore, the Integrity Group has standing to protest the Department’s procurement and resulting Supplemental Notice of Intent to Award.

41. Moreover, the Integrity Group raises issues as to whether the Department’s process was fundamentally flawed, which also affords the Integrity Group standing to maintain this protest. *See, e.g., PayIt, LLC v. Dep't of Fin. Servs.*, Case No. 20-0742BID at ¶72 (Fla. DOAH Aug. 6, 2020); *Flour-Astaldi-MCM, Joint Venture v. Dep't of Transp. and Archer Western-De Moys, Joint Venture*, Case No. 17-5800BID (Fla. DOAH Apr. 10, 2018; Fla. Dep’t of Transp. Apr. 30, 2018) (finding that the petitioner had standing to challenge the fundamental fairness of the procurement and seek a rejection of all bids); *CTS America v. Dep't of High. Saf. & Motor Veh. and Open Portal Solutions, Inc.*, Case No. 11-3372BID (Fla. DOAH Oct. 19, 2011; Fla. Dep’t of High. Saf. & Motor Veh. Nov. 14, 2011) (finding that the petitioner had “standing to request that the other party’s proposal be rejected, or that the process was so fundamentally flawed that the contract must be re-bid”); *Vertex Standard v. Fla. Dep't of Transp.*, Case No. 07-0488BID (Fla. DOAH Apr. 30, 2007; Fla. Dep’t of Transp. May 30, 2007) (finding that the petitioner had standing to protest the award and seek a rejection of all bids); *NCS Pearson, Inc. v. Dep't of Educ.*, Case No. 04- 3976BID (Fla. DOAH Feb. 8, 2005; Fla. Dep’t of Educ. Feb. 21. 2005) (recognizing that lower-ranked bidders had standing to argue that

there were fundamental flaws in the process requiring a re-bid where any bidder might receive the award).

STATEMENT OF ULTIMATE FACTS ALLEGED

42. The Integrity Group incorporates by reference Paragraphs 1-41 as fully stated herein.

43. While the Integrity Group has not yet received all documents responsive to its public records request, based upon its current understanding of the Department's conduct of the procurement, the procurement process was not conducted in accordance with Florida law or the terms of the RFP, was conducted in an irrational manner, and was fundamentally flawed. The flaws in the procurement prevented the Department from appropriately evaluating the Respondents to determine which Respondents should be awarded contracts.

44. Specifically, the Department's procurement and Supplemental Notice of Intent to Award demonstrate that: (1) the Department's scoring was not conducted in a rational manner; (2) the Department did not evaluate the proposals in accordance with the criteria published in the RFP or impermissibly based its evaluation on undisclosed criteria; (3) the Department's evaluators did not have the requisite knowledge and experience, or were otherwise unqualified, to fairly evaluate the proposals; (4) the Department did not correct the overall issues with its evaluation and erroneously made additional awards to Respondents that had lower scores and higher rates than the Integrity Group; and (5) the Department's procurement was fundamentally flawed.

45. Accordingly, the Department's procurement process and Supplemental Notice of Intent to Award are clearly erroneous, arbitrary and capricious, contrary to competition, and were

contrary to the specifications of the RFP, Florida law, and the Department's governing statutes, rules, policies, and principles.

46. The Integrity Group is a responsible and responsive vendor that submitted a competitive proposal that offers the most advantageous solutions to the Department and the State.

I. The Department's Scoring Of The Proposals Was Irrational

47. The Integrity Group is a Florida-based company led by principals with many decades of experience in Florida state and local government, and has demonstrated consulting experience and expertise in the Services solicited in the RFP. In its proposal, Integrity Group included a resume for Gary Yates, a Senior Partner of Integrity Group, who served many roles in the Florida Department of Law Enforcement ("FDLE") for 24 years, including serving as the Inspector General for FDLE. Also included in Integrity Group's proposal was a resume for James Moore, a Senior Partner for Integrity Group, who was the longest serving Commissioner in the history of FDLE. Likewise, the Integrity Group's proposal included a resume for Eric Miller, a Senior Partner for The Integrity Group, who has a long history of service in local and state law enforcement, and who has served as the Chief Inspector General for the State of Florida as well as the Florida Agency for Health Care Administration.

48. The Integrity Group provides a highly-experienced team of experts who are well-versed in providing the consulting services sought, including specifically FEMA public assistance and hazard mitigation programs as well as Community Development Block Grant-Disaster Recovery ("CDBG-DR") programs administered by the U.S. Department of Housing and Urban Development ("HUD") and the Florida Department of Economic Opportunity ("FDEO"). Indeed, the Integrity Group for several years provided services to the State and local

government entities. They possess unique insight and experience relating to the State's consulting needs. Despite its unique expertise and experience, the Integrity Group inexplicably received low scores and was not awarded any contracts for any of the MCS Services solicited in the RFP.

49. As addressed previously, just one evident example of irrational scoring is Toletha Sylvester's scoring of nearly all of the Service proposals submitted by the Integrity Group. Ms. Sylvester assigned a score of 25 points to the Integrity Group's Experience submission, 18 points for the Integrity Group's proposal for Service a, and 0 points for the rest of the proposals for Services b through l. Ms. Sylvester's scores are fundamentally out-of-line and inconsistent with those of the other evaluators. This divergent score is perhaps most clear when Ms. Sylvester's scores are compared with those of Mr. Dickinson, who assigned the *highest* possible point score of 55 points to the Integrity Group's proposals for Services a through l.

50. Based on the evaluation criteria and scoring rubrics set forth in the RFP, Ms. Sylvester's scores of 0 for the Integrity Group's proposals would only be proper if the Integrity Group *does not have the ability* to provide the Services, while Mr. Dickinson's high scores for the Integrity Group's proposals reflected that the Integrity Group demonstrated an "exceptional" ability to provide the Services. *See* Addendum 5 at pp. 18-26.

51. With the breadth of expertise and experience demonstrated by the Integrity Group in its proposals, it is clear that Ms. Sylvester's scores are so inexplicable as to fall outside of the realm of a reasonable exercise of judgment or discretion. Thus, the Department's evaluation of the proposals was conducted in an irrational manner and demonstrates a fundamentally flawed procurement.

52. There exists no logical explanation for how the evaluators' scoring of the Integrity Group's proposals can differ so greatly. The Integrity Group's varied scores can only be rationalized by the evaluators' use of undisclosed evaluation criteria, the evaluators' application of the criteria in an irrational manner, the consideration by evaluators of factors irrelevant to the terms of the RFP and Integrity Group's ability to provide the services, or by the use of unqualified evaluators to score the proposals.

53. The scoring of the proposals, generated on such a haphazard basis, resulted in contract awards that were not the best value or most advantageous solutions to the Department and the State.

54. Indeed, the Department recognized the inadequacy of its evaluation and scoring of the proposals, and it appears that – after the posting of the initial awards – revised scores for one evaluator, Paul Baker, were generated, albeit only for the proposals of the Respondents protesting the Department's initial awards. *See* Exhibits D and E.

55. To the extent the Department's scoring of the proposals was conducted in an irrational or inconsistent manner amongst the Respondents, the Department's procurement process is fundamentally flawed and the Notice of Intent to Award and Supplemental Notice of Intent to Award that incorporated the results of the Department's irrational scoring cannot stand. Consequently, the Department's procurement and resulting awards are clearly erroneous, arbitrary and capricious, contrary to competition, and contrary to the specifications of the RFP, Florida law, and the Department's governing statutes, rules, policies, and principles. *See City of Sweetwater v. Solo Constr. Corp.*, 823 So. 2d 798, 802-03 (Fla. 3d DCA 2002) (enjoining a city from moving forward with a contract award and issuing a writ of mandamus compelling the city to act in accordance with Florida law and the terms of the solicitation when the city's evaluation

committee scored the bids in a random and haphazard manner); *see also Agrico Chem. Co. v. State, Dept. of Env'tl. Reg.*, 365 So. 2d 759, 763 (Fla. 1st DCA 1978) (“A capricious action is one which is taken without thought or reason or is irrational. An arbitrary decision is one that is not supported by facts or logic, or which is despotic.”).

II. The Department Did Not Score The Technical Proposals In Accordance With The Requirements Of The RFP

56. The Department’s irrational scoring of the proposals may be explained by the evaluators’ deviation from the published evaluation criteria and scoring rubrics in the RFP. Upon information and belief, the Department’s evaluators did not score the proposals in accordance with the criteria set forth in the RFP, or the evaluators improperly based their evaluation upon undisclosed criteria.

57. Evaluators were required to base their evaluation of the proposals on the specific published evaluation criteria and scoring rubrics. *See* Addendum 5 at pp. 18-26. The evaluators were specifically instructed to “carefully follow the directions in the RFP regarding the evaluation criteria,” that they “must not deviate from the evaluation requirements of the RFP,” that they should “use [their] best judgement and score consistently to promote and safeguard fair consideration of all of the vendors,” and that they should “always have a reasonable, rational, and consistent basis for [their] scoring.” *See* Exhibit H.

58. Despite the Integrity Group submitting a responsive and competitive proposal for Services a through l, upon information and belief, the Integrity Group did not receive appropriate scores for its proposals because the evaluators deviated from the published evaluation criteria and scoring rubrics in the RFP or based their evaluation on criteria that was not disclosed in the RFP. By way of example, Ms. Sylvester’s score of 0 for the Integrity Group’s proposals for Services b through l significantly deviated from the scoring rubric in the RFP, as a score of 0

indicated that the vendor did not demonstrate the ability to offer the services. Given that *every other evaluators'* scores reflected that the Integrity Group showed at least a “minimal” ability to provide the Services, and most reflected that the Integrity Group demonstrated a “good” or “exceptional” ability to provide the Services, Ms. Sylvester’s scoring cannot be explained through a proper application of the provided evaluation criteria. *See* Evaluator Score Sheet (Baker), attached hereto as **Exhibit N**, Evaluator Score Sheet (Dykes), attached hereto as **Exhibit O**, and Evaluator Score Sheet (Higgins), attached hereto as **Exhibit P**.

59. Indeed, had the Department’s evaluation been conducted in a rational manner and in accordance with the terms of the RFP, the Integrity Group would have received awards for all of the Services they proposed under the initial Notice of Intent to Award. Moreover, had the Department taken appropriate measures to correct the issues with its evaluation and scoring of the proposals after the protests were filed, the Integrity Group would have received awards in the Supplemental Notice of Intent to Award.

60. To the extent that the evaluators did not strictly adhere to the evaluation criteria and scoring rubrics in the RFP, or based their evaluation on undisclosed criteria, the Department’s procurement and awards are clearly erroneous, arbitrary and capricious, contrary to competition, and contrary to the specifications of the RFP, Florida law, and the Department’s governing statutes, rules, policies, and principles.

61. Florida law is clear that an agency must provide adequate notice of, and adhere to, the criteria published in its solicitation to evaluate vendors’ proposals. *See Consultec, Inc. v. Dept. of Admin.*, DOAH Case No. 91-5950BID at ¶¶ 24, 31, 33 (Recommended Order Nov. 13, 1991). “[C]entral to the integrity and reciprocity of the competitive bid process is the requirement that an agency’s action on a bid be expressed within the bid specifications and

evaluation criteria which it created, and adhere to them during the selection process.” *Id.* at ¶ 33 (quoting *Boozer v. Dept. of Health and Rehab. Servs.*, 11 FALR 4823, 4839-40 (1989)). An agency cannot award a contract based on unstated selection criteria as it would afford “itself overly broad discretion to capriciously and arbitrarily award a contract without established criteria.” *Emerald Corr. Mgmt. v. Bay Cnty. Bd. of Comm’rs*, 955 So. 2d 647, 653 (Fla. 1st DCA 2007).

62. Indeed, the Legislature’s intent in enacting Florida’s government procurement laws was to:

[Recognize] that fair and open competition is a basic tenet of public procurement; that such competition reduces the appearance and opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically; and that documentation of the acts taken and effective monitoring mechanisms are important means of curbing any improprieties and establishing public confidence in the process by which commodities and contractual services are procured. It is essential to the effective and ethical procurement of commodities and contractual services that there be a system of uniform procedures to be utilized by state agencies in managing and procuring commodities and contractual services; that detailed justification of agency decisions in the procurement of commodities and contractual services be maintained; and that adherence by the agency and the vendor to specific ethical considerations be required.

§ 287.001, Fla. Stat.; *see also Wester v. Belote*, 103 Fla. 976, 981 (Fla. 1931) (the purpose of procurement laws is to “protect the public against collusive contracts; to secure fair competition upon equal terms to all bidders; to remove not only collusion but temptation for collusion and opportunity for gain at public expense; to close all avenues to favoritism and fraud in its various forms; to secure the best values for the [government] at the lowest possible expense, and to afford an equal advantage to all desiring to do business with the [government], by affording an opportunity for an exact comparison of bids.”). Thus, the Legislature required RFPs to include

“the relative importance of price and other evaluation criteria,” and the “criteria that will be used for evaluation of proposals” in section 287.057(1)(b), Florida Statutes. Additionally, section 287.057(1)(b) requires that the agency must make an award “taking into consideration the price and other criteria set for in the request for proposals.” These measures — requiring an agency to adhere to the published evaluation and selection criteria — ensure that a procurement comports with the Legislature’s intent to have a system of uniform procedures for procuring government contracts to ensure fair and open competition upon equal terms for all bidders, reduce the opportunity for favoritism, and ensure that contracts are awarded equitably.

63. Accordingly, the Division of Administrative Hearings has consistently concluded that agency action cannot stand when the agency did not follow its own stated evaluation criteria or based its evaluation on undisclosed evaluation criteria. *See R.N. Expertise, Inc. v. Miami-Dade Cnty. School Bd.*, DOAH Case No. 01-2663BID (Recommended Order Feb. 4, 2002) (“From the requirement that requests for proposals state all of the evaluation criteria logically follows the rule that proposals shall be evaluated only on the stated criteria and none other. For obvious reasons, no agency can be allowed to employ secret evaluation criteria in a competitive procurement.”); *see also MCI Telecommunications Corp. v. Dept. of Corrections*, DOAH Case No. 95-1639BD at ¶ 96 (Recommended Order Jan. 31, 1995) (“The facts established at the final hearing in this matter demonstrate that the DOC failed to comply with its own bid evaluation criteria, and that the resulting decision to award the Contract . . . was made fraudulently, arbitrarily, illegally or dishonestly.”); *City of Sweetwater v. Solo Constr. Corp.*, 823 So. 2d 798, 802-03 (Fla. 3d DCA 2002) (enjoining a city from proceeding with a contract and issuing a writ of mandamus compelling the city to act in accordance with the requirements of the city code, Florida law, and the terms of the ITB when the city completed its scoring in a “random and

sometimes haphazard manner” and based its award on “categories and criteria that were not advertised in the bid documents”); *Emerald Corr. Mgmt. v. Bay Cnty. Bd. of Comm’rs*, 955 So. 2d at 653 (“Whether the [agency] acted arbitrarily is generally controlled by a determination of whether the [agency] complied with its own proposal criteria as outlined in the [solicitation].”); *Campbell Therapy Servs., Inc. v. Sch. Bd. Of Broward Cnty.*, DOAH Case No. 99-2729BID at ¶ 19 (Recommended Order Sep. 3, 1999) (“The failure of the RFP to disclose its purpose violates fundamental principles of due process, adequate notice, and fairness to potential proposers. It creates a gap between what agency staff knew of the [agency’s] intent for the RFP and what potential proposers could know from reading the specifications in the RFP.”); *Carlton & Carlton, P.A. v. Dept. of Health and Rehab. Servs.*, DOAH Case No. 92-4937BID at ¶¶ 5-9, 28 (Recommended Order Dec. 22, 1992) (finding that “[o]nce the representation is made in a solicitation package that it contains the evaluation criteria, the offerors should not be subjected to an additional evaluation process” and concluding that “[t]he unannounced evaluation process is an impropriety that causes the [agency’s] reliance on any resulting award to be an arbitrary action”).

64. Consequently, the Department’s evaluation of the proposals and resulting awards that were arrived at in a manner that is contrary to the published terms and criteria of the RFP and/or based upon undisclosed criteria are clearly erroneous, arbitrary and capricious, contrary to competition, and contrary to the specifications of the RFP, Florida law, and the Department’s governing statutes, rules, policies, and principles, and demonstrates that the Department’s procurement process was fundamentally flawed.

III. The Department’s Evaluation Team Was Not Qualified To Evaluate The Proposals

65. The Department's irrational evaluation of the proposals may also be attributable to the lack of expertise and knowledge needed to adequately evaluate the proposals.

66. While the Department appointed more than the required amount of individuals to evaluate the proposals in accordance with Florida law, such individuals did not have the requisite knowledge and experience to appropriately evaluate the proposals.

67. The Department's Evaluator Designation Memorandum dated May 20, 2020, reveals that while the designated individuals may have general contracting experience, they do not have experience and knowledge specific to the Services procured in the RFP. *See* Exhibit I.

68. For example, pursuant to Attachment C of the RFP, State Term Contract 80101500-20-1 for Management Consulting Services, the "Customer-specific preferences" included "[k]nowledge of Federal and state grant requirements" and specifically sought services for "[c]omprehensive grants management services related to the Stafford Disaster Relief and Emergency Assistance Act." *See* RFP at pp. 42-43. However, out of the five evaluators, only one evaluator, Mr. Dickinson, may have had the requisite knowledge and experience in emergency management and disaster relief as an employee of the Division of Emergency Management to appropriately score the proposals. *See* Exhibit I.

69. Section 287.057(16)(a), Florida Statutes, specifically requires that proposals be evaluated by those "who collectively have experience and knowledge in the program areas and service requirements for which commodities or contractual services are sought." "Among the sound reasons for requiring a knowledgeable and experienced selection team is to produce evaluations in which the merits of competing proposals are fairly and competently considered. When people who are unfamiliar with the subject matter of a contract are allowed to evaluate offers to perform the work, the danger exists that their focus will stray from the important details

(which the novice might not recognize or understand) to irrelevant or improper considerations, creating opportunities for favoritism and eroding public confidence that contracts are awarded equitably.” *R.N. Expertise, Inc. v. Miami-Dade Cnty. Sch. Bd.*, DOAH Case No. 01-2663BID at ¶ 169 (Recommended Order Feb 4, 2002).

70. As the evaluators were not collectively qualified to adequately evaluate the proposals, the procurement violated section 287.057(16)(a) and resulted in an evaluation and scoring process that was irrational.

71. To the extent that the evaluations were not conducted by qualified evaluators, in a fair and unbiased manner, or were influenced by factors outside of the RFP, the Department’s evaluation and scoring of the proposals, and the contract awards that incorporated such scores, are clearly erroneous, arbitrary and capricious, contrary to the terms of the RFP, and contrary to Florida law and the Department’s governing statutes, rules, policies, and principles.

IV. The Department Did Not Adequately Correct The Issues With Its Evaluation Process And Erroneously Made Additional Awards To Respondents With Lower Scores and Higher Pricing Than The Integrity Group

72. In addition to the various reasons the Department’s procurement was fundamentally flawed, the Department also improperly settled bid protests by making additional awards to Respondents who are less qualified than the Integrity Group to offer the Services and who did not offer the most advantageous proposals to the State.

73. As discussed previously, the Integrity Group was not informed that the Department intended to make additional awards to the protestors until the Supplemental Notice of Intent to Award was issued, at which point, the Integrity Group appropriately and timely exercised its protest rights.

74. The Department's attempt to correct the issues with its evaluation process by generating revised scores for one evaluator for only the proposals submitted by the protestors was not an adequate resolution of the overall flaws with the procurement. It appears, the Department never assessed whether other evaluators' scores were arrived at in an appropriate manner or in accordance with the RFP, and never re-scored other Respondents' proposals after recognizing that there were errors in its evaluation process. In short, when the Department recognized that its initial evaluation process was flawed and erroneous, it was not enough for the Department to generate revised scores for a single evaluator for only the proposals of Respondents who submitted protests. Instead, when the Department recognized the flawed nature of its initial scoring, it should have taken appropriate steps to correct these flaws with respect to the procurement as a whole. The Department's award of additional contracts to the protestors, who received lower scores and proposed higher prices, was improper without also awarding additional contracts to the Integrity Group.

75. By way of example, the Department awarded Slalom, LLC a contract for Service e in return for Slalom's dismissal of its protest. However, the Integrity Group's proposal for Service e initially received 6.2 more points than Slalom's. Moreover, the Integrity Group's pricing was significantly better than Slalom's for Service e, as the Integrity Group received 9 more points than Slalom for its Cost Proposal. *See* Total Final Scores and Awards, attached hereto as **Exhibit Q**. The Department's additional award to Slalom for Service e without also making an additional award to the Integrity Group was improper.

76. Similarly, TEKsystems Global Services, LLC was awarded a contract for Service d, however, the Integrity Group's proposal for Service d received 102.83 points whereas TEKsystems' proposal initially received 99.55 points. *Id.* The Integrity Group was not only

more qualified to provide the services solicited for Service e but also proposed a lower cost for such services than TEKsystems, yet TEKsystems received an award and the Integrity Group did not. *Id.*

77. Accordingly, the Department's additional awards to the protestors without making additional awards to the more qualified and less costly Integrity Group, was clearly erroneous, arbitrary and capricious, contrary to the specifications of the RFP, and contrary to Florida law and the Department's governing statutes, rules, policies, and principles. Moreover, the Department's award of additional contracts to the Integrity Group would be consistent with the intent of the RFP and Florida procurement policy as it would provide more options for state agencies and other eligible users to choose from and increase competition amongst the selected Respondents to offer the best value and most advantageous solutions to the users.

DISPUTED ISSUES OF MATERIAL FACT

78. The Integrity Group incorporates Paragraphs 1-77 as fully stated herein. Disputed issues of material fact and law exist and entitle the Integrity Group to a formal administrative hearing pursuant to section 120.57, Florida Statutes. The disputed issues of material fact and law include but are not limited to the following:

- a. Whether the Department evaluated the proposals in accordance with the published terms, specifications, and criteria in the RFP;
- b. Whether the Department based its evaluation of the proposals on undisclosed criteria;
- c. Whether the evaluators applied a uniform method of evaluation to the proposals;
- d. Whether the Department scored the proposals in a rational manner;
- e. Whether the Department's evaluators were qualified to evaluate the proposals;

- f. Whether the Department's evaluators collectively had experience and knowledge in the program areas and service requirements for the services sought in the RFP;
- g. Whether the Department's evaluators conducted their evaluation in a fair and unbiased manner;
- h. Whether the Department's procurement complied with section 287.057(16)(a), Florida Statutes;
- i. Whether, had a rational and appropriate evaluation been conducted, the Integrity Group would have been within the range of Respondents selected for awards;
- j. Whether, upon becoming aware of the erroneous nature of its evaluation, the Department took appropriate steps to remedy this error;
- k. Whether the Department should have reviewed all evaluators' scores for all Respondents before issuing the Supplemental Notice of Intent to Award;
- l. Whether the Department should have re-scored all of the Respondents' proposals before issuing the Supplemental Notice of Intent to Award;
- m. Whether the Department should have made additional awards to the Integrity Group;
- n. Whether the Department appropriately issued its Supplemental Notice of Intent to Award;
- o. Whether the Department's Supplemental Notice of Intent to Award was clearly erroneous, arbitrary and capricious, contrary to competition, contrary to the specifications of the RFP, contrary to Florida law, and/or contrary to the Department's governing statutes, rules, policies, and principles; and

- p. Whether the Department's conduct of the procurement was clearly erroneous, arbitrary and capricious, contrary to competition, contrary to the specifications of the RFP, contrary to Florida law and/or contrary to the Department's governing statutes, rules, policies, and principles.

BASIS FOR RELIEF REQUESTED & REMEDY REQUESTED

79. The Integrity Group is entitled to relief pursuant to sections 120.569 and 120.57, Florida Statutes, together with the established decisional law of the Florida courts and agencies of the State of Florida, because the Department's procurement and awards were clearly erroneous, contrary to competition, arbitrary or capricious, contrary to the specifications of the RFP, contrary to Florida law, and/or the Department's governing statutes, rules, policies, and principles.

80. The Integrity Group has not yet received a complete response to its public records request. As such, the Integrity Group reserves the right to amend this protest if other bases for challenge become apparent through the review of public records made available to the Integrity Group by the Department or through discovery as this protest process progresses.

WHEREFORE, based upon the foregoing, the Integrity Group respectfully requests:

- a. That the procurement be stayed until a Final Order is entered in this proceeding;
- b. That the Integrity Group be provided an opportunity to resolve this protest by mutual agreement within seven days of the filing of this protest as provided by section 120.57(3)(d), Florida Statutes;
- c. That if this protest cannot be resolved within seven days, that the matter be referred to the Division of Administrative Hearings for a formal hearing to be

conducted before an Administrative Law Judge pursuant to section 120.57,
Florida Statutes;

- d. That Recommended and Final Orders be entered rescinding the Department's Supplemental Notice of Intent to Award and issuing a Supplemental Notice that includes the Integrity Group, or in the alternative, that the Department reject all proposals and reissue the RFP;
- e. That the bond be returned to the Integrity Group; and
- f. That the Integrity Group be granted such other and further relief as is just and allowed by law.

Respectfully submitted December 14, 2020,

/s/ Benjamin J. Grossman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished via email to the following on December 14, 2020:

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