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**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

MORSE COMMUNICATIONS, INC.,

Petitioner,

vs.

Case No. 08-5079 BID

BREVARD COUNTY SCHOOL BOARD,

Respondent,

and

BREVARD BUSINESS TELEPHONE SYSTEMS, INC.,

Intervenor.

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PETITIONER'S WRITTEN EXCEPTIONS TO THE RECOMMENDED ORDER

Petitioner, Morse Communications, Inc., by and through its undersigned counsel, hereby files its exceptions to the Recommended Order submitted by Administrative Law Judge, Susan B. Harrell on February 10, 2009 and states as follows:

1. Petitioner files exception to paragraph 42 of the Recommended Order as contrary to record testimony. Paragraph 42 states, "The School Board waived the requirement that the contractor be certified by Molex and Siemon."

2. On June 17, 2008, Respondent, Brevard County School Board issued an invitation to bid for telephone systems maintenance and installation services. This invitation to bid

explicitly required that every bidder have a Siemon and Molex certification pursuant to section 2.4.4 of the bid.

3. No where on the record is it stated or alleged that the certification was waived.

4. Moreover, even if such requirement was waived, such waiver would have been made after the invitation to bid and bid solicitation was complete.

5. Causing a waiver after the invitation to bid and after the bid solicitation are submitted, prejudices not only the Petitioner, but also all the potential bidders who would have bid but for the fact of the Siemon and Molex certification requirements.

6. Since Respondent rejected a competitive bid in the instant action, the administrative law judge must determine "whether the agency's proposed action is contrary to the agency's governing statutes, the agency's rules or policies, or the bid or proposal specifications." § 120.57(3)(f), Fla. Stat.

7. The standard of proof for this proceeding is whether Respondent was "clearly erroneous, contrary to competition, arbitrary, or capricious" under Florida Statutes Section 120.5(3)(f).

8. Hence, it has been properly determined by the trier of fact in this case, that the bid required Siemon certification, but the city waived it. Such waiver violates the Respondent's

own proposal specifications in violation of law and to find otherwise is clearly erroneous.

9. Respondent acted arbitrarily and contrary to competition to waive the Molex and Siemon certification after it solicited bids and companies submitted bids.

10. As a matter of law, Respondent's request for proposal, at a minimum, should have been re-bid.

11. Petitioner files exception to paragraph 37 of the Recommended Order as contrary to record testimony. Intervenor's response to Brevard County's bid directly called for subcontracting its catastrophic plan.

12. Pursuant to section 2.4.1 of Respondent's request for proposal, bidders were prohibited from subcontracting work.

13. It was completely improper and contrary to competition for Intervenor to list additional companies for review of its bid and catastrophic plan.

Dated this 20th day of February, 2009.




Maurice Arcadier, Esquire
Attorney for the Petitioner

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that the original of the foregoing has been filed with the Brevard County School Board, and a true and correct copy was sent by U. S. Mail to Honorable Susan B. Harrell, Administrative Law Judge, Division of Administrative Hearings; Respondent, c/o Harold T. Bistline, Esquire, Stromire, Bistline & Miniclier, 1037 Pathfinder Way, Suite 150, Rockledge, Florida 32955; and Intervenor, c/o Douglas D. Marks, Esquire, Boyd & Marks, L.L.C., 360 North Babcock Street, Suite 104, Melbourne, Florida 32935, on this 20th day of February, 2009.

ALLEN & ARCADIER, P.A.



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