

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

PROTEST OF:

C.P.F. CORPORATION)	
)	CAB No. P-413
Under Invitation No. 4110-AA-03-1-DW)	

For the Protester: Gerald T. Nielsen, Morgan, Lewis & Bockius. For the Government: Nancy K. Hapeman and Edward J. Rich, Assistants Corporation Counsel.

Opinion by Administrative Judge Jonathan D. Zischkau, with Administrative Judges Lorilyn E. Simkins and Cynthia G. Hawkins-León, concurring.

OPINION

C.P.F. Corporation ("CPF") protests the award of a contract for janitorial services to Jones Construction and Maintenance Company ("Jones"). CPF asserts that Jones' bid was unreasonably low, that the contracting officer lacked a reasonable basis for determining Jones to be a responsible bidder, and that Jones' was ineligible to receive award and its bid was nonresponsive because Jones was not certified under the proper procurement category for this set aside solicitation. The District argues that a contracting officer's business judgments are accorded wide latitude and the contracting officer's actions here were within the bounds of reasonableness. Soon after Jones began contract performance, the agency terminated the contract for default based on asserted performance deficiencies. The agency has resolicited for the same services identified in the original solicitation, under the assumption that the procurement regulations required resolicitation. As second low bidder in the original solicitation, CPF claims that it should receive award under the original solicitation and that a resolicitation would contravene the integrity of the sealed bidding procedures. We sustain the protest.

BACKGROUND

The Department of Administrative Services ("DAS") issued Invitation No. 4110-AA-03-1-DW (the "IFB") on April 29, 1994, for janitorial services for the Frank D. Reeves Municipal Center ("Reeves Center"). (Motion of the District of Columbia To Dismiss the Protest ("Motion to Dismiss"), Exhibit 1). The procurement of the janitorial services was the responsibility of DAS' Procurement and General Services Administration ("PGA") and was being conducted by a contracting officer in PGA's Products and Building Services Division, aided by a contract specialist, among others. (Agency Report, Exhibit 2). DAS' Building Management Administration ("BMA") is responsible for the operation of janitorial services at

the Reeves Center. (Agency Report, Exhibit 3). It appears that the General Specifications and Cleaning Specifications were prepared within BMA's Building Operations Division. (Motion to Dismiss, Exhibit 1). The solicitation was set aside for certified small business enterprise ("SBE") bidders in the procurement category of "General Services." (*Id.*).

On bid opening date, June 7, 1994, 13 bids were opened. Jones was the apparent low bidder with a total bid price for the base year and two option years of \$350,172 and an evaluated price of \$325,659.96 after applying preference points. The protester, CPF, was the second-low bidder on the IFB with a total bid price of \$619,920 and an evaluated price of \$588,924. The third-low bidder was Rosa's Contracting with a total bid price of \$698,184 and an evaluated price of \$663,274.80. The fourth-low bidder was All-Kleen Inc. with a total bid price of \$839,340 and an evaluated price of \$780,586.20.¹ For the remaining 9 bidders, total prices ranged from \$864,468 to \$1,835,999.64. (Motion to Dismiss, Exhibit 2).

Soon after bid opening, the PGA contract specialist for the solicitation contacted Jones, requesting that Jones verify its bid. By letter of June 10, 1994, the president of Jones replied: "We have carefully reviewed our bid for Janitorial Services at the Reeves Center and are prepared to execute the contract at our bid price." (Agency Report, Exhibit 1). The contracting officer did not obtain any information from Jones with regard to its estimated manhours. Although no government estimate had been prepared for the solicitation, we are told that the contracting officer and the contract specialist "were aware of the estimated cost of performance (\$342,000) of the contract with CPF [the incumbent contractor] to provide janitorial services at the Reeves Center that ran from October 1, 1993, to September 30, 1994." (Agency Report at 9 n.2).

¹ In examining the reasonableness of prices, it is useful to note the yearly and monthly breakdown for each bid shown by the agency's bid tabulation form: \$116,724 yearly and \$9,727 monthly for Jones, \$206,640 yearly and \$17,220 monthly for CPF, \$232,728 yearly and \$19,394 monthly for Rosa's Contracting, and \$279,780 yearly and \$23,315 monthly for All-Kleen. (Motion to Dismiss, Exhibit 2).

By intra-agency memorandum of June 13,² the contracting officer (acting chief of PGA's Products and Building Services Division) transmitted the bid tabulations to BMA's Building Operations Division. In a June 21 memorandum, the chief of BMA's Building Operations Division advised the contracting officer in pertinent part:

Note is taken of the fact that the cost to provide the twenty-four (24) mandatory man-hours, Monday through Friday, will consume nearly fifty (50) percent of Jones Construction's monthly bid of \$9,727.00. Furthermore, when you consider the additional hours the contractor will have to utilize in cleaning the facility between 5:00 p.m. and 9:30 p.m., we seriously question the low bidder's ability to satisfactorily deliver the services.

However, should you decide to award to Jones Construction and Maintenance Company, we strongly recommend a thorough check to ensure technical and financial responsibility.

(Agency Report, Exhibit 2). Attached to the June 21 memorandum is a worksheet which calculates the cost of the 24-hour mandatory daily manhours at \$4,783.58 per month and \$57,402.96 per year. In a June 21 handwritten transmittal, the contracting officer sought advice from her superior, the Administrator of PGA, as follows:

Wanda, Jones Construction's monthly bid price of \$9,727 is enough to cover the payroll (\$4,783.58 + 2,000 for cleaning the facility between 5:00 p.m. and 9:30 p.m.). Approx[imately] \$3,000 would be left for the purchase of supplies, insurance & profit. I think we should give him a chance provided a responsibility determination is made. Ch[arlene]
CPF is the next low bidder. Please advise.

(Agency Report, Exhibit 2). It appears that the contracting officer relied on BMA's cost estimate for the 24 daily mandatory hours. On the other hand, there is no evidence in the record as furnished by the District to support the contracting officer's \$2,000 estimate for the nighttime cleaning -- *i.e.*, the cleaning between 5:00 p.m. and 9:30 p.m. -- which is in addition to the 24 daily mandatory manhours. Unknown to the contracting officer at the

² The District has not included the June 13 memorandum in the record.

time of this transmittal, her estimate of \$2,000 for the nighttime cleaning was significantly understated. In a handwritten response to the contracting officer annotated on the same transmittal, and, apparently, on the same day, the PGA Administrator stated:

Charlene: Agreed. BMA's concerns are not sufficient to not award to Jones.
Please proceed with the award action process.

(*Id.*). In another transmittal one day later, June 22, the contracting officer wrote:

Diane, Ed David stated that most of the cleaning will be performed at night. He stated that approx[imately] 156 daily M[an] H[ou]rs were needed for night cleaning. I told Wanda what he said which was not spelled out in their [BMA's] memo. Anyway, Wanda said they [BMA] have not presented anything materially to prevent award to Jones. Do a resp[onsibility] determination, call their references, & check on their tax info before awarding.

(*Id.*). This additional information from Mr. David, an employee in DAS' BMA, that approximately 156 manhours were required each day for night cleaning -- *in addition to* the 24 daily mandatory manhours -- should have alerted the contracting officer to her initial significantly understated cost estimate for nighttime cleaning. The 156 manhour estimate for the nighttime cleaning hours,³ along with the procurement history for janitorial services at the Reeves Center,⁴ not to mention the fact that the next higher group of bids were significantly higher than Jones', should have put the contracting officer on notice that something was seriously wrong with her \$2,000 estimate for nighttime work in particular and Jones' bid in general. Even assuming only 100 hours were required for each nighttime

³ The District does not challenge the accuracy of the 156-hour estimate and it does not appear to be unreasonable. It would appear from the information in the record that the night cleaning itself would consume at least 120 manhours. We are told that GSA's standard rate for cleaning office facilities is 2,500 square feet per hour per person, the Reeves Center contains approximately 379,250 square feet of occupiable space to be cleaned under the solicitation's requirements (Motion to Dismiss, Exhibit 1), and the daytime activities include cleaning approximately 75,000 square feet. That would mean that approximately 300,000 square feet remain to be cleaned during each nighttime shift, which, at the cleaning rate of 2,500 square feet per hour, yields approximately 120 manhours of work.

⁴ Besides the \$342,000 one-year price, the prior contract specified a 184-hour daily mandatory minimum for all cleaning and utility work at the Reeves Center. (Protester's Reply to the Agency Report, Exhibit B).

cleaning, the monthly or yearly minimum cost for just that portion of the work (using the mandatory wage and fringe benefits rates and labor burden rates) is at least double Jones' monthly or yearly bid price for all work required by the solicitation.

In a letter of June 22, Jones responded to a June 13 letter⁵ from the contracting officer that requested data for determining responsibility. (Agency Report, Exhibit 3). The response from Jones indicates that the company has been performing maintenance services for approximately three years. The response also contained an income statement for the year ending December 31, 1993, showing total revenue of \$811,326, total operating expenses of \$833,140, negative net income of \$55,589 for 1993 and a negative retained earnings of \$42,829 at the beginning of 1993. (*Id.*). Another document showed negative cash flow. (*Id.*).

On July 8, the contracting officer executed a Determination and Findings For Contractor's Responsibility. (Agency Report, Exhibit 3). Item 3 of the D&F, entitled "Estimated Fair and Reasonable Cost," contains simply the \$116,724 bid price found in Jones' bid. There is no objective evidence in the D&F or in the rest of the record which provides a reasonable basis for such a determination. The information contained in Exhibit 2 of the agency report constitutes not only insufficient evidence to support finding Jones' bid price to be reasonable, the information supports finding Jones' price to be unreasonable. The record demonstrates that the contracting officer's estimate of \$2,000 for nighttime work was clearly unreasonable and unsupported. The same can be said for the \$3,000 which the contracting officer apparently felt "would be left for the purchase of supplies, insurance & profit." In reviewing the record as a whole, we are compelled to find that the contracting officer never conducted a meaningful analysis of either manhour estimates or costs by which to judge the reasonableness of Jones' bid price, and therefore could not make a credible determination that Jones' bid price was reasonable. On the contrary, the record before us demonstrates that Jones' bid was unreasonably and unrealistically low. In view of the significant below cost bid offered by Jones, and the financial condition of Jones as revealed by the record, we find that there was insufficient information to support the contracting officer's determination of responsibility.

On the same date that the D&F was executed, July 8, the contracting officer made

⁵ The District has not included this June 13 letter in the record.

award to Jones for the base year period of August 11, 1994 through August 10, 1995. CPF received notice of the award on July 14, and filed its protest on July 22, claiming that the award to Jones should be cancelled because Jones' bid was so low that the contracting officer could not have reasonably determined Jones to be a responsible bidder. CPF requested *inter alia* that the Board order the District to cancel Jones' contract and have the award directed to CPF as the low responsive and responsible bidder.

It was not long before the problem of Jones' unreasonably low bid manifested itself. Jones began performance in August 1994. On September 2, 1994, DAS sent a "cure letter/show cause notice" to Jones concerning deficiencies in its performance, threatening default termination if the deficiencies were not corrected. (Agency Report at 6). After obtaining an extension of time within which to respond to the protest, the District, on September 12, filed with the Board a motion to dismiss, stating that the protest should be dismissed as moot because the District was in the process of terminating Jones' contract for default. On September 19, the District issued a letter terminating Jones' contract for default based on an asserted failure to correct performance deficiencies. (*Id.* at 3).

On September 15, 1994, the District issued Invitation For Bid No. 4262-AA-03-1-DW for a 120-day emergency contract for janitorial services for the Reeves Center. On September 20, the District awarded the 120-day emergency contract to Rosa's Contracting (the third low bidder under the original solicitation), at a monthly price of \$16,500 (Agency Report, Exhibit 4), which is about \$3,000 per month less than it had bid under the original solicitation and about \$700 less than CPF had bid under the original solicitation.

On September 26, 1994, CPF filed its opposition to the District's motion to dismiss on the ground that terminating Jones' contract did not afford the complete relief requested by CPF in its protest. CPF asserted that the District was intending to resolicit rather than award a contract to it under the original solicitation. CPF claimed that recompeting not only places an additional administrative burden on the agency but also would result in an illegal auction by forcing CPF to recompile after its price had been revealed in the original competition. On September 28, 1994, the agency issued a new solicitation for janitorial services for the Reeves Center. There are no substantive differences between the new solicitation and the original solicitation. (Agency Report at 12; Agency Report, Exhibit 7). At the Board's request, the agency has twice extended bid opening, first to November 14, 1994, and most recently to November 22, 1994.⁶

The Board denied the District's motion to dismiss the protest during a conference with the parties on October 20, 1994, and directed that the District file an agency report by October 28 addressing the responsibility issue raised by the protest. (October 21, 1994

⁶ The Board appreciates the contracting officer's cooperation.

Order and Report on Telephone Conference). During the October 20 conference, the Board also inquired as to why the agency had decided to recompetes for the same requirements found in the original solicitation. The District replied that the contracting officer believed that the District's procurement regulations regarding default termination required a new solicitation. The Board requested that the District address the issue in its agency report and to advise the Board as to whether there are any other grounds for resoliciting rather than awarding under the original solicitation (*e.g.*, some requirements have changed, original bids are stale or not considered reasonable). The Board directed the protester to respond to the agency report by November 4, 1994. The parties timely filed their papers. In addition to filing its response to the agency report, the protester also has moved to amend its protest to add as an additional ground that Jones was ineligible to receive award of the contract because it was not certified under the District's Equal Opportunity for Local, Small and Disadvantaged Business Enterprises Act in the category of "General Services" as called for by the solicitation. The protester states that it first learned of this ground for protest when it received the agency report. The motion is timely, has not been opposed, and is granted.⁷

In its agency report, the District contends that the contracting officer properly determined that Jones was a responsible bidder and that broad discretion is given a contracting officer in determining the responsibility of a potential contractor. The District states that "the contracting officer and the contract specialist examined the bid of Jones and determined, through bid verification and other means, that Jones was capable of performing the contract at the price bid." (Agency Report at 8-9). With regard to the reasons for conducting a resolicitation, the District argues that the contracting officer believed in good faith that she did not have the discretion to make an award under the original solicitation and that 27 DCMR § 3716.4 required a resolicitation.

⁷ In view of our conclusion *infra* that the contracting officer's responsibility determination with regard to Jones cannot be sustained, we will not address this additional protest ground advanced by CPF.

DISCUSSION

The Board has jurisdiction over this protest pursuant to D.C. Code § 1-1189.3.

A. The Responsibility Determination

Bidder responsibility is a prerequisite to award pursuant to an IFB. D.C. Code § 1-1183.3(e). A responsible bidder is "a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance." *Id.* § 1-1181.7(40).

The procurement regulations require that the contracting officer shall determine whether a prospective contractor is responsible and whether the prices offered are reasonable. 27 DCMR § 1540.1. The regulations also require that the contracting officer make award only to responsible contractors, that the contracting officer make a responsibility determination in writing prior to award, and that in the absence of information clearly indicating that the prospective contractor is responsible, the contracting officer shall make a determination of nonresponsibility. 27 DCMR §§ 2200.1-2200.3. The same regulations also set forth responsibility criteria. *Id.* § 2200.4. If the contracting officer determines that the price bid by a prospective contractor is so low as to appear unreasonable or unrealistic, the contracting officer may determine the prospective contractor to be nonresponsible. *Id.* § 2200.5. In order to make a responsibility determination, the contracting officer must possess or obtain information sufficient to demonstrate that the prospective contractor currently meets the applicable responsibility standards and requirements. *Id.* § 2204.1. If the available information is insufficient to make a determination of responsibility, the contracting officer shall determine the contractor to be nonresponsible. *Id.* § 2204.4.

The parties correctly identify our standard for reviewing a contracting officer's responsibility determination. Under the Procurement Practices Act, our review of agency actions is *de novo* and thus there is no presumption of agency correctness. D.C. Code § 1-1189.3; *Ideal Electrical Supply Corp.*, CAB No. P-372, Aug. 13, 1993, 41 D.C. Reg. 3603, 3606 (and cases cited therein). Nevertheless, because a responsibility determination requires the contracting officer to exercise business judgment, 27 DCMR §§ 2200, 2204, we accord the contracting officer broad discretion in this determination, consistent with well-settled procurement law principles and procurement regulation that the contracting officer "shall have wide latitude to exercise business judgment." 27 DCMR § 1003.4; *Ideal Electrical Supply Corp.*, 41 D.C. Reg. at 3606; *Dixon's Pest Control Services, Inc.*, CAB No. P-401, Apr. 6, 1994, 42 D.C. Reg. 4528, 4529. Consequently, we will not overturn a determination of responsibility unless a protester can show fraud or bad faith, a bidder's failure to adhere to definitive responsibility criteria, or that such a determination lacked a reasonable basis. *Dixon's Pest Control Services, Inc.*, 42 D.C. Reg. at 4529; *Ideal*

Electrical Supply Corp., 41 D.C. Reg. at 3605-06. An affirmative determination of responsibility is based on information available at the time the contracting officer makes the decision. *J&L Contract Services, Inc.*, CAB No. P-313, Oct. 2, 1992, 40 D.C. Reg. 4565, 4567; *Group Insurance Administration, Inc.*, CAB No. P-309-B, Sept. 4, 1992, 40 D.C. Reg. 4485, 4517, *aff'd*, No. 92-12406 (Super. Ct. Apr. 25, 1994).

We have sustained agencies' nonresponsibility determinations where a bid was unreasonably or unrealistically low. *J&L Contract Services, Inc.*, CAB No. P-313, Oct. 2, 1992, 40 D.C. Reg. 4565 (sustaining contracting officer's determination that bidder was nonresponsible because bid was so low that bidder could not meet the minimum wage and fringe benefit costs necessary to provide the required services); *Top Service Construction, Inc.*, CAB No. P-409, July 12, 1994, 42 P.D. 4628 (sustaining determination of nonresponsibility where the bid was significantly below government estimates and omitted and understated other costs of performance). On the facts presented by the record here, we conclude that the contracting officer had no reasonable basis for an affirmative determination of responsibility. All of the objective data available to the contracting officer - the manhour and cost information from the agency's administration most familiar with janitorial service operations, the procurement history, and the significant discrepancy between Jones' low bid and the group of next higher bids -- pointed to the conclusion that Jones' bid was unrealistically low. The District correctly argues that simply because Jones' bid price was below its cost of performance, that does not automatically mean that Jones is nonresponsible. Citing *Oshkosh Truck Corp.*, B-252708.2, Aug. 24, 1993, 93-2 CPD ¶ 115, *Cobarc Services, Inc. -- Reconsideration*, B-252359.3, Aug. 3, 1993, 93-2 CPD ¶ 74, and *Crestmont Cleaning Service & Supply Co.*, B-254486, Dec. 22, 1993, 93-2 CPD ¶ 336, the District argues that even if a bid is below cost, it is not legally objectionable, and that whether the contract can be performed at the price bid is a matter of responsibility. Although we agree with that general principle, on the facts here we conclude that the contracting officer did not have legally sufficient information upon which to make an affirmative determination of responsibility.

At a minimum, the information available should have suggested to the contracting officer to conduct a more careful review of Jones' bid, including, for example, a request for information concerning Jones' estimates of manhours and costs. See 27 DCMR § 2204; *Contract Services Co.*, 66 Comp. Gen. 468 (1987), 87-1 CPD ¶ 521 (where contracting officer still believed low bid to be mistaken in spite of verification, bidder should have been requested to provide sufficient explanation and/or documentation to assure contracting officer that bid as confirmed was correct). The intra-agency memoranda and transmittals suggest that the contracting officer did not fully appreciate that the responsibility determination is an affirmative determination and that a lack of sufficient information to establish responsibility dictates a finding of nonresponsibility. 27 DCMR § 2200.3. Although we do not think that the contracting officer's comment of "giving him [Jones] a chance" was the sole or dominant reason for the responsibility determination, such a factor

is simply not part of the responsibility equation. Considering the magnitude of Jones' below-cost bid, and the financial documentation of record, notwithstanding Jones's three-year history of satisfactory performance, we cannot find reasonable support for determining Jones to be financially responsible or capable of meeting the performance requirements for purposes of this solicitation.

B. The Remedy

Because Jones was not a responsible bidder, contract award to it was improper. We need take no action with respect to the contract since the District already has terminated Jones' contract. The issue before us is whether resolicitation should continue, as the District urges, or whether the agency should make award under the original solicitation, as urged by CPF.

Our reading of the District's position is that the contracting officer believed that she had no authority to make an award under the original solicitation after the default termination of Jones' contract, based on her reading of 27 DCMR §§ 3716.4, which states that: "Except as provided in §§ 3716.5 and 3717 [surety takeover agreements], the contracting officer shall use the procedures set forth in chapters 15 [procurement by competitive sealed bidding] and 16 [procurement by competitive sealed proposals] of this title, whichever is applicable, to repurchase the terminated supplies or services, or any additional requirements needed." 27 DCMR § 3716.5 provides in relevant part: "[I]f supplies or services are required immediately, the contracting officer may reprocur the required supplies or the services on an emergency basis in accordance with the provisions of chapter 17 [sole source and emergency procurements] of this title. . . ." In its agency report, the District argues that 27 DCMR § 3716.4 does not permit reinstating an original solicitation after a contract has been awarded and where the contract subsequently has been terminated for default. In support, it cites *Interstate Forestry, Inc.*, AGBCA No. 89-114.1, 91-1 BCA ¶ 23,660, for the proposition that "an award of a contract under a solicitation effectively cancels the original bids, making a resolicitation rather than award to the second lowest bidder appropriate in a termination for default situation." (Agency Report at 12 n.4).⁸ On the other hand, the District states elsewhere in its agency report that it would not "foreclose reinstatement of the solicitation in certain specific circumstances after a termination for default." (Agency Report at 13 & n.5). The District does not articulate what those specific circumstances might be. We can also discern from the agency report an argument that the contracting officer has broad discretion to decide how to reprocur the services, and her decision here should not be disturbed.

⁸ We have reviewed *Interstate Forestry* but have been unable to find any support for the proposition for which it is cited by the District.

First, we do not read 27 DCMR § 3716.4 as precluding reinstatement of the original solicitation. Section 3716.4 simply requires the contracting officer to reprocure through competitive means. Reinstating the original solicitation to select the lowest responsive and responsible bidder is, in fact, a selection meeting the sealed bidding requirements of chapter 15. Neither party has argued and the record offers no basis for finding that the original solicitation failed to attract competitive bids.

Second, and more importantly, we must consider the posture of this case when considering the appropriate remedy. The protest was filed after award to Jones. The protester challenged the award and requested that it receive award as the lowest responsive and responsible bidder. The agency terminated Jones' contract after the District filed its motion to dismiss, and after that, the agency decided to issue a new and duplicative solicitation. Under these circumstances there can be no question that we have jurisdiction to afford appropriate relief with regard to the original solicitation. D.C. Code §§ 1-1189.3, 1-1189.8. Contrary to the District's position that contract award effectively cancels the original bids, our Board and the Comptroller General have ruled that improper awards may in appropriate circumstances be set aside, bids reinstated, and award made to the lowest responsive and responsible bidder. *See, e.g., Ideal Electrical Supply Corp.*, 41 D.C. Reg. at 3608-09; *Singleton Electric Co.*, CAB No. P-411, Nov. 15, 1994, 42 P.D. 4888, 4901; *Architectural Window Systems, Inc.*, B-213799, Mar. 19, 1984, 84-1 CPD ¶ 326. In *Ideal*, we terminated a contract for the convenience of the District and directed the agency to award to the next low responsive and responsible bidder. In *Singleton*, we determined that a cancellation action was improper, and directed that original bids be reinstated and award be made to the lowest responsive and responsible bidder. In *Architectural Window Systems*, the Comptroller General sustained an award to the original low bidder on the basis of a revived bid -- following termination of a contract previously awarded to the protester.

In the current protest, the same considerations for protecting the integrity of the sealed bidding process dictate that original bids be reinstated and award made to the lowest responsive and responsible bidder. *Architectural Window Systems*, 84-1 CPD ¶ 326. All the bids in the original solicitation have been revealed. The agency's requirements have not changed. The District has not suggested that the bid prices from the original solicitation are stale or unreasonably high. In fact, the District has not offered any substantive reason for resoliciting. We cannot see how impartiality and fair play for competitive sealed bidding would be furthered by allowing bidders another opportunity to better the prices of their competition. *See* B-154483, Oct. 30, 1964. Finally, making award under the original solicitation will avoid additional administrative costs associated with conducting an unnecessary resolicitation.

Accordingly, we sustain the protest, and we direct the District to cancel the new solicitation, reinstate the bids under the original solicitation, and make award to the lowest

responsive and responsible bidder.

SO ORDERED.

DATE: November 18, 1994

/s/ Jonathan D. Zischkau
JONATHAN D. ZISCHKAU
Administrative Judge

CONCURRING:

/s/ Lorilyn E. Simkins
LORILYN E. SIMKINS
Chief Administrative Judge

/s/ Cynthia G. Hawkins-León
CYNTHIA G. HAWKINS-LEÓN
Administrative Judge