

EXHIBIT 1

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

BOLT SOLUTIONS, INC.,

Petitioner,

vs.

Case No. 23-0848CBP

CITIZENS PROPERTY INSURANCE
CORPORATION,

Respondent,

and

APPLIED SYSTEMS, INC.,

Intervenor.
_____ /

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was conducted in this case on April 4 through 6 and 20, 2023, in Tallahassee, Florida, before Administrative Law Judge June C. McKinney with the Division of Administrative Hearings.

APPEARANCES

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STATEMENT OF THE ISSUES

First, whether Citizens Property Insurance Corporation’s (“Citizens” or “Respondent”) decision to award a contract for Citizens Offered Rater to Applied Systems, Inc. (“Applied” or “Intervenor”), is contrary to Citizens’ governing statutes, its rules or policies, or the specifications of Invitation to Negotiate No. 22-0007 (the “ITN”) for Citizens Eligibility Reimagined and, if so, is clearly erroneous, contrary to competition, arbitrary, or capricious such that the intended award to Applied should be rescinded and the solicitation cancelled.

Second, whether Citizens’ decision to cancel the Florida Market Assistance Plan (“FMAP”) and Additional Certified Rater components of the ITN and reject all replies for such components is illegal, arbitrary, dishonest, or fraudulent.

PRELIMINARY STATEMENT

On March 11, 2022, Citizens issued the ITN for Citizens Eligibility Reimagined, soliciting responses from vendors for three services: Citizens Offered Rater, Additional Certified Rater, and FMAP, as well as provided the opportunity for a vendor to propose a replacement Clearinghouse Program solution.

Eight vendors responded to the ITN. Those vendors were Applied; Appulate, Inc. (“Appulate”); Bolt Solutions, Inc. (“Bolt” or “Petitioner”); NSI Insurance Group/HoneyQuote + Momentum Consulting (“HoneyQuote”); R8 Write Tech Corp. (“R8”); Synergist Technologies, LLC (“Synergist”); Vertafore, Inc. (“Vertafore”); and Xceedance, Inc. (“Xceedance”).

The Evaluation Committee scored the vendor replies and the top four ranked vendors, HoneyQuote, Bolt, Applied, and Appulate, advanced to the negotiation stage of the procurement process.

On January 31, 2023, the Negotiation Team voted to award a contract for Citizens Offered Rater to Applied and to cancel and reject all replies for Additional Certified Rater and FMAP.

That same day, Citizens issued its Notice of Intended Award and stated its intent to award a contract for Citizens Offered Rater to Applied and its election to cancel and reject the replies for the FMAP Exchange and Additional Certified Rater components of the ITN.

On February 3, 2023, Bolt filed its Notice of Intent to Protest.

On February 13, 2023, Bolt filed a timely Formal Bid Protest Petition.

On March 1, 2023, Bolt’s Formal Bid Protest Petition was referred to the Division of Administrative Hearings (“DOAH”). By Order dated March 9, 2023, Applied was permitted to intervene in the proceedings.

On March 30, 2023, the undersigned granted Bolt’s leave to file an Amended Formal Bid Protest Petition (“Protest”).

The hearing was held as scheduled on April 4 through 6 and 20, 2023, in Tallahassee, Florida.

At hearing, Petitioner presented the expanded testimony of nine witnesses in person: Nathan Myers, Adam Marmelstein, Kelly Gudmunson, Ravi Tadiparthi, Judy Grunewald, Carole Amidon-Johannson, Summer Reeves, Paul Murphy, and Carl Rockman. Petitioner also submitted the testimony of Robert Norberg, Kerrie Ruland, Penny Stapleton, and Dulce Suarez-Resnick by deposition. Petitioner's Exhibits numbered 1 through 22, 24 through 65, 67 through 103, 105 through 108, 111, 113, 115, 117, 118, 120 through 131, 135 through 148, 150 through 173, 177 through 250, and 266 through 269 were admitted into evidence.

Respondent presented the testimony of Summer Reeves and testimony by deposition of four witnesses: Stephen Guth, Aditya Gavvala, Omer Drori, and Erja Jackson. Applied presented the testimony of one witness: Scott Niebuhr. Respondent and Intervenor's Joint Exhibits 1 through 134, 136 through 138, 140 through 145, 147 through 150, 152, 154, 156, 159, 170, 171, 174, and 175 were admitted into evidence.

The proceedings of the hearing were recorded and transcribed. An eight-volume Transcript of the hearing was filed at DOAH on April 26, 2023. The parties agreed to file their proposed recommended orders by May 8, 2023. The parties timely filed proposed recommended orders, which have been considered in preparation of this Recommended Order.

On May 19, 2023, Petitioner filed Bolt's Motion to Reopen Evidence Based Upon Improperly Withheld Documents ("Motion"). That same day, the undersigned issued an Order Requiring Response ("Order"). Respondent and Intervenor filed responses to the Motion and Order, and Petitioner filed a

response to the Order. After careful consideration of the parties' positions, the undersigned determines there is not good cause to reopen the record in this matter and denies the Motion, which also renders Respondent's May 22, 2023, Motion to Strike moot.

Unless otherwise indicated all statutory references are to the Florida Statutes (2022).

FINDINGS OF FACT

The Parties

1. Bolt is a corporation headquartered in New York and registered to do business in Florida that provides technology solutions for insurance sales and distribution.

2. The Florida Legislature established Citizens in 2002, as a not-for-profit government entity that provides property insurance to those in Florida who are unable to obtain coverage in the private market.

3. Applied is a corporation headquartered in Illinois and registered to do business in Florida that offers software as a service to the independent insurance agent market, working closely with the largest carrier partners and agencies in the industry to provide custom solutions.

4. In 2013, the Florida Legislature authorized Citizens to implement a Clearinghouse Program ("Clearinghouse") by January 1, 2014, to offer coverage from private carriers for new applicants and existing renewal policies and Citizens' policyholders. Renewal policies and new applicants for coverage are submitted to the Clearinghouse to facilitate an offer of coverage from a private carrier. § 627.3518(2), Fla. Stat.

5. Bolt won the first competitive solicitation for the Clearinghouse and built the original system Citizens required. Since August 23, 2013, Bolt has provided ongoing software as a service solution that serves as the technology platform for the Clearinghouse.

6. The existing Bolt contract relating to the Clearinghouse expires August 22, 2023.

7. Since Bolt's contract is coming to an end and there are no additional renewals available under the contract, Citizens competitively solicited another contract.

2021 Invitation to Negotiate

8. On December 16, 2021, Citizens issued the Invitation to Negotiate No. 21-0026 ("2021 ITN") for Citizens Eligibility Reimagined,¹ seeking replies from vendors providing comparative rater platforms, FMAP platforms, and related services for Citizens' Clearinghouse. The deadline for reply submissions was January 26, 2022.

9. Summer Reeves ("Reeves") served as Citizens' procurement officer, which meant she oversaw, facilitated, and managed the entire competitive solicitation process from beginning through award. All communications regarding the solicitation were handled by Reeves, and she served as the sole point of contact internally and externally for the 2021 ITN communications.

10. Reeves also authored the 2021 ITN, with assistance from Isabella Valcarcel ("Valcarcel"), senior contracting officer,² in coordination with Citizens' counsel.

11. The initial vision for Citizens Eligibility Reimagined came from Citizens' think tank group of about 15 people.

12. Citizens wanted to improve the Clearinghouse platform in the next solicitation.

¹ Citizens Eligibility Reimagined is the initiative from Citizens seeking a multiplatform solution to reimagine the Clearinghouse and FMAP platforms as they exist today by the comprehensive procurement at issue.

² Valcarcel is a Florida certified contract negotiator, and her role at Citizens is to actively participate in negotiating the contract terms and conditions under the ITN.

13. Citizens' procurement staff engaged in market outreach efforts to encourage vendors to respond to the solicitation.

14. Reeves, as Citizens' procurement officer, reached out to approximately 17 different vendors prior to the reply deadline for the 2021 ITN. Each vendor received the same message from Reeves. Bolt and Applied were included among the vendors Reeves contacted, by phone and email, prior to the reply deadline for the 2021 ITN.

15. Bolt responded to the outreach that they were interested, but Applied indicated that they were not interested in the solicitation.

16. Citizens received two timely Replies to the 2021 ITN from Bolt and Synergist and one untimely Reply from Vertafore.

17. Citizens determined that Bolt was the only Reply that appeared to be a competitive offer and decided that a competitive procurement was not met with only one vendor.

18. On February 7, 2022, Kelly Booten ("Booten"), chief operating officer,³ advised Senior Director of Vendor Management and Purchasing Spencer Kraemer ("Kraemer")⁴ of her decision to reject all replies to the 2021 ITN and to reject the procurement.

19. On February 8, 2022, Kraemer requested Reeves move forward with a notice to reject all replies by email and stated:

Please move forward with a reject all. It is the prudent path for us to resolicit in lieu of proceeding to negotiate, since we only have one competitive offer for the full Citizens Reimagined concept. This direction provides a second chance to deliver a

³ Kelly Booten has oversight over Citizens' Clearinghouse.

⁴ Spencer Kraemer is a licensed attorney who leads the Procurement Department at Citizens.

procurement with true competition among viable offers for a full Citizens Reimagined solution.

20. That same day, Citizens posted its formal notice rejecting all vendor replies to the 2021 ITN.

21. No Evaluation Committee or Negotiation Team was ever appointed for the 2021 ITN, and Citizens still needed to formulate a new solicitation to take over when the 2023 contract with Bolt ended.

2022 Invitation to Negotiate

22. On March 11, 2022, Citizens released the ITN for Citizens Eligibility Reimagined.

23. Citizens Eligibility Reimagined is intended to enable consumers and policyholders to find adequate coverage more effectively in the private admitted market, while also validating eligibility prior to issuing and renewing policies.

24. Reeves authored the ITN in her role as the procurement officer.

25. Reeves had the same duties as procurement officer with the ITN as she had with the 2021 ITN.

26. The ITN specifications detailed the procurement process from selection to the award.

27. Bolt did not file a notice of intent to protest the ITN specifications with Citizens within 72 hours after Citizens posted notice of issuance of the ITN.

28. Kraemer recommended some of the changes placed in the ITN that were different from the 2021 ITN.

29. The ITN preface page notified vendors that the ITN “primarily focused on streamlining the reply options, providing Vendors maximum flexibility in their response, and providing additional context regarding the problem Citizens is seeking to solve.”

30. Citizens also implemented a delay for the consideration of price in the ITN, which Reeves recommended as a change. Vendors were noticed in the ITN that price would be “a topic addressed during the negotiation phase.”

31. Additionally, the ITN allowed vendors to submit replies for one or more of four options independently.

32. Section 1.1.4 of the ITN, titled “Preferred Reply Option,” included three preferred reply options for vendors: Citizens Offered Rater, Additional Certified Raters, and FMAP Exchange.

33. A Clearinghouse Reply Option was also available in Section 1.1.5 of the ITN.

34. As it had in the 2021 ITN, Citizens engaged in market outreach efforts to encourage vendors to respond to the ITN solicitation.

35. Reeves, on behalf of Citizens, reached out to more than 30 different vendors prior to the reply deadline for the ITN. Each vendor received the same message from Reeves. Bolt and Applied were included among the vendors Reeves contacted, and each received the same amount of messages by the same method, phone or email.

36. Replies to the ITN were due by 2:30 p.m. on April 14, 2022.

Vendor Replies

37. Section 2.2 of the ITN addressed vendor replies and provided, in relevant part:

2.2 REPLY CONTENTS: The purpose of Vendor’s Reply is to demonstrate its qualifications, competence, and capacity to provide the Services in accordance with the requirements of this ITN.

To be eligible for award, all replying Vendors are to submit the following (collectively, the Reply):

VENDOR REPLY	
ITEM	DESCRIPTION
1. Attachment A, Vendor Certification Form	These documents will provide Citizens with basic information about the Vendor and provide certain assurances necessary to qualify the Vendor for a potential contract award. These documents will <u>not</u> be used in the scoring of Replies.
2. Financial Documents <i>(as requested in Attachment B)</i>	
3. Current IRS W-9 or W-8 Form <i>(as requested in Attachment B)</i>	
4. Attachment D, Pricing Information Pricing will not be scored during the initial evaluation phase but will be addressed during the negotiations phase of the ITN; see section 3.5.	
5. Attachment C, Vendor Questionnaire	These documents will provide Citizens with specific information about Vendor's proposed Services and <u>will</u> be used as a basis for evaluation and scoring of the Replies.

38. On April 11, 2022, Applied contacted Reeves in her capacity as the procurement officer by email, stating that Applied “needs [a Non-Disclosure Agreement (“NDA”)] executed in order to provide all the required documentation” and attaching a proposed NDA.

39. Attachment B, Section 5., of the ITN sets forth the standard practice for placing vendors in a financial review pending status, which provides, in pertinent part:

Financial Review Pending. Citizens may issue a Financial Review Pending status to a Vendor while pursuing alternative or additional documentation under Section 6, below. A Vendor is eligible to advance to evaluations and negotiations after receiving a Financial Review Pending status; however, the Vendor is not eligible for award unless a **PASS** determination is ultimately made by Citizens, or its designee

40. Reeves followed Attachment B, Section 5., of the ITN and decided to allow Applied to submit its financial documents after the initial reply deadline.

41. On April 12, 2022, Reeves advised Applied of her decision to allow submission of its timely Reply without the financial documents, and she emailed Applied:

I do not anticipate we will have a signed NDA in place prior to the response deadline of this Thursday. However, if your company is interested in responding, you may submit your response (prior to the response due date) minus your financial statements - understanding they will be submitted upon execution of the NDA

42. On April 13, 2022, Reeves followed up with Applied and emailed “as a governmental entity [Citizens] ha[s] very little flexibility to accept responses after the deadline.”

43. Eight vendors submitted a reply to the ITN: Applied, Appulate, Bolt, HoneyQuote, R8, Synergist, Vertafore, and Xceedance.

44. Applied’s Reply on April 14, 2022, did not include its financial statements. The April 14, 2022, email transmitting Applied’s Reply states, “This Reply includes all required supporting documentation except for the Financial Documents requested under Attachment B.”

45. Reeves, per standard Citizens’ practices, and upon submission of Applied’s initial Reply to the ITN without the financial documents, assigned Applied a financial review pending status.

46. Appulate also did not include financial documents in its initial Reply to the ITN submitted on April 14, 2022, and Citizens placed Appulate’s Reply in a financial review pending status as it moved forward to the evaluation stage.

47. Bolt’s Reply on April 14, 2022, included audited financial statements for the full year of 2020 and unaudited financial statements for three quarters of 2021 from its parent Bolttech Holding Limited (“Bolttech”). The financials identified Bolttech as “formerly known as Sky Noble Venture Limited.”

48. In Bolttech's financials on page 49, Bolt was listed as part of the compilation of subsidiaries included by Ernst & Young in Bolttech's financial calculations.

49. In the ITN, Citizens requested "a brief description of [the] organization including name of any parent company and affiliate organizations, history of organization, number of full-time employees" Bolt's Reply identified Bolttech as its parent company and stated, "Bolt [is] a subsidiary of [B]olttech."

50. Citizens reviewed each of the eight vendors for responsiveness and responsibility.

51. Citizens' review included each of the attachments provided in the solicitation, which were compared to the vendor's reply. Next, Citizens forwarded the financial component of the reply to Neal Fuhler ("Fuhler") to provide a financial review, including an outside firm also assessing the financials.

52. After Citizens determined that the eight vendors were responsive and responsible, each vendor's reply, including the Replies from Bolt and Applied, was sent to the Evaluation Committee to evaluate the proposals.

53. On May 20, 2022, Applied and Citizens fully executed the NDA.

54. Applied submitted its financial documents to Citizens on May 31, 2022.

55. The financial documents Applied submitted to Citizens were for the most recent fiscal year, the calendar year ending December 31, 2022.

Evaluation Process

56. Citizens' standard selection process to choose the Evaluation Committee provides that Citizens select "[a]t least three persons to independently evaluate proposals and replies who collectively have experience and knowledge in the program areas and service requirements for the commodity or contractual services sought." § 287.057(17)(a)1., Fla. Stat.

57. Project Owner(s) is/are the person or persons who serve in the senior level position(s) at Citizens with direct oversight responsibility over the subject(s) of a procurement, which in this case is the Clearinghouse and FMAP Exchange. Citizens standard practices authorize the Project Owner(s) to participate in the nomination of the Evaluation Committee for a procurement.

58. Citizens designates Project Owner(s) based on job responsibilities for various tasks associated with their procurement, including the nomination of the Evaluation Committee and Negotiation Team.

59. In this procurement, Citizens made Carl Rockman (“Rockman”), vice president of Agency and Market Services,⁵ and Brandon Taylor (“Taylor”), manager of Customer Experience & Design, the Project Owners for the ITN for Citizens Eligibility Reimagined because they are over the day-to-day responsibilities for the Clearinghouse system.

60. The Project Owners, in consultation with Citizens’ Purchasing Department, recommended the following nominees for appointment to the ITN Evaluation Committee: Adam Marmelstein (“Marmelstein”), Judy Grunewald (“Grunewald”), Kelly Gudmunson (“Gudmunson”), Nathan Myers (“Myers”), and Ravi Tadiparthi (“Tadiparthi”).

61. Reeves obtained each of the following nominee’s bios with their experience and knowledge relevant to the procurement so that she could circulate the bios for review at Citizens before ultimate approval:

- Adam Marmelstein: Adam joined Citizens in 2014 after nearly two decades of experience in the private sector. As the Director of Market Services, Adam is responsible for the diversion and divestment of risks and insurance policies from Citizens to the private market. He directs the three teams responsible for doing so: the Clearinghouse Team, the Depopulation Team and the FMAP Team. In addition to these teams, he is responsible

⁵ Rockman’s unit is responsible for the output of the solicitation, which is the construct on the Clearinghouse system, and the day-to-day responsibilities to operate the Clearinghouse.

for developing and managing relationships with Florida's private insurance carriers. Adam's professional career spans the financial and insurance industries and includes a broad range of responsibilities within them, including strategic planning, operations management, sales and sales management, information technology and corporate finance. Adam's focus on the property and casualty insurance industry began as the operator of an independent insurance agency and led to becoming Chief Operating Officer for one of the nation's largest privately held personal lines insurance agencies. He is a licensed property and casualty agent and holds a Bachelor of Arts from Drew University

- **Judy Grunewald:** Judy currently serves as the Depopulation & Florida Market Assistance Plan (FMAP) Manager and has responsibility for both team's efforts in exposure reduction. Judy's background includes over 17 years of insurance industry experience. Her 14 years at Citizens have been dedicated to removing and keeping policies out. Prior to joining Citizens, she worked at the Office of Insurance and Regulation, where she held various roles assisting new property insurance companies entering the Florida Marketplace.

- **Kelly Gudmunson:** Kelly has held several positions since joining Citizens in 2011 including Quality Assurance Manager and IT Delivery Manager, and currently he is an Enterprise Architecture Manager. Prior to Citizens, Kelly was a Quality Assurance Manager with Yahoo!, BIPT Inc., and Deloitte Consulting. He has experience working on several large system implementations, specifically, he led the Quality Assurance effort for the implementation of Citizens Insurance Suite, which included the integration of Guidewire PolicyCenter with Citizens current Agency Management Systems. He is also certified in TOGAF (The Open Group Architecture Framework) version 9 and is a Certified Business Architect (CBA®).

- Nathan Myers: Nate currently serves as the Product Owner in support [of] the Agency and Market Services teams. Nate’s background includes over 16 years of industry experience serving property and casualty insurers[,] as well as managed care health insurance. Prior to joining Citizens, Nate worked as a Product Owner for a managed care health insurer and held leadership positions in operations management focused on Customer Care and Enrollment. Nate has earned the industry designations of PSPO and SAFe POPM.

- Ravi Tadiparthi: Ravi served in several positions since joining Citizens in 2009 supporting various applications at Citizens and various others as an Enterprise Architect. He currently serves as Director of Application Development and is responsible for leading application development teams that support various business critical applications including CIS, ECM, Integrations, IAM, and other external vendor systems. He also earned Six Sigma Green Belt certification[s] prior to joining Citizens, while he worked at General Electric.

62. No one at Citizens who vetted the nominees’ bios raised any concerns regarding the nominees.

63. On April 21, 2022, Barry Gilway (“Gilway”), the agency head, which for Citizens is the executive director and president, appointed the five nominees to the Evaluation Committee for the ITN according to Citizens’ standard procedures. §§ 287.057(17)(a)1. and 627.351(6)(e)1.b., Fla. Stat.

Evaluation Committee Training

64. In accordance with Citizens’ standard practices, each member of the Evaluation Committee for the ITN received and executed a Conflict of Interest Disclosure Form confirming no known or potential conflict of interests with any of the eight vendors responding to the ITN.

65. As part of Citizens' standard practices, Evaluation Committee members receive training prior to conducting evaluations. If an Evaluation Committee member has not previously served as an evaluator, that member attends live interactive training, and those members who have previously served and been trained as an evaluator receive the training materials along with the evaluation materials.

66. The Evaluation Committee training included providing the Evaluation Committee members the requirements of Florida law relating to procurements, familiarizing the Evaluation Committee with the solicitation documents, and providing an overview of the evaluation process, including the roles and responsibilities of the Evaluation Committee.

67. The training specifically covered the Evaluation Committee's responsibility to "evaluate replies against evaluation criteria in the ITN in order to identify one or more vendors within the competitive range to commence negotiations," the scoring tool used to score replies, and the Vendor Questionnaire Evaluation Tool used by the Evaluation Committee to record their scores for the Evaluation criteria for each vendor.

68. As part of Citizens' standard practices, each member of the Evaluation Committee was instructed in training to award a whole number score, in each of the three Evaluation Criteria areas for each of the vendors, using Citizens' standard 0 to 10 scoring scale.

69. Marmelstein, Grunewald, and Myers had not previously served as evaluators and, therefore, received live interactive Evaluation Committee training via Teams from Reeves on April 20, 2022, prior to conducting their evaluations.

70. Gudmunson and Tadiparthi had previously served as evaluators and, therefore, were sent the training materials as a refresher on April 21, 2022, prior to conducting their evaluations.

71. On April 21, 2022, Reeves provided each member of the Evaluation Committee access to the materials needed to conduct their evaluations of the vendor replies to the ITN. Materials included the ITN by email, each vendor's response to Attachment C of the ITN, the Vendor Questionnaire of the ITN, a Vendor Questionnaire Evaluation Tool to enter scores for each vendor for each Evaluation Criteria category, and the Evaluation Committee training materials.

72. Reeves also emailed the Evaluation Committee the Evaluation Criteria chart with the maximum points delineated for each criteria category and the evaluation point scale chart for assessing the scores, along with Excel score tool sheets.

73. Reeves informed the Evaluation Committee that the first tab includes the Evaluation Criteria and point scale from the ITN with the second tab being where scores are entered.

74. The Evaluation Committee was provided Attachment C of the ITN and no other portion of the vendor replies for review and scoring the ITN.

75. Citizens has a standard procedure for scoring the ITN replies in the evaluation stage of the procurement.

76. Section 3.4 of the ITN, titled "Evaluation Process," states that: "Replies will be provided to the Evaluation Committee for individual reviewing using the allocation of points indicated below."

77. Section 3.4 of the ITN includes the following chart allocating up to 15 points for Background and Experience, up to 65 points for Proposed Approach, and up to 20 points for Implementation Plan:

ITN 22-0007: Citizens Eligibility Reimagined
Evaluation Criteria and Point Scale

Evaluation Criteria

ATTACHMENT	SECTION	MAXIMUM POINTS
Attachment C Vendor Questionnaire	Background and Experience	15
	Proposed Approach	65
	Implementation Plan	20
	Total Points	100 points

Evaluation Point Scale (For Scoring Attachment C)

ASSESSMENT	SCORE
Excellent	10
Very Good	8 to 9
Good	5 to 7
Fair	3 to 4
Poor	1 to 2
Fail	0

78. Each member of the Evaluation Committee received the chart above showing the mandatory Evaluation Criteria and maximum points in Reeves’ instructive email of April 21, 2022.

79. The Evaluation Committee followed Citizens’ training and instructions and scored the three-category ITN Evaluation Criteria: Background and Experience, Proposed Approach, and Implementation Plan, using Citizens’ standard scoring scale of 0 to 10 points for each vendor.

80. The Evaluation Committee members submitted their completed Vendor Questionnaire Evaluation Tool scoresheets back to Reeves, and she transferred the scores into a master Excel sheet workbook and consolidated each of the members’ scores.

81. Next, consistent with Citizens’ standard practices, Reeves compiled the Evaluation Committee scores for each of the eight vendors for each Evaluation Criteria, then she determined the average score for each vendor in each area of the ITN Evaluation Criteria.

82. Afterwards, Reeves weighted vendor scores for each of the Evaluation Criteria assigned by the members of the Evaluation Committee utilizing the total maximum points for the Evaluation Criteria to determine the total number of points for each vendor up to the maximum of 100 points as specified in the ITN.

83. Consistent with Section 3.4 of the ITN, the maximum points available to a vendor using Citizens' 0 to 10 scoring tool and weighting process was 100 total points, with a maximum of 15 points available for Background and Experience, a maximum of 65 points available for Proposed Approach, and a maximum of 20 points for Implementation Plan.

84. Reeves next ranked the eight vendors in order from first to eighth based on the total points awarded each vendor.

85. On May 4, 2022, after weighting the scores, Reeves sent the consolidated workbook with her compilation of the total points and rank order of the eight vendors to each evaluator and scheduled a one-on-one meeting to review the scoring and prepare for the upcoming public meeting.

86. Prior to the May 5, 2022, public Evaluation Committee meeting, Reeves met individually with each member of the Evaluation Committee to ensure that she had recorded their scores accurately and to remind them about the tasks for the scheduled public meeting.

87. On May 5, 2022, the Evaluation Committee met in a public meeting and discussed the evaluation of the replies, rankings, and vendors in the competitive range, as well as vendors who should move forward to negotiation.

88. The total points awarded to each vendor in the ITN evaluation phase in rank order was:

Rank	Vendor Name	Vendor Questionnaire			Total Points <i>(100 points max.)</i>
		Background and Experience <i>(15 points max.)</i>	Proposed Approach <i>(65 points max.)</i>	Implementation Plan <i>(20 points max.)</i>	
1	HoneyQuote	11.40	57.20	16.40	85.00
2	Bolt	12.90	49.40	16.40	78.70
3	Applied	11.10	42.90	13.20	67.20
4	Appulate	11.10	37.70	12.40	61.20
5	Synergist	8.10	33.80	12.80	54.70
6	Xceedance	9.00	33.80	10.00	52.80
7	Vertafore	10.50	35.10	7.20	52.80
8	R8	6.00	23.40	7.20	36.60

89. During the meeting, Marmelstein stated that a natural breaking point in the scoring should be a 60-point threshold, and he suggested that vendors that scored within the 60-point threshold were worth considering to advance to the next round.

90. After Gudmunson, Grunewald, Myers, and Tadiparthi agreed with the 60-point threshold, Marmelstein made a motion to advance the top four ranked vendors forward to the ITN negotiation phase. Gudmunson seconded the motion.

91. The Evaluation Committee unanimously recommended the top four ranked vendors: HoneyQuote, Bolt, Applied, and Appulate (“advancing vendors”), in order of rank, as the vendors within the competitive range to advance forward to the negotiation phase of the ITN.

Negotiation Stage

92. Citizens formed a three-member Negotiation Team to serve as negotiators for the ITN procurement.

93. The Negotiation Team meets with vendors throughout the procurement process to better understand their offerings and proposed solutions. The Negotiation Team can also have discussions with vendors, explore pricing, terms and conditions, statements of work, and request demonstrations or proofs of concept. Ultimately, the Negotiation Team determines and selects which vendor provides the best value to Citizens.

94. The Negotiation Team was also nominated by Citizens' Purchasing Department in conjunction with the ITN Project Owners, Rockman and Taylor, and was ultimately appointed by Executive Director Gilway on April 29, 2022.

95. Prior to Gilway's appointment, nominees were vetted at Citizens to see if any nominees raised any concerns regarding appointments.

96. Reeves obtained the following nominees' bios with their experience and knowledge relevant to the procurement and circulated the bios for review at Citizens:

- Aditya Gavvala: Aditya is the Vice President of Application Development. In this role, Aditya is responsible for systems delivery, application development, systems integration, enterprise architecture, software quality assurance, content management, and information management. Aditya has over 19 years of experience in systems development with focus on architecture, software engineering and systems integrations. He has led numerous major initiatives, developed enterprise architecture blueprints, and managed systems development and delivery.
- Carl Rockman: Carl Rockman is the Vice President of Agency and Market Services. In this role, Carl is responsible for overseeing communication, education, administration, and compliance for Citizens' 9,500 appointed agents and for the administration and effectiveness of Citizen's Depopulation and Clearinghouse programs. Prior to joining Citizens, Carl enjoyed a 25-year career with Allstate Insurance Company, where he held key

leadership roles in underwriting, product operations, marketing, and sales management in their Florida and New York regional offices and their home office in Northbrook, Illinois. Carl holds a Bachelor of Arts degree in Communication from the University of South Florida.

- Stephen Guth: Stephen is the Vice President of Enterprise Services. He is a licensed attorney (D.C. Bar) and has over 20-years of procurement, negotiation, contracting, and vendor management experience, including authoring several supply management books and holding numerous professional certifications including Certified Professional in Supply Management and Florida Certified Contract Negotiator. Additionally, he has taught procurement-related courses at the graduate level and has served as an expert witness on contract law matters. He is a graduate of the University of Miami School of Law (J.D.), the University of Maryland University College (M.S., Procurement and Contract Management), and Saint Leo University (B.A., summa cum laude).

97. No concerns or questions regarding the nominees surfaced before Gilway's appointment.

98. Gilway appointed Rockman, Stephen Guth ("Guth"), and Aditya Gavvala ("Gavvala") to the ITN Negotiation Team.

99. The Negotiation Team members followed Citizens' standard procedures and executed conflict of interest forms once appointed.

100. On May 4, 2022, all three Negotiation Team members were sent the training materials by email as a refresher, since each had previously served as negotiators.

101. On May 11, 12, and 13, 2022, Citizens held "ask me anything" meetings with the four advancing vendors.

102. On May 20, 2022, Reeves, at the direction of the Negotiation Team, requested informal proofs of concept from the four advancing vendors with a deadline of June 3, 2022.

103. Bolt and Applied, as well as the other two advancing vendors, timely submitted their informal proofs of concepts to Citizens on June 3, 2022.

104. Applied's informal proof of concept also included information to Citizens that it did not believe that it would be able to provide a formal proof of concept within the time frame of the ITN. Applied even notified Citizens that they would need several months to provide a formal proof of concept that satisfactorily demonstrated its solution.

105. On May 31, 2022, Reeves, at the direction of the Negotiation Team, emailed HoneyQuote, Bolt, Applied, and Appulate to schedule each vendor's presentation of informal proof of concept to the Negotiation Team.

106. Between June 6 and 10, 2022, HoneyQuote, Bolt, Applied, and Appulate each presented their informal proofs of concept to the Negotiation Team.

107. On or about June 10, 2022, the Negotiation Team met to discuss the informal proof of concept presentations and to determine which vendors to request formal proofs of concept.

108. During the Negotiation Team's strategy session, Rockman suggested that HoneyQuote and Bolt move forward to present formal proofs of concept and Applied and Appulate be put aside at that point in the procurement process.

109. The Negotiation Team unanimously decided to request formal proofs of concept from HoneyQuote and Bolt, and not from Applied or Appulate.

110. On June 14, 2022, Reeves, on behalf of Citizens, emailed HoneyQuote and Bolt and informed them that the "Negotiation Team anticipates requesting a formal POC from your company."

111. That same day, Reeves emailed Applied and Appulate and informed them that "[a]t this time, the Negotiation Team does not require any additional information about your proposed solution/product and does not anticipate requesting a Proof of Concept from your company."

112. Citizens also posted Addendum No. 3 to the ITN, removing the Negotiation Team's June 15, 2022, public meeting from the schedule, since no vendor had indicated that they were requesting payment from Citizens to provide a formal proof of concept.

113. Bolt did not file a notice of protest with Citizens within 72 hours after Citizens posted the notice of Addendum No. 3.

114. The Negotiation Team continued the negotiation process.

115. Section 3.5.D. of the ITN provides that "Vendors proceeding to negotiations may be required to a make a presentation / demonstration ... and [it] shall become part of Vendor's Reply."

116. On July 12, 2022, the Negotiation Team requested that Bolt and HoneyQuote submit formal proofs of concept by August 9, 2022.

117. On July 27, 2022, Bolt and Citizens had a recorded telephone call relating to the formal proof of concept. During the call, Bolt was represented by Omer Drori ("Drori") and David Brandeis ("Brandeis"). Drori requested that the dates be changed and Bolt be allowed to present its formal proof of concept demonstration to Citizens before Bolt submitted its written formal proof of concept. Drori also requested that the demonstration not be on the August 9, 2022, deadline, but that Bolt have a few more days, until tentatively August 16, 2022.⁶

118. During this call, Brandeis also suggested to Citizens that vendors be the ones to present their own formal proof of concept.

119. Citizens granted Bolt's request and allowed Bolt's presentation to precede the submission of the written formal proof of concept.

⁶ At hearing, Bolt's Corporate Representative Paul Murphy testified that Bolt did not ask Citizens for more time to put its formal proof of concept together or to submit its formal proof of concept. The recorded telephone conversation of July 27, 2022, is held to be more reliable regarding Bolt's request for an extension and for establishing the timeline of Bolt's demonstration and submission in this proceeding.

120. Bolt worked hard to create and prepare its formal proof of concept. Bolt had to construct an entire new component with a high degree of complexity, which included new architecture and engineering.

121. Citizens changed the ITN calendar based on Bolt's request for an extension of time to present its demonstration. On August 9, 2022, Citizens posted Addendum No. 4 to the ITN, which extended the time frame for vendors to develop proofs of concept from August 12, 2022, to October 9, 2022, as well as changed the public meeting date to announce the intended award from August 29, 2022, to October 10, 2022.

122. Bolt did not file a notice of protest with Citizens within 72 hours after Citizens posted notice of Addendum No. 4.

123. On August 15, 2022, Nathan Waite ("Waite"), from Applied, emailed Reeves requesting a meeting regarding the Clearinghouse solicitation and Applied's EZLynx response.

124. On August 16, 2022, Drori emailed Reeves regarding Addendum No. 4 to the ITN and stated that Bolt was surprised to see the schedule change so close to the end of the ITN. Drori also requested Citizens delay Bolt's presentation of its formal proof of concept specifically stating, "As it [has] been the case with every milestone, BOLT is ready for the demo, however, we will now ask to move it closer to the decision date, last week of September or first week of October please."

125. Reeves responded the same day on behalf of Citizens to Drori by email denying Bolt's extension request for the formal proof of concept presentation. Reeves also informed Bolt that its demonstration should continue as scheduled for Thursday, August 18, 2022.

126. On August 17, 2022, Reeves responded to Waite by email that "Citizens is currently in the negotiation phase of the process for ITN-22-007 Citizens Eligibility Reimagined. The Negotiation Team has not requested additional information from Applied at this time; however, should the Negotiation Team request additional information from Applied, the

Procurement Officer (me) will reach out to the Applied point of contact via email.”

127. At this point in the procurement, Applied was not under consideration or in the running for any of the ITN’s options.

128. On or about August 18, 2022, Bolt proceeded with the demonstration of its formal proof of concept.

129. HoneyQuote also presented its formal proof of concept around the same time.

Agent and Carrier Focus Group

130. The Negotiation Team decided to utilize agents to provide feedback on vendors’ proposed solutions, since the agents are the users of the Clearinghouse system.

131. Citizens established a group of subject matter experts that consisted of insurance agents and an insurance carrier representative. The agent and carrier focus group (“focus group”) for the ITN were from different insurance agent segments Citizens served.

132. Rockman recommended the individuals who served on the focus group based on their experience and knowledge, and varied roles in the Florida insurance market, including as related to Citizens and its Clearinghouse.

133. Citizens brought the agent focus group into the procurement process under Section 3.5.J. of the ITN, which allows Citizens “the right to utilize subject matter experts and other technical advisors to assist the Negotiation Team with reviewing Replies. These persons will not be deemed to be members of the Negotiation Team.”

134. In August 2022, Reeves contacted the following agents to serve on the focus group: Robert Norberg, representative of an independent neighborhood agency and active member in the agent association FAIA; Kerrie Ruland (“Ruland”), the carrier representative; Penny Stapleton, a representative from a captive agent group, State Farm; and Dulce Suarez-Resnick, a

representative from a large agent aggregate, Sentry Insurance, and an active member in the Latin American Association of Agents.

135. The focus group each received, signed, and returned standard Instructions to Subject Matter Experts (“Instructions”) prior to serving.

136. The Instructions provided the focus group guidance about their role and responsibilities as part of the solicitation. The focus group was to review the formal proofs of concept and provide feedback to the Negotiation Team.

137. The focus group was not provided the ITN or the vendor replies submitted in response to the ITN.

138. Citizens informed Bolt that the focus group would be involved in the negotiation process prior to Bolt presenting its formal proof of concept to the group.

139. The focus group attended HoneyQuote and Bolt’s vendor demonstrations of formal proofs of concept and provided feedback to the Negotiation Team.

140. Ruland did not attend either Bolt or HoneyQuote’s presentation sessions and did not provide any feedback to the Negotiation Team regarding vendor proposals.

141. At the time of the presentations, Ruland no longer worked for the carrier representative Security First, which was the background experience and reason she was originally selected for the focus group.

142. On September 22, 2022, the remaining members of the focus group had a debriefing session with the Negotiation Team in a recorded meeting to provide feedback about the formal proofs of concept. Ruland did not participate in the meeting.

143. The focus group discussed their likes, dislikes, strengths, and weaknesses with the Negotiation Team. The focus group preferred HoneyQuote’s formal proof of concept over Bolt’s presentation.

144. The Negotiation Team met in a strategy session after being debriefed by the focus group. After a discussion, Rockman suggested that the team

consider other options, such as the Additional Certified Rater component. The team authorized Rockman, through Reeves, to reach out to Applied to see if it had any interest in having a conversation about the Additional Certified Rater option and for Rockman to represent the Negotiation Team in the strategy session meeting with Applied.

145. On or about September 23, 2022, Reeves, at the direction of the Negotiation Team, contacted Applied. Reeves emailed Applied's primary contact Scott Niebuhr ("Niebuhr") and informed him that the Negotiation Team had asked that she schedule a 30-minute call with Bolt on September 27, 2022.

146. On September 26, 2022, Reeves replied to the email from Niebuhr inquiring about the scope of the call scheduled for September 27, 2022. Reeves emailed Niebuhr that "[t]he focus of the meeting will be around the Additional Certified Rater component of the solicitation."

147. On September 27, 2022, Reeves and Rockman met with Applied, which expressed an interest in the Additional Certified Rater and Citizens Offered Rater options of the ITN.

148. During the September 30, 2022, strategy meeting, the Negotiation Team analyzed the Clearinghouse functionality and discussed options, as well as whether Applied might be able to provide a service.

149. The Negotiation Team ultimately discussed bifurcating the award. During the strategy meeting, the idea was introduced that discussions should be had with all three vendors, HoneyQuote, Bolt, and Applied, to learn more about how each vendor could operate in the Clearinghouse space for Citizens.

150. In the strategy meeting, the Negotiation Team also discussed changing the award date from October 2022 to January 2023 in order to find out as much as possible about all three vendor options and get the best solution possible.

151. On October 6, 2022, Citizens posted Addendum No. 5 to the ITN, extending the proof of concept period through January 2023 and moving the contract award date from October 10, 2022, to January 31, 2023.

152. Applied did not request the change to the ITN timeline in Addendum No. 5.

153. Bolt did not file a notice of intent to protest with Citizens within 72 hours after Citizens posted notice of Addendum No. 5.

154. On November 1, 2022, Citizens requested a formal proof of concept for the first time from Applied with a deadline of December 9, 2022.

155. After the November request from Citizens, Applied started working on a formal proof of concept to the ITN for the first time.

156. Applied submitted its formal proof of concept timely on December 9, 2022.

157. On January 12, 2023, Applied presented a demonstration of its formal proof of concept to the focus group in a recorded session. Ruland did not participate.

158. On January 18, 2023, the focus group met with the Negotiation Team in a recorded session and provided feedback about Applied's presentation.

Best and Final Offers

159. The Negotiation Team continued negotiations for the ITN, and, on January 23, 2023, Citizens requested Best and Final Offers ("BAFO") from HoneyQuote, Bolt, and Applied with a deadline of January 26, 2023, at 11:59 p.m.

160. On January 25, 2023, Citizens made amended requests for BAFOs, requesting additional items from HoneyQuote, Bolt, and Applied. Citizens also extended the deadline to noon, January 27, 2023.

161. Each of the three vendors timely submitted its BAFO to Citizens on January 26, 2023.

The Best Value Determination

162. The Negotiation Team reviewed the vendors' BAFOs to determine if the team had any outstanding questions for the three vendors.

163. On January 31, 2023, Citizens convened a Negotiation Team recorded public meeting to discuss the outcomes of the negotiation sessions; HoneyQuote, Bolt, and Applied's proposals, including the BAFOs; and to determine which vendor offered the best value to Citizens based on the selection criteria set forth in Section 3.6 of the ITN.

164. The public meeting was a culmination of the Negotiation Team's work, with support from approximately 30 subject-matter experts in over 45 negotiation sessions with the three vendors, Applied, Bolt, and HoneyQuote, which comprised over approximately 1,800 hours of Citizens' staff time.

165. During the procurement process, the Negotiation Team requested formal proofs of concept, obtained agent subject-matter expert feedback on proposed solutions, reviewed vendor implementation statements of works, and negotiated pricing.

166. The public meeting started by Reeves introducing herself and identifying the purpose of the meeting. Reeves informed the Negotiation Team that she was going to review Section 3.6 of the ITN that set forth the meeting purpose, which she summarized as the team being charged to select the vendor that provides the best value to Citizens based on the selection criteria in the ITN. Reeves also specifically advised the Negotiation Team before opening the floor for discussion that:

The best value determination will be based upon the requirements of this ITN and the following selection criteria: One, the quality, design, approach, workmanship, prior relevant experience and demonstrated ability of the vendor to effectively provide the services and/or meet the goals of this ITN. Two, the price and terms of payments for their services. Three, the

reasonableness of the contractual terms including service level agreements. Four, vendor's ability to provide services throughout the State of Florida in both a catastrophic and noncatastrophic environment. Five, vendor's ability to provide quality and timely services to Citizens during the term of the contract. And six, vendor's ability to track performance and quality assurance metrics. Additionally, best value is defined in Florida Statutes as the highest overall value to Citizens based upon factors that include but are not limited to price, quality, design and workmanship. With that, I will open the floor up to the team for discussion related to each vendor and how they were able to meet or not meet each of the selection criteria specified in Section 3.6 of the ITN.

167. During the public meeting, the Negotiation Team decided to cancel the Additional Certified Rater and FMAP Exchange options of the ITN, which the Negotiation Team ultimately formalized in a unanimous vote prior to the public meeting ending.

168. At the meeting, the Negotiation Team members each individually discussed their basis for each vendor decision, including strengths, weaknesses, likes and dislikes, design, experience, ability to provide services, price, and terms, as well as the ability to track performance.

169. Among the discussions, each member expressed liking the user friendly, modern, interface experience of HoneyQuote and recognized the superiority of Bolt's proposals to its current solution at Citizens. There were also detailed discussions about carrier reach and how HoneyQuote's carrier reach was limited through its application programming interface ("API") connections, as well as Bolt possibly taking longer to onboard carriers due to its API integrations. The Negotiation Team pointed out that Applied had access to the most carriers and its carrier reach was broad. Team members also described Applied's access as "significantly higher" and "roughly double."

170. The Negotiation Team also addressed price and acknowledged that Applied and Bolt included infrastructure cost, which would help control Citizens' cost over time. It was also pointed out by Rockman that HoneyQuote was priced at three times higher than the other vendors. Additionally, the discussions summarized that Applied was significantly higher than Bolt, at approximately two times higher in price than Bolt or in the middle of the vendor range, but closer to the lowest vendor than higher vendor price. The fact that Applied had a rating product already widely adopted at independent agencies was also highlighted during the discussions.

171. Ultimately, after the three-member Negotiation Team reviewed and considered the vendor proposals, the selection criteria in the solicitation, the user experience, the rate accuracy, the carrier status, carrier reach and price, Rockman, Gavvala, and Guth agreed unanimously that Applied's proposal for Citizens Offered Rater offered the best value to Citizens, agents, and carriers. The Negotiation Team also decided Applied should be awarded the contract for the ITN Citizens Offered Rater option.

172. The Negotiation Team also decided that Bolt was the first contingent awardee and HoneyQuote was the second contingent awardee for the solicitation.

173. That same day, Citizens issued a written Notice of Intended Award.

174. On February 13, 2023, Bolt filed a timely Formal Bid Protest Petition and, ultimately, filed the Protest.

Formal Hearing

175. At hearing, Bolt's chief revenue officer, Paul Murphy ("Murphy"), testified regarding the corporate ownership of Bolt. He explained that a parent company is a corporation with subsidiary companies and Bolttech is "our parent company."

176. Murphy also explained that the financial statements Bolt provided with its Reply were the most recent fiscal year and the three quarters worth

of 2021 financials were not available in an audited fashion at the time of submission or Bolt would have supplied them.

177. At hearing, Reeves credibly explained Citizens' standard practices when instructing evaluators and the training she provided in this matter to teach the evaluators the steps in the process of using the 0 to 10 score tool for assessing each of the vendor's Evaluation Criteria with the understanding that the scores would be weighted consistent with the maximum points identified in the ITN.

178. Reeves detailed and confirmed that evaluators examined each vendor's initial Reply pursuant to the Evaluation Criteria set forth in Section 3.4 of the ITN.

179. Reeves also testified credibly and competently that Citizens has found that the use of the 0 to 10 scoring scale to score each Evaluation Criteria is less confusing for the evaluators and leads to more consistency and fairness in the scoring of vendor replies. She also confirmed that the Evaluation Committee members were each provided the Evaluation Criteria and maximum points as set forth in Section 3.4 of the ITN by email from her on April 22, 2022.

180. Reeves even credibly explained that as the Evaluation Committee's staff person, she compiled the scores for the Evaluation Committee members, determined the average scores for each vendor in each Evaluation Criteria category, and was responsible for the weighting process using the maximum points for the Evaluation Criteria of the ITN.

181. At hearing, Reeves confirmed the total points, up to the 100-point maximum, were used by the Evaluation Committee to determine which vendors would move forward to the negotiation stage of the procurement.

182. Reeves also explained how Citizens' granting of Bolt's request for an extension beyond the August 9, 2022, proof of concept deadline to present its formal proof of concept prior to submitting its written formal proof of concept

caused Citizens to issue Addendum No. 4, which extended the time frame for vendors.

183. Reeves also testified credibly and detailed that Applied was out of the running for the ITN in June 2022 when she emailed them. She testified further that the Negotiation Team decided to first communicate back with Applied on September 30, 2022. Reeves also testified credibly that the Negotiation Team decided to engage further with Applied regarding its proposal for the services sought under the ITN, while continuing its negotiations with Bolt and HoneyQuote.

184. Niebuhr testified credibly at hearing that Applied did not start working on its formal proof of concept until notified to present one on November 1, 2022.

185. At hearing, Rockman testified that he has worked with the Clearinghouse for approximately eight years, and he acknowledged prior frustrations with the Clearinghouse during that period. However, Rockman also credibly testified that he reviewed and analyzed each vendor's proposal for the ITN based on the strength of the proposals, and not based on any other products or services or prior experiences with the vendors, good or bad.

186. At hearing, Rockman also competently and credibly explained how the focus group was used as subject matter experts and stated, "as a negotiator [I] was looking at the proof[s] of concept and obviously to make sure from the eyes of the agent, the tools made sense and they liked them."

Ultimate Findings of Fact

187. The undersigned is not persuaded that Bolt made misrepresentations to Citizens regarding its parent entity. The credible evidence at hearing demonstrates that the ITN did not have a definition of "parent entity" for Bolt to follow. Hence, Murphy presented the credible competent testimony at hearing, which established Bolttech as "a parent company."

188. As is standard practice for Citizens, the record showed that nominations for the Negotiation Team were reviewed and vetted by

numerous individuals and departments within Citizens, including the Project Sponsors and the Vendor Management and Purchasing Departments at Citizens. Rockman was not solely responsible for selection of either the Evaluation Committee or Negotiation Team. Additionally, Rockman did not have the final say in appointing nominees. The record is clear that only the executive director and president appointed the nominees to both committees.

189. The record evidence also demonstrated that Applied did not include its financial documentation when submitting its initial Reply to the ITN on April 14, 2022, while awaiting the NDA execution with Citizens. However, the record is clear that Attachment B, Section 5., of the ITN allowed Citizens' practice of placing vendors in a financial review pending status without financial submissions. Additionally, the evidence supports financials not being the priority for consideration in this ITN. In fact, Section 2.2 and the preface of the ITN notified vendors that financials were not being considered until the negotiation stage.

190. Section 3.4 of the ITN contemplates a structure for the evaluations of vendors and states that "the average scores of the Evaluation Committee for the Vendor Questionnaire will be used to determine the initial ranking of Vendors." The record of evidence demonstrates that the evaluators utilized Citizens' standard scoring of 0 to 10 and weighting process based on the ITN Evaluation Criteria and maximum points to determine the ranking of the vendors. The undersigned is not persuaded by Bolt's economist, Dr. Carole Amidon-Johannson, because Dr. Amidon-Johannson did not determine that a different methodology was necessary for accuracy and to follow the ITN, other than Citizen's methodology. Instead, her testimony only suggested that Citizens' scoring of the responses could have been conducted using a different scoring process whereby whole numbers from 0 to 100 were assigned by the Evaluation Committee rather than the 0 to 10 scoring and weighting process used by Citizens to award points for the ITN and that use of such alternate

scoring process could—not would—have resulted in a finer distribution of the points between the vendors who were part of the ITN.

191. The evidence supports that Reeves, working as the procurement officer, staffed the Evaluation Committee, including allocating the maximum points across the slate of Evaluation Criteria based on an additional step with Citizens’ scoring tool to record scores based on individual assessments for each criteria in the categories of excellent, very good, good, fair, poor, and not provided. The evidence also confirms that the scoring process utilized by Citizens still allowed vendors to receive a maximum of 15 points for Background and Experience, a maximum of 65 points for Proposed Approach, and a maximum of 20 points for Implementation Plan, for a total of 100 maximum points as stated in Section 3.4 of the ITN.

192. To that end, Bolt also scored second in rank order out of the eight vendors and advanced to negotiations at which time the scores no longer played any role in the procurement. Additionally, no evidence was presented that another scoring process would have resulted in any change to the ranking of the vendors or the determination of which vendors fell within the competitive range to move forward to negotiations.

193. The ITN also sets forth in Section 3.5.J. “that subject matter experts and other technical advisors [can] assist the Negotiation Team with reviewing Replies.” The record evidence supports that Citizens properly utilized agents within the specifications of the ITN to try out the proposed vendor products to get feedback to assist the Negotiation Team in assessing the capabilities of the proofs of each vendors’ concept, which allowed the Negotiation Team to determine what additional information was needed.

194. It is also determined as a matter of ultimate fact that Citizens neither extended the procurement process calendar to provide Applied additional time to develop its solution and prepare its formal proof of concept. The evidence demonstrates that as of June 14, 2022, Applied was no longer being considered for one of the options of the ITN, and Citizens specifically

informed Applied by email that Citizens “does not anticipate requesting a Proof of Concept from your company.” The record also shows that Applied reached out to Citizens afterwards about the ITN, and Reeves confirmed by email that the Negotiation Team had not requested anything from Applied. The competent credible evidence at hearing demonstrates that it was not until September 23, 2022, that Applied was contacted by Reeves on behalf of the Negotiation Team, and only then was invited to have a meeting with the Negotiation Team. The record further shows that Applied only started working on its proof of concept after Citizens requested one on November 1, 2022.

195. The record further supports that Citizens did not change the ITN scope of work. When Citizens released the ITN, it detailed in the preface that there were “reply options.” As such, Sections 1.1.4 and 1.1.5 of the ITN specified the four options available for vendors and delineated the “Preferred Reply Option” as: Citizens Offered Rater, Additional Certified Rater, and FMAP Exchange. The fourth was the Clearinghouse Reply option. In providing the options of the ITN, Citizens notified the vendors that each of the four options were individually available to be considered for a best value determination and award.

CONCLUSIONS OF LAW

196. DOAH “has jurisdiction to determine the facts and law concerning the protest and issue a recommended order.” § 627.351(6)(e)2.b.(II), Fla. Stat.

197. Section 627.351(6)(e), Florida Statutes, Citizens’ Board of Governors Procedure: Procurement Protests, and rules and procedures of DOAH govern this proceeding. § 627.351(6)(e)2.b.(II), Fla. Stat.

Standing

198. Citizens and Applied challenge Bolt’s standing on grounds that Bolt was not responsive. *See* § 287.057(1)(c)4., Fla. Stat. (requiring a contract be awarded to “the responsible and responsive vendor that the agency

determines will provide the best value to the state, based on the selection criteria”). Citizens and Applied maintain that Bolt’s own Reply failed to comply with the financial documentation requirements of the ITN and Bolt misrepresented its parent company.

199. A responsive vendor is a vendor that has submitted a reply “which conforms in all material respects to the solicitation.” § 287.012(27), Fla. Stat.

200. A “responsive bid,” “responsive proposal,” or “responsive reply” means a bid, or proposal, or reply submitted by a responsive and responsible bidder that conforms in all material respects to the solicitation. § 287.012(26), Fla. Stat.

201. The evidence at hearing demonstrates that, like Applied, Citizens advanced Bolt through the evaluation and negotiation stages of the procurement process. Contrary to Citizens and Applied’s position that Bolt misrepresented its parent corporation, the Findings of Fact above demonstrate Bolt complied with the ITN and that Bolt provided a parent company, Bolttech. Additionally, the record shows that Bolt’s financials materially conform to the specification in the ITN. More specifically, the record evidence demonstrates that neither Fuhler nor the outside firm Citizens utilized to review financial documents in vendor replies for responsiveness found any defects upon which to reject Bolt’s financials audited by Ernst & Young. Additionally, the evidence in the record indicates Citizens categorized Bolt’s financials in compliance since Bolt went through the procurement process, including BAFO up to the award determination stage, and is the first contingent awardee. To further support Bolt’s financials being acceptable, no evidence exists in the record to demonstrate that Citizens ever requested clarification, more information, or asked more questions about the financials as allowed by Section 3.5.E. of the ITN. Therefore, Bolt is a responsive vendor and has standing in this proceeding to bring its protest.

202. Bolt protests the procurement as fundamentally flawed and seeks a rejection of all replies and a re-bid of the contract.

203. Pursuant to section 627.351(6)(e)2.c., the burden of proof rest with Bolt as the party contesting Citizens' action. Bolt must sustain its burden of proof by the preponderance of the evidence. § 4-7.00 of the Citizens Board of Governors Procedure: Procurement Protests ("Findings of fact in the Recommended Order must be based on a preponderance of the evidence."); *see also AT&T Corp. v. Dep't of Mgmt. Servs.*, 201 So. 3d 852, 854 (Fla. 1st DCA 2016) (protesting party in an invitation to negotiate procurement bore the burden of proof to show by a preponderance of the evidence that the award was clearly erroneous, contrary to competition, arbitrary, or capricious).

204. With respect to the portion of Bolt's Protest regarding Citizens' decision to award a contract for Citizens Offered Rater to Applied, the undersigned administrative law judge must conduct a de novo proceeding to determine whether Citizens' proposed action is contrary to Citizens' governing statutes, Citizens' rules or policies, or the solicitation specifications. § 627.351(6)(e)2.c., Fla. Stat. The standard of proof is whether Citizens' actions was clearly erroneous, contrary to competition, arbitrary, or capricious. *Id.*

205. "In this context, the phrase 'de novo hearing' is used to describe a form of intra-agency review. The [administrative law] 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 & Eng'g Corp. v. Dep't of Transp.*, 709 So. 2d 607, 609 (Fla. 1st DCA 1998).

206. The administrative law judge neither "sits as a substitute" for the agency nor "makes a determination whether to award the bid de novo." *Intercontinental Props., Inc. v. State Dep't of Health & Rehab. Servs.*, 606 So. 2d 380, 386 (Fla. 3d DCA 1992).

207. After the administrative law judge determines the relevant facts based upon the evidence presented at hearing, the agency's intended action must be considered in light of those facts, and the agency's determinations must remain undisturbed unless they are clearly erroneous, contrary to competition, arbitrary, or capricious. A proposed award will be upheld unless it is contrary to governing statutes, the agency's rules, or the terms of the invitation to negotiate. § 627.351(6)(e)2.c., Fla. Stat.

208. The "clearly erroneous" standard has been defined to mean "the interpretation will be upheld if the agency's construction falls within the permissible range of interpretations." *Colbert v. Dep't of Health*, 890 So. 2d 1165, 1166 (Fla. 1st DCA 2004). A factual determination is "clearly erroneous" when the reviewer is "left with a definite and firm conviction that [the fact-finder] has made a mistake." *Tropical Jewelers Inc. v. Bank of Am., N.A.*, 19 So. 3d 424, 426 (Fla. 3d DCA 2009); *see also Holland v. Gross*, 89 So. 2d 255, 258 (Fla. 1956)(When a finding of fact by the trial court "is without support of any substantial evidence, is clearly against the weight of the evidence or ... the trial court has misapplied the law to the established facts, then the decision is 'clearly erroneous.'").

209. An agency's decision is "contrary to competition" if it unreasonably interferes with the purposes of competitive procurement, which the Supreme Court of Florida describes as protecting the public against collusive contracts and securing fair competition upon equal terms to all bidders. *Wester v. Belote*, 103 Fla. 976, 981-82, 138 So. 721, 723-24 (Fla. 1931).

210. The "contrary to competition" test forbids agency actions that: (a) create the appearance and opportunity for favoritism; (b) reduce public confidence that contracts are awarded equitably and economically; (c) cause the procurement process to be genuinely unfair or unreasonably exclusive; or (d) are abuses, i.e., dishonest, fraudulent, illegal, or unethical. *See* § 287.001, Fla. Stat.; and *Harry Pepper & Assoc. v. City of Cape Coral*, 352 So. 2d 1190, 1192 (Fla. 2d DCA 1977).

211. Finally, an action is “arbitrary” if it is not supported by logic or the necessary facts and is “capricious” if it is adopted without thought or reason, or if it is irrational. *Hadi v. Liberty Behav. Health Corp.*, 927 So. 2d 34, 38-39 (Fla. 1st DCA 2006); *Agrico Chem. Co. v. Dep’t of Env’t Regul.*, 365 So. 2d 759, 763 (Fla. 1st DCA 1978).

212. To determine whether an agency acted in an “arbitrary” or “capricious” manner, the undersigned must determine “whether an agency: (1) has considered all of the relevant factors; (2) has given actual, good faith consideration to those factors; and (3) has used reason rather than whim to progress from considering those factors to reaching a final decision. *Adam Smith Enter. v. Dep’t of Env’t Regul.*, 553 So. 2d 1260, 1273 (Fla. 1st DCA 1989). However, if a decision is justifiable under any analysis that a reasonable person would use to reach a decision of similar importance, it would seem that the decision is not arbitrary or capricious. *Dravo Basic Materials Co. v. Dep’t of Transp.*, 602 So. 2d 632, 635 n.3 (Fla. 2d DCA 1992).

213. “The ITN process was created as a distinctly more flexible process than the RFP or ITB processes and gives an agency the means ‘to determine the best method for achieving a specific goal or solving a particular problem’ and to identify ‘one or more responsive vendors with which the agency may negotiate in order to receive the best value.’” *AT&T Corp.*, 201 So. 3d at 854 (quoting § 287.057(1)(c), Fla. Stat.).

214. Invitations to negotiate allow agencies to rank the bidders and then negotiate with one or more of them with fewer restrictions. *See AT&T Corp.*, 201 So. 3d at 857 (recognizing that invitations to negotiate were adopted because agencies “could not treat the RFP process as an initial ranking tool to determine a preferred provider and then negotiate a contract with that provider without limitation and without regard for the original proposal and RFP parameters”).

Applied's Reply Allegation

215. Bolt claims that Applied's Reply is not responsive, and Bolt also alleges Applied's Reply materially deviated from the specifications set forth in the ITN by not including any financial documents in its initial Reply on April 14, 2022. As to this issue, the parties do not dispute that the financial statements submitted by Applied to Citizens on May 30, 2022, complied with Attachment B of the ITN, which was the financial review form. Therefore, the only issue is the timing of Applied providing its financial statements to Citizens.

216. First, Bolt claims that the submission of Applied's financial documents with the Reply was an ITN mandatory requirement. However, the evidence presented at hearing established that a vendor was not required to submit financial documentation at the time of submission of its initial Reply to be deemed responsive and participate in the procurement process. The record evidence supports Citizens' actions and demonstrates that the financial documents, as requested in Attachment B of the ITN, were not needed by the Evaluation Committee in scoring the initial replies. Instead, the financial documentation was to be used by Citizens to make a PASS/FAIL determination of financial stability and viability prior to a contract award.

217. The Findings of Fact above also show that Citizens, through Reeves as procurement officer, expressly authorized Applied to submit its Reply to the ITN minus Applied's financial statements with the understanding that the financial statements would be submitted upon execution of the NDA. Thus, consistent with Attachment B of the ITN, Reeves effectively informed Applied that upon timely submission of a reply minus financial statements, Applied would be placed in Financial Review Pending status until Applied submitted financial documentation following execution of the NDA. This was not only consistent with the ITN, but with Citizens' standard practices reflected in the standard form included as Attachment B of the ITN. It was also consistent with how Citizens treated Appulate, a competitive vendor, in

this procurement, who also was placed in a Financial Review Pending status, after Appulate also did not initially submit its financial documents with its Reply and was invited to negotiations.

218. Moreover, since Applied's financials documents were not a part of the Evaluation Committee's consideration and Appulate also was placed in a Financial Review Pending status, the record lacks evidence of any competitive advantage by Applied submitting its financial documents after the NDA was executed. Applied's submission of its financial statements, only after execution of an NDA, with permission of Citizens' procurement officer for the ITN, also was not a material deviation from the ITN since the preface of the ITN informed each vendor up front that pricing would be a topic addressed, after the evaluation stage in the negotiation phase of the procurement.

219. It is important to note that because Applied's financial documents were not used in the evaluation stage of the procurement process, the undersigned is also not persuaded that *Syslogic Technical Services, Inc. v. South Florida Water Management District*, Case No. 01-4385BID, 2002 WL 76312 (Fla. DOAH Jan. 18, 2002; Fla. SFWMD Apr. 12, 2002), is instructive in this matter because this proceeding is an invitation to negotiate and not a request for proposal requiring the financial stability determination as was addressed in *Syslogic*.

220. Furthermore, even if Applied's late submission of its financials on May 30, 2022, was a deviation from the ITN, at most, it would have been a minor irregularity. The First District Court of Appeal has held that while an application containing a material deviation is unacceptable, not every deviation from a competitive solicitation is fatal. A deviation is only fatal if it is material. The deviation 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. Fla. Dep't of Gen. Servs.*, 493 So. 2d 50, 52 (Fla. 1st DCA 1986). The record is void of any such advantage in this matter.

221. Section 3.12 of the ITN expressly reserved Citizens the right to waive any minor irregularity concerning a reply when doing so will serve Citizens' best interests.

222. Therefore, Applied is a "responsive vendor," one "that has submitted a bid, proposal, or reply that conforms in all material respects to the solicitation" pursuant to section 287.012(27). And, even if Applied was not responsive, at best, Applied's Reply of financial documentation is a minor irregularity, which Citizens had the discretion to waive.

Evaluation Allegation

223. Bolt also challenges the evaluation of the proposals and claims Citizens acted contrary to the specifications of the ITN.

224. Section 3.4 of the ITN states that: "Replies will be provided to the [E]valuation [C]ommittee for individual reviewing using the allocation of points indicated below."

225. Section 3.4 of the ITN contains a chart allocating 100 total points among three categories comprising of up to 15 points for Background and Experience, up to 65 points for Proposed Approach, and up to 20 points for Implementation Plan.

226. For the reasons set forth in the Findings of Fact above, the record demonstrates that the members of the Evaluation Committee scoring the initial replies, using a 0 to 10 scale on the ITN evaluation criteria before the scores were averaged and weighted, were consistent with the maximum points identified in Section 3.4 of the ITN and are, at most, a step interjected so as to get the allocation of maximum points. The record evidence shows that Citizens' methodology is logical and fair. Additionally, the ITN does not address how to get to the maximum points. Moreover, the ITN does not preclude Citizens' interim step before allocation of maximum points.

227. Bolt's position also cannot prevail on this issue because no evidence was presented that the total points awarded to the replies were other than the maximum points identified in Section 3.4 of the ITN. Further, the

evidence supports that Citizens' scoring methodology was not inconsistent because it was used for all the vendors and, therefore, not arbitrary.

228. Finally, the scoring methodology used by Citizens was neither arbitrary nor inconsistent with or contrary to the ITN. Also, Citizens' scoring method did not introduce new specifications into the process. Thus, Bolt did not demonstrate that Citizens deviated from the ITN in evaluating replies.

Evaluation Team Meeting Allegation

229. Bolt also asserts for the first time in its Proposed Recommended Order that Citizens did not comply with the ITN's specifications when the Evaluation Committee reviewed the scores because the Evaluation Committee members' individual meetings with Reeves were not public meetings.

230. Any issue not raised in the Protest or Joint Pre-hearing Stipulation is considered to have been waived. *See Palm Beach Polo Holdings, Inc. v. Broward Marine, Inc.*, 174 So. 3d 1037, 1038-39 (Fla. 4th DCA 2015) (stating that "[p]retrial stipulations prescribing the issues on which a case is to be tried are binding upon the parties and the court and should be strictly enforced"). However, the undersigned has elected, in an abundance of caution, to address all the issues that Bolt appears to have raised during the course of the instant proceeding.

231. Section 3.4 of the ITN provides: "In a public meeting, the Evaluation Committee will review the scores and establish a competitive range of Replies reasonably susceptible for award."

232. Bolt is correct that the evidence shows that members of the Evaluation Committee met with Reeves as the procurement officer in private one-on-one meetings in which they reviewed the scores. These meetings were immediately prior to the May 5, 2022, public meeting in which the Evaluation Committee reviewed the scores and announced that four vendors would proceed to the negotiation phase.

233. On this issue, Bolt has failed to meet its burden and persuade the undersigned that the individual meetings with Reeves, a Citizens employee staffing the committee by coordinating the process and handling the administrative duties, are violations of Section 3.4 of the ITN, because the record is void of any evidence establishing that a competitive range was established in the meetings with the Evaluation Committee members as required by Section 3.4 of the ITN. Additionally, Bolt's position is misplaced in that the Citizens' staffer was only assisting the Evaluation Committee as part of her job duties in a non-public meeting, which is neither improper, illogical, or arbitrary.

Focus Group Allegation

234. Bolt maintains that Citizens deviated from the ITN by using agent and carrier representatives as subject matter experts and that the agent and carrier representatives were biased against Bolt and in favor of Applied.

235. Section 3.5.J. of the ITN expressly reserves Citizens "the right to utilize subject matter experts and other technical advisors to assist the Negotiation Team with reviewing the Replies." The term "Replies" as used in this reservation of rights includes all information provided in response to the ITN, and not just the initial written replies. This is reflected in Section 3.5.D. of the ITN, which indicates that demonstration and presentation materials become part of the reply, and in Section 3.5.E. of the ITN, which reserves to Citizens the right to request reply revisions prior to the contract award. The ITN did not disclose the identity of any subject matter experts or technical advisors nor did the ITN require Citizens to make any such disclosure. The ITN also did not require subject matter experts or technical advisors to be Citizens employees.

236. It is important to note that Bolt did not timely protest the ITN specifications. Accordingly, Bolt waived proceedings challenging the ability of Citizens to use subject matter experts or other technical advisors to assist the Negotiation Team. § 627.351(6)(e)2.d., Fla. Stat. ("Failure to file a notice of

protest or failure to file a formal written protest constitutes a waiver of proceedings.”); *See also Optiplan, Inc. v. Sch. Bd. of Broward Cnty.*, 710 So. 2d 569, 572 (Fla. 4th DCA 1998) (“Failure to timely file a bid specification protest waived rights to challenge criteria in specifications.”).

237. Nonetheless, there was nothing about Citizens’ use of agency and carrier representatives as subject matter experts in a focus group that deviated from the ITN. The focus group ultimately ended up being a cross section of the agent community because the carrier representative did not participate. The evidence at hearing shows that agent representatives were only utilized to provide subject matter expertise from the perspective of users of the platform solution being procured through the ITN. Consistent with Section 3.5.J. of the ITN, the focus group properly assisted the Negotiation Team with reviewing demonstrations of the vendors’ proposed solutions and providing feedback on the user experience and user interface.

238. Moreover, the record is devoid of evidence showing that any of the agent representatives were biased against Bolt or in favor of Applied, and Ruland, the sole carrier representative, did not provide feedback to the Negotiation Team due to a change in her employment.

239. For the aforementioned reasons, even if Bolt had not waived its right to challenge use by Citizens of subject matter experts, Bolt has not made, and cannot make, any showing that use of the agents as subject matter experts in the focus group by Citizens deviated from the ITN and was clearly erroneous, contrary to competition, arbitrary, or capricious.

Flawed Procurement Allegation

240. Bolt also advances that the procurement was fundamentally flawed and biased against Bolt. Bolt specifically alleges that Citizens’ actions throughout the ITN process were unreasonable, arbitrary, capricious, anticompetitive, and motivated by a bias against Bolt and that such actions were orchestrated by Rockman, Citizens’ vice president of Agency and

Market Services, who has direct responsibility for Citizens' Clearinghouse Program and FMAP Exchange.

241. The evidence presented at hearing, however, shows otherwise. Specifically, the evidence demonstrates that Citizens conducted a thorough, thoughtful, reasonable, and fair procurement process. Thus, the undersigned is not persuaded by Bolt's assertions.

242. It is undisputed that Rockman was deeply involved in most of the key decisions in the ITN as the Findings of Facts show above. And, even though Rockman acknowledged prior frustrations with the Clearinghouse, the record lacks evidence that Rockman was biased against Bolt, in favor of Applied, or that he unduly influenced the contract award decision reached by Citizens in the procurement. Evidence, such as Rockman being the individual who initiated removing Applied out of the solicitation process after its informal proof of concept to move HoneyQuote and Bolt forward, supports Rockman's fairness. Further, no evidence was presented of any bias by Rockman or anyone else involved in the procurement process in favor of Applied.

243. Bolt's bias allegations begin prior to the issuance of the ITN and begin with Citizens' decision to reject all replies in response to the 2021 ITN. Not only was no evidence of bias presented at hearing regarding such decision, but Bolt also failed to timely protest Citizens' decision to reject all replies submitted in response to the 2021 ITN and has waived proceedings with respect to such decision. § 627.351(6)(e)2.d., Fla. Stat.; *see also Optiplan, Inc.*, 710 So. 2d at 572.

244. Bolt also challenges the changes from the 2021 ITN to the current ITN specifically relating to the maximum number of points allocated for Evaluation Criteria. These challenges were also waived when Bolt did not timely protest the ITN specifications. § 627.351(6)(e)2.d., Fla. Stat.; *see also Optiplan, Inc.*, 710 So. 2d at 572. Moreover, no evidence demonstrates that any of these changes were motivated by bias against Bolt or in favor of Applied or any other vendor. The record shows that the majority of changes

from the 2021 ITN to the current ITN were initiated by Reeves, Kraemer, and Citizens' Purchasing Department, not by Rockman.

245. Bolt's allegations that Citizens' employees were biased also fails. On this point, the evidence shows that the members of the Evaluation Committee, including Marmelstein, who has direct responsibility for the Clearinghouse team at Citizens, all were nominated based on their experience and knowledge in the program areas and service requirements sought in the ITN. The record also confirms that the nominations were reviewed, vetted, and approved by multiple individuals at Citizens. Moreover, no bias or favoritism in the evaluation process was proven by Bolt at hearing. In fact, Bolt's ranking in the evaluation phase was only second to HoneyQuote, ahead of Applied, and the fourth-ranked vendor, Appulate, when Bolt was invited to negotiations, which is inconsistent with Bolt's bias allegations.

246. There was nothing arbitrary or capricious about the Evaluation Committee advancing the four top-ranked vendors to negotiations and such decision was not contrary to competition but promoted competition. The fact that Bolt may disagree with where the competitive range was set does not make it arbitrary or capricious. *See Dravo Basic Materials Co., Inc.*, 602 So. 2d at 634 n.3 (stating that an administrative decision justifiable under any analysis that a reasonable person would use is neither arbitrary nor capricious).

247. Bolt also did not show that Citizens acted arbitrarily or capriciously, or in a biased manner during the negotiation phase of the ITN. Pursuant to Citizens' standard practices, Rockman and Taylor, as the Project Owners, nominated the members of the Negotiation Team for appointment by Citizens' executive director. Also, Rockman served as a member of the Negotiation Team because he was a Project Owner and is the individual directly responsible for the Clearinghouse Program. Contrary to the allegations in the Protest, the evidence at hearing was that Guth asked to be

part of the Negotiation Team because of the significance of the procurement to Citizens and he satisfies the statutory requirement that one member of the Negotiation Team be a certified contract negotiator. *See* § 287.057(17)(b)1., Fla. Stat. There was no evidence that Rockman unduly influenced Guth or Gavvala in their roles as members of the Negotiation Team.

248. As described in the Findings of Fact above, Citizens appropriately utilized agent representatives as subject-matter experts to assist the Negotiation Team. These agent representatives are future users of the Citizens Reimagined Platform being procured through the ITN. Although some of these representatives may have expressed frustrations about the current Clearinghouse and had ideas about how it might be improved, no competent evidence was presented showing that they were biased against Bolt or in favor of Applied. Furthermore, the carrier representative never provided feedback to the Negotiation Team because of a change in her employment. Additionally, the agent representatives simply provided feedback on the vendor demonstrations, which was just one subject among many considered by the members of the Negotiation Team in making its best value determination.

Unfair Advantage Allegation

249. Contrary to the evidence at hearing, Bolt contends that Applied received an unfair competitive advantage because Citizens provided Applied months more time to develop its proposed solution and prepare its formal proof of concept. Bolt's claim is misplaced. For the reasons set forth in the Findings of Fact above, the record has demonstrated that Applied was out of the ITN procurement process upon receipt of the June 14, 2022, email from Reeves informing Applied "[a]t this time, the Negotiation Team does not require any additional information about your proposed solution/product and does not anticipate requesting a Proof of concept from your company." The credible evidence in this proceeding shows that there was no communication from the Negotiation Team with Applied again until

September 23, 2022, even though Applied had made several inquiries to Reeves. Additionally, the record shows that Applied only started working on its formal proof of concept when invited to present on November 1, 2022, with a deadline of December 9, 2022, which Applied met.

250. It is also important to note that the timeline for the procurement was extended because Citizens needed additional time and, in one instance, because Bolt requested additional time to submit its formal proof of concept, not because Applied requested additional time or to benefit Applied. Additionally, Bolt did not timely protest any of the addenda extending the timeline for the procurement and, therefore, waived its rights to challenge any extension of the procurement timeline. § 627.351(6)(e)2.d., Fla. Stat.; *see also Optiplan, Inc.*, 710 So. 2d at 572.

251. Therefore, Bolt's argument is without merit, and Bolt fails to meet its burden to demonstrate that Applied received an unfair competitive advantage.

Arbitrary Award Allegation

252. Bolt challenges Citizens' intended award to Applied as being arbitrary.

253. To be clear, just because Bolt does not agree with the justifications the Negotiation Team provided for its unanimous selection of Applied, does not mean that the Negotiation Team was irrational or illogical. Instead, the record evidence in this case demonstrates that the Negotiation Team was neither irrational nor illogical.

254. First, the Negotiation Team was trained according to Citizens' standard procedures. The evidence also shows the Negotiation Team conducted over 45 negotiation sessions with the three vendors to learn about each vendor's proposed solutions. Also, the evidence demonstrates the Negotiation Team utilized subject matter experts to assist them and make sure they understood the proposals.

255. The record evidence also establishes the procurement officer, Reeves, opened the award meeting on January 31, 2023, by instructing the Negotiation Team that their charge was to select the vendor that provides the best value to Citizens, and Reeves detailed the ITN selection criteria for the award. The evidence supports that the Negotiation Team had a robust discussion supported by logical reasoning of the selection criteria, including price, and, ultimately, concluded that Applied was the best value to Citizens.

256. Therefore, Bolt has failed to meet its burden and show the intended award to Applied is arbitrary.

Additional Certified Rater and FMAP Allegation

257. With respect to the portion of Bolt's Protest contesting Citizens' decision to reject all replies for the Additional Certified Rater and FMAP components of the ITN, the standard of review is whether Citizens' intended action is illegal, arbitrary, dishonest, or fraudulent. § 627.351(6)(e)2.c., Fla. Stat.

258. Bolt claims that Citizens' rejection of all replies for the Additional Certified Rater and FMAP components of the ITN was an improper attempt to circumvent competitive bidding requirements and restrict competition.

259. Bolt's allegations directed at Citizens' cancellation of the FMAP and Additional Certified Rater portions of the ITN and rejection of all replies for those portions of the ITN are without merit. The record is clear that the ITN provided vendors notice about the availability to submit a reply for one or more of the three options detailed in Section 1.1.4 of the ITN. Likewise, Citizens did not alter the scope of the ITN in deciding to only award a contract for Citizens Offered Rater, as this was always a possibility contemplated by the ITN and fully within Citizens' authority.

260. As to Bolt's claim, the undersigned is not persuaded by Bolt's reliance on *AT&T Corp.*, 201 So. 3d at 857. Here, this matter is distinguishable in that Citizens' ITN always provided flexibility to award contracts for one or

more options, and there was no need for a revision of the scope of work set forth in the ITN as in *AT&T Corp.*

261. Also, Bolt did not timely challenge the ITN specifications and, therefore, waived any proceedings protesting the portions of the specifications that allowed vendors to respond to, and Citizens to award contracts for, one or more of the reply options. § 627.351(6)(e)2.d., Fla. Stat.; *see also Optiplan, Inc.*, 710 So. 2d at 572.

262. Accordingly, no evidence of illegal, arbitrary, dishonest, or fraudulent actions have been demonstrated to support Bolt's claim that by Citizens removing the Additional Certified Rater and FMAP options, Citizens was circumventing the competitive bidding requirements. Therefore, no basis exists for Citizens' intended contract award to Applied for Citizens Offered Rater to be rescinded and the entire procurement cancelled based on the rejection of the replies for the Additional Certified Rater and FMAP components, which were always Citizens' prerogative under the ITN.

Section 287.057(1)(c)5., Florida Statutes, Allegation

263. Bolt also contends Citizens violated section 287.057(1)(c)5., which provides, in pertinent part:

The contract file for a vendor selected through an invitation to negotiate must contain a short plain statement that explains the basis for the selection of the vendor and that sets forth the vendor's deliverables and price, pursuant to the contract, along with an explanation of how these deliverables and price provide the best value to the state.

264. Bolt contends that since Citizens has not prepared a short plain statement that explains the basis for the selection of Applied and set forth Applied's deliverables and price along with the explanation of how these deliverables and price provide the best value to the state, Citizens' actions are clearly erroneous, contrary to section 287.057(1)(c)5.

265. However, the evidence does not support the allegation that Citizens has violated section 287.057(1)(c)5. First, section 287.057(1)(c)5. does not establish a time frame by which the short plain statement explaining the basis for the selection of the vendor must be in the contract file for a vendor selected. Since Bolt's protest to the selection of Applied as the vendor for Citizens Offered Rater is only an intended decision that has not yet been finalized, the undersigned finds that Citizens has no obligation to create such a file or prepare the statutory statement until the contract is signed, which cannot occur until this protest is finally resolved.

266. Moreover, after this solicitation is finalized and awarded, Citizens will execute the contract. Thereafter, Citizens will create a contract file, place the contract in it, and confirm that it contains a short plain statement explaining the basis for the award, as required by section 287.057(1)(c)5. The contract itself is sufficient to meet this requirement. Based on the weight of the credible evidence and the language of the statute, the undersigned finds that Citizens has no obligation to create such a file or prepare the statutory statement until the contract is signed, which cannot occur until this protest is resolved.

Section 627.3518(3)(d), Florida Statutes, Allegation

267. Bolt's claim that Citizens is going to violate section 627.3518(3)(d) because under the intended contract with Applied, insurance carriers would have to pay a fee to participate in the Citizens Offered Rater is premature.

268. With respect to section 627.3518(3)(d), the competent evidence at hearing failed to demonstrate that Applied's proposed solution will require insurers and agents participating in the program to pay a fee to offset or partially offset the cost of the program or use the program for renewal of policies initially written through the Clearinghouse. Additionally, this is an issue of future contract performance not proper for a procurement protest. Since this allegation is about future performance of the contract that is the subject of the intended award, issues relating to performance of a contract in

the future do not affect the responsiveness of a proposal and do not provide a basis for protesting an agency's intended contract award. *See State Contracting & Eng'g Corp.*, 709 So. 2d at 609. Therefore, the undersigned does not have jurisdiction to rule on Bolt's alleged section 627.3518(3)(d) future contract violation.

269. Accordingly, Bolt has not met its burden by the preponderance of the evidence to demonstrate that Citizens' proposed action to award a contract for Citizens Offered Rater to Applied is contrary to Citizens' governing statutes, its rules or policies, or the ITN specifications, and that Citizens' actions during the procurement process were clearly erroneous, contrary to competition, arbitrary, or capricious. Likewise, Bolt also failed to prove that Citizens' decision to cancel the Additional Certified Rater and FMAP options and reject all replies for the components is illegal, arbitrary, dishonest, or fraudulent.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Citizens Property Insurance Corporation enter a final order dismissing the Protest and affirming the Notice of Intent to Award Invitation to Negotiate No. 22-0007 for Citizens Eligibility Reimagined to Applied Systems, Inc.

DONE AND ENTERED this 25th day of May, 2023, in Tallahassee, Leon County, Florida.



JUNE C. MCKINNEY
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Filed with the Clerk of the
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this 25th day of May, 2023.

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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.