

**COUNTY OF HERNANDO
BOARD OF COUNTY COMMISSIONERS
HERNANDO COUNTY PURCHASING DEPARTMENT
PROCUREMENT SELECTION COMMITTEE**

REPUBLIC SERVICES OF FLORIDA
LIMITED PARTNERSHIP

Petitioner,

v.

RFP No. 24-RFP00582/TPR

HERNANDO COUNTY,
BOARD OF COUNTY COMMISSIONERS,
PURCHASING DEPARTMENT,
PROCUREMENT SELECTION
COMMITTEE

Respondent.

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**OPPOSITION TO CHIEF PROCUREMENT OFFICER’S INVESTIGATIVE
SUMMARY AND DECISION AND REQUEST FOR FORMAL PROCEEDING**

Petitioner, Republic Services of Florida, Limited Partnership (“Republic Services”), pursuant to Section 120.57, Florida Statutes, and Section 22, Hernando County Procurement Manual, submits this Opposition to Chief Procurement Officer’s (“CPO”) Investigative Summary and Decision (the “Decision”). Republic Services opposes the Decision and requests a *de novo* formal proceeding before a specific master, hearing officer, or administrative law judge to resolve its opposition and formal written protest with respect to Solicitation Number 24-RFP00582/TPR and Title Curbside Residential Solid Waste and Recycling Collection Services (the “RFP”) and the related Notice of Intent to Negotiate and Award by Procurement Selection Committee (the “Notice of Intent”) issued by Respondent, Hernando County (the “County”), the Board of County Commissioners, the County Purchasing Department, and the County Procurement Selection Committee (the “Committee”).

I. Summary of Opposition

On July 1, 2024, the County published the RFP, which solicited bids from the most qualified entities or businesses who were pre-qualified under Solicitation No. 23-PQ00289/IR to enter a seven-year exclusive franchise, beginning on January 1, 2026, to provide various residential waste collection and related services to unincorporated Hernando County. A copy of the RFP is attached hereto as **Exhibit A**. On March 4, 2025, the Committee issued a Notice of Intent to Negotiate and Award (the “Notice of Intent”) wherein the Committee provided a short list of firms, ranked those firms highest to lowest based on the Committee’s scoring of the firms’ proposals, and stated that it intended to enter into negotiations with and award the RFP to Coastal Waste & Recycling, Inc. (“Coastal”). A copy of the Notice of Intent is attached hereto as **Exhibit B**. On March 6, 2025, Republic Services filed its Notice of Protest and submitted its protest bond the following day. True and correct copies of the Notice of Protest and protest bond are attached hereto as **Composite Exhibit C**.

Republic Services provided exceptional services to the County for the past twelve years and does not wish to be in a position of having to protest the Committee’s procurement and Notice of Intent. However, the Notice of Intent does not further the policies of the County to procure contracts in a manner that provides fair and open competition for all respondents and based upon the published evaluation criteria. Specifically, the Committee erroneously scored Republic Services’ bid in the following ways:

- **Transition Plan Scoring** – Republic Services is the incumbent residential solid waste and recycling services provider, having provided these services to the County for the past twelve years. Awarding the franchise to Republic Services would require no transition since Republic Services would simply continue

providing County residents with the services it already provides using the employees, equipment, and facilities that are already present in the County. However, the Committee inexplicably scored Republic Services' transition plan significantly lower than all other firms.

- **Experience and Past Performance Scoring** – Republic Services has twelve years of experience providing these exact services to the County and has achieved 99.9% service reliability over the last five years. Moreover, operating through its subsidiaries, including Republic Services of Florida, Limited Partnership, Republic Services, Inc. is the second largest waste and recycling company in the nation, with 1,000 operating locations and 17,000 trucks servicing 13 million customers daily. Yet Republic Services received the second lowest score in this category.
- **Qualification and Capabilities** – Republic Services is presently performing the requested services for Hernando County and has the infrastructure and equipment already in place to continue performing the new contract without interruption. Despite this, Republic Services received a score lower than a proposer not presently operating in the Hernando County.
- **Customer Service Approach** – The Committee gave Republic Services the lowest score in the Customer Service Approach category despite Republic Services having provided the waste collection and recycling services to the County for 12 years and being the only proposer that presently possesses the requisite staffing, trucks, equipment, and facilities to perform the proposed contract.

Because of the Committee's erroneous scoring, Republic Services was ranked as the second most qualified proposer by a mere .9 points.

The Committee's procurement process and Notice of Intent decision were clearly erroneous, arbitrary and capricious, contrary to competition, and were contrary to the specifications of the RFP, Florida law, and the County's own governing statutes, rules, policies, and principles. Therefore, on March 14, 2025, Republic Services submitted a Formal Written Protest Petition (the "Protest Petition") to the CPO that requested the Committee's Notice of Intent be rescinded, that the Committee issue a Supplement Notice of Intent that lists Republic Services as the most qualified Proposer, and that the Committee state an intent by the County to negotiate the contract contemplated by the RFP with Republic Services. A copy of the Protest Petition is attached hereto as **Exhibit D**.

On March 20, 2025, the CPO issued the Decision, which took no action with respect to the Protest Petition. A copy of the Decision is attached hereto as **Exhibit E**. The Decision asserts that Republic Services provided "no facts" to support its assertions, and thus, "there was no factual basis to conclude the Committee's evaluation and scoring" was flawed. Ex. E, p. 2. The CPO reasoned that the Committee had "wide discretion" to accept public service bids and that "it is improper to substitute another's judgment for that of the Committee and revise the evaluation and scoring." *Id.*

The Decision is wrong and should be reversed. Contrary to the CPO's claim that Republic Services "provided only conclusory statements," the Protest Petition including both specific facts and evidence that demonstrated the Committee's scoring was erroneous, arbitrary, and capricious. Specifically, the Protest Petition included as evidence the RFP, the bid submissions, the Committee's scoring, and undisputed facts regarding Republic Services' status as the incumbent

service provider and twelve-year service history. This evidence demonstrated that there was no rational basis for how the Committee scored Republic Services' bid in four categories based on the RFP's stated criteria.

II. Procedural Issues

A. Agency Affected

The name of the agency affected is the Board of County Commissioners of Hernando County, Florida, which is the governing body of Hernando County, Florida with the following address: 15470 Flight Path Drive, Brooksville, Florida 34604, Phone: (352) 754-4000, Fax: (352) 754-4477.

The solicitation that is the subject of this written protest is RFP No. 24-RFP00582/TPR, titled "Curbside Residential Solid Waste and Recycling Collection Services" and the Notice of Intent to Negotiate and Award, dated March 4, 2025.

B. Representatives of Republic Services

The following names and addresses should be used for service purposes on Republic Services:

Adis Latic
Republic Services of Florida, Limited Partnership
General Manager
5210 Linebaugh Avenue
Tampa, Florida 33624
alatic@republicservices.com
Phone: (813) 265-0292

With a copy to counsel for Republic Services at:

Christian C. Burden, Esq.
Zachary S. Foster, Esq.
Quarles & Brady LLP
101 East Kennedy Boulevard, Suite 3400
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zachary.foster@quarles.com

chris.burden@quarles.com

C. Other Affected Persons

Coastal Waste & Recycling, Inc.
c/o Matthew Cowan
General Counsel
4950 Communication Ave., Suite 920
Boca Raton, Florida 33431

III. Basis for Opposition

A. Material Facts

1. In 2012, the County awarded Republic Services a seven-year, exclusive franchise to provide curbside residential and recycling collection services within the County. In 2019, the County renewed Republic Services' franchise for a subsequent seven-year term.

2. Over the last twelve years, Republic Services has provided excellent service to the Hernando County community with 99.9% service reliability over the last five years.

3. Republic Services maintains 135 employees, 65 of whom are residents of Hernando County, and has invested over \$22 million in its current assets to service Hernando County.

4. On August 2, 2023, the County issued a Request of Pre-Qualification, Solicitation No. 23-PQ00289/IR, to select the most qualified entities or businesses to respond to a Request for Proposals to enter a seven-year Exclusive Franchise, beginning on January 1, 2026, for the following services: curbside residential collection of solid waste twice per week, yard waste once per week, dual stream recycling once per week, and bulk collection by request of customer. Curbside services shall be collected by automated, semi-automated, or manual Collection as appropriate for the area and type of service.

5. On March 15, 2024, the County qualified Republic Services, Coastal, FCC Environmental Services Florida, LLC ("FCC"), Waste Connections of Florida, Inc.,

Waste Management Inc. of Florida (“WM”), and Waste Pro of Florida, Inc. (“Waste Pro”) to proceed with the solicitation process by responding to the RFP.

6. On July 1, 2024, the County published the RFP. The RFP required the qualified firms to submit written proposals, which the Committee would then evaluate and “assign a consensus score for each evaluation criteria based upon consensus scoring, with the exception of pricing which will be scored administratively utilizing a formula.” Ex. A, § 7.6(B). The Committee would then add the scores and rank the proposals based on those scores. *Id.* § 7.6(C), (E).

7. The RFP allowed the Committee to establish a “short list” of three proposers and request oral presentations from the proposers. The scores from these oral proposals would then be added to the proposal’s overall consensus score for purposes of selecting the most qualified proposer.

8. The RFP established eight weighted elements (totaling 100 available points) by which the Committee was to evaluate the proposals: (1) Price [20 points/20% of total score]; (2) Operations Approach [20 points/20% of total score]; (3) Customer Service Approach [20 points/20% of total score]; (4) Experience and Past Performance [20 points/20% of total score]; (5) Qualifications and Capability [6 points/6% of total score]; (6) Transition Plan [6 points/6% of total score]; (7) Additional Services [4 points/4% of total score]; and (8) Additional Value [4 points/4% of total score]. Ex. A, § 9.1.

9. With respect to “Experience and Past Performance,” the Committee was to evaluate “[e]xperience including similar sized contracts, past performance, experience of the management team, references and overall experience.” *Id.*

10. With respect to “Qualifications and Capability,” the Committee was to evaluate “[t]he resources available to fulfill the contract.” *Id.*

11. With respect to “Transition Plan,” the Committee was to evaluate “[s]teps and details of the proposed transition plan.” *Id.*

12. Proposals were due on February 17, 2025. Republic Services, Coastal, FCC, WM, and Waste Pro submitted proposals. Copies of the proposals are attached hereto as **Exhibit F** (Republic Services’ Proposal); **Exhibit G** (FCC’s Proposal); **Exhibit H** (Coastal’s Proposal) **Exhibit I** (WM’s Proposal); and **Exhibit J** (Waste Pro’s Proposal).

13. Upon completion of the evaluation of the proposals, the Committee posted a Notice of Notice of Intent to Negotiate and Award on March 4, 2025, which created a short list of firms and ranked them as follows:

1. Coastal
2. Republic Services
3. Waste Pro of Florida Inc.

14. The Committee also released its Consensus Scorecard, which provided the Committee’s scoring of the proposals based on the RFP’s stated elements. A copy of the Consensus Scorecard is attached hereto as **Exhibit K**. The Consensus Scorecard revealed that Coastal received the highest total score with 73.2 points and Republic received the second highest with 72.3 points—a difference of only .9 points out of 100 possible points.

15. The following chart shows the scores each proposer received in the categories relevant to this opposition:

Vendor	Customer Service Approach	Experience and Past Performance	Qualifications and Capabilities	Transition Plan
Coastal	14.6	11.8	3.0	4.4
FCC	15.8	15.4	4.4	4.4
Republic Services	14.4	13.4	4.2	3.8
WM	15.0	14.8	4.0	4.2

Waste Pro	16.0	13.8	4.0	4.6
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16. The Notice of Intent stated the County intended to enter into negotiations with and award the RFP to Coastal.

17. On March 14, 2025, Republic Services submitted its timely Protest Petition to the CPO, which argued that the Committee’s scoring with respect to the above-referenced categories was clearly erroneous, arbitrary and capricious, contrary to competition, and were contrary to the specifications of the RFP, Florida law, and the County’s own governing statutes, rules, policies, and principles. Ex. D. The Protest Petition requested that the Committee’s Notice of Intent be rescinded and that the Committee issue a Supplement Notice of Intent that lists Republic Services as the most qualified Proposer and state an intent by the County to negotiate the contract contemplated by the RFP with Republic Services. *Id.*, p. 21.

18. On March 20, 2025, the CPO issued the Decision, which rejected the Protest Petition and took no further action. Ex. E.

B. Relevant Rules, Regulations, Laws, and Statutes

1. Hernando County Code of Ordinances and Procurement Manual

Section 2-98, Hernando County Procurement Ordinance, states that the Procurement Ordinance’s purpose “is to establish the county’s purchasing function under a centralized system which will enable the county to: (1) Establish uniform policies and procedures governing purchases and contracts by the county; (2) Obtain goods and services of satisfactory quality and quantity at reasonable cost for the county; (3) Foster effective competition within the free enterprise system; and (4) Provide safeguards for the maintenance of a procurement system of quality and integrity.” Section 2-100 requires “all parties involved in the development, performance, or administration of purchasing contracts of the board of county commissioners to

act in good faith.” Section 2-101 states that the Procurement Ordinance applies to all non-exempted “purchases, procurements and contracts of the board of county commissioners.” Section 2-128 states that “[p]rotests of Hernando County competitive solicitations are governed by this ordinance. A bidder or potential bidder that lodges a protest shall follow the protest procedures and policies provided in the Hernando County Procurement Manual.” Section 2-129 allows the chief procurement officer to “incorporate in the protest procedures and policies any sections of the Administrative Procedure Act that comport with this ordinance and the best interests of the county.”

Section 14-49, Solid Waste Collection and Disposal Ordinance, states, “When the board deems appropriate, a request for proposal or bid to provide residential solid waste collection services may be issued in the interest of ensuring the county residents, consumers and customers are receiving the best service for the best price” and that “[t]he board will assemble a committee to evaluate the proposals.”

Section 1 of the County’s Procurement Manual states that the purpose of its central procurement system is to promote “efficiency, economy, and fair and open competition in an effort to reduce the appearance and opportunity for favoritism or impropriety, and to inspire public confidence that all purchases and contracts are awarded equitably and economically.” A copy of the Procurement Manual is attached hereto as **Exhibit L**. Section 1 further explains that the goal of the system is to:

- A. deal fairly and equitably with all vendor/contractors wishing to do business with Hernando County.
- B. assure adherence to all purchasing laws, regulations, and procedures.
- C. maximize competition for all procurements.
- D. administer the contracting function with internal efficiency.
- E. purchase goods and services at the lowest price, consistent with quality, performance, and delivery requirements from capable vendor/contractors meeting the County’s needs.

Section 22 of the County’s Procurement Manual incorporates Sections 120.57(1)(b), (c), and (f) to govern bid protest formal proceedings.

2. The RFP’s Relevant Evaluation Criteria

Section 7.6 of the RFP requires the Committee to review all submitted proposals, “evaluate written Proposals and assign a consensus score for each evaluation criteria based upon consensus scoring,” and rank the proposals “based on the Evaluation Criteria and the Proposal Evaluation Process.” Ex. A, p. 21. The RFP provides a specific description of the Evaluation Criteria for the Committee is to consider for scoring purposes.

For scoring the “Transition Plan” evaluation category, Section 9.1 of the RFP requires the Committee to evaluate “[s]teps and details of the proposed transition plan” in each proposal and award a score between 0 to 6 points, with 6 representing the best score available. *Id.* at p. 47. Section 7.5 clarifies that a proposal must “describe the major or milestone steps Proposer anticipates will occur as they *transition into providing services.*” *Id.* at p. 20 (emphasis added). The purpose of this category is to evaluate the proposer’s ability to prepare itself to implement the waste and recycling services by the contract start date by, among other things, integrating the County’s data system and information onto the proposer’s platform, creating and testing route maps, procuring the necessary trucks and equipment into the County, acquiring and constructing physical infrastructure, hiring and training sufficient staff members, and educating the public about the new service provider.

For scoring “Qualifications and Capability” evaluation category, Section 9.1 of the RFP requires the Committee to evaluate the proposer’s “[t]he resources available to fulfill the contract” and award a score between 0 to 6 points with 6 representing the best score available. *Id.* at p. 48. The RFP does not provide any additional language regarding this factor. Therefore, taking this

category at face value, the Committee was required to simply assess whether the proposer presently possessed or could timely acquire the trucks, equipment, facilities, and staff necessary to fulfill the contract by the start date.

For scoring the “Experience and Past Performance” evaluation category, Section 9.1 of the RFP requires the Committee to evaluate the proposer’s “[e]xperience including similar sized contracts, past performance, experience of the management team, references and overall experience” and award a score between 0 to 20 points with 20 representing the best score available. *Id.* at p. 47. Section 7.5 states that a proposal must, among other requirements, “[d]escribe the number of County or Municipal customers that your firm has serviced in similar size (60,000 - 100,000 units) to Hernando County.” *Id.* at p. 20.

For scoring the “Customer Service Approach” category, Section 9.1 of the RFP requires the Committee to evaluate “details regarding how customer service will be handled including methods of communication and handling of complaints” and award a score between 0 to 20 points with 20 representing the best score available. *Id.* at p. 47. Section 7.5 states that a proposal must:

Describe the approach to customer service including how incoming calls will be handled such as call center, local staff and what alternate methods of communication will be available to residents (email, text, website, app, etc.). Describe how the customer service approach will provide residents with a high level of service.

Describe the planned approach to handling escalated customer service issues.

Describe how the location of your company will benefit Hernando County residents. If the proposed location is not in Hernando County, discuss what steps will be taken to ensure that service to residents is not compromised by the location. Describe how the location of your company and project team may benefit the County as it specifically relates to the requested services.

Id. at p. 20.

3. Applicable Law

The standard for overturning a public entity's procurement decision is whether the public entity's proposed action is contrary to the entity's governing statutes, rules, policies, or the solicitation specifications, and whether the action being protested is erroneous, contrary to competition, or was decided in an arbitrary or capricious manner. *See Accela, Inc. v. Sarasota Cnty.*, 993 So. 2d 1035, 1038 (Fla. 2d DCA 2008) (holding that courts are to evaluate whether a county acted arbitrarily or capriciously in its procurement decision); *Emerald Corr. Mgmt. v. Bay County Bd. of County Comm'rs*, 955 So. 2d 647, 652–53 (Fla. 1st DCA 2007) (summarizing cases standing for the proposition that the arbitrary and capricious standard applies to local governments' handling of bids and competitive proposals); *Volume Services Div. of Interstate United Corp. v. Canteen Corp.*, 369 So. 2d 391, 395 (Fla. 2d DCA 1979) (evaluating the public agency's contract decision under an arbitrary or capricious standard in the absence of statutory requirements); *Wood-Hopkins Contracting Co. v. Roger J. Au & Son, Inc.*, 354 So. 2d 446, 450 (Fla. 1st DCA 1978) (“[T]he law does require that where discretion is vested in a public agency with respect to letting public contracts on a competitive basis, the discretion may not be exercised arbitrarily or capriciously but must be based upon facts reasonably tending to support the conclusions reached by such agency.” (quoting *City of Pensacola v. Kirby*, 47 So. 2d 533, 535 (Fla. 1950))).

Notwithstanding the deference afforded a public entity, “a public entity must follow its own laws for a contract with the entity to be valid.” *Accela.*, 993 So. 2d at 1038–39; *see also City of Hollywood v. Witt*, 789 So. 2d 1130, 1131–32 (Fla. 4th DCA 2001) (“In order for a contract with a city to be valid, it must comply with the city charter or ordinances.”); *Town of Indian River Shores v. Coll*, 378 So.2d 53, 55 (Fla. 4th DCA 1979) (concluding that a local ordinance requiring the town council to authorize employment of persons nullified an employment contract when the

mayor on his own hired a secretary); *Palm Beach County Health Care Dist. v. Everglades Mem'l Hosp., Inc.*, 658 So.2d 577, 581 (Fla. 4th DCA 1995) (holding that “[a]greements entered into by public bodies which fail to comply with statutory requirements are void”); *Martin County v. Yusem*, 690 So.2d 1288, 1295 (Fla. 1997) (noting that, in the context of the deferential “fairly debatable” standard applicable to a local government’s legislative action, the action “still must be in accord with ... local ordinances”).

An arbitrary decision is one not supported by fact or logic, while a decision is capricious if it is taken without thought or reason. *Agrico Chem. Co. v. State Dept. of Env'tl. Regulation*, 365 So. 2d 759, 763 (Fla. 1st DCA 1978). “In the contract procurement context, whether an action was arbitrary or capricious depends upon whether the awarding committee complied with its own proposal criteria.” *Acad. Express, LLC v. Broward Cnty.*, 53 So. 3d 1188, 1190 (Fla. 4th DCA 2011). The inquiry to determine whether an agency has acted arbitrarily or capriciously is whether the agency has: (1) considered all relevant factors; (2) given actual, good faith consideration to those factors; and (3) used reason rather than whim to progress from consideration of those factors to its formal decision. *Adam Smith Enterprises, Inc. v. State Dep't of Envir. Reg.*, 553 So.2d 1260, 1273 (Fla. 1st DCA 1989).

C. The Committee’s scoring of the proposals was arbitrary and capricious.

1. Transition Plan Scoring

Republic Services is currently providing Hernando County with the very services that are subject to the RFP and has done so at 99.9% service reliability compliance rating for the last five years. As such, it already: (1) integrated into the County’s data system; (2) services established County residents on established routes; (3) has the necessary trucks, equipment, and facilities in place to service residents; and (4) employs a fully trained staff necessary to fulfill the service

requirements. Under the RFP, the only changes to the services Republic Services currently performs for the County would be minor equipment upgrades and adjusting route days and schedules for a select group of customers migrating from Subscription to Universal services. Simply put, there are no “major or milestone steps” that would need to occur for Republic Services “transition” into providing the services under RFP.

Despite this, Republic Services’ transition proposal committed to providing the same robust and thorough implementation process that it uses for its large community transitions. *See* Ex. F, pp. 32–33. This plan would rely on a detailed 239 Check Point Plan, which outlines 239 individual transition milestones, identifies a transition team and point persons responsible for implementing the milestones, organizes proactive and frequent community outreach, coordinates cart/bin deliveries to new service locations, and outlines public outreach for any route changes. *Id.*

Given that Republic Services is already fulfilling nearly all the service requirements under the RFP as the incumbent provider, the Committee should have determined that its transition plan presents little, if any, uncertainties or risks with respect Republic Services’ ability to carry out the plan. Therefore, the Committee should have awarded Republic Services the full 6 points available under the Transition Plan category or, at the very least, ranked Republic Services the highest in this category relative to the other proposers. However, the Committee inexplicably took the opposite approach and awarded Republic Services the **lowest score** among the five proposals—3.8 out of 6.0. Ex. K.

For comparison, the Committee scored FCC’s transition plan at 4.4 (**.6 points higher** than Republic Services) despite the company admitting to having no operations, assets, or facilities in Hernando County and providing a perfunctory, 17-point draft plan with a commitment to prepare a more developed plan if awarded the contract. Ex. G, pp. 39–42. Likewise, the Committee

awarded Coastal a transition plan score of 4.4 (**.6 points higher** than Republic Services) despite its Hernando County presence being limited to servicing several hundred commercial customers, offering a barebones, 9-point timeline, and vaguely asserting that it has plans to acquire a property from which it will service the contract. Ex. H, pp. 40, 53–56. Moreover, Coastal’s staffing plan relies on hiring “collection personnel who work for” Republic Services and onboarding them in the “weeks leading up to the operations start date.” *Id.* at p. 54. As an initial matter, Coastal offers no explanation why it believes it can simply poach Republic Services employees to fulfill its substantial staffing needs. Even if it could guarantee that it could convince Republic Services employees to switch employers, this plan would harm County residents by leaving Republic Services inadequately staffed to fulfill its service obligations during the final months of its existing contract.

Further, the Committee scored WM’s transition plan at 4.2 (**.4 point higher** than Republic Services) despite WM having no residential collection operations in Hernando County and having proposed a transition timeline with multiple milestones scheduled to expire before the contract will be in place. Ex. I, pp. 28–31. Finally, the Committee awarded Waste Pro a score of 4.6 (**.8 points higher** than Republic Services) even though Waste Pro committed to creating a “new” and presently non-existent “hauling location” somewhere within Hernando County. Ex. J, p. 36.

2. Qualifications and Capabilities

Like the Transition Plan category, the Committee should have given Republic Services 6 points, or at least the most points relative to the other proposers, because Republic Services is presently performing under a nearly identical contract as requested in the RFP and has done so for twelve years in Hernando County. Yet the Committee awarded Republic Services 4.2 points while

awarding 4.4 points to FCC, despite FCC having no operations, assets, or facilities in Hernando County. Ex. G.

3. Experience and Past Performance Scoring

As the incumbent provider, Republic Services has the most relevant experience among the proposers because it has been servicing the Hernando County market for twelve years and has achieved a 99.9% service reliability over the last five years. Moreover, Republic Services' RFP presented a local management team with a combined 150 years of industry experience and many who had worked for Republic Services in Hernando County since 2012. Hence, there is no reasonable, objective basis for the Committee to assess Republic Services a score that reflects doubts about Republic Services' ability to fulfill the contract.

Besides Hernando County, in Florida, Republic Services outlined that it services 101,000 homes in neighboring Hillsborough County and another 100,000 combined homes in various other municipalities. Moreover, Republic Services highlighted that it fulfills over 2,000 municipal contracts serving 13 million customers with 42,000 employees. Republic Services and its affiliated companies maintain a large, national footprint and broad employee and equipment rosters, which means Republic Services is well positioned to provide uninterrupted services during contingent operations that will arise over the life of the contract. Thus, Republic Services demonstrated that it possessed **both** the hyper-relevant experience of servicing Hernando County for twelve years and broad national experience.

This combined experience is unique to Republic Services among the proposers and should have led to a score higher than the other proposers. Instead, the Committee scored Republic Services at 13.4 for Experience and Past Performance—the **second lowest** score given for this category. Meanwhile, the Committee scored WM and FCC, which both have comparable national

footprints to Republic Services, 1.4 and 2 points higher, respectively. Worse, Waste Pro, a company that is a mere fraction the size of Republic Services received a score of 13.8—.4 points higher than Republic Services.

Committee's scoring of this category is not anchored in fact and is irrational.

4. Customer Service Approach

With respect to the company location factor assessed in this category, unlike some of the other proposers, Republic Services outlined that it already maintains a physical location in Pasco County, a mere five miles from the Hernando County border, which it has used to provide to the County the exact services called for by the RFP, including a 99.9% service reliability rating for the last five years. Moreover, Republic Services proposed a comprehensive customer service plan, which included dedicated customer service representatives, a defined customer service management team, and a Hernando County customer service ombudsman. Therefore, the Committee should have afforded Republic Services a top score for this factor since there was no question Republic Services had the physical assets to deliver first-class customer service.

To the contrary, the Committee unjustifiably gave Republic Services a score of 14.4—the **lowest score** among the proposers. For comparison, the Committee awarded a score of 14.6 to Coastal, 15.8 to FCC, and 16.0 to Waste Pro, despite each of those companies disclosing that they would need to acquire and build out those physical facilities within the next nine months to fulfill their customer service promises.

5. The Committee's scoring of Republic Services' proposal was arbitrary and capricious.

There is no logical explanation for the Committee's scoring of Republic Services' proposal in the aforementioned categories given Republic Services' status as County incumbent provider with a twelve-year performance track record under nearly identical contracts and possessing the

equipment, personnel, and physical infrastructure in place to continue this work. The only explanation for Republic Services' score is that the evaluators' use of undisclosed evaluation criteria, the evaluators' application of the criteria in an irrational manner, or the consideration by evaluators of factors irrelevant to the terms of the RFP and Republic Services' ability to provide the services. Either of these explanations would require the overturning the Committee's decision.

To the extent the Committee's scoring of the proposals was conducted in an irrational or inconsistent manner, the Committee's procurement process is fundamentally flawed, and the Notice of Intent that incorporated the results of the Committee's irrational scoring cannot stand. Consequently, the Committee's procurement and resulting awards are clearly erroneous, arbitrary, and capricious, contrary to competition, and contrary to the specifications of the RFP, Florida law, and the County's governing statutes, rules, policies, and principles.

Likewise, if the Committee did not strictly adhere to the evaluation criteria and scoring rubrics in the RFP, or based their evaluation on undisclosed criteria, the Committee's procurement and awards are clearly erroneous, arbitrary and capricious, contrary to competition, and contrary to the specifications of the RFP, Florida law, and the County's governing statutes, rules, policies, and principles.

Florida law is clear that an agency must provide adequate notice of, and adhere to, the criteria published in its solicitation to evaluate vendors' proposals. *See Consultec, Inc. v. Dept. of Admin.*, DOAH Case No. 91-5950BID at ¶¶ 24, 31, 33 (Recommended Order Nov. 13, 1991). "[C]entral to the integrity and reciprocity of the competitive bid process is the requirement that an agency's action on a bid be expressed within the bid specifications and evaluation criteria which it created, and adhere to them during the selection process." *Id.* at ¶ 33 (quoting *Boozer v. Dept. of Health and Rehab. Servs.*, 11 FALR 4823, 4839-40 (1989)). An agency cannot award a contract

based on unstated selection criteria as it would afford “itself overly broad discretion to capriciously and arbitrarily award a contract without established criteria.” *Emerald Corr. Mgmt.*, 955 So. 2d at 653.

Accordingly, the Florida courts and the Division of Administrative Hearings have consistently concluded that a public entity or agency decision cannot stand when the public entity or agency did not follow its own stated evaluation criteria or based its evaluation on undisclosed evaluation criteria. *See Id.* at 654 (allegations that the county had failed to follow the terms of its RFP in selecting a winning proposal was sufficient to indicate that “the County engage in favoritism” contrary to Florida law governing competitive bids and sustain claims challenging the contract by the disappointed bidder); *State, Dept. of Lottery v. Gtech Corp.*, 816 So. 2d 648, 653 (Fla. 1st DCA 2001) (affirming summary judgment in favor of disappointed bidder where the public agency where it omitted or altered material provisions required by its request for proposal); *City of Sweetwater v. Solo Constr. Corp.*, 823 So. 2d 798, 802-03 (Fla. 3d DCA 2002) (enjoining a city from proceeding with a contract and issuing a writ of mandamus compelling the city to act in accordance with the requirements of the city code, Florida law, and the terms of the ITB when the city completed its scoring in a “random and sometimes haphazard manner” and based its award on “categories and criteria that were not advertised in the bid documents”); *see also Agrico Chem. Co.*, 365 So. 2d at 763 (“A capricious action is one which is taken without thought or reason or is irrational. An arbitrary decision is one that is not supported by facts or logic, or which is despotic.”); *R.N. Expertise, Inc. v. Miami-Dade Cnty. School Bd.*, DOAH Case No. 01-2663BID (Recommended Order Feb. 4, 2002) (“From the requirement that requests for proposals state all of the evaluation criteria logically follows the rule that proposals shall be evaluated only on the stated criteria and none other. For obvious reasons, no agency can be allowed to employ secret

evaluation criteria in a competitive procurement.”); *see also MCI Telecommunications Corp. v. Dept. of Corrections*, DOAH Case No. 95-1639BD at ¶ 96 (Recommended Order Jan. 31, 1995) (“The facts established at the final hearing in this matter demonstrate that the DOC failed to comply with its own bid evaluation criteria, and that the resulting decision to award the Contract . . . was made fraudulently, arbitrarily, illegally or dishonestly.”); *Campbell Therapy Servs., Inc. v. Sch. Bd. Of Broward Cnty.*, DOAH Case No. 99-2729BID at ¶ 19 (Recommended Order Sep. 3, 1999) (“The failure of the RFP to disclose its purpose violates fundamental principles of due process, adequate notice, and fairness to potential proposers. It creates a gap between what agency staff knew of the [agency’s] intent for the RFP and what potential proposers could know from reading the specifications in the RFP.”); *Carlton & Carlton, P.A. v. Dept. of Health and Rehab. Servs.*, DOAH Case No. 92-4937BID at ¶¶ 5-9, 28 (Recommended Order Dec. 22, 1992) (finding that “[o]nce the representation is made in a solicitation package that it contains the evaluation criteria, the offerors should not be subjected to an additional evaluation process” and concluding that “[t]he unannounced evaluation process is an impropriety that causes the [agency’s] reliance on any resulting award to be an arbitrary action”).

6. The CPO’s Decision to take no action with respect to Republic Services’ Formal Protest is incorrect and should be overturned.

The CPO’s Decision errs in several material respects and should be overturned.

First, the Decision incorrectly states that Republic Services submitted no facts or evidence to support its assertions that the Committee’s Consensus Scoring was erroneous in its Formal Written Protest. To the contrary, the Written Protest provided overwhelming evidence to support its assertions that the Committee failed to follow the RFP’s stated parameters for scoring the four challenge Evaluation Criteria categories. Specifically, Republic Services provided the Consensus Scorecard, the written proposals submitted by all bidders, the RFP and relevant provisions of the

County's Procurement Manual, and undisputed facts regarding Republic Services' status as the incumbent service provider and its relevant assets, employees, facilities, and operational record over the prior twelve years. Reviewed together, this evidence demonstrates, at face value, that the Committee's scored Republic Services' proposal arbitrarily or capriciously. The CPO's Decision summarily ignores and improperly failed to address this substantial evidence.

Second, the Decision argues that the Committee had wide discretion to weigh the proposals and suggests that it would be "improper to substitute another's judgment for that of the Committee and revise the evaluation and scoring." But as the case law outlined herein demonstrates, the Committee's discretion is not unbound. Rather, the Committee was required to score the proposals in conformance with the RFP's published evaluation requirements. An objective review of the RFP, Republic Services' proposal, and the Committee's scoring plainly demonstrates that the Committee failed to apply the RFP's stated criteria in scoring Republic Services' proposal and consequently acted beyond the bounds of its discretion.

Therefore, the CPO should have issued a decision rescinding the Committee's Notice of Intent and issuing a Supplement Notice of Intent that lists Republic Services as the most qualified Proposer and states an intent by the County to negotiate the contract contemplated by the RFP with Republic Services.

IV. Requested Relief

Based on the forgoing, Republic Services respectfully requests:

- a. That the matter be referred to a Special Master, Hearing Officer, or Administrative Law Judge to conduct a *de novo* formal proceedings;
- b. That the Special Master issue a recommendation to the Board of County Commissioners that the Committee's Notice of Intent be rescinded and that the

County issue a Supplement Notice of Intent that lists Republic Services as the most qualified Proposer and states an intent by the County to negotiate the contract contemplated by the RFP with Republic Services;

- c. That the procurement be stayed until a final order is entered in a formal proceeding;
- d. That the protest bond be returned to Republic Services; and
- e. That Republic Services be granted such other and further relief as is just and allowed by law.

Republic Services reserves the right to amend this protest if other bases for challenge become apparent through discovery as this protest process progresses.

Dated this March 28, 2025.

/s/ Zachary S. Foster

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished via email and U.S. Mail
to the following on March 28, 2025:

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