BEFORE THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

LIFE INSURANCE COMPANY
OF THE SOUTHWEST, d/b/a
NATIONAL LIFE GROUP,

Petitioner, DOAH Case No. 19-5140 BID

vs.

BROWARD COUNTY SCHOOL BOARD, L.T. Case No. RFP FY20-013

Respondent,

and

AXA EQUITABLE LIFE INSURANCE
COMPANY,

Intervenor.
_____/

RESPONDENT SBBC and INTERVENOR AXA EQUITABLE'S AMENDED RESPONSE IN OPPOSITION TO LSW'S EXCEPTIONS TO RECOMMENDED ORDER (Amended Only as to Amount and Award of Costs)

COME NOW the Respondent, THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA (hereinafter referred to as "THE SCHOOL BOARD"), and the INTERVENOR, AXA EQUITABLE LIFE INSURANCE COMPANY, by and through their respective attorneys, and pursuant to Section 28-106.217(3), Florida Administrative Code, respectfully file this amended response in opposition to the Exceptions to Recommended Order filed by the Petitioner, LIFE INSURANCE COMPANY OF THE SOUTHWEST, d/b/a NATIONAL LIFE GROUP ("LSW"), and would state as follows:

I. Standard for Review of Recommended Order

Pursuant to Section 120.57(1)(l), Fla. Stat., THE SCHOOL BOARD may adopt the recommended order of the administrative law judge as the final order of the agency. In considering

a recommended order issued by an administrative law judge, THE SCHOOL BOARD is constrained by certain statutory limitations which require the denial of LSW's Exceptions.

LSW's Exceptions state that it "takes exception to the Recommended Order because it is fundamentally flawed as it includes: (a) findings of fact which are not supported by competent substantial evidence, and (b) conclusions of law which do not comport with the essential requirements of law or which may be revised by Agency conclusions which are as or more reasonable than the ALJ's conclusions." In taking that position, LSW (a) overlooks the existence of competent substantial evidence within the record that supports the Administrative Law Judge's findings of fact, and (b) misstates the law which limits THE SCHOOL BOARD's ability to reject or modify any conclusions of law.

In addition, LSW's general assertion that the conclusions of law "do not comport with the essential requirements of law" fails to specify the legal basis for asserting the existence of such circumstances. Section 120.57(1)(k), Florida Statutes, provides that "an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record."

LSW's vague assertions about the "essential requirements of law" are similar to the conclusory statements in Dunham v. Highlands County School Board, 652 So.2d 894 (Fla. 2d DCA 1995), in which the Second District Court of Appeal held that a conclusory statement that the hearing officer's recommended penalty was "not in keeping with the findings of fact and conclusions of law" failed to meet the statutory requirement that, in order to increase or decrease the recommended penalty in a recommended order, the agency must state "with particularity its

reasons therefor in the order, by citing to the record in justifying the action." LSW's exceptions must fail for the same lack of specificity.

A. Standard for Review of Findings of Fact

Pursuant to Section 120.57(1)(l), Florida Statutes, THE SCHOOL BOARD "may not reject or modify the findings of fact unless… [it] first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law." That provision states further that "[r]ejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact."

It is the administrative law judge's function to consider all evidence presented, resolve conflicts in the evidence, judge the credibility of witnesses, draw permissible inferences from the evidence and reach ultimate findings of fact based upon competent substantial evidence. Goss v. District School Board of St. John's County, 601 So.2d 1232 (Fla. 5th DCA 1992). THE SCHOOL BOARD may not reject a finding of fact by the administrative law judge if there was competent substantial evidence within the record from which such findings could have been reasonably inferred. Dunham v. Highlands County School Board, 652 So.2d 894 (Fla. 2d DCA 1995).

Questions of fact that are determinable by ordinary methods of proof through the weighing of evidence and the judging of the credibility of witnesses are both solely the prerogative of the administrative law judge. Goss, supra; Dunham, supra. Even if the evidence in a case is inconsistent, THE SCHOOL BOARD cannot reject the findings of fact issued by an administrative law judge. THE SCHOOL BOARD cannot and is not authorized to reweigh the evidence in the record, judge the credibility of witnesses, or otherwise interpret evidence to fit the agency's desired conclusion. Dunham, supra. Findings of fact made by an administrative law judge as a result of a

formal hearing cannot be rejected without valid reason. Reese v. Department of Banking and Finance, 471 So.2d 601 (Fla. 1st DCA 1985). Similarly, if the administrative law judge's findings are supported by competent substantial evidence, an agency cannot reject them even to make alternate findings that are also supported by competent substantial evidence. See: Resnick v. Flagler County School Board, 46 So.3d 1110, 1112 (Fla. 5th DCA 2010).

In Heifetz v. Department of Business Regulation, 475 So.2d 1277 (Fla. 1st DCA 1985), the First District Court of Appeals considered action taken by an agency to reject or modify a DOAH hearing officer's recommended order. Such hearing officers are now called administrative law judges and the following holding in Heifetz serves as a guide for THE SCHOOL BOARD's deliberations in these bid protest proceedings:

> Despite a multitude of cases repeatedly delineating the different responsibilities of hearing officers and agencies in deciding factual issues, we too often find ourselves reviewing final agency orders in which findings of fact made by a hearing officer are rejected because the agency's view of the evidence differs from the hearing officer's view, even though the record contains competent, substantial evidence to support the hearing officer's findings. So once again we find it necessary to explain the respective roles of hearing officers and agencies in Section 120.57 proceedings.
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> Factual issues susceptible of ordinary methods of proof that are not infused with policy considerations are the prerogative of the hearing officer as the finder of fact. McDonald v. Department of Banking & Finance, 346 So.2d 569 (Fla. 1st DCA 1977). It is the hearing officer's function to consider all the evidence presented, resolve conflicts, judge credibility of witnesses, draw permissible inferences from the evidence, and reach ultimate findings of fact based on competent, substantial evidence. State Beverage Department v. Ernal, Inc., 115 So.2d 566 (Fla. 3d DCA 1959). If, as is often the case, the evidence presented supports two inconsistent findings, it is the hearing officer's role to decide the issue one way or the other. The agency may not reject the hearing officer's finding unless there is no competent, substantial evidence from which the finding could reasonably be inferred. The agency is not authorized to weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion. We recognize the temptation for agencies, viewing the evidence as a whole, to change findings made by a hearing officer that the agency does not agree with. As an appellate court, we are sometimes faced with affirming lower tribunal rulings

> because they are supported by competent, substantial evidence even though, had we been the trier of fact, we might have reached an opposite conclusion. As we must, and do, resist this temptation because we are not the trier of fact, so too must an agency resist this temptation since it is not the trier of ordinary factual issues not requiring agency expertise.

Id. at 1281-1282.

B. Standard for Review of Conclusions of Law

Pursuant to Section 120.57(1)(l), Florida Statutes, THE SCHOOL BOARD "may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. [Emphasis added]" That provision states further that "[w]hen rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified."

In L.B. Bryan & Company v. The School Board of Broward County, Florida, 746 So.2d 1194 (Fla. 1DCA 1999), the First District Court of Appeal considered whether this district school board could reject an administrative law judge's conclusions of law concerning surplus insurance lines. Clearly, the surplus insurance lines laws were not within a district school board's substantive jurisdiction, however an earlier version of Section 120.57(1)(j), Florida Statutes, (1996) then in effect stated that "[t]he agency in its final order may reject or modify the conclusion of law and interpretation of administrative rules over which it has substantive jurisdiction."

At issue in L.B. Bryan was whether the phrase "over which it has substantive jurisdiction" only restricted an agency's ability to substitute its judgment upon interpretations of the administrative rules or if that phrase also limited those types of conclusion of law over which an agency was permitted to overrule an administrative law judge. The First District held that the old

law then in effect only restricted the agency's ability to reject or modify interpretations of administrative rules over which it had substantive jurisdiction. However, the First District noted that, during the course of those proceedings, the 1999 Florida Legislature revised the law to also only permit an agency to reject or modify (1) an interpretation of an administrative rule over which the agency had substantive jurisdiction or (2) a conclusion of law over which it has substantive jurisdiction. If THE SCHOOL BOARD now lacks substantive jurisdiction over the rule or law in question, it may not reject or modify the administrative law judge's conclusion on such matters.

II. Analysis of LSW's Exceptions

LSW has asserted Exceptions to the Paragraphs 146 and 147 of the Conclusions of Law within the Recommended Order. These two paragraphs come under the heading of "New Criterion Allegation" within the Recommended Order and state as follows:

> 146. Petitioner also fails to demonstrate that SBBC created a new award criterion, W-2 agent use only, for other vendors and excluded LSW from the change contrary to competition. The opposing evidence shows that the only criteria used during RFP 20's process were contained in the RFP and that no new criterion was implemented. Section 5.2 [sic] of RPF [sic] 20 allows the evaluation committee to negotiate **any** term or condition it chooses with each individual proposer to get the best product for its employees. The record is void of evidence that the evaluation committee decided to award contracts to proposers who only had W-2 agents. Even though AXA and Voya ultimately and independently negotiated to only use W-2 agents, which VALIC had already proposed, the record shows that the evaluation committee's negotiation focus with LSW was to allow LSW to use its 1099 consultants if controlled. By negotiating with LSW about the terms for 1099 consultants at length, it was established that there was neither a requirement of W-2 employees nor change in criteria. [Emphasis furnished in original].
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> 147. It is also important to note that the evidence does not support Petitioner's assertion that Gallagher told the Insurance Committee to adopt a preference of salary plus commission. Instead, the evidence indicates Gallagher did not initiate the discussion about the salary plus bonus structure, only responded to Osborn's specific question, and explained that it was the "optimum structure" based on "participant feedback." Therefore, Petitioner has not successfully carried its burden to demonstrate W-2 agent use only, even if in the form of salary plus bonus, was an undisclosed criterion that was either contrary to competition, arbitrary, or capricious.

Paragraphs 146 and 147 collectively reject LSW's argument that a new evaluation criterion not found within the RFP was imposed upon it by the SIWAC Committee. LSW challenges Paragraphs 146 and 147 asserting that they are either (a) findings of fact that are not supported by competent substantial evidence or (b) conclusions of law for which THE SCHOOL BOARD should substitute its judgment for that of the administrative law judge. Except for the correction of a scrivener's error within the Recommended Order, the record shows that LSW is wrong on both grounds and that THE SCHOOL BOARD must refrain from otherwise rejecting or modifying Paragraphs 146 and 147 or altering the recommended disposition of entering a Final Order dismissing LSW's formal written protest.

As discussed earlier, it is the administrative law judge's function to consider all the evidence presented, resolve conflicts, judge credibility of witnesses, draw permissible inferences from the evidence, and reach ultimate findings of fact based on competent, substantial evidence. Heifetz at 1282. If the administrative law judge's findings are supported by competent substantial evidence, an agency cannot reject them even to make alternate findings – including any findings of fact urged by LSW - that are also supported by competent substantial evidence. Resnick at 1112.

As set forth hereafter, each portion of Paragraphs 146 and 147 that might be construed as a finding of fact or makes reference to the record is supported by competent substantial evidence:

Excerpt from Paragraph 146 of the Recommended Order: **Petitioner also fails to demonstrate that SBBC created a new award criterion, W-2 agent use only, for other vendors and excluded LSW from the change contrary to competition. The opposing evidence shows that the only criteria used during RFP 20's process were contained in the RFP and that no new criterion was implemented.**

Substantial Competent Evidence within the Record to Support the Foregoing: See: Joint Exhibit JE-13 – Transcript of June 24, 2019 SIWAC Meeting. A review of the complete meeting transcript within record shows that nothing that would support a finding of fact that the SIWAC

Committee implemented any criterion other than those contained in the RFP. To the contrary, the record includes the following competent substantial evidence that supports the Findings of Fact in Paragraphs 124, 125 and 126 of the Recommended Order which conclusively refute LSW's argument regarding a purported new criterion for award:

> 124. **At hearing, negotiation committee members explained the LSW 1099 consultant control issue in detail and why it was a major concern that needed to be resolved during the negotiation meeting before LSW could obtain an award.** [Substantial Competent Evidence within the Record to Support Finding of Fact: please see citations to record below for Paragraphs 125 through 127 of the Recommended Order].
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> 125. [Joseph] **Zeppetella credibly testified he voted against making an award to LSW because "there was a lack of confidence moving forward after the negotiations based on the lack of controls of possible 1099 contractors."** [Substantial Competent Evidence within the Record to Support Finding of Fact: Formal Hearing Transcript; Volume 2, Testimony of Joseph Zeppetella at Page 298, line 22 to Page 299, Line 3: Q. What caused you to vote to not award to them after having scored them as your highest ranked and having moved, seconded to move into negotiations; what caused you to at that point vote no? A. There was a lack of confidence moving forward after the negotiations based on the lack of controls of possible 1099 contractors].
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> 126. **Carol Nicome-Brady admitted that she was against awarding LSW the contract because, among other things, LSW had received the lowest score during evaluations; she was concerned about LSW's consultants selling unauthorized products; and LSW's offer to make employees whole if they were sold unauthorized products failed to adequately address her concerns.** [Substantial Competent Evidence within the Record to Support Finding of Fact: Formal Hearing Transcript; Volume 2, Testimony of Carol Nicome-Brady at Volume 2, Page 276, Lines 17 through 20: Q. One of the reasons you voted against LSW was because they got the lowest score on the evaluation portion; correct? A. Yes. Formal Hearing Transcript; Volume 2, Testimony of Carol Nicome-Brady at Page 279, Line 25 through Page 280, Line 17: Q. (BY MR. VIGNOLA) Ms. Nicome-Brady, were you -- in considering LSW as a proposer and considering award to them did you have concern about the safety of the District's employees and their financial interests? A. Yes, I did. Q. What was that concern? A. It was a concern because our employees, like me, we didn't understand, you know, how -- you know, retirement. You could just take something that wasn't really correct for you for retirement for the 403(b)s. And that was my concern, that the safety of our employees was very much a part of my decision into their making a choice that was legitimate -- well, I don't even want to say legitimate because then they will come back with what was the reason for legitimate. I just had a concern that the safety of our employees was at risk. Formal Hearing Transcript; Volume 2, Testimony of Carol Nicome-Brady at Page 278, Line 24 through Page 280, Line 6: Q. You know that LSW offered during negotiations that if any employee purchased a product that

was unauthorized that LSW pledged to make that employee whole; correct? A. Correct. Q. That did not however address your concerns; correct? A. No].

127. [Dr.] **Collado also testified that he declined to vote to award the contract to LSW because of the company's lack of accountability for its consultants and that LSW's explanations regarding the committee's concerns during negotiations were a concern because of LSW's inability to explain things to satisfy his concerns.** Formal Hearing Transcript; Volume 2, Testimony of Washington Collado, Ph.D. at Page 267, Lines 10 through 23: Q. When it came to your vote to award a contract to LSW the issue which kept you from voting yes was how LSW had explained to you whether it could or could not be accountable for its agents; correct? A. That was part of it; yes. Q. But there was no other reason; correct? A. Associated with that my other reason was how LSW would put my members in a predicament to determine whether or not they could have gotten some benefit and the whole process of making whole was not clear to me. And I felt that it was unnecessary to put our members in that predicament of determining whether they could have gotten a better deal and to then pursue this making whole. Formal Hearing Transcript; Volume 2, Testimony of Washington Collado, Ph.D. at Page 271, Line 7 through Page 2728, Line 5: A. When LSW came back to the committee, members of the committee really delved into the what happens if one of the members has some financial detriments after they retired or what have you. And the questions kept on coming back, well, we'd make them whole and we'd go through the process. And when I heard the explanation about that process I felt, well, who is -- in terms of me being a consumer, who is sophisticated enough that in 20, 25 years to determine whether or not I could have gotten X amount as opposed to X amount and the whole process of being made whole, what does that look like? Who do I go to? And that was not explained with a clarity that satisfied me. Q. After -- during the meeting and negotiations did the responses from LSW cause you to lack confidence in having their agents interact with our employees on issues regarding our employees' financial future? A. I would say that the explanation with regards to the issues that were a concern to me and their inability, let me just say it that way, to explain it in a way that would have satisfied my concerns, it may have, in fact, lessened my ability to give an affirmative vote].

Conclusion of Law in Paragraph 146 of the Recommended Order is Not Subject to Rejection of Modification by THE SCHOOL BOARD: Paragraph 146 contains conclusions of law that LSW fails to demonstrate that SBBC created a new award criterion, W-2 agent use only, for other vendors and excluded LSW from the change contrary to competition and that the opposing evidence shows that the only criteria used during RFP 20's process were contained in the RFP and that no new criterion was implemented. Those conclusions of law are not ones over which THE SCHOOL BOARD has substantive jurisdiction nor do they interpret any administrative rules over which THE SCHOOL BOARD has substantive jurisdiction. As such, THE SCHOOL BOARD is precluded by Section 120.57(1)(l), Florida Statutes, from rejecting or modifying the conclusion of laws in Paragraph 146 without regard to whether THE SCHOOL BOARD might believe its own conclusion of laws or interpretation of administrative rules to be as or more reasonable than that of the administrative law judge.

Excerpt from Paragraph 146 of the Recommended Order: **Section 5.2 of RPF 20 allows the evaluation committee to negotiate any term or condition it chooses with each individual proposer to get the best product for its employees.** [Emphasis furnished in original].

Substantial Competent Evidence within the Record to Support the Foregoing: See: Joint Exhibit JE-1, RFP at Section 5.3 at Bates Page 000017: As accurately stated in the Recommended Order, this portion of the RFP states as follows: The Committee reserves the right to negotiate any term, condition, specification, or price (other than Section 4.2 and Section 7.1) with a selected Proposer(s). Note: This sentence of the Recommended Order contains two scrivener's errors as it referenced "Section 5.2 [sic] of RPF [sic] 20" whereas the actual provision being referenced by the Administrative Law Judge is found at Section 5.3 of the RFP. Other than correcting these two scrivener's errors, THE SCHOOL BOARD must refrain from rejecting or modifying these portions of Paragraph 146 of the Recommended Order.

Conclusion of Law in Paragraph 146 of the Recommended Order is Not Subject to Rejection of Modification by THE SCHOOL BOARD: After correction of scrivener's errors, Paragraph 146 contains a conclusion of law that Section 5.3 of RFP 20 allows the evaluation committee to negotiate any term or condition it chooses with each individual proposer to get the best product for its employees. That conclusion of law is not one over which THE SCHOOL BOARD has substantive jurisdiction nor does it interpret any administrative rules over which THE SCHOOL BOARD has substantive jurisdiction. As such, THE SCHOOL BOARD is precluded by Section 120.57(1)(l), Florida Statutes, from rejecting or modifying the conclusion of law in Paragraph 146 without regard to whether THE SCHOOL BOARD might believe its own conclusion of law or interpretation of an administrative rule to be as or more reasonable than that of the administrative law judge.

Excerpt from Paragraph 146 of the Recommended Order: **The record is void of evidence that the evaluation committee decided to award contracts to proposers who only had W-2 agents. Even though AXA and Voya ultimately and independently negotiated to only use W-2 agents, which VALIC had already proposed, the record shows that the evaluation committee's negotiation focus with LSW was to allow LSW to use its 1099 consultants if controlled. By negotiating with LSW about the terms for 1099 consultants at length, it was established that there was neither a requirement of W-2 employees nor change in criteria.**

Substantial Competent Evidence within the Record to Support the Foregoing: See: Joint Exhibit JE-13 – Transcript of June 24, 2019 SIWAC Meeting at Page 176, Line 22 through Page 231, Line 8 (Bates Nos. 004128 to 004182). LSW took issue within its exception to the Recommended Order's statement that "AXA and Voya ultimately and independently negotiated to only use W-2 agents…." The transcript clearly shows that the SIWAC Committee engaged in separate negotiations sessions with each of the four proposers and that none of the proposers were provided any details of the negotiations conducted with their competitors. These separate and independent negotiation sessions were conducted in that manner in compliance with Section 286.0113(2)(a), Florida Statutes, which exempts such negotiations from the Sunshine Law until

such time as the agency provides notice of an intended decision. The transcript of the June 24, 2019 SIWAC Committee meeting further shows the Committee engaged in 55 pages of contract negotiations with LSW regarding a possible award. At no point in the meeting transcript did the SIWAC Committee preclude LSW or any other proposer from using 1099 agents to provide services to the school district's employees. Rather, the record clearly shows that the SIWAC Committee inquired extensively about how LSW would exercise control over its 1099 agents and be responsible for their actions and that LSW was unable to satisfy the SIWAC Committee's concerns about these matters.

Conclusion of Law in Paragraph 146 of the Recommended Order is Not Subject to Rejection of Modification by THE SCHOOL BOARD: Paragraph 146 contains conclusions of law that (a) the record is void of evidence that the evaluation committee decided to award contracts to proposers who only had W-2 agents; (b) that even though AXA and Voya ultimately and independently negotiated to only use W-2 agents, which VALIC had already proposed, the record shows that the evaluation committee's negotiation focus with LSW was to allow LSW to use its 1099 consultants if controlled; and (c) that by negotiating with LSW about the terms for 1099 consultants at length, it was established that there was neither a requirement of W-2 employees nor change in criteria. Those conclusions of law are not ones over which THE SCHOOL BOARD has substantive jurisdiction nor do they interpret any administrative rules over which THE SCHOOL BOARD has substantive jurisdiction. As such, THE SCHOOL BOARD is precluded by Section 120.57(1)(l), Florida Statutes, from rejecting or modifying the conclusion of laws in Paragraph 146 without regard to whether THE SCHOOL BOARD might believe its own conclusion of laws or interpretation of administrative rules to be as or more reasonable than that of the administrative law judge.

Excerpt from Paragraph 147 of the Recommended Order: **It is also important to note that the evidence does not support Petitioner's assertion that Gallagher told the Insurance Committee to adopt a preference of salary plus commission. Instead, the evidence indicates Gallagher did not initiate the discussion about the salary plus bonus structure, only responded to Osborn's specific question, and explained that it was the "optimum structure" based on "participant feedback." Therefore, Petitioner has not successfully carried its burden to demonstrate W-2 agent use only, even if in the form of salary plus bonus, was an undisclosed criterion that was either contrary to competition, arbitrary, or capricious.**

Substantial Competent Evidence within the Record to Support the Foregoing: See: Joint Exhibit JE-10 – Transcript of May 9, 2019 SIWAC Meeting at Page 92, Line 17 through Page 93, Line (Bates Pages 003724 to 003725)], which states as follows:

> MR. OSBORN [SIWAC Committee Member]: Going back to question 53, in your opinion, is there a -- is there a positive or a negative across the companies about how they're compensated and would that -- would that motivate -- would that motivate the salesperson to do what's best for them versus what's best for our employees?

> MR. DESMOND [Gallagher Consultant]: Yeah. We firmly believe that the optimum compensation structure would be salary plus bonus based upon participant feedback so that there's really nothing to incentivize them for certain investments. In a number of their answers the vendors have, basically, said that our representatives aren't paid more if they sell one investment over another. But when you look at the answer on 53, that, basically, some of the compensation structures are not 100 percent clear that it's pure salary and bonus. Some of them are, actually -- it looks to be paid through what would be called a registered rep system, that they're paid based upon amounts directed to accounts. They may be paid the same amount, but they're still paid on that basis].

Conclusion of Law in Paragraph 147 of the Recommended Order is Not Subject to Rejection of Modification by THE SCHOOL BOARD: Paragraph 147 contains a conclusion of law that LSW has not successfully carried its burden to demonstrate W-2 agent use only, even if in the form of salary plus bonus, was an undisclosed criterion that was either contrary to competition, arbitrary, or capricious. That conclusion of law is not one over which THE SCHOOL BOARD has substantive jurisdiction nor does it interpret any administrative rules over which THE SCHOOL BOARD has substantive jurisdiction. As such, THE SCHOOL BOARD is precluded by Section 120.57(1)(l), Florida Statutes, from rejecting or modifying the conclusion of law in Paragraph 147 without regard to whether THE SCHOOL BOARD might believe its own conclusion of law or interpretation of an administrative rule to be as or more reasonable than that of the administrative law judge.

III. Conclusion

The Administrative Law Judge correctly recommended that the bid protest filed by Petitioner LSW should be dismissed. Accordingly, it is respectfully requested that THE SCHOOL BOARD consider the following recommended motions:

Suggested Motion upon Scrivener's Errors in Paragraph 146: From a review of the entire record and, in particular, a review of Sections 5.2 and 5.3 of the RFP; I move that THE SCHOOL BOARD modify Paragraph 146 of the Recommended Order to correct scrivener's errors that (1) typed "RPF 20" instead of "RFP 20"; and (2) typed "Section 5.2 of the RFP" instead of "Section 5.3 of the RFP."

Suggested Motion upon LSW's Exceptions to Paragraphs 146 and 147: I move to reject the Petitioner LSW's Exception to Paragraphs 146 and 147 of the Recommended Order as the findings of fact contained in those paragraphs are supported by competent

substantial evidence and as the Conclusions of Law contained in those paragraphs are not ones over which THE SCHOOL BOARD has substantive jurisdiction nor do they interpret any administrative rules over which THE SCHOOL BOARD has substantive jurisdiction.

Suggested Final Motion upon Recommended Order: **I move for the entry of a Final Order adopting and incorporating by reference the Recommended Order of the Administrative Law Judge as modified by THE SCHOOL BOARD to correct two (2) scrivener's errors; dismissing the Formal Written Protest filed by Petitioner LIFE INSURANCE COMPANY OF THE SOUTHWEST, d/b/a NATIONAL LIFE GROUP ("LSW"); and finding that costs incurred by THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA in the amount of $34,699.67 served a useful purpose and should assessed in the Final Order in favor of THE SCHOOL BOARD and against LSW.**

Respectfully submitted,

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DATED: April 29, 2020.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via electronic mail on this 29th day of April, 2020, to the parties listed on the below Service List.

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