Iowa Department of Inspections and Appeals

Division of Administrative Hearings
Wallace State Office Building – Third Floor
Des Moines, Iowa 50319

NCS PEARSON, INC.,	)	Docket No. 18DASV0003
	)	
Appellant,	)	
	)	
v.	)	
	)	
IOWA DEPARTMENT OF ADMINISTRATIVE SERVICES,	)	**PROPOSED DECISION**
	)	
Respondent,	)	
	)	
AMERICAN INSTITUTES FOR RESEARCH,	)	
	)	
Intervenor.	)	

A contested case hearing was held from November 27 through November 30, 2017, at the Wallace State Office Building in Des Moines, Iowa. Attorneys Mark Weinhardt and Danielle Shelton represented Appellant NCS Pearson, Inc. (Pearson). Assistant Attorneys General Jordan Esbrook, Susan Hemminger, Emily Willits, and Kathryn Krickbaum represented Respondent Department of Administrative Services (DAS). Attorneys Michael McGill, Andrew Anderson, and Chantele Kramme[1] represented Intervenor American Institutes for Research (AIR).

Witnesses who testified for DAS were Karl Wendt, Nancy Wheelock, Jay Pennington, Jennifer Reidemann, Becky Durand, Dennis Wulf, Marty Shudak, Doug Stilwell, and Mike Szymczuk. Witnesses who testified for Pearson were Lisa Lepic, Kelly Hannum, Jon Twing, and Amy Sinclair. All of the exhibits listed on the Combined Trial Exhibits list were admitted into the record. The parties also signed a Stipulated Protective Order with regard to certain evidence.

Upon request of the parties, the record was left open for post-hearing briefing, with Pearson's final reply brief due January 11, 2018. After that final brief was received, the record was closed, and the matter taken under advisement.

[1] Ms. Kramme has since withdrawn from her representation of AIR.

ISSUE

Whether DAS' decision to issue a Notice of Intent to Award to AIR for its Independent College and Career Readiness Solution pursuant to RFP 1117282197 followed correct procedures or was otherwise affected by error of law.

DECISION

DAS' action issuing the Notice of Intent to Award RFP 1117282197 is AFFIRMED.

FINDINGS OF FACT

State and Federal law, including the Every Student Succeeds Act, requires that Iowa school children be assessed for academic growth in reading/language arts, mathematics and science. Currently, the tests that are administered to assess Iowa students are known as the Iowa Assessments, which was developed by Iowa Testing. However, due to concerns that those tests are not "aligned" with the Iowa Core Standards and that consequently the State could be in jeopardy of losing eligibility for certain federal funds, in 2013 Governor Branstad appointed a task force to recommend a new assessment. A number of individuals, including Department of Education (DOE) officials and employees, were involved in that task force.

Following a lengthy process, the task force recommended that Iowa employ an assessment known as "Smarter Balanced." The Smarter Balanced assessment was developed by a consortium of states and is a test favored by many educators and administrators, but it can be a lengthy and expensive test to administer. Based on this recommendation for a Smarter Balanced assessment, DOE released a Request for Proposal (RFP) for a vendor to administer this assessment. The consortium that developed Smarter Balanced does not also offer test administration services. Several testing companies submitted bids as part of this process.

However, before those bids were considered or even opened, the Iowa Legislature stepped in to effectively put a halt to this process, apparently based on concerns regarding the amount of instructional time the assessment was going to eat up and its cost. Consequently, the legislature passed, and on May 11, 2017, Governor Branstad signed Senate File 240 (SF 240).

In pertinent part, SF 240 required that certain groups of Iowa school children be assessed in the areas of mathematics, reading, and science and that the assessment be aligned to the Iowa Core Standards. It further required that DOE issue a new RFP for a statewide assessment to be administered beginning July 1, 2018 and each succeeding school year.

The legislation provided seven specific criteria for consideration in the RFP as follows:

> In evaluating the proposals, the department shall only consider the feasibility of implementation by school districts; the costs to school districts and the state in providing and administering the statewide

> assessment and the technical support necessary to administer the statewide assessment; the costs of acquiring the infrastructure necessary for implementing technology readiness in all of Iowa's school districts, including technology required for accommodations; the degree to which the submission is aligned with the Iowa core academic standards; the ability of the assessment to measure student grown and student proficiency; the ability of the assessment to meet the requirements of the federal Every Student Succeeds Act . . .; and the instructional time required to conduct the statewide assessment.

Finally, the legislation required DOE to issue the RFP by July 1, 2017 and to select a test "that best meets the criteria established under this section" in time to be administered for the 2018-2019 school year.

It is highly unusual, indeed almost heard of according to DAS procurement experts, for the legislature to directly require an RFP and then to specifically prescribe the factors that must be considered within the process. This unique statute therefore governs this procurement.

In response to SF 240, DOE halted the RFP for the Smarter Balanced assessment and began the process of drafting and issuing an RFP that would be compliant with and issued pursuant to SF 240. Jay Pennington, a Bureau Chief for Information and Analysis Services at the Department of Education, was selected to head this process because of his expertise in the assessment area and because he was not involved in the previous Smarter Balanced efforts. Pennington thus began the process of drafting the RFP in light of the legislation. His goal with this process was to draft an RFP that was faithful to and compliant with SF 240.

Pennington and others made the decision to employ the services of the Iowa Department of Administrative Services (DAS) in this process due to DAS' expertise in and experience with procurement.[2] Nancy Wheelock, a DAS purchasing agent, was assigned the task. Wheelock, who had written the official DAS procurement manual, viewed her job as to guide the procedural aspects of the procurement. She was not an expert in and did not possess any particular knowledge of educational assessments. Her goal for the process was simple fairness to all competitors. While Pennington, with the assistance of various DOE staffers, drafted most of the technical portions of the RFP, Wheelock provided guidance and assistance in the process. She believed that Pennington honestly and faithfully attempted to heed to the guidance provided by the legislature in SF 240.

Pennington and Wheelock's first important decision was that because SF 240 listed seven criteria, the RFP's technical portion should also have seven categories that tracked and implemented the legislation. The headings for each of the RFP's technical

[2] DAS rules provide it the ability to assist individual agencies in their procurement of goods or services. 11 Iowa Administrative Code (IAC) 117.14(2).

requirements were thus taken verbatim from SF 240. Each section was then also further clarified and explained with additional language, mostly as drafted by Pennington.

Thus, in Section 4, "Scope or Work," the RFP was broken down into seven technical requirements, mirroring the seven factors listed in SF 240. Some portions of the RFP's technical requirements are of particular significance to this appeal, and need specially be mentioned here.

First, as part of Scored Technical Requirement 3 ("the costs of acquiring the infrastructure necessary for implementing technology readiness in all of Iowa's school districts, including technology required for accommodations"), the RFP asked about the bidders' ability to translate their assessment in the following manner:

> Ideally, a Contractor's system would have access to a wide variety of translation libraries which would enhance accessibility and student access to the assessment system. The Agency has committed to providing, at a minimum, a Spanish translation as part of the Every Student Succeeds Act of 2015 state plan, given the increasingly large Hispanic population in Iowa schools. Spanish needs to be available in both paper-pencil and online assessment. American Sign Language needs to be available as part of the online platform if audio is part of the assessment to ensure equitable participation of hearing impaired students which follows IDEA requirements and best practices outlined in Operational Best Practices for Statewide Large-Scale Assessment Programs (2013). In addition, below is a list of the most frequent native languages in Iowa schools representing greater than 2 percent of EL students. While there is no requirement per se that the Contractor must cover all of these languages, with the exception of Spanish and American Sign Language, the Agency is interested in learning if Contractor's system can cover a wider variety of translations.
>
> Currently, these languages are as follows:
>
> 1) Spanish (required)
> 2) American Sign Language (ASL) (required if audio is part of the assessment)
> 3) Karen language
> 4) Arabic
> 5) Bosnian
> 6) Vietnamese
> 7) Burmese
>
> If the Contractor does not have this functionality currently available, the Contractor shall provide cost breakdown for each language to be included in the cost proposal.

Thus, it was made clear that Spanish and American Sign Language translation was required, while translation into the five additional languages was not so required. But, that bidders were also required to provide information about their ability to translate into the five additional languages as an informational item.

Next, under Scored Technical Requirement 7 ("Instructional Time Required to Conduct the Statewide Assessment"), the RFP did not ask for a simple timing notation of hours and minutes. Rather, it first noted that the assessment must meet a number of requirements, such as to cover the full range of state standards, elicit complex demonstrations or applications of knowledge and skills, provide an accurate measure of student achievement, and provide a measure of student growth. In light of these requirements, the RFP further stipulated:

> A high-quality assessment must strike the balance of meeting the above requirements, while at the same time limiting the administration time required of the assessment. Contractor shall provide information regarding the average length of time to administer the assessment in each grade and content area. In addition, the Contractor shall provide a justification of the time of test administration against the above requirements.
>
> The Agency will evaluate each proposal not just based on the least amount of time required for assessment administration but rather balance between the time needed and quality of the set of items given to the student, coverage of standards, depth of knowledge, etc., which provide quality information to students, parents and educators about the skills and knowledge attained along with progress toward the Iowa Core Standards covered by the Statewide Assessment of Student Progress.

Thus, the RFP dictated consideration of more than just a simple calculation of the time it would take to administer the test.

As an accompaniment to the RFP, Pennington, with the assistance of fellow DOE employee Jennifer Riedemann, also drafted a "think about" or "rubric" document that was intended to help incorporate SF 240 and to provide further guidance and detail to the evaluation team with regard to the technical scoring requirements. The document broke down into the seven categories set forth in the RFP. Under each category, a number of bullet points were noted, with the top point being optimal, and each lower bullet point representing a less optimal response. For example, the portion of the rubric speaking to translations noted the following three response examples:

- The vendor's system is capable of providing additional translations beyond Spanish and American Sign Language for Karen, Arabic, Bosnian, Vietnamese, and/or Burmese.

- Full Spanish translation is available in both paper and on-line versions of the assessment. American Sign Language is available for the online platform for any audio portions of the assessment.
- Full Spanish translation and ASL for audio portions are not yet available, and will require significant cost to develop.

According to Pennington's explanation, a bid matching the top bullet point should receive the most points. A bid matching one of the other two bullet points should receive less points.

Furthermore, under Technical Requirement 7, "Instructional Time Required to Conduct the Statewide Assessment," the rubric document provided for consideration of the following:

- Average length of time to administer assessment and justification of time in meeting requirements for: covering full range of standards, eliciting complex demonstrations or applications, and providing accurate measure of achievement and growth.
    - Vendor provides a detailed description of the time of each assessment component in each grade and content area. Vendor includes a detailed justification which covers: the full range of standards; includes multiple items types (selected response, constructed response, technology based and performance task), covers multiple depth of knowledge levels and provide accurate measures of achievement and growth.
    - Vendor provides a high level description of the time each assessment but justification is at a surface level.
    - Reasonable period of assessment time with significant information about student's achievement covering a large portion of the standards.
    - Long assessment period without little justification or and does not include multiple assessment types and does not cover significant portion of standards.
    - Short period of assessment with little coverage. Assessment covers only a bask depth of knowledge which does not provide adequate information to determine achievement and growth.

As can be seen, while the language of SF 240 arguably required a simple assessment of "instructional time," in both the RFP and in the rubric document Pennington concluded more fleshing out of this concept was necessary. To him, a short assessment that did not provide meaningful data and was not time well spent would not be a quality assessment deserving of a good score in this category. Accordingly, he included consideration of the additional explanatory factors.

According to Wheelock, it is common DAS practice that an RFP will be scored on a 700/300 basis: 700 points for the technical components and 300 points for the cost component. She and Pennington agreed that it made sense to employ this customary

breakdown for the assessment this RFP. Wheelock, however, left it to the Department to determine how to allocate points within the 700-point technical category. In the end, because of SF 240's seven criteria and the matching requirements in the RFP, the Department decided that each of the criteria would be worth 100 points, for a total of 700. SF 240 did not mandate the relative weighting to be afforded to each of the criteria, so it made sense to equally weight them.

A cost proposal spreadsheet was also included with the RFP; in fact Wheelock considered this to be part of the RFP. Per standard DAS operating procedure, this cost proposal portion was to be scored separately and only opened after the technical requirements portions is scored.

Within this particular cost proposal spreadsheet, the lines containing all mandatory included items were colored white, while the lines with all "optional" items were colored blue. Those lines contained the cost for each of years 1 through 5 and then flowed into a "grand total" line. The intention of DAS and DOE was that optional items would not be included in the grand total. Consequently, the coding for the spreadsheet was such that if it was an optional item, the associated cost would not be added to the grand total. The spreadsheet contained a number of optional items, such as optional grade level costs and additional proposed training. Those items were specifically designated as "optional" and the spread sheet's internal coding did not add those individual costs into the grand total in the final column.

The cost proposal spreadsheet also included two entries for translations: "Translations (Required)" and "Translations (Optional)." The intent and understanding of all was that the required translations would flow into the grand total, while the optional translations would not. Unfortunately, unbeknownst to anyone, the creator of the spreadsheet mistakenly colored the "Translations (Optional)" line (line 165) white, which made it look and act like a mandatory item, although it was not. This was a clerical error. It is not in dispute that there never was an intention for the optional translation costs, like all other optional cost items, to be reflected in grand total.

DAS released RFP 1117282197 on June 20, 2017. Following the RFP release, ultimately six entities responded with eight different proposals. First, American Institutes for Research submitted three different proposals, a "Smarter Balanced Solution" (AIR 1), a "Shortened Smarter Balanced Solution" (AIR 2), and the "Independent College and Career Readiness Solution" (AIR 3). Other submissions came from Data Recognition Corporation (DRC), Kansas University[3], Questar Assessment Inc., NCS Pearson, and ACT.

After the RFP's release, certain requests for clarification were submitted to DAS. Ultimately, DAS' responses were included as an Addendum to the RFP. In response to a question about translations, DAS replied that "the Agency is interested in the cost of

[3] Ultimately, Kansas University's proposal was found insufficient as it did not meet the required minimum technical score, and its cost proposal was not even considered.

additional languages listed in the RFP but [other than Spanish and ASL] these are not required." DAS additionally clarified that "there is no requirement that the items be translated into any languages other than Spanish and ASL . . . .The Agency is interested in learning if the Contractor's system can currently, or in the future, cover a wide variety of translations."

A group within DOE, including Jay Pennington and his supervisor David Tilly, came together to select a number of persons to serve on the evaluation committee to consider and score the proposals. In selecting this group, the Department felt it important to exclude any persons who had served on the previous Smarter Balanced task force due to conflict-of-interest concerns. The Department was also interested in getting a broad base of knowledge and expertise in education and assessments. Eventually, the following evaluation team was assembled:

- Becky Durand, former Director of Instructional Services at the Bondurant-Farrar School District
- Dennis Wulf, former Norwalk Superintendent
- Marty Shudak, Director of Assessment for the Council Bluffs School District
- Doug Stilwell, former Urbandale Superintendent and current Drake education professor
- Mike Szymczuk, retired assessment consultant for the Heartland AEA
- Jennifer Riedemann, student assessment consultant for the Department of Education
- Jay Pennington, Department of Education Bureau Chief for Data, Reporting, and Accountability

On August 10, 2016, the team met for an orientation meeting that had been organized by Nancy Wheelock. At this meeting, the evaluators first signed Confidentiality and Conflict of Interest forms and then reviewed the evaluation guidelines. Wheelock described to them the "consensus scoring" method and she reviewed the scoring matrix that would be used. Wheelock explained that each evaluator should initially informally score each proposal based on the criteria in the RFP on their own and independently of the other evaluators. They were not to talk to one another during this scoring process. She described this individual scoring as basically a memory aid for them to bring into the later consensus meeting and to help assist the evaluators in progressing through and reviewing each proposal.

Wheelock further explained that once each evaluator had fully reviewed and scored all proposals, the group was going to meet in person again to arrive at a final consensus score for each proposal. At this point, the individual scores would no longer matter and would have no further relevance. The consensus scores would be final and would constitute part of the calculus leading to selection of an assessment.

Wheelock and Pennington provided the evaluators a number of documents, including the RFP, copies of all of the proposals, a scoring spreadsheet, Pennington's scoring

rubric, and a DAS document detailing the general "Steps in RFP Proposals Evaluation Process."

This DAS guidance document referenced above advised that in awarding points in each area the evaluators "may want to consider the following guide":

Guidance	Points
Couldn't imagine a better response	10
Excellent, insightful response	8-9
More than adequate response	6-7
Adequate response	4-5
Inadequate response	2-3
Totally inadequate response	1
No response given	0

In reference to their scoring, Wheelock simply urged each evaluator to be internally consistent with his or her own scoring and to not worry about what scores were assigned by other evaluators.

Wheelock asked the participants all to score the first proposal on that spreadsheet (AIR 1) and then go no further until they could reconvene via conference call on August 18, 2017 to discuss the process to that point and to answer any questions that may have arisen. All evaluators followed this guidance and scored only the first proposal, AIR1.

During the August 18 conference call, Wheelock provided further instruction for the evaluators individually to complete their scoring of the remaining evaluations. All appeared to have done so in order that the proposals were presented on the spreadsheet. Thus, they evaluated and scored them in the following order: AIR Option 1, DRC, Kansas University, AIR Option 2, Questar, Pearson, AIR Option 3, and ACT. In doing so, each evaluator spent many, many hours considering and scoring the bids.

Once the evaluators had completed their individual scoring, they all met in person on September 7 and 8 for the consensus scoring meeting. Wheelock again guided and facilitated this meeting, which involved a very rich discussion of all proposals, including some disagreement on particular topics. Wheelock also reiterated that the individual scores were just a starting point and were not binding at all. While working through each of the various categories, the group asked the high and low individual scorers to address their particular scores on each area. Through the ensuing discussion, the group assigned a consensus score for each scoring item. They never discussed the concept of averaging their individual scores.

The unanimous assessment of the evaluation team and Wheelock was that the process was fair, impartial, and resulted in the best proposal receiving the highest technical score. No particular evaluator dominated the process. None of them received any more weight than the others. They all participated and were engaged. No evaluator "pushed" any particular company or test and none of them perceived any bias from another

evaluator. The process was very thorough. When a particular evaluator had specific expertise in a given area, the others listened to them and were informed beyond their area of knowledge. Many of them were helped to understand issues they had missed or that they simply did not understand during their individual scoring portion of the process. At the end, when the consensus scores were finalized, all were in agreement and would not have gone back to change any of them.

When Wheelock totaled up all of the committee's consensus scoring of the technical components, AIR's first option (the "Smarter Balanced Solution" or AIR 1) received the highest score. The results were as follows:

Vendor	Points (out of 700)
AIR 1	555
AIR 3	531
AIR 2	530
Pearson	430
Questar	406
DRC	398
ACT	361

In her professional career, Nancy Wheelock had attended more than fifty such consensus scoring meetings. In her estimation, nothing about this particular meeting stood out as unique or different from the others. She has no reason to believe the consensus scores given here do not accurately reflect the unanimous view of the scoring group. She witnessed no intentional deviation from the guidance provided to the group and believes they acted faithfully to SF 240, the RFP, and the rubric document.

At the conclusion of the technical scoring meeting, per standard procedure, Wheelock unsealed the cost proposals for the first time while in the presence of the committee. Some members of the evaluation committee did not even realize this cost portion existed or remained to be considered and others did not pay attention to the unveiling. The "Grand Totals" for the seven proposals were revealed as follows:

- AIR 1 - $47,241,414.19
- ACT - $47,044.956.00
- Questar - $40,555,589.22
- AIR 2 - $36,287,915.01
- AIR 3 - $36,254,151.01
- DRC - $32,649,326.00
- Pearson - $21,749,839

Thus, by a significant margin, Pearson had the lowest cost proposal. Some evaluators were concerned about this unusually low bid.

Wheelock then, on a screen projected in the room, inputted the final cost figures from each of the remaining proposals directly into the spreadsheet, which automatically calculated the scores assigned to each of the proposals. This score was calculated by assigning 300 points (the most available) to the lowest bidder, Pearson, and then assigning a pro-rated amount of points to the remaining proposals. When she inputted the figures into the spreadsheet, it revealed that Pearson was the preliminary winning bidder.

Some of the evaluators also were either surprised or disappointed in this apparent result. For example, Jennifer Riedemann was troubled at Pearson's seemingly unusually low bid and she was concerned that Pearson would not be able to meet the State's science assessment needs. Pennington also was disappointed and concerned as he felt that Pearson's test was less technically adequate than some of the other proposals.

However, as Wheelock and Pennington made clear, they still had to review the cost proposals, which had just been unsealed for the first time, to ensure that all necessary items were included and/or were consistent before a final scoring total would be announced. They also needed to check the math to make sure it was accurate for each proposal. The evaluation committee then adjourned, while Pennington and Wheelock knew that after the intervening weekend they would get back to reviewing the cost proposals and combine it with the technical scoring.

During their respective reviews, both Pennington and Wheelock independently discovered certain inconsistencies or questions, in particular with regard to Pearson's proposal. They met to discuss the cost proposals on September 13, 2017. First, they noted that Pearson listed an incorrect number of students to be assessed.[4] This was concerning because it hinted to the possibility Pearson had used an incorrect assumption when calculating its cots and would perhaps explain its unusually low bid. Second, both Wheelock and Pennington noticed that Pearson's grand total did not reflect the sum of all of the particular costs.

With regard to this second issue, when both Wheelock and Pennington added all the subtotals in Pearson's cost proposal, the result was $2,076,761 beyond the grand total shown on their cost proposal sheet. It quickly became apparent to both that an amount representing the optional translation costs, or exactly $2,076,761, was not counted in Pearson's grand total. Because the cost spreadsheet that was provided to bidders contained internal formulas that automatically added all costs, including the optional translation costs, it became further apparent to Pennington and Wheelock that Pearson had intentionally changed the internal formula coded into the spreadsheet in order to delete those costs from the grand total. Pearson would later confirm, via a Request for Clarification from DAS, that the optional translation costs had been deleted.

This second issue also revealed that when the cost proposal template was created, there was an inconsistency in how bidders treated a particular cost item in Line 165 regarding

[4] Pearson would later clarify and confirm that its costs were based on the correct number of students.

the translation of the assessment into languages other than Spanish and American Sign Language (ASL). As the RFP noted, while the agency was committed to providing Spanish and ASL translations, the agency was also interested in learning if each bidder could provide translations into the five other listed languages and the cost for doing so. For example, some had not included anything about their translation costs.

Prior to his Wednesday meeting with Wheelock, Pennington had already done some preliminary calculations showing that if they were to deal with the apparent problem by simply deleting all optional translation costs from all proposals, that AIR 3 would become the winning proposal rather than Pearson. Pennington denied that this motivated in any way his decision to bring up or address the discrepancy with Line 165.

According to Wheelock, because this was a *process* issue, as opposed to a technical issue, it was DAS' sole decision on how to react. She therefore discussed this situation with her supervisor, Karl Wendt. Wendt agreed with her suggestion that they should just remove the optional translation cost item from the grand total for all bidders. First, this course of action would allow for an apples-to-apples comparison that is so important to evaluating bids. That suggestion was also consistent both with the language of the RFP itself and with DAS' standard practice to not include optional cost items in the grand total. Neither Wheelock, Wendt, nor Pennington saw any reasonable option other than to simply delete the optional costs and to continue to only include mandatory items. Simply put, optional items were never intended to be included in the grand totals and it was a simple and reasonable decision to delete it at this point. It was also not unprecedented for Wheelock specifically, or DAS in general, to remove cost items in order to arrive at the ideal apples-to-apples comparison.

Accordingly, in order to accomplish this course of action, Wheelock subtracted $58,823.53 from Questar's bid, $5,250,000 from AIR3's bid, and $215,000 from ACT's bid. Pearson's bid of course remained the same because it had already removed the optional translation costs on its own. This, consequently, had the effect of raising the cost scores or ACT, Air 3 and Questar relative to Pearson, whose bid amount remained the same (since it had already removed the amount for optional translations from the original grand total).[5] When this adjustment was complete, AIR3 became the apparent winning proposal, dropping Pearson to second place:

Vendor	Technical Score	Cost Score	Total Score
AIR 3	531	210	741
Pearson	430	300	730
AIR 2	530	180	710
AIR 1	555	138	693
DRC	398	200	598
Questar	406	161	567
ACT	360	139	499

[5] The Air 1, Air 2, and DRC bids remain unchanged because their original grand totals reflected no additional costs for the optional translations.

In a spreadsheet that Wheelock subsequently drafted reflecting this, she noted that "Pearson's original cost proposal grand total did not include the optional translations (Line 165) amount of $2,076,761.00. Therefore, the State did not need to remove it from their original grand total."

Wheelock has not otherwise documented via email or other written format her thought process for this decision, but she intends to do so as soon as the file on this RFP closes. She did not view this as a change to the RFP, but rather a simple matter of removing certain costs from a spreadsheet to be consistent with the RFP's explanation and directions, as well as with the intentions of all involved in the process.

After the determination was made that AIR 3 was the highest scoring proposal, Wheelock and others met with DOE Director Ryan Wise to present the final scores. Pursuant to policy, Director Wise had the option to either accept the high scorer and proceed with the contract or cancel the RFP in its entirety. After some deliberation, he accepted AIR 3 as the winning proposal and on September 28, 2017, DAS issued a Notice of Intent to Award to AIR for its Independent College and Career Readiness Solution (Air 3). Pearson is now challenging this Notice of Intent to Award.

At the hearing on that challenge, Lisa Lepic testified. Lepic is the Senior Vice President for Pearson's Business Development in the School Assessment Division. As part of its bidding process, Pearson held a pricing meeting to discuss the cost proposal that had been prepared by Tim Schroeder, a pricing analyst working in her division. According to Lepic, she was unaware that Schroeder had apparently manipulated the spread sheet to remove the optional translation item from the final cost. He was unauthorized to do this and he should not have been done this. Had Lepic known about it, she would not have authorized changing the spread sheet formula.

Lepic further claimed that Pearson's bid was substantially lower than every other proposal because they wanted to maintain a close relationship with and presence in Iowa by offering the test at cost. Pearson has administered assessments in Iowa for the past sixty years and wishes to continue to do so. Consequently, according to Lepic, Pearson proposed to provide many of the items for free to the State. The relationship with the State of Iowa was important to Pearson, and they desired to keep that relationship.

According to State Senator Amy Sinclair, funding is a significant concern for local school districts in Iowa. In the past, there has been no special appropriation made to the local districts to help pay for student assessments. Rather, they must pay for it as part of their general assessment. The State's fiscal outlook for the coming year is gloomy and she does not envision a special state appropriation for testing in the future. For this reason, school districts are rightly concerned with the cost of any new assessment. This had been a concern with the Smarter Balanced assessment.

Kelly Hannum, Ph.D., who holds a doctoral degree in educational research, measurement, and evaluation and who teaches in the Department of Educational Research and Methodology at the University of North Carolina at Greensboro, testified as an expert on behalf of Pearson. She has experience as a professional evaluator, and she reviewed the scoring process employed by DAS when evaluating this RFP.

Hannum had two main takeaways from this review. First, with regard to the specificity of rating categories and options, she found fault with the fact that the rating options (score from 1 to 10, as noted in the chart set forth earlier in this decision) did not include specific descriptions for each category at each level. She also opined that there should have been substantive scoring training or preliminary rater calibration on scoring areas and there should have been a review process at the end. Second, with regard to the consistency and relevance of the information considered in scoring the proposal, she expressed the following concerns: (1) the technical scoring included optional translation abilities while the cost scoring did not; (2) the technical scoring regarding instructional time included other information unrelated specifically to timing; and (3) some raters conducted "independent research" by accessing hyperlinks noted in the proposals.

Due to these "process" issues and the lack of documentation generated during the scoring meeting, she does not believe the evaluators were given the tools needed to reach reliable and valid scoring results. However, she did concede that a consensus process, in general, can help internally calibrate scoring as it moves forward and that it is generally a reasonable method. She also took no issue with the composition of the scoring committee and she made clear that "there is not a perfect process."

Dr. Jon Twing, who is a Senior Vice President of Psychometrics and Testing Services at Pearson, also testified as an expert for Pearson. He was not involved in this particular RFP process, but undertook a review of the individual scores as compared to the consensus scores. He noted that as compared to all of the scores the individual raters assigned to Pearson's bid, the consensus scores were almost all adverse to Person. To Dr. Twing, this could not have been the result of chance, and something else must have happened to the cause the change. He did not opine on what this "something else" was.

CONCLUSIONS OF LAW

The Iowa Legislature created the Department of Administrative Services (DAS) "for the purpose of managing and coordinating the major resources of state including the human, fiscal, physical, and information resources of state government."[6] This contested case proceeding concerns the procurement of services through competitive bidding. The Iowa Legislature has granted DAS express authority to "adopt rules establishing competitive bidding procedures" for the purchase of equipment, supplies and services.[7] DAS has adopted rules governing competitive bidding at 11 IAC chapters

[6] Iowa Code § 8A.103 (2017).
[7] *Id.* § 8A.311(1)*a*.

117 through 120. Competitive bidding of public contracts is purely statutory and is designed "for the protection of the public to secure by competition among bidders, the best results at the lowest price, and to forestall fraud, favoritism, and corruption in the making of contracts."[8]

DAS has adopted a policy "to obtain goods and services from the private sector to achieve value for the taxpayer through a competitive selection process that is fair, open, and objective."[9] "Formal competition" is required for the procurement of goods and services of general use costing $50,000 or more.[10] Formal competition means a competitive selection process that employs a request for proposals or other means of competitive selection authorized by applicable law and results in procurement of a good or service.[11]

When the estimated annual value of the service contract is equal to or greater than $50,000 or the estimated value of the multiyear service contract in the aggregate, including any renewals, exceeds $150,000, a state agency shall use a formal competitive selection process to procure the service.[12]

> *"Competitive selection"* means a formal or informal process engaged in by a state agency to compare provider qualifications, terms, conditions, and prices of equal or similar services in order to meet the objective of purchasing services based on quality, performance, price, or any combination thereof. During a competitive selection process, a state agency may weigh the relevant selection criteria in whatever fashion it believes will enable it to select the service provider that submits the best proposal. The lowest priced proposal is not necessarily the best proposal.[13]

DAS is the centralized procurement authority and "shall procure goods and services of general use for all state agencies . . . ."[14] DAS must issue a request for proposal "whenever a requirement exists for a procurement and cost is not the sole evaluation criterion for selection."[15] The request for proposal must provide information about the technical equipment that is sufficient for the vendor to propose a solution to the requirement.[16]

> Elements of a request for proposals shall include, but need not be limited to:
> (1) Purpose, intent and background of the requirement.

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[8] *Medco Behavioral Care Corp. v. Iowa Dep't of Human Servs.*, 553 N.W.2d 556, 563 (Iowa 1996) (quoting *Istari Constr., Inc. v. City of Muscatine*, 330 N.W.2d 798, 800 (Iowa 1981); *Elview Constr. Co., Inc. v. N. Scott Cmty. Sch. Dist.*, 373 N.W.2d 138, 141 (Iowa 1985)).
[9] 11 IAC 117.3.
[10] *Id.* 117.3(2).
[11] *Id.* 117.2.
[12] 441 IAC 118.5(1).
[13] *Id.* 118.3.
[14] 441 IAC 117.7(1).
[15] *Id.* 117.9(4).
[16] *Id.*

> (2) Key dates in the solicitation process.
> (3) Administrative requirements for submitting a proposal and format for the proposal.
> (4) Scope of work and performance requirements.
> (5) Evaluation criteria and method of proposal evaluation
> (6) Contractual terms and conditions.
> (7) Need for a vendor conference.[17]

The proposals must be sealed until the date and time for opening.[18] DAS' rules require the issuing officer to review the proposals for compliance with requirements before submitting the proposals for evaluation.[19]

> A request for proposals shall be evaluated according to criteria that are developed prior to the issuance of the request for proposal document and that consist of factors relating to technical capability and the approach for meeting performance requirements; competitiveness and reasonableness of price or cost; and managerial, financial and staffing capability.[20]

DAS will select a vendor on the basis of the criteria contained in the RFP.[21] DAS retains the right to reject any or all bids at any time for any reason.[22] The department reserves the right to waive minor deficiencies and informalities if, in the judgment of the department, the best interest of the state of Iowa will be served.[23]

Any vendor that files a timely bid or proposal and that is aggrieved by an award of the department may appeal the decision within five calendar days of the date of the award.[24] The notice of appeal shall state the grounds upon which the vendor challenges the department's award.[25]

In light of these authorities, Pearson suggests that in the review of this procurement the undersigned is simply part of the decision making process of DAS. In other words, the job of the administrative law judge is to make original fact finding, without deference to any related finding by the agencies, and to then apply the law to make a determination as to whether DAS acted in violation of the law. DAS and the intervenor propose that the role of an administrative law judge in this process is simply to review the procurement as a whole and determine whether the process was fair, open, objective and compliant with governing law. Both parties agree that the standards and analytical construct set forth in Iowa Code section 17A.19(10) (standards for judicial review of agency action) do not apply.

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[17] *Id.*
[18] *Id.* 117.9(4)(*b).*
[19] *Id.*
[20] *Id.*
[21] *Id.* 117.13(1).
[22] *Id.* 117.13(2).
[23] *Id.* 117.13(3).
[24] *Id.* 117.20(1).
[25] *Id.*

ANALYSIS

The touchstone of a valid procurement process is one that was "fair, open, . . . objective" and otherwise compliant with the governing law. It is with this baseline proposition in mind and with the authorities noted above that I review this process. Pearson advances several manners in which this procurement failed to meet this standard or was unlawful and therefore requires that it be reversed, either replacing it as the winning bidder or re-opening the process entirely. Pearson's primary and overarching argument is that the procurement failed to follow the piece of legislation, Senate File 240, that required the procurement in the first place.

COMPLIANCE WITH SF 240

In general, Pearson asserts DAS and DOE improperly exercised judgment in interpreting and applying the seven legislatively-mandated criteria set forth in SF 240. Under this legislation, according to Pearson, the agencies were required to evaluate and score the proposals consistent with the plain meaning of the seven criteria. This it allegedly did not do. Again, Pearson reiterates that this was a unique procurement in that the legislature mandated the RFP and provided the specific criteria to be considered. As set forth above, those seven criteria were

1. the feasibility of implementation by school districts;
2. the costs to school districts and the state in providing and administering the statewide assessment and the technical support necessary to administer the statewide assessment;
3. the costs of acquiring the infrastructure necessary for implementing technology readiness in all of Iowa's school districts, including technology required for accommodations;
4. the degree to which the submission is aligned with the Iowa core academic standards;
5. the ability of the assessment to measure student grown and student proficiency;
6. the ability of the assessment to meet the requirements of the federal Every Student Succeeds Act . . .; and
7. the instructional time required to conduct the statewide assessment.

Pearson characterizes criteria 4, 5, and 6 as relating to the "quality of the assessment" and criteria 2, 3, and 7 as "constraints on resources the assessment would consume." With this characterization, it points to three of the seven criteria in which DAS and DOE failed to properly implement SF 240: instructional time (item 7 of SF 24) and costs to the school districts and the state (items 2 and 3 of SF 240). Specifically, it argues that DAS mixed the cost and quality concepts, and therefore essentially treated all seven criteria as measures of quality. Pearson also generally claims that DAS, through Jay Pennington, lacked the discretion to further interpret these criteria and to construe them, through the RFP, in the manner in which he did.

Certainly, SF 240 did to some extent limit the agency's discretion by providing a field of factors that were to be considered. But, the legislature still left the process in the hands of DOE and, in turn, DAS to implement and interpret. By calling for an RFP, the legislature authorized a process that by its nature allows the procuring agency a certain amount of discretion. Importantly, DAS' use of the competitive selection process allowed it to weigh the relevant selection criteria in whatever fashion it believes will enable it to select the service provider that submits the best proposal. Likewise, in this process the lowest priced proposal is not necessarily the best proposal and the legislation did not call for a cost-only bid. The RFP itself reiterated this consideration when it stated that "the Agency will award the Contract(s) to the Responsible Contractor(s) whose Responsive Proposal the agency believes will provide the best value to the Agency and the State."

Treatment of Cost Criteria

Pearson maintains criteria 2 and 3 focused entirely on cost and that the agencies improperly inserted other unrelated considerations. Undoubtedly, criteria 2 and 3 are framed in terms of "costs." However, within SF 240 that concept of cost is further clarified and given shape by the remainder of both of those sentences. Criterion 2 references the idea of costs in the context of "providing and administering the statewide assessment and the technical support necessary to administer the statewide assessment." Similarly, criterion 3 references costs in the context "acquiring the infrastructure necessary for implementing technology readiness in all of Iowa's school districts, including technology required for accommodations."

I reject the contention that DAS improperly blurred costs and quality concepts with regard to these two criteria, or that it asked for and considered concepts it was not entitled to under these criteria. First, it would be meaningless to simply accept a cost figure without also asking for information about and considering whether those costs would cover all of the items necessary to administer the test, provide for technical support, acquire necessary infrastructure, implement technology, or provide accommodations. These concepts are necessary considerations in order to fully explain and put meat on the cost components.

Moreover, if the agency was truly limited by SF 240 to only asking for a flat dollar figure, there simply would be no way for the agencies to assess whether those costs that each bidder provided were a reliable indication of true costs if items that bidder is supposed to provide. Information as to those particular items are a critical inquiry and are allowable considerations under the legislation. DAS appropriately asked for information, and scored the bidders on, these concepts.

Finally, taken to its extreme, it appears that Pearson would have had DAS simply list the seven criteria from SF 240 and release it as the RFP. This cannot have been the intent of the legislature when it enacted SF 240. Certainly, as mentioned above, DAS and DOE were provided a certain degree of discretion in how to apply and implement these factors through the RFP process.

Instructional Time Item

SF 240 required consideration of "the instructional time required to conduct the statewide assessment." In putting this requirement into effect, the RFP first asked each bidder to provide information regarding the average length of time to administer the assessment, but it also required bidders to provide a *justification* of the time of test administration against the above requirements. With regard to the justification element, the RFP noted that each proposal would be evaluated *not just based on the least amount of time required for assessment administration* but also such things as the balance between the time needed and quality of the set of items given to the student, coverage of standards, depth of knowledge, etc., which provide quality information to students, parents and educators about the skills and knowledge attained along with progress toward the Iowa Core Standards covered by the Statewide Assessment of Student Progress.

Pearson asserts there simply was no consideration of the discrete concept of instructional time, and that Pennington improperly inserted a consideration of certain "quality" measures into this criterion. Instead, according to Pearson, the legislative intent was clear: less time is preferable to more instructional time. With this in mind, Pearson asserts that the agency substituted its own judgment about whether the length of assessment criterion was itself a good criterion.

First, there can be no dispute but that the agency and the scoring team did in fact consider the amount of instructional time each proposal was estimated to take. The RFP itself required that each "[c]ontractor . . . provide information regarding the average length of time to administer the assessment in each grade and content area." Each proposal provided such estimate, the scoring team considered it, and the proposals were scored on this criteria. The score assigned to this portion of the technical scoring was added to other scoring areas to arrive at the final score. With this in mind, of course instructional time was scored and thus to a degree considered.

Pearson, though, relatedly asserts that the RFP's treatment of instructional time devalued it as a concept. What this fails to recognize, however, is the fact that SF 240 did not require a particular valuation of any of the seven criteria. It just required that they be considered. The weight to be accorded to each criterion was therefore left to the discretion of DAS. If the practice of considering instructional time in combination with other qualitative or justification concepts served to "dilute" the value of the instructional time criterion, this was not precluded by the legislation.

Regardless, as Pennington reasonably explained, the simple consideration of hours and minutes would be meaningless when taken out of the context of the adequacy of the test itself. A very short test that measures nothing and is of no assistance to Iowa educators and students is worthless. The justification for the required instructional time is a necessary and reasonable component of this consideration. This is why the RFP called for the justification response. Again, SF 240 did not prohibit this and the agency was acting within its discretion to ask for it.

Furthermore, SF 240 only listed seven criteria for consideration. It did not mandate how each of those criteria should be weighted. It certainly did not mandate an equal consideration of each. It did not prohibit certain of these factors from being considered jointly or as part of the consideration of any other factor. SF 240 did not prohibit any "redundancy" in evaluating certain concepts in different scored areas. Finally, it did not mandate that in the RFP scoring process only cost items be considered on the "cost" side rather than as part of the "technical" scoring. Simply because some of the cost factors seemed to combine quality elements with other resource constraint notions does not invalidate this process, or make it lacking in fairness, openness or objectivity.

Failure to Consider Optional Translations

SF 240 required the agency to consider "costs to school district and the state in providing and administering the statewide assessment" and "costs of acquiring the infrastructure necessary for implementing technology readinesss . . . , including technology required for accommodations." In light of these requirements, Pearson asserts that the legislation required consideration of the costs of translations into languages other than Spanish and ASL, and that the failure to do so violates SF 240.

Neither State nor Federal law appears to require translation of assessments into any of the optional languages It therefore seems a reasonable policy choice by DOE to not require such of its assessment contractor. It was made clear throughout this process that the State and/or districts may at some time in the future purchase such translations, but as of the time of the RFP release, that decision had not been made. The fact that the RFP did not require consideration of the costs of this hypothetical cost does not render it violative of SF 240.

FAILURE TO FOLLOW RFP

Pearson next maintains the agency exceeded its legal authority in failing to follow the RFP that it issued. Indeed, an agency is bound to and must enforce compliance with the RFP[26] and an agency cannot establish procedures but then refuse to follow them when inconvenient or inconsistent with a certain result it desires. Pearson believes the agencies here violated these rules.

Treatment of Line 165

As noted above in the Findings of Fact, after Wheelock and Pennington discovered the obvious mistake in coding that allowed for consideration of the costs of optional translations, it was decided to simply delete the costs set forth Line 165 before the scoring was completed. Pearson alleges that by excluding the potential costs associated with purchasing the optional translation services, the agencies improperly deviated from

[26] *See* Ashbritt, Inc. v. United States, 87 Fed. Cl. 344, 374 (2009).

the RFP. Because it failed to follow the RFP, according to Pearson, the whole process was invalidated and must be set aside.

As an initial matter and as noted above, SF 240 contained no requirement that these optional translations be purchased. Nor had DOE made the decision that it or any district would actually purchase them. DOE simply desired information about these translation costs should it decide to purchase them at some time in the future. It was thus within the discretion of DOE to choose to not require such a feature. This is a reasonable policy choice and is not indicative of a deficient RFP.

Pearson characterizes the choice to delete the Line 165 costs as having "changed" the winner. However, this seems to misstate and over dramatize what actually happened here. First, until the cost component was analyzed for completeness and checked for math errors, and until those cost points were finally added to the technical component, there was no "winner." The standard process required the DAS agent and the DOE contact to review the cost sheets because they had just been opened for the first time at the completion of the technical scoring meeting. There was no way, at that time, of knowing whether all required components were included and whether it was otherwise compliant.

This was not a material change to the RFP. It truly was a simple correction made to ensure consistency between proposals and to match with the original intent of all who drafted the document. The original cost sheet formatting error was clerical in that whoever coded the cost sheet colored this row incorrectly, which affected the cost totals. To change the sheet in a manner that returned it to its original intentions did not affect the fairness of the process.

There is no dispute that the agency ever intended to include optional translation costs in the total. It did not. The agency expressly told bidders that such translations were not required. These costs therefore should not have been considered in the first place. Even Pearson recognized the inclusion of optional translation costs was a mistake, as its own employee edited the sheet itself to take out the costs. This change was also entirely consistent with other portions of the RFP that spoke to optional costs and that were not included in the grand total. No addendum to the RFP was required this was not a substantial change.

Finally, there is no evidence that the choice to exclude the costs in Line 165 was underhanded or a subterfuge to elevate a lower-scoring but more desirable bidder to the top. To the contrary, Wheelock, Pennington and Wendt all believed this was the only reasonable choice and they would have done it regardless of its effect, if any, on the eventual outcome.

OPENNESS AND FAIRNESS ISSUES

Pearson also makes a number of arguments that implicate the fairness and openness of this process. They will be discussed in his division of the decision.

Violation of Iowa "Sunshine Laws"

Iowa's Open Meetings law, Iowa Code section 21.1, seeks to assure, through a requirement of open meetings of governmental bodies, that the basis and rationale of governmental decisions, as well as those decisions themselves, are easily accessible to the people. It also sets forth the policy that ambiguity in the construction or application of this chapter should be resolved in favor of openness. Pearson maintains that as a "governmental body,"[27] the evaluation committee was required to have kept detailed minutes of its two-day meeting, recorded it, affirmatively documented the basis and rationale of its decision, produced key documents, produced a meeting agenda, and taken other steps pursuant to its openness obligation. This, according to Pearson, made it impossible for it, as a bid challenger, to learn what happened and meaningfully challenge it.

Simply put, Chapter 21 does not apply to the evaluation committee and its two-day consensus scoring meeting. First, the evaluation committee is not a "governmental body" as defined in the statute. It is not a board or other body expressly created by statute or executive order, it is not a formally created multi-membered body, and it is not an advisory board created to make recommendations on policy issues.

The Iowa Supreme has held likewise in at least two reported cases. In Donahue v. State, 474 N.W.2d 537 (Iowa 1991), the Court held that an administrative panel organized among university faculty members to review promotion decisions was not "governmental body" because the panel existed essentially as an advisory board, it exercised no policy-making power, and its findings were not binding on the Board of Regents. Similarly, in Mason v. Iowa Vision Board, 700 N.W.2d 349 (Iowa 2005), the court held that a committee created to negotiate a grant under the Vision Iowa Program did not have any policy making duties and therefore it was not subject to the open meetings law.

Nor was their two-day consensus scoring meeting a "meeting" as envisioned by Iowa's Open Meetings Law.[28] The statute only covers "a gathering in person or by electronic means, formal or informal, of a majority of the members of a governmental body where there is deliberation or action upon any matter within the scope of the governmental body's policy-making duties." As noted, this evaluation team certainly possessed no policy-making authority or duties. Its sole purpose was to review and offer scoring conclusions on the submitted bids as part of DAS' and DOE's task to select a new Iowa assessment.

Lack of Documentation

Pearson believes DAS has hid its decision making process "behind a veil of secrecy" by failing to take notes or document its processes. This lack of documentation should result in its decision being provided no deference, according to Pearson. In particular, it

[27] Iowa Code §21.2(1).
[28] Iowa Code § 21.1(2).

points out that the evaluation committee took no notes during its two-day meeting, and that no DAS or DOE representative ever contemporaneously documented the rationale behind the decision to remove Line 165 from the cost scoring proposal.

There is no evidence in this record that would lend an inference that Pennington, Wheelock or any other DAS or DOE employee intentionally avoided documentation in order to conceal impropriety or shield its decision from review. To the contrary, the evidence shows that this was an open, fair, and objective process.

Nor is there any regulation, law, or even DAS policy that would require any more documentation than was made here. With regard to the consensus scoring meeting, nothing requires that minutes be taken or that reasons for departing from the individual scoring be explained in writing. Rather, pursuant to established DAS practices, the consensus scores were in fact the documentation of the consensus scoring meeting. The prior individual scores were of no relevance or significance to the final scoring.

Deprivation of Right to Challenge Bid

DAS rules requires that the "presiding officer shall hold a hearing on the vendor appeal within 60 days of the date the notice of appeal was received by the department."[29] In a ruling dated October 31, 2017, the undersigned denied Pearson's request to continue the hearing in this matter be beyond that 60-day window. Pearson now continues to maintain that this "time frame as applied in this case has deprived it of its rights under Chapter 17A and/or violated its due process rights under the Iowa and federal constitutions." In particular, Pearson argues that this compressed timeframe made it impossible for it and its lawyers to meaningfully and fairly challenge the bid.

To the extent Pearson re-asserts the arguments made in its earlier Motion to Continue, the "Discussion" section of the October 31, 2017 Order shall remain the basis for the denial. Moreover, with regard to the constitutional basis for this argument, administrative proceedings such as this can only preserve and not decide such claims.[30] Accordingly, the claim is noted and preserved, but not ruled upon.

Representation of AIR by Hogan Lovells

On November 19, 2017, NCS Pearson filed a Motion to Disqualify Hogan Lovells, asserting that because Pearson is currently a client of Hogan Lovells, that firm ethically may not represent an adverse party (AIR) in this matter. The undersigned denied that motion by order of November 21, 2017.

Pearson now re-asserts the arguments made in that motion and asks the that a specific finding be made regarding whether Pearson provided informed consent for Hogan

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[29] 11 IAC 117.20(2)(a).

[30] See, e.g., McCracken v. Iowa Dept. of Human Services, 595 N.W.2d 779, 785 (Iowa 1999) ("To preserve constitutional issues for . . . review, a party must raise such issues at the agency level. The party must raise such issues, even though the agency lacks authority to decide constitutional issues.").

Lovells' representation of AIR. The invitation to expand on the November 19 ruling is declined, and that ruling shall remain as the basis for the denial of Pearson's motion.

ORDER

To the extent that Pearson made additional arguments that have not been explicitly addressed in this decision, they are found to be without merit. The record in this case establishes that this process was sufficiently fair, open and objective. This procurement was also faithful to and compliant with SF 240 and other governing regulations. The Notice of Intent to Award RFP 1117282197 to American Institutes for Research is AFFIRMED. DAS shall take any steps necessary to implement this decision.

Dated this 14th day of February, 2018.

David Lindgren
Administrative Law Judge
515-281-7148

cc: (all via electronic mail)

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NOTICE

This decision shall become a final decision unless there is an appeal to the Director of the Department of Administrative Services within 15 days after the mailing of the proposed decision.[31] Any appeal must be filed in writing with the Director of the Department of Administrative Services, Hoover State Office Building, Third Floor, Des Moines, Iowa 50319.[32] A party appealing the proposed decision shall mail a copy of the notice of appeal to all other parties.[33]

[31] 11 IAC 117.20*a*.
[32] *Id.* 117.20*b*.
[33] *Id.* 117.20*c*.