STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

D. J. LEGGATE APPRAISAL SERVICE, INC.,	)	
Petitioner,	)	
vs.	)	CASE NOS. 90-8118BID 90-8119BID
DEPARTMENT OF TRANSPORTATION,	)	
Respondent.	)	

RECOMMENDED ORDER

On January 15, 1991, a formal administrative hearing was held in these cases in Tallahassee, Florida, before J. Lawrence Johnston, Hearing Officer, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Charles E. Vanture, Esquire
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For Respondent: Susan P. Stephens, Esquire
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STATEMENT OF THE ISSUES

The issues in these consolidated cases are: (1) whether the Respondent should award Project/Job No. 15030-2531, RFP No. DOT-90/917002-RA to the Petitioner or to John C. Putnam; (2) whether the Respondent should award Project/Job No. 15010-2540, RFP No. DOT-90/91-7003-RA to the Petitioner or to George A. Cuddeback; and (3) whether the Respondent should award Project/Job No. 26090-2522, RFP No. RFP-DOT-2-90-003, to the Petitioner or to Richard S. Hale.

PRELIMINARY STATEMENT

On December 31, 1990, the Respondent, the Department of Transportation, referred two separate bid protests--one involving Project/Job Nos. 15030-2531 and 15010-2540, RFP Nos. DOT-90/917002-RA and DOT-90/91-7003-RA, and the other involving Project/Job No. 26090-2522, RFP No. RFP-DOT-2-90-003--to the Division of Administrative Hearings. The bid protests were assigned two different case numbers--Case No. 90-8118BID and Case No. 90-8119BID, respectively--and were assigned to two different hearing officers. The hearing officers scheduled final hearing in these cases on January 15 and 14, respectively, 1991. Before the hearings, it became apparent to the hearing officers that the cases involved the same or similar issues of law and fact and that the same parties and some of the same witnesses were involved in both cases, making consolidation of the cases for further proceedings appropriate under F.A.C. Rule 22I-6.011.

The cases were consolidated for final hearing before the undersigned Hearing Officer on January 15, 1991. At the hearing, evidence first was presented on Case No. 90-8118BID. The Petitioner presented the testimony of Donald J. Leggate, its principal, and the Department presented the testimony of Kennard P. Howell, the Senior Review Appraiser in its Bureau of Right of Way in Tallahassee, and Broderick Baker McLaughlin, the District Appraisal Contracts Administrator in its District VII. Joint Exhibits 1 through 6 and Petitioner's Exhibits 1 through 5 were admitted in evidence. Then evidence was presented on Case No. 90-8119BID to the extent that it did not duplicate evidence already presented. Leggate testified again for the Petitioner, and William Rusnak, the District Appraisal Contracts Administrator in District II, testified for the Department. Joint Exhibits 7 through 9 also were admitted in evidence. It was agreed that a common evidentiary record would be used for both cases. Although it initially was anticipated that a separate Recommended Order would be entered for each case, it now is concluded that a single Recommended Order is appropriate under the circumstances.

Explicit rulings on the proposed findings of fact contained in the parties' proposed recommended orders may be found in the attached Appendix to Recommended Order, Case Nos. 90-8118BID and 90-8119BID.

FINDINGS OF FACT

1. On or about October 19, 1990, the Respondent, the Department of Transportation (DOT or Department), requested proposals for appraisal services in connection with the condemnation of road right of way. Three of the requests for proposals are identified as follows: (1) in District VII, Project/Job No. 15030-2531 (State Road 686, East Bay Drive, Missouri Avenue to East of Highlands, Pinellas County), RFP No. DOT-90/917002-RA, hereafter referred to as RFP 7002 ; (2) also in District VII, Project/Job No. 15010-2540 (State Road 686, West Bay Drive, Missouri to Second Avenue, Pinellas County), RFP No. DOT-90/91-7003-RA, hereafter referred to as RFP 7003; and (3), in District II, Project/Job No. 26090-2522 (State Road 24, Archer Road, Alachua County), RFP No. RFP-DOT-2-90-003.

2. The DOT has been decentralized to the extent that each district handles requests for proposals for work within its geographical boundaries. The central office in Tallahassee, establishes general procedures for the districts to follow, provides support services and makes suggestions but does not always require that its suggestions be followed, leaving that for the districts to decide, along with the description of the scope of the work and other aspects of the process.

3. In the requests for proposals (RFPs) in issue in this case, both District VII and District II followed the general procedures of selecting an appraisal service from among the respondents to the RFPs by scoring the respondents on price and other criteria designed to rank the quality of the appraisal service offered. With one exception, the point system and criteria are the same for all three RFPs in issue in this case. In all three cases, evaluation of the responses to the RFPs was done by a three-member committee that included the district appraisal contracts administrator.

4. District VII provided that proposals had to be submitted by November 16, 1990, for evaluation and posting of evaluation results on November 26, 1990. District II provided that proposals had to be submitted by November 19, 1990, for opening on November 20, 1990.

5. The Petitioner, D. J. Leggate Appraisal Service, Inc. (Leggate), submitted responses to all three of the RFPs. All of the contracts were awarded to an RFP respondent other than Leggate. On RFP 7002, Leggate received a score of 37.44 out of a possible maximum score of 60, the third highest score; the successful bidder, John C. Putnam, received a score of 45.33. On RFP 7003, Leggate's score was 39.52 out of 60, again the third highest score; George Cuddeback was awarded this contract with a score of 47.14. On the Alachua County RFP, Leggate's score was 33.01 out of a possible maximum score of 55, only the sixth highest scorer out of eight respondents; Richard S. Hale was the successful bidder with a score of 42.66.

6. The Petitioner made some general claims, and presented some evidence in an attempt to prove, that the criteria and scoring system were too subjective. But the evidence did not prove that the criteria and scoring system were so subjective as to be facially arbitrary. The DOT witnesses adequately explained the criteria and scoring system. Although some of the criteria were not susceptible to completely objective evaluation, even those criteria established specific enough standards to ascertain that the evaluations were not done in a generally arbitrary fashion.

7. Except as referenced in Finding 6, the Petitioner did not attack the scores given to Putnam, Cuddeback or Hale. Instead, the Petitioner attempted to prove that the Petitioner should have received higher scores.

8. One ground argued in support of the Petitioner's case that it should have received higher scores was that higher scores should have been given under some of the criteria pursuant to F.A.C. Rule 14-95.003. But F.A.C. Chapter 14-95 sets out criteria for the evaluation of appraisers to determine whether they are minimally qualified to do work for the DOT. Appraisers not qualified under Chapter 14-95 to do work for the DOT would be precluded from responding to the RFP. But Chapter 14-95 does not to purport to undertake to rank the relative qualifications of appraisers to determine which appraiser's RFP response should be selected. None of the RFPs state that Chapter 14-95 applies to the evaluation under the RFP criteria. The RFP criteria stand alone and apart from Chapter 14-95.

9. Under the heading "Selection Process," each RFP contains a criterion entitled "Education." The criterion states in part that respondents would be given three points for having a college or university degree with a major related to real estate appraisal and one point for having a degree with any

other major. Putnam got one point under this criterion for a B.A. degree in science and engineering; Cuddeback got one point for a B.A. degree in arts; Hale got two points. 1/

Leggate, in the person of its principal, Donald J. Leggate, does not have a college degree. But, in part, unjustifiably relying on Chapter 14-95, Leggate contends that his years of experience in the field should be considered to be the equivalent of a college degree. But Leggate is not entitled to points under this part of the criterion. He clearly does not have a college or university degree. The RFP does not provide for the substitution of work experience for a college or university degree; to the contrary, the RFPs contain a separate criterion under which scores are given for work experience.

Whether or not any particular appraiser with a degree is better than any particular appraiser without one, awarding points separately for a college or university degree is legitimate as part of a rational attempt to differentiate the qualifications of the respondents.

10. Under the heading "Education," respondents also were given points for hours of appraisal training in the past three years--three points for 45 or more hours, two points for 30-44 hours, and one point for 10 to 29 hours. Putnam, Cuddeback and Hale got three points each. Leggate had 35 hours and received two points. He did not and could not prove that he was entitled to more.

Whether or not any particular appraiser with 45 or more hours of recent appraisal training is better than any particular appraiser with less recent training, awarding points for recent training is legitimate as part of a rational attempt to differentiate the qualifications of the respondents.

Although it would seem to make sense for teachers of appraisal training courses to be able to claim or be awarded "bonus" hours for teaching courses, as the Petitioner seems to argue, the Petitioner's evidence that he has taught appraisal training courses at some unspecified point in the past does not entitle him to more points. It was not clear how much of his teaching, if any, was within three years.

11. Under the criterion entitled "Appraisal Experience (maximum points possible, 15)," RFP respondents were given between 10 and 15 points if they had more than five years experience in either eminent domain or single-family experience. The evaluators in District VII gave Leggate a maximum score of ten, while Cuddeback got only eight, and Putnam got only six; in District II, Leggate got 9.67 (the average of the two tens and one nine given by the three evaluators), and Hale got a ten. The Petitioner did not prove why a score of 9.67 was an inaccurate assessment of his appraisal experience in comparison with Hale and the other respondents to the Alachua County RFP. (Their responses to the RFP are not in evidence.) The Petitioner's argument that its score of ten in the District VII evaluations demanded the same score in the District II evaluation does account for possible differences among the competing respondents and is rejected.

12. Under the "Appraisal Experience" criterion, up to five points also were available for "demonstrated expertise in complex/unusual appraisal problems." Putnam, Cuddeback and Leggate all got three as their score in District VII; in District II, Leggate got 3.67, and Hale got 3.33. Again, Leggate contended that it should have been given the highest possible score based on its principal's experience, but the responses to the RFPs were not in

evidence, and the Petitioner did not prove why the scores it got were inaccurate assessments of its appraisal experience in comparison with the other respondents.

13. The next criterion to which the Petitioner objects is entitled "Performance (maximum points possible, 9) . . . Past performance for DOT as indicated by Appraiser Performance Evaluations . . . (An appraiser with no prior DOT evaluation shall be rated 'Acceptable.')" Following the suggestion of a memorandum from DOT's central office in Tallahassee, both District VII and District II scored this criterion on the following scale: Outstanding, 9; Good, 5; Acceptable, 0; Poor, but correctable, -5; and Unacceptable, -9. But then the two districts' methodologies diverged.

14. District VII also followed the central office's suggestion that this criterion be based upon the new statewide performance ratings. Before, districts gave RFP respondents a score based either on the district's own rating system or on the old statewide system. As late as May, 1990, District VII gave Leggate a score of 9 based on its own rating system that only took District VII work into account. 2/ The new statewide rating system was based on work done for the DOT, in any district, but only since October 1, 1989, with a score of zero ("acceptable") given to any respondent with no DOT work since October 1, 1989, unless submission of a demonstration appraisal report warranted a higher (or, presumably, a lower) score.

15. The DOT central office memorandum also suggested that, if the new rating system is used, the RFPs should notify respondents of the change. District VII did not follow that suggestion. Instead, it relied on a mass mailout to appraisers on its mailing list, as well as verbal advice imparted at various conferences, to advise prospective bidders of the new rating system and the demonstration appraisal report option. The evidence was that, at some point in time, probably in the spring of 1990, the Petitioner received notice of the new statewide rating system and the demonstration appraisal report option.

16. Leggate did not have DOT work after October 1, 1989, and did not submit a demonstration appraisal report with his response. Using the new statewide rating system, District VII gave Leggate a zero. Putnam and Cuddeback each got a five. Putnam got his five points by submitting a demonstration appraisal report.

17. Leggate claims that it should have gotten a nine, the same score it got on this criterion in May, 1990. If it had, it would have been the highest scoring respondent on both of the District VII RFPs.

18. On the other hand, District II chose not to follow the DOT central office memorandum's suggestion, believing it not to be fair or accurate to give appraisers who had high ratings in prior years a zero score, for merely "acceptable," just because they did not have DOT work after October 1, 1989. District II felt this was especially unfair because not much DOT appraisal work had been available after October 1, 1989, and many good appraisers who submitted responses to the Alachua County RFP would lose a high rating through nothing reflecting adversely on them or their ability. (District II apparently did not feel the "demonstration appraisal report" option adequately addressed the perceived unfairness.) District II decided to score the respondents to its RFP based on their rating in the out-of-date statewide rating system. Using this system, both Leggate and Hale got a five. 3/

19. On September 26, 1990, Leggate inquired of DOT's District I office in Bartow as to his performance rating and was told by letter dated September 29 that Leggate had no rating in District I but that his statewide rating was 15. The evidence was that this rating of 15 was on a different scale than the -9 to +9 scale used in the RFPs and would equate to a five on the RFP scale. One can surmise that this rating may have been based on the same out-of-date statewide rating that District II used, but the source and meaning of the rating is not clear from the evidence.

20. It is not inherently illogical or arbitrary for District VII to score respondents differently than District II did on this criterion of the RFPs. Since the work is being procured and contracted by and for the districts, it is "appropriate" for the DOT to allow the districts the discretion to choose whether to use their own rating system or to use the statewide rating system.

21. At the same time, the Petitioner did not prove facts on which the DOT would be compelled to require the districts to follow their own rating systems, rather than the new statewide system. The evidence adequately explicated a rational basis for DOT's suggestion that the districts use the new statewide rating system--the new statewide system is based on recent experience and addresses all of the appraisers' recent experience. To address the possibility that formerly rated appraisers, like Leggate, might not have recent enough experience, the DOT provided for the demonstration appraisal option. While perhaps not the best method for rating performance, the new statewide system has a rational basis and is not arbitrary.

22. The next criterion of which the Petitioner complains is entitled "Understanding of the project (maximum points possible, 10). Under this criterion, the contracting agency is to rate the completeness of the RFP respondent's work plan, together with the respondent's demonstrated understanding of the project complexities and particular appraisal skills, knowledge and ability possessed by the respondent, as described in a maximum of three pages of narrative. District VII gave Leggate a six on RFP 7002 and a seven on RFP 7003; it gave Putnam an eight on RFP 7002, and it gave Cuddeback a nine on RFP 7003. District II gave Leggate a 7.67 to Hale's 6.33. In all cases, the scores were based entirely on the written submission of each RFP respondent describing the respondent's understanding of the project. The evaluators scored the submission based on the perceived relative merits of the appraisal issues raised and possible solutions offered by the RFP respondents.

The Petitioner did not place the other responses in evidence, and its response could not be compared with the others. Apparently accepting that his submission was not as complete as it could have been (or as others were), Leggate implied that it relies in part on his credentials and experience to demonstrate his understanding of the project. But the RFPs clearly were designed to score credentials and experience separately, and the Petitioner should have recognized that this criterion was limited to an evaluation of the three-page written submission.

Awarding points separately for an RFP respondent's ability to communicate in writing his understanding of the project at hand is legitimate as part of a rational attempt to differentiate the qualifications of the RFP respondents.

23. District VII used one criterion omitted by District II, giving five points for office location 50 miles or less from the Hillsborough County courthouse. Assuming that this criterion was intended to rate the RFP respondents' access to the court records they would have to use during the

appraisal work, Leggate pointed out that the appraiser awarded the contracts would have to use the Pinellas County courthouse to access the pertinent court records and that, although the Petitioner got five points for office location, its office actually is more than 50 miles from the Pinellas County courthouse. The Petitioner argued that the criterion is arbitrary. The Department's evidence, however, was that the criterion was added to give an advantage to local appraisers with working knowledge of local conditions and that the 50 mile limitation was used specifically to include Leggate and other appraisers from Lakeland, known to District VII to be good appraisers with local knowledge. The Petitioner did not prove either that the criterion should be invalidated or that five points should be subtracted from its score.

24. As can be seen by the foregoing Findings of Fact, the Petitioner has not proven its entitlement to any additional points on any of the RFP response evaluations in issue in this case. (Besides, as to the Alachua County RFP, even if the Petitioner were given all of the additional points claimed, it still would not be the highest scoring respondent.

CONCLUSIONS OF LAW

A. Waiver of Facial Defects in the RFP.

25. The RFPs in this case were initiated under the authority of Section 287.057, Fla. Stat. (1989). They are governed by F.A.C. Rule 13A-1.006, which is promulgated under the authority of Section 287.042 and which implements Section 120.53, Fla. Stat. (1989), the bid protest procedure statute.

26. F.A.C. Rule 13A-1.006(3), provides that:

> Any person who is affected adversely by an agency decision or intended decision concerning a procurement solicitation or award, and who wants to protest the decision or intended decision, shall file its written notice of protest with the agency's purchasing officer or designated clerk within 72 hours after receipt by mail or other delivery of the agency decision or intended decision, including but not limited to receipt of the bid solicitation . . . .

It has been held that this rule requires that challenges to bid solicitations be filed within 72 hours of receipt, or they are waived. Final Order, Answerphone of Florida, Inc., v. Dept. of Health, etc., 11 F.A.L.R. 1413 (HRS 1989). A similar provision in F.A.C. Rule 14-25.024(1) was interpreted in Capeletti Bros., Inc., v. Dept. of Transp., 499 So. 2d 855, 857 (Fla. 1st DCA 1986), as intended "to allow an agency, in order to save expense to the bidders and to assure fair competition among them, to correct or clarify plans and specifications prior to accepting bids." Capeletti Bros. also held that the provision requires a bidder to protest deficiencies in a request for proposal within the prescribed time after issuance. Dicta in the Final Order, Capital Group Health Serv. of Florida, Inc., v. Dept. of Administration, DOAH Case No. 87-5387BID, entered April 28, 1988, suggested that such a waiver should be limited to deficiencies in the technical aspects of plans and specifications in a bid solicitation but that statutory requirements are not subject to waiver.

27. In this case, the Petitioner did not protest within 72 hours of receipt of the RFPs; instead, it waited until the responses were evaluated and the results posted before protesting. As a result, the Petitioner waived its right to assert facial, technical defects in the RFPs, including the criteria awarding points for a college or university degree, for appraisal training in the past three years, and for office location. The Petitioner's complaints regarding these criteria could and should have been voiced within 72 hours after receipt of the RFPs.

28. In contrast, the Petitioner's complaints regarding the other criteria involve the manner in which the criteria were evaluated and scored. The Petitioner could not have, and should not be expected to have, voiced them earlier than it did. The Petitioner's complaints about these other criteria were not waived.

B. Decentralization of DOT Functions.

29. Section 20.23(4)(a), Fla. Stat. (1989), provides in pertinent part:

> The operations of the department shall be organized into seven districts, each headed by a district secretary. The district secretaries shall report to the Assistant Secretary for District Operations. . . . In order to provide for efficent operation and to expedite the decisionmaking process, the department shall provide for maximum decentralization to the districts, where appropriate. (Emphasis added.)

As reflected in the Findings of Fact, in accordance with Section 20.23(4)(a), the DOT's central office in Tallahassee has given the districts broad discretion in the formulation of requests for proposals and the evaluation of responses.

30. Notwithstanding Section 20.23(4)(a), it is concluded that there are limits to the exercise of discretion by the districts in the formulation of requests for proposals and the evaluation of responses. It is concluded that, in some situations, the DOT is required to establish agency policy that binds all the districts. The facts of this case include examples of permissible and impermissible exercises of discretion by the districts.

C. The Past Performance Criterion.

31. The facts of this case reflect that the different districts and the central Tallahassee office of the DOT have different ideas about how to best rate the past performance of appraisers who have worked for the agency. Before October 1, 1989, the central office had a statewide rating system that apparently averaged the ratings given by all of the districts. In ranking appraisers responding to requests for proposals, apparently some districts used their own district rating, and some used the statewide rating. As of October 1, 1989, the DOT's central office in Tallahassee recommended that the districts use a new statewide rating system that takes into account work performed in any district, but only if performed after October 1, 1989, giving a score of zero to respondents who have not worked for the DOT after October 1, 1989. 4/

32. Using one of these systems, apparently its own district system, District VII gave Leggate a score of 9 in May, 1990, in evaluating Leggate's response to an RFP that was initiated before October 1, 1989. Using the new system, District VII gave Leggate a zero for past performance on its responses to the RFPs in this case because Leggate had no DOT work after October 1, 1989. District II, on the other hand, rejected the new rating system as being unfair and not the most accurate rating system available and used the old statewide system, giving Leggate a score of five. Apparently, District I in Bartow also uses the old district system under which Leggate also has a rating of five (15 on a different scale).

33. It also is concluded that, since the work is being procured and contracted by and for the districts, it is "appropriate" for the DOT to allow the districts the discretion to choose whether to use their own rating system or to use the statewide rating system. See Section 20.23(4)(a).

34. At the same time, the Petitioner did not prove facts on which the DOT would be compelled to require the districts to follow their own rating systems, rather than the new statewide system. The evidence adequately explicated a rational basis for DOT's suggestion that the districts use the new statewide rating system--the new statewide system is based on recent experience and addresses all of the appraisers' recent experience. To address the possibility that formerly rated appraisers, like Leggate, might not have recent enough experience, the DOT provided for the demonstration appraisal option. While perhaps not the best method for rating performance, the new statewide system has a rational basis and is not arbitrary.

D. RFPs' Lack of Notice of the New Performance Rating.

35. As noted, the central Tallahassee office's memorandum suggesting the use of the new statewide rating system also suggested that the RFPs contain clear notice of the new rating system and of the demonstration appraisal report option. District VII did not provide notice in the RFP. Instead, it relied on a mass mailout to appraisers on its mailing list, as well as verbal advice imparted at various conferences, to advise prospective bidders of the new rating system and the demonstration appraisal option. The evidence was that, at some point in time, probably in the spring of 1990, the Petitioner received notice of the new statewide rating system and the demonstration appraisal report option.

36. As reflected in the Findings of Fact, the Petitioner received a score of 9 on an RFP response in May, 1990, and also received information from District I in Bartow in September, 1990, that its rating was 15 (apparently on a different scale that would translate to a score of five on the scale used in the RFPs.) The Petitioner now claims to have been confused as to what rating system was being used, what the Petitioner's score would be on the RFPs in this case, and whether to submit a demonstration appraisal report. But the Petitioner's evidence did not prove that its failure to submit a demonstration appraisal report was due to justifiable confusion rather than mistake or oversight.

37. The Petitioner cites Aurora Pump v. Goulds Pumps, Inc,, 424 So. 2d 70 (Fla. 1st DCA 1982), in support if its argument that it should be awarded nine points for past performance, enough to surpass both the points total of Putnam on RFP 7002 and of Cuddeback on RFP 7003 in District VII, Pinellas County. But Aurora does not support the Petitioner for two reasons.

First, in Aurora, the protesting bidder proved that, in fact and law, it was justifiably confused by the unwritten bidding procedures used in that case. To the contrary, in this case, although notice of the use of the new statewide rating system was not included in the RFPs, written notice was given by a mass mailout, and the Petitioner received actual notice. Unlike the protesting bidder in Aurora, Leggate did not prove that, in fact and law, it was justifiably confused.

Second, the Aurora court did not award the contract to the protesting party, as the Petitioner argues should be done in this case. To do so would have been unfair to the bidders who knew the unwritten procedures and relied on them. Instead, the Aurora court upheld a lower court enjoining the bid process and ordering rebidding. Likewise, even assuming justifible confusion on the part of the Petitioner, it would be unfair to the successful RFP respondents in this case to award the contracts to the Petitioner based on its interpretation of the past performance criterion.

38. As reflected in the Findings of Fact, the Petitioner has not proven that the scores given to it by the evaluators in District VII and District II should be increased. (Even if the Petitioner were given all the points it seeks on the Alachua County RFP, it would not have enough points to overtake the successful respondent.) The awards resulting from these evaluations should not be disturbed.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is recommended that the Department of Transportation enter a final order dismissing the bid protests in these cases and awarding the appraisal contracts to John C. Putnam (RFP 7002), George Cuddeback (RFP 7003) and Richard S. Hale (Alachua County RFP).

RECOMMENDED this 1st day of February, 1991, in Tallahassee, Florida.

J. LAWRENCE JOHNSTON
Hearing Officer
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative
Hearings this 1st day of
February, 1991.

ENDNOTES

1/ It is not clear from the evidence how Hale got two points under this criterion, given the scoring system. But Leggate did not attack the award of points to Hale under the criterion, and the DOT was not called upon to defend the score.

2/ This was a score given on a response to an RFP that was initiated before the new statewide rating system went into effect.

3/ Unlike the District VII RFPs, a higher score on this criterion would not have been enough to make Leggate the successful respondent to the Alachua County RFP. In fact, even if Leggate were given all of the additional points it claims on the Alachua County RFP, it still would not have enough points to surpass Hale's total. See Finding of Fact 23, below.

4/ As reflected in the Findings of Fact, the central office also recommended that the districts afford respondents to RFPs the option of submitting a demonstration appraisal report as the basis for a score other than zero. The central office also recommended that RFPs give notice of both the use of a new rating system and the demonstration appraisal report option.

APPENDIX TO RECOMMENDED ORDER

To comply with the requirements of Section 120.59(2), Florida Statutes (1989), the following rulings are made on the parties' proposed findings of fact:

Petitioner's Proposed Findings of Fact.

A. Case No. 90-8118BID

1.-9. Accepted and incorporated to the extent not subordinate or unnecessary.
10. First clause, accepted and incorporated; second clause, conclusion of law.
11.-15. Accepted and incorporated to the extent not subordinate or unnecessary.
15. First clause, accepted and incorporated; second clause, rejected as not proven (in that the difference was in the rating system used to evaluate the criteria not the criteria themselves).
16.-17. Accepted and incorporated to the extent not subordinate or unnecessary.
18. Rejected as not proven.
19. The characterization "quite subjective" is rejected as not proven; otherwise, accepted and incorporated.
20.-21. Accepted and incorporated.
22. Accepted but unnecessary.
23. Accepted and incorporated.

B. Case No. 90-8119BID

1.-9. Accepted and incorporated to the extent not subordinate or unnecessary.
10. First clause, accepted and incorporated; second clause, conclusion of law.
11.-12. Accepted and incorporated to the extent not subordinate or unnecessary.
13. The characterization "quite subjective" is rejected as not proven; otherwise, accepted and incorporated.
14.-15. Accepted and incorporated.
16. Accepted but unnecessary.
17. Accepted and incorporated.

Respondent's Proposed Findings of Fact.

(It should be noted that the Department erroneously reversed the case numbers in its proposed recommended orders. The subject matter of Case No. 90-8118BID is addressed in its proposed recommended order in Case No. 90-8119BID, and vice versa. Therefore, the case numbers referenced in these rulings are given only for the purpose of identifying the proposed findings, and proposed findings will not be rejected because they address the wrong case.)

A. Case No. 90-8118BID

1. The RFP mailing date is rejected as contrary to the facts found and the greater weight of the evidence; otherwise, accepted and incorporated.

2.-20. Accepted and incorporated to the extent not subordinate or unnecessary.

B. Case No. 90-8119BID

1.-21. Accepted and incorporated to the extent not subordinate or unnecessary.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

ALL PARTIES HAVE THE RIGHT TO SUBMIT TO THE DEPARTMENT OF TRANSPORTATION WRITTEN EXCEPTIONS TO THIS RECOMMENDED ORDER. ALL AGENCIES ALLOW EACH PARTY AT LEAST TEN DAYS IN WHICH TO SUBMIT WRITTEN EXCEPTIONS. SOME AGENCIES ALLOW A LARGER PERIOD WITHIN WHICH TO SUBMIT WRITTEN EXCEPTIONS. YOU SHOULD CONSULT WITH THE DEPARTMENT OF TRANSPORTATION CONCERNING ITS RULES ON THE DEADLINE FOR FILING EXCEPTIONS TO THIS RECOMMENDED ORDER.