

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

VSM, INC. by and on behalf)
of its operating subsidiary,)
VSM OF FLORIDA, INC.,)
)
Petitioner,)
)
vs.) CASE NO. 92-4859BID
)
FLORIDA DEPARTMENT OF)
TRANSPORTATION,)
)
Respondent,)
)
and)
)
LEWARE CONSTRUCTION COMPANY;)
MISENER MARINE, INC.; MISENER)
MARINE CONSTRUCTION INC.; AND)
L & A CONTRACTING COMPANY,)
)
Intervenors.)
_____)

RECOMMENDED ORDER

Upon due notice, this cause was heard by William R. Cave, the assigned Hearing Officer from the Division of Administrative Hearings, on September 4, 1992 and September 15, 1992 in Tallahassee, Florida

APPEARANCES

For Petitioner: Allen P. Clark, Esquire
CAVEN, CLARK, RAY AND TUCKER
3306 Independent Square
Jacksonville, Florida 32202

George M. Meros, Jr., Esquire
106 College Avenue
Tallahassee, Florida 32301

For Respondent: Carolyn Holifield, Esquire
Deputy General Counsel
Susan P. Stephens, Esquire
Assistant General Counsel

Paul Sexton, Esquire
Assistant General Counsel
State of Florida, Department
of Transportation
605 Suwannee Street, MS-58
Tallahassee, Florida 32399-0458

For Intervenors: Mary M. Piccard, Esquire
CUMMINGS, LAWRENCE & VEZIMA
1004 DeSoto Park Drive
Tallahassee, Florida 32302

STATEMENT OF THE ISSUES

1. Whether the bid submitted by VSM of Florida, Inc., under cover of the bid blank issued to VSM, Inc. for the construction on State Project 16070-3511 (the Project), with the Florida Department of Transportation (Department), was the lowest responsive bid.

2. Whether the Department acted arbitrarily, illegally, dishonestly or fraudulently in rejecting the bid submitted by VSM of Florida, Inc. under cover of the bid blank issued to VSM, Inc. for the construction of the Project based on the Department's determination that VSM of Florida, Inc. was not a prequalified contractor.

3. Whether VSM, Inc., has standing to bring this bid protest by and on behalf of its operating subsidiary, VSM of Florida, Inc.

PRELIMINARY STATEMENT

This matter arose when VSM, Inc., filed a Formal Notice of Protest, pursuant to Sections 120.53 and 337.11, Florida Statutes, and Rule 14-25.024, Florida Administrative Code, challenging the Department's intent to award a contract for construction on the Project to Intervenor, Leware Construction Company (Leware). The other Intervenors were permitted to intervene for the limited purpose of asserting claims of privilege relating to the confidentiality of their respective Prequalification Application filed with the Department. Rulings on these asserted claims of privilege and Petitioner's Motion To Compel were made at the hearing after conducting an in camera inspection of the questioned documents. On June 23, 1992, VSM, Inc., timely filed its Notice of Intent to file Formal Protest and on July 1, 1992 did timely file and serve its Formal Notice of Protest. On August 10, 1992 the Department referred the matter to the Division of Administrative Hearings for the assignment of a Hearing Officer and the conduct of a formal administrative hearing. A Hearing Officer was assigned and the matter scheduled for hearing on August 21, 1992 but upon written agreement of the parties the matter was continued and rescheduled for hearing on September 4, 1992. The parties were unable to complete the hearing on September 4, 1992 and the hearing was rescheduled for, and completed on, September 15, 1992.

At the hearing, Petitioner presented the testimony of Van Monroe, Gregory Monroe, and Lawrence Walls. Petitioner's exhibits 1 through 17, 20 through 35, 37 and 38 were received as evidence in this case. Petitioner's exhibits 18, 19 and 36 were rejected. The Department presented the testimony of Juanita Moore, Paul Newell, Lawrence Walls and Leslie Adams. The Department's exhibits 1, 2A-2D and 3 were received as evidence in this case. The Intervenors did not offer any testimony or documentary evidence.

A transcript of this proceeding was filed with the Division of Administrative Hearings on September 30, 1992. By order, the time for filing Proposed Recommended Orders was extended until October 15, 1992 on the motion of Intervenor, Leware, which was unopposed by the Petitioner and the Department, with the understanding that the time for entry of a Recommended Order was

extended in accordance with Rule 22I-6.031(2), Florida Administrative Code. The parties timely filed their Proposed Recommended Orders under the extended time frame. A ruling on each of the proposed findings of fact submitted by the parties has been made as reflected in an Appendix to the Recommended Order.

FINDINGS OF FACT

Upon consideration of all of the evidence, the following relevant findings of fact are made:

1. Bids submitted on the Project were opened on May 27, 1992 and posted on June 18, 1992.

2. The bid submitted by VSM of Florida, Inc. under cover of the bid blank issued by the Department to VSM, Inc., a prequalified contractor, was the apparent low bid on the Project in the amount of \$1,565,565.00.

3. The bid submitted by Leware under cover of the bid blank issued by the Department to Leware, a prequalified contractor, was the apparent second low bid on the Project in the amount of \$1,600,000.00.

4. All contractors who seek to bid on Department projects in excess of \$250,000.00 must be prequalified by the Department in order to bid on such projects. The Project was in excess of \$250,000.00 thereby requiring all bidders to be prequalified contractors.

5. The Department's Contract Administration Office (CAO) is responsible for prequalifying contractors to bid on Department projects in excess of \$250,000.00, for issuing bid packages for such projects, and for processing bids for award of a contract.

6. The Department will not issue a bid blank for a project in excess of \$250,000.00 unless a request for a bid blank is received from a prequalified contractor. Upon a request being made, the Department first determines that the contractor making the request is prequalified and has the capacity to bid on the project, then the Department prints or stamps the name of the prequalified contractor on the front page (cover sheet) of the bid blank and mails the bid package to the prequalified contractor.

7. Contractors do not have to be prequalified to bid on projects of less than \$250,000.00 but the Department's Equal Employment Opportunity (EEO) requirements would be applicable to projects of less than \$250,000.00 as well as those in excess of \$250,000.00.

8. Contractors do not have to be prequalified to work as subcontractors on a Department project. The Department does not approve subcontractors on Department projects but does review and approve the use of subcontractors on Department projects to ensure that subcontractors do not perform in excess of 49% of the work on the project in violation of Standard Specification No. 8 in the Department's contract.

9. Review of the subcontractors being used on a project is conducted by the Department's District offices and the CAO is not made aware of which contractors are being used as subcontractors on a project.

10. There is no specific language in the application for prequalification that requires a separate application be submitted for each contracting firm

seeking prequalification. However, a copy of the Department's rule included in the application package does require that a separate application must be submitted for each contracting firm seeking prequalification.

11. The purpose of the information sought in Question 8 (Question 6 in 1989) of the application concerning the affiliates of the parent company is to: (a) determine if any of the affiliates have been disbarred by other agencies or convicted of contract crimes which would disqualify them or; (b) alert the Department that an affiliate is applying for prequalification independent of the parent company so that the Department can properly audit the financial statements of each applicant. It is not intended to allow or provide for a joint application.

12. The application must be accompanied by an audited financial statement and an equipment list. First-time applicants must also provide resumes and letter of recommendation supporting the applicant's representation that it is qualified and capable of performing the type of work for which it is seeking qualification.

13. The CAO reviews the application for completeness and checks various data bases to determine if the applicant and its affiliates have adverse reports from other contracting agencies.

14. The Department's Internal Audit Section reviews the financial information provided with the application for purposes of developing the Current Ratio and Net Worth Factors for use in calculating the applicant's Maximum Capacity Factor. The Internal Audit Section also reviews the information on corporate subsidiaries provided in response to "Question 8" (Question 6 in 1989) on the application.

15. The Department's Construction Office reviews the equipment and experience information provided with the application to develop an applicant's Ability Factor for use in calculating the applicant's Maximum Capacity Factor.

16. The Internal Audit Section and the Construction Office report their conclusions to the CAO, which issues the Certificate of Prequalification (Certification) to the applicant.

17. Where the Opinion Letter of the applicant's Certified Public Accountant, which must be included with the application, states that the financial statement was audited in accordance with General Accepted Accounting Principles, the Department can rely on the Opinion Letter and the financial statements submitted with the application, unless there is a reasonable basis for the Department to question the financial statements.

18. Where the Opinion Letter identifies the entity and subsidiaries, if any, whose financial condition is reflected in the financial statement, it is the Department's practice and policy to issue the Certification in name of the entity whose financial condition is reflected in the financial statement as indicated by the Opinion Letter.

19. Where the Opinion Letter indicates that the financial condition of both the parent company and subsidiaries are reflected in the financial statement, then the Department will issue the Certification in the name of the parent company and the generic term "subsidiaries" or "subsidiary". Neither the parent company nor the subsidiary would be qualified separately.

20. Under the above circumstances, the Department would accept a bid submitted by the parent company without the subsidiary even though the bid blank had been issued in the name of the parent company and "subsidiary" or "subsidiaries". For example, a Certification was issued by the Department to "Balfour Beatty Construction, Inc. and subsidiary", the bid blank was issued in the same name but the bid was submitted by and awarded to Balfour Beatty Construction, Inc. There was at least one other instance where the Department followed a similar procedure. The Department's justification for this practice is that the parent company has control over its subsidiaries and could submit a bid on their behalf and enter into a contract with the Department that would bind the subsidiaries. Whereas, with the converse, the subsidiary or subsidiaries are normally without authority to submit a bid on behalf of the parent company or enter into a contract with the Department on behalf of the parent company. However, where a prequalified parent company gives proper written authorization to a subsidiary to submit a bid on its behalf and such authorization is attached to bid, then the Department would not consider such bid submitted by the subsidiary as irregular.

21. Where a parent company relies on the assets and experience of its majority-owned subsidiaries in its application for prequalification to which it has access to, and control over, and the Opinion Letter indicates the parent company to be the entity whose financial condition is reflected in the financial statement, then the Department would certify the parent company in its name alone and allow the parent company to bid on Department projects in excess of \$250,000.00. Furthermore, the Department would allow the parent company's subsidiaries to perform all of the work on the project for the parent company notwithstanding Standard Specification No. 8 limiting the percentage of work which the subcontractors are allowed to perform on a Department project to 49%.

22. The Department does not consider subsidiaries performing work for a parent corporation on a Department project as subcontractors within the meaning of Standard Specification No. 8 and thus, a parent company could bid on a Department project in its own name and rely solely on its subsidiaries to perform 100% of the work on the project without violating Standard Specification No. 8. For example, VSM, Inc. could bid on a Department project and, if awarded the bid, could rely solely on VSM of Florida, Inc. to perform 100% of the work on the project. It was conceded by the Department that VSM of Florida, Inc. has the expertise, experience and equipment to perform all of the work bid for on the Project.

23. Where the applicant's name on the face of the application does not exactly correspond with the name of the entity whose financial condition is reflected in the financial statement, then the Department will issue the Certification in the name of the entity whose financial condition is reflected in the financial statement as indicated in the Opinion Letter.

24. VSM, Inc. is a Florida corporation that was incorporated in 1988. In 1988 VSM, Inc. formed two subsidiary corporations, VSM of Florida, Inc. and VSM of Virginia, Inc. The parent corporation, VSM, Inc., owns 80% of the stock in both VSM of Florida, Inc. and VSM of Virginia, Inc. Van Monroe is the sole stockholder, sole director and president of VSM, Inc. Van Monroe is also the sole director and president of VSM of Florida, Inc. The remaining 20% stock of VSM of Florida, Inc. is owned by Gregory Monroe, brother of Van Monroe. Gregory Monroe is also vice president of VSM of Florida, Inc. These corporations (VSM, Inc. and VSM of Florida, Inc.) are separate entities with each having a separate Federal Identification Number.

25. Beginning in 1989, VSM, Inc. applied for Certification with the Department to qualify to bid on projects in excess of \$250,000.00. In the application form (Question 6), the applicant is requested to: "List the following for all affiliated companies: (a) Name and Address; (b) States Qualified ; and (c) Explain in detail your connection with this company and whether or not this company is qualifying with FDOT. In response to that question, VSM, Inc. answered in pertinent part as follows: (a) VSM of Florida, Inc., P. O. Box 5761, Jacksonville, FL 32247 (58-2916127); (b) Florida and; (c) VSM, Inc. - 80% Stockholder, Gregory B. Monroe - 20% Stockholder (We would qualify VSM of Florida, Inc. as a subsidiary of VSM, Inc.). The Department issued the Certification on April 21, 1989 in the name of VSM, Inc.

26. Each of the applications for renewal of the Certification issued on April 21, 1989 submitted on March 26, 1990, March 26, 1991 and March 30, 1992 requested basically the same information in Question 8, as had Question 6 in the original application, and the answers were basically the same as in the original application. The renewal applications submitted on March 26, 1990 and March 30, 1992 have both VSM, Inc. and VSM of Florida listed as applicants. The Department subsequently lined out VSM of Florida, Inc. on each of these renewal applications and issued the Certification to VSM, Inc. The reason being, that each contracting firm seeking Certification must file a separate application, and the Opinion Letter indicated that the entity whose financial condition was reflected in the financial statement was VSM, Inc. A Certification was issued to VSM, Inc. on April 30, 1990, April 10, 1991 and April 16, 1992, respectively in response to the above renewal applications for Certification. The Certification dated April 16, 1992 expanded the classes of work to be performed under the certificate to include Bascule bridge repair (rehabilitation) work.

27. In each of the above years, Van Monroe, the president of both VSM, Inc. and VSM of Florida, Inc., consciously chose not to seek Certification for VSM of Florida, Inc. independently of VSM, Inc. because VSM, Inc. and its subsidiaries operate as an integrated operation and could not be separated.

28. Beginning in 1990 and each year thereafter, when VSM, Inc. applied for renewal of its Certification with the Department, it included a consolidated financial statement which contained the financial condition of its two subsidiaries, VSM of Florida, Inc. and VSM of Virginia, Inc. The Department chose not to issue the Certification in the name of "VSM, Inc. and subsidiaries" for these years because the Department concluded that the Opinion Letter indicated that the only entity whose financial condition was reflected in the financial statement was VSM, Inc. Although the Department conceded that the Certification could possibly have been issued to "VSM, Inc. and subsidiaries", the Department contended that this would not have changed the result of the bid since under either situation, VSM of Florida, Inc. had not submitted written authorization from VSM, Inc. authorizing VSM of Florida, Inc. to submit a bid on behalf of VSM, Inc.

29. Since 1989, both VSM, Inc. and VSM of Florida, Inc., after requesting and receiving permission from the Department, have used the same vendor (prequalification) identification number. Additionally, the names VSM, Inc. and VSM of Florida, Inc. have been used interchangeably on documents submitted to and received from the Department. The current Certificate of Capacity, required by the Department of all prequalified contractors, was issued in the name of VSM of Florida, Inc.

30. On February 26, 1992 under cover of the bid blank issued to VSM, Inc. by the Department, VSM of Florida, submitted a bid on a Department project in

Polk County, Job No. 16630-3601. Because this bid was third lowest bid, no objection or declaration of irregularity to this bid format was made by the Department.

31. On May 27, 1992 under cover of the bid blank issued to VSM, Inc. by the Department, VSM of Florida, Inc. submitted a bid on a Department project in Gadsden County. The Department notified VSM, Inc. by form letter dated June 17, 1992 that the bid proposal had been taken apart and not been stapled back in the same order as when issued and that such errors or omissions could result in a future bid proposal being declared irregular. One of the items (Item 5) on this form letter states "the bidder's name is not as issued per their prequalification application on the front sheet (Bid Blank)". Item 5 was not checked or noted as a deficiency in the bid on the Gadsden County project along with the other noted problem because the name (VSM, Inc.) on the cover sheet had not been altered - it was the same as issued on the Certification. The Gadsden County project bids were posted on June 18, 1992 under the name "VSM, Inc." as irregular but with no reason stated for the irregularity and there is nothing in the minutes of the Department's Bid Review Committees indicating the reason for the irregularity. Again, the bid submitted by VSM of Florida, Inc. under cover of the bid blank issued to VSM, Inc. was not the low bid on the Gadsden County project.

32. On May 27, 1992 VSM of Florida, Inc., under cover of a bid blank issued to VSM, Inc. by the Department submitted a bid on another Department project in Polk County, Job No. 16070-3501, the apparent low bid on the project and the bid in dispute here.

33. The name of VSM, Inc. under which the bid blank was issued by the Department was not altered on the bid submitted by VSM of Florida, Inc.

34. The bid as submitted by VSM of Florida, Inc. was signed by V. S. Monroe and G. B. Monroe as president and secretary, respectively of VSM of Florida, Inc.

35. Although the bid did not contained written authorization from VSM, Inc. authorizing VSM of Florida, Inc. to submit the bid on behalf of VSM, Inc., there is sufficient evidence in the record to show that at the time of the bid submittal VSM, Inc. had knowledge of, consented to and authorized the bid submittal by VSM of Florida, Inc. Also, at the time of the bid submittal, VSM, Inc. and VSM of Florida, Inc. were under the impression (rightfully or wrongfully) that VSM, Inc. and VSM of Florida, Inc. had been previously prequalified jointly by the Department.

36. By letter dated May 29, 1992, the Department advised VSM, Inc. that it needed to file a Disadvantaged Business Enterprise (DBE) affirmative action plan with the Department in order for its bid of May 27, 1992 to be considered responsive. The DBE plan was furnished by VSM of Florida, Inc. and approved by the Department.

37. The Department also requested that VSM, Inc. submit a current capacity rating status so that the Department could determine if the current capacity of VSM, Inc. was such that it was still qualified to perform the work required by the Project. The current capacity rating status was filed by VSM of Florida, Inc. on June 3, 1992.

38. On June 11, 1992, the Department's Technical Review Committee (TRC) recommended that the bid executed and submitted by VSM of Florida, Inc. under

cover of the bid blank issued to VSM, Inc. be declared irregular based on the TRC's determination that VSM of Florida, Inc. was not a prequalified contractor.

39. On June 16, 1992, the Department's Contract Awards Committee (CAC) unanimously adopted the recommendation of the TRC and declared the bid submitted under cover of the bid blank issued to VSM, Inc. to be irregular. The CAC voted to post an intent to award the bid on the Project to Leware.

40. The Department rejected the bid submitted by VSM of Florida, Inc. under cover of the bid blank issued to VSM, Inc. on the basis that VSM of Florida, Inc. was not a prequalified contractor.

41. The bid was rejected by the Department without any review of the Department's prequalification file of VSM, Inc., or without any review as to whether the irregularity could be cured by VSM, Inc. ratifying the action of VSM of Florida, Inc. by supplying the Department with written authorization for VSM of Florida, Inc. to submit the bid on behalf of VSM, Inc.

42. There was no evidence that curing this irregularity would provide the Petitioner with such a competitive advantage that it would restrict or stifle competition or that curing this irregularity would violate any rule or statute.

43. The intent to award the Project to Leware was posted on June 18, 1992.

44. VSM, Inc., by and on behalf of its operating subsidiary, VSM of Florida, Inc., filed a timely initial protest to the intent fo award on June 23, 1992 and a timely formal protest on July 1, 1992.

CONCLUSIONS OF LAW

45. The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, this proceeding pursuant to Sections 120.57(1) and 120.53(5)(d)(2), Florida Statutes, and Rule 14-25.026(3), Florida Administrative Code.

46. It is clear from the record that VSM of Florida, Inc. is a majority-controlled affiliate of VSM, Inc., that both VSM, Inc. and VSM of Florida, Inc. have the same sole director and president, that the protest of the award of the bid for the Project named VSM, Inc., on behalf of its operating subsidiary, VSM of Florida, Inc. as the Petitioner and that the substantial interest of both VSM, Inc. and VSM of Florida, Inc. will be affected by the outcome of this proceeding. Therefore, the Petitioner's standing to bring this action is well founded.

47. The Petitioner contends that the Department is prevented on the theory of estoppel from rejecting the bid as submitted on the Project on the basis that VSM of Florida, Inc. is not a prequalified contractor. In order to prevail on the theory of estoppel, the Petitioner must show that: (a) the Department has represented to the Petitioner a material fact that is contrary to a later asserted position; (b) there was reliance on that representation by the Petitioner and; (c) there was a change in position detrimental to the Petitioner caused by such representation and reliance. Florida Department of Revenue v. Anderson, 403 So.2d 397 (Fla. 1981); Tri-State Systems, Inc. v. Department of Transportation, 500 So.2d 212 (1 DCA Fla. 1986), reh. denied, 506 So.2d 1041 (Fla. 1987). The Petitioner has failed to present evidence sufficient to establish facts to show that the Department made such a representation upon

which the Petitioner had a basis to rely and has therefore, failed to establish the elements necessary for estoppel to apply.

48. The system of competitive bidding protects against collusion, favoritism, and fraud in the award of public contracts. Department of Transportation v. Groves-Watkins Constructors, 530 So. 2d 912, 913 (Fla. 1988), and the cases cited therein. However, an agency, such as the Department, has wide discretion in soliciting and awarding competitive bids, "and its decision, when based on an honest exercise of this discretion, will not be overturned by a court even if it may appear erroneous and even if reasonable persons may disagree". Groves-Watkins, 530 So. 2d at 913, and the cases cited therein.

49. In exercising its discretion, the Department may not accept a bid that is materially at variance with the bid document. "However, although a bid containing a material variance is unacceptable, not every deviation from the invitation to bid is material. It is only material if it gives the bidder a substantial advantage over the other bidders and thereby restricts or stifles competition." Tropabest Foods, Inc. v. Department of General Services, 493 So. 2d 50, 52 (3 DCA Fla. 1986). If the variance does not provide the bidder with such a palpable competitive advantage, it constitutes a minor irregularity that may be waived by the Department without violating the integrity of the bidding process. See: Robinson Electrical Co., Inc. v. Dade County, 417 So. 2d 1032, 1034 (3 DCA Fla. 1982).

50. Applying this standard, the evidentiary record will support a finding that there was no material variance from the bid documents in the Petitioner's bid. If anything, it should be considered only as a technical deficiency that may be waived by the Department without violating the integrity of the bidding process.

51. While the failure of VSM of Florida, Inc. to attach its authorization from VSM, Inc. to submit a bid on behalf of VSM, Inc. rendered the bid technically nonconforming, this deficiency is easily remedied by VSM, Inc. ratifying the action of VSM of Florida, Inc. by subsequently furnishing such written authorization to the Department. Intercontinental Properties, Inc. v. State of Florida Department of Health and Rehabilitative Services, and Coliseum Lanes, Inc., ___So.2d ___ (3 DCA Fla. 1992), 17 FLW D2030, D2033, Opinion filed September 1, 1992.

52. Because there is a very strong public policy in favor of awarding public contracts to the low bidders in order to save tax dollars, and an equally strong public policy against disqualifying the low bidder for technical deficiencies which do not confer an economic advantage on one bidder over another, this is plainly the sort of technical deficiency which the Department can, and should, in its discretion, allow the Petitioner to cure after the fact. Intercontinental Properties, 17 FLW at D2033.

53. Therefore, the Department would be acting arbitrarily if it refused to allow the Petitioner to cure this technical deficiency after the fact, notwithstanding that such refusal may be within the Department's discretion, Agrico Chemical Company v. Department of Environmental Regulation, 565 So.2d 759, 763 (1 DCA Fla. 1989), and subvert the competitive bidding process as well as being contrary to a strong public policy against disqualifying the low bidder for technical deficiencies which do not confer an economic advantage on one bidder over another. Intercontinental Properties, 17 FLW at D2033.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is, accordingly

RECOMMENDED:

That the Department enter a Final Order awarding the contract for the construction of the Project to the Petitioner upon VSM, Inc. curing the technical deficiency in the bid by submitting to the Department authorization for VSM of Florida, Inc. to have submitted the bid on the Project on behalf of VSM, Inc.

DONE and ORDERED this 12th day of November, 1992, in Tallahassee, Florida.

WILLIAM R. CAVE
Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 12th day of November, 1992.

APPENDIX TO RECOMMENDED ORDER
IN CASE NUMBER 92-4859BID

The following constitutes my rulings pursuant to Section 120.59(2), Florida Statutes, on all of the proposed findings of fact submitted by the parties in this case.

Rulings on Proposed Findings of Fact
Submitted by the Petitioner

1. Proposed findings of fact 1 - 4, 6 and 8 - 11 are adopted in substance as modified in the Recommended Order.
2. Proposed findings of fact 5 and 7 are adopted in substance as modified in the Recommended Order, but see Findings of Fact 41 relating to reliance.

Proposed Findings of Fact
Submitted by the Respondent

1. Proposed findings of fact 1 - 42 and 44 are adopted in substance as modified in the Recommended Order.
2. Proposed finding of fact 43 is rejected as not being a finding of fact but more of an argument as to the weight to be given certain evidence.

Rulings on Proposed Findings of Fact
Submitted by the Intervenor, Leware

1. Proposed findings of fact 1 - 35 are adopted in substance as modified in the Recommended Order.

COPIES FURNISHED:

Ben G. Watts, Secretary
Department of Transportation
Haydon Burns Building
605 Suwannee Street
Tallahassee, FL 32399-0458

Thornton J. Williams, Esquire
General Counsel
Department of Transportation
Haydon Burns Building
605 Suwannee Street
Tallahassee, FL 32399-0458

Allen P. Clark, Esquire
CAVEN, CLARK, RAY and TUCKER
3306 Independent Square
Jacksonville, FL 32202

George M. Meros, Jr., Esquire
106 College Avenue
Tallahassee, FL 32301

Carolyn Holifield, Esquire
Paul Sexton, Esquire
Department of Transportation
Haydon Burns Building
605 Suwannee Street
Tallahassee, FL 32399-0458

Mary M. Piccard, Esquire
CUMMINGS LAWRENCE & VESIMA
1004 DeSoto Park Drive
Tallahassee, FL 32302

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions to this Recommended Order. All agencies allow each party at least 10 days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should contact the agency that will issue the final order in this case concerning agency rules on the deadline for filing exceptions to this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.