7-30-01

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION
Haydon Burns Building
605 Suwannee Street
Tallahassee, Florida

OHM REMEDIATION SERVICES CORP.,

AT

Petitioner,

vs.

DOAH CASE NO.: 00-0495BID
DOT CASE NO.: 99-0246

PNM-CLOS

DEPARTMENT OF TRANSPORTATION,

Respondent,

and

WRS INFRASTRUCTURE AND ENVIRONMENT, INC.,

Intervenor.

_____/

FINAL ORDER

This proceeding was initiated by the filing of a Notice of Protest on October 22, 1999, and a Formal Protest and Petition for Formal Administrative Hearing on November 1, 1999, by **Petitioner, OHM REMEDIATION SERVICES CORP.** (hereinafter **OHM**), pursuant to Section 120.57(1), Florida Statutes, in response to a Notice of Intent to Award (Revised) posted by the **Respondent, DEPARTMENT OF TRANSPORTATION** (hereinafter **DEPARTMENT**), on October 20, 1999. On December 1, 1999, an Order Granting Intervention was issued at the request of **Intervenor, WRS INFRASTRUCTURE AND ENVIRONMENT, INC.** (hereinafter **WRS**). On January 28, 2000, the matter was referred to

the Division of Administrative Hearings (hereinafter DOAH) for assignment of an Administrative Law Judge and a formal hearing.

A formal administrative hearing was held in this case in Miami, Florida, on March 5 through 8, 2001, before Patricia Hart Malono, a duly appointed Administrative Law Judge. Appearances on behalf of the parties were as follows:

For Petitioner: William C. Davell, Esquire
Christopher Barber, Esquire
May, Meacham & Davell, P.A.
One Financial Plaza, Suite 2602
Bank of America Tower
Fort Lauderdale, Florida 33394

For Respondent: Brian F. McGrail, Esquire
Brian A. Crumbaker, Esquire
Assistant General Counsel
Department of Transportation
605 Suwannee Street, M.S. 58
Tallahassee, Florida 32399-0458

For Intervenor: Betty J. Steffens, Esquire
Samantha Boge, Esquire
Post Office Box 82
Tallahassee, Florida 32302-0082

At the hearing, **OHM** presented the testimony of Tom McSweeney, a vice president of **OHM**; Curtis Lee, a project manager employed by **OHM**; Jon Berry, an employee of **WRS**; Mauricio Gomez, a contamination impact coordinator and environmental manager employed by the **DEPARTMENT** in District VI; Nancy Lyons, Contracts Administrator, employed by the **DEPARTMENT** in District VI; Lillian Costa, an environmental scientist employed by the **DEPARTMENT** in District VI; Javier Rodriguez, a project development engineer employed by the **DEPARTMENT** in District VI; Paul Lampley, a contamination impact coordinator

employed by the **DEPARTMENT** in District VI; Gustavo Pego, the **DEPARTMENT'S** Director of Operations in District VI; and John Martinez, the **DEPARTMENT'S** Director of Production in District VI. **OHM** offered Exhibits 1 through 27, 29 through 34 (including 29(a)), 36 through 39, 44 through 48, 52, and 86 through 95, which were admitted into evidence. The **DEPARTMENT** presented the testimony of Mauricio Gomez, and offered Exhibit 86, which was admitted into evidence. **WRS** presented the testimony of Paul Lampley and offered Exhibits 70 and 78, which were admitted into evidence.

On rebuttal, **OHM** sought to have admitted certain portions of the deposition testimony of Gustavo Pego to rebut a portion of the testimony elicited by the **DEPARTMENT** from Mr. Gomez during its case-in-chief; the **DEPARTMENT** and **WRS** objected. Ruling was withheld on **OHM'S** request, and **OHM** was permitted to proffer the selected portions of the deposition testimony. The parties submitted memoranda of law with respect to the admissibility of the testimony, and the proffered testimony was rejected in an order entered April 24, 2001.

Pursuant to motions for official recognition filed by the **DEPARTMENT** and **OHM**, DOAH entered orders on April 25, 2001 and May 4, 2001. Pursuant thereto, official recognition was taken of the answer briefs filed by the **DEPARTMENT** and by **WRS**, and of the opinion and mandate in OHM Remediation Services Corp. v. State Dep't Transp., 782 So. 2d 882 (Fla. 3d DCA 2001).

The transcript of the proceedings was filed with DOAH on April 6, 2001.

On May 4, 2001, **OHM** filed a Proposed Findings of Fact and Conclusions of Law. On April 7, 2001, the **DEPARTMENT** and **WRS** each filed a Proposed Recommended Order. On May 8, 2001, **OHM** filed a Motion to Supplement Proposed Findings of Fact and

Conclusions of Law, and on May 11, 2001, the **DEPARTMENT** filed a Motion to Supplement Proposed Recommended Order. On May 18, 2001, **OHM** filed a response to the **DEPARTMENT'S** Motion to Supplement Proposed Recommended Order.

On July 30, 2001, Judge Malono issued her Recommended Order. On August 27, 2001, **OHM** filed its exceptions to the Recommended Order. The **DEPARTMENT** and **WRS** each filed a response to **OHM'S** exceptions on September 10, 2001. On September 25, 2001, the **DEPARTMENT** filed a Motion for Costs.

STATEMENT OF THE ISSUE

As articulated by the Administrative Law Judge in her Recommended Order, the issue presented was: "Whether the Department of Transportation's proposed action, the award of the contract in question to WRS Infrastructure and Environment, Inc., is contrary to its governing statutes, its rules or policies, or the proposal specifications." The Administrative Law Judge also determined that "The standard of proof is whether the Department of Transportation's actions were clearly erroneous, contrary to competition, arbitrary, or capricious."

BACKGROUND

The subject of this bid protest is the **DEPARTMENT'S** District VI Contamination Assessment and Remediation Contract for Project and Bid Number RFP-DOT-99/2000-6026DS, FIN Number 249943 (hereinafter the District VI contract). On October 20, 1999, the **DEPARTMENT** posted its Notice of Intent to Award (Revised) stating its intention to award the District VI contract to **WRS** as the highest ranked proposer. On November 1, 1999, **OHM**, the second highest ranked proposer, filed a Formal Protest and Petition for Formal

Administrative Hearing. On December 1, 1999, an Order Granting Intervention was issued at the request of **WRS**. On January 28, 2000, the matter was referred to DOAH for assignment of an Administrative Law Judge and a formal hearing. On February 18, 2000, an order was entered consolidating the **OHM** protest with the Formal Protest of Metcalf & Eddy, Inc., DOAH Case Number 00-0494BID.

The final hearing was held March 5 through 8, 2001.

EXCEPTIONS TO RECOMMENDED ORDER

OHM'S first exception is to Findings of Fact No. 31, 102, and 103, claiming the Administrative Law Judge erred in not finding that Lillian Costa's original scoring of **WRS'S** and **OHM'S** proposals was arbitrary and capricious because she improperly compared the **OHM** and **WRS** proposals, in violation of **DEPARTMENT** policy and the Request for Proposals (RFP).

OHM states that in paragraph 31, the Administrative Law Judge notes that Costa's original scoring for **WRS** included the handwritten comment "close to OHM proposal" on her Technical Proposal Evaluation Sheet. **OHM** claims that one of the restrictions on the Technical Review Committee in conducting its evaluation was that the members review the proposals independently, without comparing them.

OHM also argues that the Administrative Law Judge erred in finding that despite Costa's comment that **WRS'S** proposal was "close to OHM proposal," that Costa nevertheless "scored the two proposals separately." The Administrative Law Judge, according to **OHM**, further improperly found that Costa's handwritten comment "is not sufficient to support an inference that Costa inappropriately compared the WRS and OHM proposals," and that the

comment "could reasonably be interpreted as a comment on the quality of the proposals rather than the number of points she awarded." These findings, according to **OHM**, are not supported by the evidence, and constitute an arbitrary conclusion.

According to **OHM**, the Technical Proposal Evaluation Sheet gives the total number of points available for each portion of the technical proposals, then asks the evaluator to provide his or her scoring and notes or comments supporting the scoring. **OHM** argues that it cannot reasonably be argued that Costa was not comparing the proposals as part of her scoring when she specifically stated that one was "close to" the other in her comments supporting her scoring. Regardless of whether Costa made a self-serving statement that she did not compare the two proposals in her scoring, **OHM** concludes, her comment sheet demonstrates beyond question that she did. Thus, **OHM** argues, the Administrative Law Judge's finding that she did not improperly compare the two proposals is not supported by any competent, substantial evidence.

The record reveals that Ms. Costa testified that she evaluated the proposals independently in accordance with the District VI Contractual Services Acquisition Procedures. It is the Administrative Law Judge's function "to consider all the evidence presented, resolve conflicts, judge credibility of witnesses, draw permissible inferences from the evidence, and reach ultimate findings of fact based on competent, substantial evidence." Heifetz v. Dep't of Business Reg., 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985); State Beverage Dep't v. Ernal, Inc., 115 So. 2d 566 (Fla. 3d DCA 1959). Having heard the testimony and observed the demeanor of the witness, the Administrative Law Judge concluded that the handwritten comment "close to OHM proposal" was not "sufficient to support an inference that Costa

inappropriately compared the WRS and OHM proposals." "The notion that special deference is owed to a credibility finding by a trier of fact is deeply imbedded in our law." Metropolitan Dade County v. Bannister, 683 So. 2d 130 (Fla. 3d DCA 1996). The Administrative Law Judge's findings in this regard are supported by competent, substantial evidence.

OHM'S first exception to Findings of Fact No. 31, 102, and 103, is rejected.

OHM'S second exception is also to Findings of Fact No. 31, 102, and 103, and to the Administrative Law Judge's failure to find that Lillian Costa's original scoring of the proposals of **WRS** and **OHM** was arbitrary and capricious because she improperly scored based on factors outside the scope of the RFP.

OHM refers to Ms. Costa's comment sheet for **WRS** which also included the handwritten comments: "ongoing, outstanding project" needed "continuity," and "other departments like[d] working" with **WRS**. Although the Administrative Law Judge found these comments "should not have been included," the Administrative Law Judge nevertheless found that the comments were not sufficient "to support the inferences that Ms. Costa based her scores on criteria other than those specified in the RFP . . . ." (Finding of Fact No. 103) This finding, **OHM** argues, is not supported by any evidence in the record.

OHM continues to argue that the Technical Proposal Evaluation Sheet specifically sets forth Ms. Costa's reasons for assigning the points she did, and that Ms. Costa admitted during her testimony that the two issues raised in her comments are outside the scope of the RFP. Thus, **OHM** concludes, the reasons for Ms. Costa's original scores for **WRS** admittedly include factors outside the scope of the RFP. As such, **OHM** concludes, the Administrative Law Judge's finding that Costa did not consider matters outside the RFP is not supported by

any competent, substantial evidence, and is mere arbitrary conjecture, especially given that the Administrative Law Judge expressly recognized that the comments were improper.

The record reveals, and the Administrative Law Judge found, that based on Ms. Costa's testimony and a review of the comments made on the **WRS** Technical Proposal Evaluation Sheet that "ongoing, outstanding project needed continuity" and that "other departments like" working with **WRS** did not establish that Ms. Costa did not properly evaluate the proposals on the criteria set forth in the RFP. It is the Administrative Law Judge's role to evaluate a witness's testimony and demeanor at hearing and to weigh the totality of the evidence. Heifetz, 475 So. 2d at 1281. Ms. Costa testified that she had worked with **OHM** in the past on the same contamination and remediation contract and established a professional rapport with **OHM**. There is no competent, substantial evidence that indicates a prior working relationship with either **WRS** or **OHM** had an undue influence on Ms. Costa's evaluation of either firm's proposal. The Administrative Law Judge concluded as much in her findings and these findings are supported by competent, substantial evidence.

OHM'S second exception to Findings of Fact No. 31, 102, and 103, is rejected.

OHM'S third exception is to Findings of Fact No. 48 and 99, claiming that the Administrative Law Judge's finding that **OHM**, at the time it submitted its September 24, 1999, "rebuttal" letter, was aware of all information the Technical Review Committee considered at its October 4, 1999, meeting, is not supported by any evidence.

Key to its position, argues **OHM**, is Exhibit 27, a September 24, 1999, "rebuttal" letter written by **OHM'S** counsel to Brian McGrail, counsel for the **DEPARTMENT**. In this letter, **OHM** responded to the Formal Protest filed by **WRS**, which was, at that time, the second-place

proposer. Thereafter, **DEPARTMENT** personnel spoke and learned several things about **OHM'S** involvement in District IV. Subsequently, on October 4, 1999, the Technical Review Committee met and considered **WRS'S** protest, the "rebuttal" letter, and the additional information.

As a result, the Administrative Law Judge held that **OHM** in its rebuttal letter was given full opportunity to respond to all matters the Technical Review Committee considered on October 4, 1999, and rejected **OHM'S** contention that it should have been given the opportunity to respond to these issues, because the Administrative Law Judge found that **OHM** already had been given this opportunity.

OHM claims that the Administrative Law Judge's finding that **OHM** was aware of all matters considered by the Technical Review Committee at its October 4 meeting at the time **OHM** submitted its September 24, 1999, "rebuttal" letter is completely unsupported by the evidence. Specifically, **OHM** argues, there was absolutely no evidence presented that would support an inference that **OHM** was aware that it allegedly was replacing Metcalf & Eddy in District IV, that Metcalf & Eddy's contract had been worth about $2 million per year historically, and that **OHM** would be getting busier as Metcalf & Eddy was phased out.

These erroneous, unsupported findings, according to **OHM**, were absolutely crucial to the Administrative Law Judge's overall finding against **OHM**. The Administrative Law Judge found that the information concerning Metcalf & Eddy's work and **OHM'S** future work in District IV was sufficient for the **DEPARTMENT** to question whether **OHM** would be able to meet its 90 percent commitments. Thus, if the evidence established that **OHM** was not even aware of these matters (upon which the Technical Review Committee ultimately acted) until

after the fact, then **OHM**, it is argued, was certainly unfairly treated.

OHM stresses that throughout these proceedings **OHM** contended that it had never heard of these assertions concerning the Metcalf & Eddy work and **OHM'S** alleged future work prior to October 13, 1999. **OHM** argues that there was absolutely no evidence in the record upon which the Administrative Law Judge could make the finding that **OHM**, or anyone else, was aware that Metcalf & Eddy's contract had been worth about $2 million per year, or that **OHM** would be getting busier as a result of replacing Metcalf & Eddy, prior to Mr. Gomez's telephone call.

Initially, review of the Recommended Order reveals that reference to Finding of Fact No. 48 in **OHM'S** third exception regarding the "rebuttal letter" and the October 4, 1999, Technical Review Committee meeting appears to be erroneous. Finding of Fact No. 48 refers to the duties and responsibilities of Paul Lampley, contamination impact coordinator in District IV, and a kick-off meeting he had with **OHM** on October 8, 1998. It is Finding of Fact No. 98, not Finding of Fact No. 48, that makes reference to the "rebuttal letter" and the October 4, 1999, Technical Review Committee meeting. Thus, the exception will be addressed as if it were raised as to Finding of Fact No. 98.

The record reveals that **OHM** was given ample opportunity to respond to the allegations raised in the **WRS** protest prior to the Technical Review Committee considering the information. **OHM** was currently providing services in District IV on a contamination and remediation contract managed by Paul Lampley. The record also reveals that the Administrative Law Judge specifically found that **OHM** knew Metcalf & Eddy was the incumbent contamination and remediation contractor for right of way work and that **OHM**

would be taking over that work in District IV. (Finding of Fact 46) The record further reveals that the Technical Review Committee performed a re-evaluation of the **WRS** and **OHM** proposals based on the issues raised in the **WRS** Formal Protest, the **OHM** written rebuttal, and the confirmation provided by Paul Lampley regarding two of **OHM'S** key personnel on the District IV contract and the workload for that contract. The record supports the Administrative Law Judge's finding that "The Department had no obligation to allow OHM another opportunity to explain the omission in its proposal of any mention of the District IV contract." (Finding of Fact No. 99)

The documentary evidence and the witnesses' testimony establish that the "revised" scores of the Technical Review Committee appropriately reflect the weight each member gave to the information confirmed by **OHM** in its written rebuttal to the **WRS** protest; and that Maurico Gomez and Lillian Costa testified that **OHM'S** reduced score was due to the fact that the same two key individuals were committed to the District IV contract and that **OHM** did not list any current or projected workload for those personnel, nor did it identify the District IV contract.

It is within the province of the Administrative Law Judge to judge the credibility of witnesses and weigh the evidence. Heifetz, 475 So. 2d at 1277. See also Perdue v. TJ Palms Assoc., Ltd., 755 So. 2d 660, 666 (Fla. 4th DCA 1999). The Administrative Law Judge heard and reviewed all of the evidence, properly weighed that evidence, and made her findings of fact. A review of the entire record reveals that the facts to which exception has been taken in this regard are supported by competent, substantial evidence.

OHM'S third exception to Findings of Fact No. 98 (or 48), and 99, is rejected.

OHM'S fourth exception is to Finding of Fact No. 105, because the Administrative Law Judge erred in finding that the Technical Review Committee's agreement that **OHM'S** score would have been affected if the Technical Review Committee had known of the District IV contract, did not amount to an agreement that **OHM'S** score should have been lower.

OHM argues that the evidence was clear and consistent that the Technical Review Committee members, when they met on October 4, 1999, agreed that had they known the information about **OHM'S** alleged work in District IV, it would have affected their original scoring of **OHM'S** proposal. In light of these findings, **OHM** argues, it was error for the Administrative Law Judge to find that when the committee met and agreed that the information about District IV would have "greatly affected" their scoring if it had been known originally, it did not amount to an agreement that **OHM'S** scores should have been lower.

OHM argues that this finding is unsupported by the extensive evidence on this issue, and is arbitrary. According to **OHM**, the only evidence offered supports a finding that the Technical Review Committee members reached an agreement during their meeting that had they known of the allegedly missing information about **OHM'S** work in District IV, **OHM'S** original scores would have been lower. This evidence, **OHM** continues, demonstrates a plain violation of the requirements imposed on the Technical Review Committee by the RFP and the **DEPARTMENT'S** internal policies that the proposals be evaluated independently and objectively, and not in a "meeting type environment." As such, it is argued, the Administrative Law Judge's findings in this regard are not supported by competent, substantial evidence, and are plainly erroneous.

The record reveals that upon review of the allegations contained in the **WRS** Formal

Protest, it was determined by the District VI Technical Review Committee for the District VI contract, that if the allegations by **WRS** as plead were true, the information pertaining to the two key **OHM** personnel presently committed to the District IV contract should have been included in **OHM'S** District VI proposal. The information regarding **OHM'S** proposed contract manager and project manager being previously committed to a District IV contract, if properly included, would have been weighed by the Technical Review Committee members during their initial evaluation of the proposals. The record also reveals that the Technical Review Committee discussed the merits of whether it should reevaluate the **WRS** and **OHM** proposals in light of the fact that **OHM** did not disclose District IV contract information and allegations raised by **WRS'S** protest and **OHM'S** written rebuttal.

The evidence is undisputed that the Technical Review Committee members did not discuss the merits of each of their previous evaluations of either the **OHM** or the **WRS** proposal or re-evaluation, and that they did not discuss any member's decision to evaluate the merits of adding or subtracting points on either the **OHM** or the **WRS** proposal based on the **OHM** information regarding the two key personnel and the current and projected workload.

Based on the testimony of the Technical Review Committee members and the contract administrator, the Administrative Law Judge determined that their testimony was reasonable and credible and specifically found that: "OHM failed to present sufficient persuasive evidence to establish with the requisite degree of certainty that the Technical Review Committee violated any provisions of the RFP and Department policy by discussing at the October 4, 1999, meeting the WRS protest, the OHM rebuttal, and the information Mr. Gomez obtained from Mr. Lampley." (Finding of Fact No. 104) It is beyond the authority of the **DEPARTMENT** to

reassess the Administrative Law Judge's evaluation of testimony and witness demeanor. These matters are within the exclusive province of the Administrative Law Judge's exercise of discretion. See Heifetz, 475 So. 2d at 1277; Perdue, 755 So. 2d at 666.

OHM'S fourth exception to Finding of Fact No. 105, is rejected.

OHM'S fifth exception is to Finding of Fact No. 107, because the Administrative Law Judge's findings regarding the workloads of Tom McSweeney and Dean Carter are not supported by the evidence. **OHM** argues that the Administrative Law Judge made the unsupported assertion in Finding of Fact No. 107 that because Tom McSweeney and Dean Carter were listed as **OHM'S** contract manager and project manager in District IV, they "would necessarily have some work under the District IV contract whenever **OHM** is working on a District IV project." **OHM** argues that there is not a shred of evidence in the record, nor is there any finding by the Administrative Law Judge elsewhere in the Recommended Order, to support that finding. **OHM** argues that the only evidence was that **OHM** had a contract in District IV. No evidence was presented that either Mr. McSweeney or Mr. Carter had any workload under that contract in District IV and that the testimony was clear that they had none. **OHM** also contends this finding is erroneous because the Technical Review Committee members admitted that they never learned of Mr. McSweeney's and Mr. Carter's workloads.

Stating the obvious, the Heifetz court notes that evidence frequently supports two inconsistent findings. Heifetz, 475 So. 2d at 1277. By its exception and its argument, **OHM** advocates avoiding the issue of the current and projected workloads of Mr. McSweeney and Mr. Carter by referring to and focusing on only time billed to the District IV contract. The record reveals that the RFP required **OHM** to describe current and projected workloads of key

personnel, and that **OHM** did not address the District IV contract workload for either of its two key personnel in its proposal for District VI. In fact, **OHM'S** written rebuttal to the **WRS** allegations admitted that **OHM** was under contract in District IV and then gave an explanation of how much work **OHM** had performed. Therein, **OHM** states that identifying the District IV contract work as a "significant" ongoing involvement would have been misleading given the lack of historical and current work in District 4." However, as the record reveals, there was no RFP requirement that bidders list "significant" involvement or only "significant" current or projected workload.

When conflicting evidence is offered, it is the Administrative Law Judge's role to decide the issue one way or the other. Heifetz, 475 So. 2d at 1277. There is competent, substantial evidence in the record to support the Administrative Law Judge's resolution of the conflicting evidence and her findings in this regard.

OHM'S fifth exception to Finding of Fact No. 107, is rejected.

OHM'S sixth exception, to Findings of Fact No. 84 through 86, claims that the Administrative Law Judge improperly overlooked the significance of Gustavo Pego's and Francine Steelman's memoranda, (Exhibits 30 and 31) which **OHM** claims contained the **DEPARTMENT'S** reasons for District VI revising **OHM'S** scores.

OHM states that the evidence, as reflected in Findings of Fact No. 82 through 84, establishes that the **DEPARTMENT'S** District VI Awards Committee met on October 15, 1999, to approve the "revised" intended award, which now declared **WRS** to be the successful bidder. **OHM** claims Exhibits 30 and 31 contain grossly inaccurate and even false statements.

OHM argues that because these memoranda set forth the reasons for the

DEPARTMENT'S actions, they are clear evidence that the action taken was arbitrary and capricious. However, **OHM** contends, the Administrative Law Judge almost completely ignored the memoranda and their established significance, addressing only the errors in Ms. Steelman's memorandum in an endnote. **OHM** challenges the Administrative Law Judge's statement in endnote 37 that Ms. Steelman "may have overstated the commitment of McSweeney and Carter to District IV," and claims Ms. Steelman's statement was not merely an "overstatement," but completely false.

The record reveals that neither Exhibit 30 or Exhibit 31 was written by any member of the Technical Review Committee. Exhibit 30 represents the mental impressions of Ms. Steelman, the District VI legal counsel assigned the task of preparing the Notice of Revised Intent to Award to **WRS**, and it does not constitute evidence of either the evaluations or the decision of the Technical Review Committee. The admission of Exhibit 30 into evidence was objected to by counsel for both the **DEPARTMENT** and **WRS**. The admission of hearsay is controlled by Section 120.57(1)(c), Florida Statutes, which allows for the admissibility of hearsay evidence to supplement or explain other evidence. The Administrative Law Judge noted the hearsay objections and concluded: "I'm going to go ahead and receive this into evidence. A hearsay objection has been made. It appears to me to be hearsay and I cannot use anything in this document as a basis for a finding of fact, unless its supported by other evidence in the record." (T2.469)[1] The record is devoid of any evidence this hearsay evidence could arguably supplement or explain.

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[1]References to the transcript of the proceeding are in the form of (T.) Followed by the volume and appropriate page number(s).

Moreover, Gustavo Pego testified that the Awards Committee did not rely on the contents of Exhibit 30 in reaching its decision to award the contract to **WRS** upon re-evaluation by the Technical Review Committee. Mr. Pego also noted that Exhibit 30, bearing a date of October 20, 1999, was prepared after the Awards Committee met on October 15, 1999.

The other exhibit upon which **OHM** relies to support its sixth exception is Exhibit 31, the minutes of the October 15, 1999, Awards Committee meeting approving the revised award to **WRS**. The record reveals that while Gustavo Pego, Director of Operations and Chairman of the Awards Committee, is responsible for keeping a record of Awards Committee meetings, his secretary prepares the minutes of those meetings. As with Exhibit 30, counsel for the **DEPARTMENT** objected to the admission of Exhibit 31 as hearsay. The Administrative Law Judge similarly admitted Exhibit 31 into evidence subject to the limitations on the use of hearsay: "To the extent that it's hearsay, then I will receive it into evidence subject to the limitations on the use of hearsay, unless you establish it is not hearsay . . . ." (T2.458) **OHM** offered no evidence to establish that the minutes were not hearsay.

"Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions." §120.57(1)(c), Fla. Stat. See, e.g., Sideris v. Dep't of Health & Rehabilitative Services, 661 So. 2d 382 (Fla. 1st DCA 1995)(error for hearing officer to rely upon hearsay to establish value of assets in determining food stamp eligibility).

The law and the greater weight of the evidence support the conclusion that Exhibits 30 and 31 are hearsay documents and may not, on their own, constitute the basis for any findings of fact by the Administrative Law Judge. By its exception, **OHM** re-argues the facts in an

attempt to establish that the Awards Committee relied on false or inaccurate information in accepting the recommendation of the Technical Review Committee's revised award to **WRS** and to establish that the Administrative Law Judge erred in not making findings in this regard. The Administrative Law Judge's findings and conclusions regarding these exhibits and the statements therein are supported by competent, substantial evidence, and the law.

OHM'S sixth exception to Findings of Fact No. 84 through 86, is rejected.

OHM'S seventh exception is to Findings of Fact No. 66 and 100. Specifically, **OHM** argues, that the portion of the Administrative Law Judge's Finding of Fact No. 100 that "OHM has failed to establish by the greater weight of the persuasive, credible evidence that the Technical Review Committee's interpretation of current and projected workload is unreasonable, irrational, or illogical," is clearly erroneous, and not supported by the evidence.

The issue, according to **OHM**, based on the evidence presented, cannot reasonably be limited to whether the Technical Review Committee's interpretation of "current and projected workload" was reasonable. First, **OHM** notes that the Administrative Law Judge recognized the terms "current workload" and "projected workload" were not defined in the RFP. **OHM** also points to the fact that the Administrative Law Judge characterized **OHM'S** interpretation as "strained," but did not find **OHM'S** interpretation to be unreasonable. As such, the Administrative Law Judge improperly found that **OHM'S** proposal actually could have been rejected as unresponsive.

OHM argues that regardless of whether the Technical Review Committee's interpretation of these terms was reasonable, it was patently unreasonable, arbitrary, and contrary to competition for the Administrative Law Judge to find that one committee member's

"opinion" as to the meaning of certain terms could be: 1) the basis for secretly reevaluating and rescoring **OHM'S** proposal, as was done; or 2) rejecting **OHM'S** proposal as unresponsive. **OHM** contends that the RFP, and Florida statutory and case law, do not give the **DEPARTMENT** the discretion to take such actions against one proposer based simply on one committee member's "opinion." Instead, upon finding that there was a dispute as to the meaning of this term, which possibly could affect the scores of one proposer, the **DEPARTMENT**, according to **OHM**, was obligated to disclose this to all proposers, and to allow input from all interested parties as to the actions it was considering taking.

The Administrative Law Judge concluded as a matter of law that the Technical Review Committee could have rejected **OHM'S** proposal as non-responsive for its failure to include current and projected workload on its District IV contract. (Conclusion of Law No. 127) There is ample evidence in the record and findings in the Recommended Order establishing that it was **OHM'S** responsibility to disclose information relating to **OHM'S** workload on the District IV contract and **OHM** did not. The record also reveals that **OHM** was given a fair opportunity to address its failure to disclose the material information at issue.

OHM'S reference to the Technical Review Committee "secretly reevaluating and rescoring **OHM'S** proposal" is without basis in the record. Such baseless accusations are both unwarranted and unsupportable. The record establishes that **OHM** had a current contract in District VI which it failed to reveal and also establishes that the RFP made no reference to "significant work load," as **OHM** continues to offer as the reason for its failure to provide the required information. The Administrative Law Judge weighed the plain language of the RFP and its various interpretations and concluded that **OHM** had not shown that the Technical

Review Committee's interpretation was "unreasonable, irrational, or illogical." It was not necessary for the Administrative Law Judge to find **OHM'S** interpretation to be unreasonable, but in weighing the evidence and judging the credibility of the witnesses, she did, however, find **OHM'S** interpretation to be "strained." The Administrative Law Judge's findings in Findings of Fact No. 66 and 100 are supported by competent, substantial evidence.

OHM'S seventh exception to Findings of Fact No. 66 and 100, is rejected.

OHM'S eighth exception is to Findings of Fact No. 82 and 93, and endnotes 23 and 26, because the Administrative Law Judge erred in not finding that a special meeting of the Awards Committee was held, at which Mauricio Gomez was instructed to ascertain the actual workloads of Mr. McSweeney and Mr. Carter in District IV.

OHM argues that the evidence established that a special meeting of the Awards Committee was held between the initial award to **OHM**, and the October 15, 1999, meeting approving the revised award to **WRS**. Despite this evidence, according to **OHM**, the Administrative Law Judge dismissed this issue to an endnote, and accepted Mr. Gomez's version of the facts. The Administrative Law Judge's decision to accept the "story" of Mr. Gomez as opposed to the testimony of the two members of the Awards Committee, both of whom testified contrary to Mr. Gomez, was arbitrary, according to **OHM**.

OHM also challenges the Administrative Law Judge's statement in endnote 23: "In any event, the relevance of whether this meeting did or did not take place to the issues to be resolved herein is questionable." In this regard, **OHM** argues that regardless of any dispute as to the date the meeting actually took place, there was no question on the record evidence (other that Mr. Gomez's mere denials) that Mr. Pego and Mr. Martinez at some point instructed Mr.

Gomez to ascertain what the actual workloads of Mr. McSweeney and Mr. Carter were, and that he failed to do so. **OHM** also claims that Mr. Pego and Mr. Martinez also consistently testified that Mr. Gomez subsequently told them that he had undertaken such an investigation (when he had not), and that his statements were the basis for the contents of the memoranda of Mr. Pego and Ms. Steelman. Thus, whatever the date of the meeting, **OHM** claims the fact that it took place is of great importance to demonstrating the fundamental unfairness and arbitrariness with which the Technical Review Committee conducted its re-evaluation of **OHM'S** proposal.

The issue is not whether the Technical Review Committee failed to conduct an extensive or exhaustive investigation as claimed by **OHM**, but, rather, **OHM'S** failure to disclose material information in its proposal as required by the RFP that precipitated the re-evaluation of **OHM'S** proposal and the revised award to **WRS**.

The record fails to establish or support an inference that Mr. Gomez had an "obvious bias" against **OHM**, as alleged by **OHM**. The record establishes that **OHM'S** District IV contract began in 1998 and is to run for three years. The District VI contract was to begin in 1999 and run for three years. (Finding of Fact No. 47) The contract dates overlap and the same key **OHM** personnel are committed to both contracts. **OHM** further criticizes Mr. Gomez and faults him for **OHM'S** own failure to reveal this in its proposal. **OHM** also attempted to discredit Mr. Gomez on cross examination. By its exception, **OHM** asks the **DEPARTMENT** to reweigh the evidence. However, it is the province of the Administrative Law Judge to judge the credibility of witnesses and weigh the evidence, not the **DEPARTMENT**. Heifetz, 475 So. 2d at 1277.

The record reflects that Mr. Martinez and Mr. Pego consistently testified regarding the Awards Committee's concerns over the duplication of manpower issue on the District IV and District VI contracts. It was also a matter of record that in **OHM'S** District IV proposal, as confirmed by the **DEPARTMENT** and admitted by **OHM** in Exhibit 27, the same two key personnel proposed for the District VI contract were committed full time to the District IV contract. When **WRS** filed its protest of the **DEPARTMENT'S** original intent to award the contract **OHM**, an explanatory rebuttal to the protest was sent by **OHM**. The Administrative Law Judge found as a matter of fact that the **DEPARTMENT** had no obligation to go back to **OHM** after **OHM** submitted its written rebuttal to **WRS'S** protest for further confirmation or rebuttal. (Finding of Fact No. 99)

OHM'S eighth exception to Findings of Fact No. 82 and 93, and endnotes 23 and 26, is rejected.

OHM'S ninth exception is to Findings of Fact No. 70 and 105, because these findings of the Administrative Law Judge on the issue of the Technical Review Committee's awareness of the closeness of the original scores directly conflict.

In this regard, **OHM** points to Finding of Fact No. 70 which states:

> Before they began their re-evaluation, the three members of the Technical Review Committee were aware that OHM was the highest-ranked proposer and had been identified in the initial Notice of Intent to Award posted August 26, 1999, as the company to which the Department intended to award the subject contract. <u>They also must have been aware of the very small difference between WRS's and OHM's total scores.</u> (emphasis added by OHM)

OHM then argues that Finding of Fact No. 105 is almost the opposite:

> However, OHM presented no persuasive evidence that the members of the Technical Review Committee were actually aware at the time of the October 4, 1999, meeting that little more than .2 points separated the total scores of OHM and WRS.

OHM claims that these two findings contradict one another and undermine findings with regard to the re-evaluation. **OHM** claims that the Technical Review Committee members admitted that they knew the initial scores at the time of their re-evaluation, and therefore believes the Administrative Law Judge's finding in paragraph 105 is further evidence of arbitrariness and prejudice against **OHM** in the Recommended Order.

The Administrative Law Judge did not find that the Technical Review Committee members were aware of the original scores, but rather that they "were aware that OHM was the highest ranked proposer" and inferred from the totality of the evidence that "[t]hey must have also been aware of the very small difference between WRS's and OHM's total score." (Finding of Fact No. 70) The Administrative Law Judge then proceeds to make numerous detailed findings regarding the individual re-evaluation of the members. (Findings of Fact No. 71-82) **OHM** has taken no exception to Findings of Fact No. 71-81. In Findings of Fact No. 75 and 76, the Administrative Law Judge specifically found that neither Ms. Costa nor Mr. Rodriguez discussed with Mr. Gomez, or with one another, their individual scoring or the re-evaluation and that each re-evaluated independently. No exceptions were taken to these findings. The Administrative Law Judge also specifically found that: "OHM failed to present sufficient persuasive evidence to establish that Mr. Gomez, Ms. Costa, or Mr. Rodriguez acted in violation of the provisions of the RFP or Department policy or acted arbitrarily or capriciously when they each deducted a point from OHM's Management Plan under Section 1.16.2.B.b.3. of

the RFP . . . ." (Finding of Fact No. 106) No exception is taken to Finding of Fact No. 106.

The Administrative Law Judge's findings that the committee members "must have been aware of the very small difference" between scores, but that no persuasive evidence was presented that they were actually aware that the difference was only "a little more than .2 points," are not inconsistent. The Administrative Law Judge made several pertinent findings regarding the re-evaluation and that **OHM** had failed to present persuasive evidence of any bias or prejudice against **OHM** or in favor of **WRS**. Additionally, the Administrative Law Judge found that: "Even assuming that the members of the Technical Review Committee were aware that any decrease in points awarded for OHM's Management Plan might result in its losing the contract award, it cannot reasonably be inferred that the Technical Review Committee members decided to re-evaluate OHM's proposal for improper motives or out of favoritism to WRS." (Finding of Fact No. 105) **OHM'S** claims of prejudice by both the Administrative Law Judge and the Technical Review Committee members are unsupported by the record or the Recommended Order. The objected to findings of the Administrative Law Judge are not inconsistent and are supported by competent, substantial evidence.

OHM'S ninth exception to Findings of Fact No.70 and 105, is rejected.

OHM'S tenth exception is to Findings of Fact No. 53 and 107, because the Administrative Law Judge improperly created a distinction between "billable" time and time spent in District IV as to Tom McSweeney's workload.

In this exception, **OHM** argues that the Administrative Law Judge made the point in two separate portions of the Recommended Order that **OHM** only presented evidence that Mr. McSweeney had put in no "billable" time in District IV, but did not indicate "the time he had

actually spent working on the District IV contract." According to **OHM**, this distinction was drawn without evidence in the record and the only testimony as to Mr. McSweeney's work in District IV was offered by Mr. McSweeney, and he testified that he had billed no time to District IV. A presumption that there must have been some other type of work Mr. McSweeney was performing in District IV is, according to **OHM**, unsupported by any record evidence, and further evidences the arbitrariness and prejudice against **OHM** by the Administrative Law Judge in the Recommended Order.

The record is undisputed that **OHM** failed to include any workload from District IV in its District VI proposal. In defense of this omission, **OHM** attempted to create a distinction between workloads and significant workloads, varying definitions of workload, and billed time. However, **OHM** admitted its failure to include the required information in its September 24, 1999, written rebuttal. (Exhibit 27) Requiring current and projected workload was material to the RFP and allowed the Technical Review Committee members to assess the time and percent of availability of key personnel that would be committed to performing other contracts. **OHM'S** explanation of its failure to include the District IV workload did not persuade the Technical Review Committee, or the Administrative Law Judge. In fact, the Administrative Law Judge found the omission so significant as to conclude as a matter of law that the Technical Review Committee could have rejected **OHM'S** proposal as non-responsive due to its failure to include material information in its proposal regarding workload. (See Finding of Fact No. 101 and Conclusion of Law No. 127)

OHM'S tenth exception to Findings of Fact No. 53 and 107, is rejected.

OHM'S eleventh exception is to Findings of Fact No. 108 and 109, and Conclusions of

Law No. 125 and 128, because based on the matters set forth in **OHM'S** first ten exceptions, these findings are not supported by competent record evidence, and are arbitrary and clearly erroneous.

Findings of Fact No. 108 and 109 conclude that **OHM** presented sufficient persuasive evidence to establish Ms. Costa [and Mr. Gomez] acted arbitrarily "in taking certain actions in the re-evaluation." These findings are favorable to **OHM**. Exceptions to favorable findings are unusual. Nevertheless, the authority to weigh the evidence is the province of the Administrative Law Judge, not the **DEPARTMENT**. Perdue, 755 So. 2d at 665. While even the **DEPARTMENT** might conclude that the actions of Ms. Costa and Mr. Gomez in this regard were not arbitrary, the **DEPARTMENT** is not authorized to reweigh the evidence. Id.

OHM also takes exception to Conclusions of Law No. 125 and 128, but merely references other arguments made in previous exceptions. **OHM'S** lack of specificity, and failure to include sufficient objected to facts or point to any legal authority to support its exception hampers the **DEPARTMENT'S** ability to adequately address the exception. In Conclusion of Law No. 125 the Administrative Law Judge determined that based on her findings of fact, **OHM** had failed to prove by a preponderance of evidence that the **DEPARTMENT'S** decision to re-evaluate **OHM'S** technical proposal was contrary to its rules, policies, or the specifications, or that its decision was arbitrary or capricious. In Conclusion of Law No. 128 the Administrative Law Judge determined that **OHM** had similarly failed to prove by a preponderance of the evidence that the Technical Review Committee acted improperly or in violation of the **DEPARTMENT'S** rules, policies, or the RFP as a result of the members' discussion of **WRS'S** protest, **OHM'S** rebuttal, and Mr. Gomez's subsequently obtained

information, or that the members of the Technical Review Committee violated **DEPARTMENT** rules or policies or the RFP by deducting a point from **OHM'S** score upon their re-evaluations.

These conclusions and the findings from which they are drawn are supported by competent, substantial evidence and the law.

OHM'S eleventh exception to Findings of Fact No.108 and 109, and Conclusions of Law No. 125 and 128, is rejected.

OHM'S twelfth exception is to endnotes 27 and 45 of the Recommended Order, claiming it was clearly erroneous for the Administrative Law Judge to conclude that there was no evidence to support a finding that the **DEPARTMENT** acted contrary to competition.

OHM argues that the **DEPARTMENT'S** actions were contrary to competition, in that all of its actions in reevaluating, rescoring, and changing its award took place without notice to any of the proposers. The **DEPARTMENT**, according to **OHM**, could have avoided some, if not all of the problems that have arisen in this matter, if it had simply notified the proposers that an issue had arisen with regard to **OHM'S** proposal, and that the **DEPARTMENT** was investigating the matter further. Once it had completed its investigation, **OHM** claims the **DEPARTMENT** could then have invited responses on the issue from the proposers involved. During this process, **OHM** argues that the **DEPARTMENT** could have learned that Mr. McSweeney had not billed an hour to the District IV contract, as well as the reasons why **OHM** projected no work for Mr. McSweeney or Mr. Carter in District IV, as **OHM** asserts the evidence subsequently established. Instead, **OHM** continues, the **DEPARTMENT** acted improperly and simply took action unilaterally, behind the scenes, without fully gathering all relevant facts, and, as a result, made a decision in a clandestine group setting, acted in favor of

one proposer based on unsubstantiated information, and used criteria outside the RFP.

Initially, **OHM'S** twelfth exception makes reference to pages 57 and 75 of the Recommended Order as well as to endnotes 27 and 45. It is assumed that these pages are referenced because it is on those pages that the superscript for the challenged endnotes appear. If pages 57 and 75 are referenced as generalized exceptions to the findings therein, they must be rejected because the mere reference to pages of a Recommended Order is insufficient to form a basis for an exception. An agency is required to make an explicit ruling on each exception made by a party. See Fla. Admin. Code R. 28-5.405(3); Lloyd v. Dep't of Professional Reg., 473 So. 2d 720 (Fla. 4th DCA 1985)(agency required to rule on exceptions and state with particularity its reasons for so ruling). Without a specific exception to a specific finding of fact or conclusion of law, the **DEPARTMENT** cannot specifically rule on or address **OHM'S** challenge to the Recommended Order.

As to endnotes 27 and 45, the **DEPARTMENT** notes that the Administrative Law Judge specifically found as a matter of law that the **DEPARTMENT** would have been justified in rejecting **OHM'S** proposal as non-responsive due to its failure to disclose its workload in District IV. (Conclusion of Law No. 127) However, when **WRS** filed its protest, **OHM** had the opportunity to provide additional information it wanted the **DEPARTMENT** to consider and did so. The evidence establishes, and the Administrative Law Judge found, that "The Department had no obligation to allow OHM another opportunity to explain the omission in its proposal of any mention of the District IV contract." (Finding of Fact No. 99) **OHM** failed to cure the deficiencies of its proposal to the satisfaction of the Technical Review Committee, the Awards Committee, and the Administrative Law Judge.

In endnote 27, the Administrative Law Judge explains that **OHM** failed to present any evidence establishing that **WRS** received a competitive advantage as a result of the **DEPARTMENT'S** actions and that, therefore, no findings of fact were made in that regard. Similarly, in endnote 45, the Administrative Law Judge rejects **OHM'S** assertion that it should prevail because **OHM** had established that the assigned work on its District IV contract was $539,782.46, which is significantly less than the $2 million the **DEPARTMENT** estimated. The Administrative Law Judge rejected **OHM'S** position because her function was to review the **DEPARTMENT'S** decision in light of the facts on which the decision was based. She concluded, therefore, that the facts offered by **OHM** that its ongoing work was less than $2 million was irrelevant. (endnote 45) These findings and conclusions are supported by competent, substantial evidence and the law.

OHM'S twelfth exception to endnotes 27 and 45 of the Recommended Order, is rejected.

OHM'S thirteenth exception is a general exception to the Administrative Law Judge's ultimate conclusions, a lack of findings, and the lack of a conclusion that the **DEPARTMENT** acted arbitrarily, capriciously, and contrary to competition, and that as a result, the **DEPARTMENT** should have either rejected all bids and ordered a new RFP to be issued, or awarded the contract to **OHM**.

By its thirteenth exception, **OHM** generally challenges the ultimate conclusion of the Administrative Law Judge approving the **DEPARTMENT'S** actions and decision by referring to the reasons set forth in its other exceptions and as set forth in its Proposed Findings of Fact and Conclusions of Law. The burden was on **OHM** in protesting the intended award of the

contract to **WRS** to establish that the award was invalid. State Contracting & Engineering Corp. v. Dep't of Transp., 709 So. 2d 607, 609 (Fla. 1st DCA 1998). Having heard and reviewed all of the evidence and applying the law to that evidence, the Administrative Law Judge concluded that **OHM** failed to meet its burden. **OHM** has failed to demonstrate a factual or legal basis for invalidating the **DEPARTMENT'S** reconsideration of the initial decision to award to **OHM** due to **OHM'S** admitted failure to not disclose its contract commitment in District IV when it submitted its District VI proposal.

The standard of proof in a competitive procurement protest is whether the **DEPARTMENT'S** action was clearly erroneous, contrary to competition, arbitrary or capricious. § 120.57(3)(f), Fla. Stat. (2000). **OHM**, as concluded by the Administrative Law Judge, failed to demonstrate by either documentary or testimonial evidence in the record, that the Technical Review Committee's re-evaluation of the **WRS** and **OHM** proposals was not based on an honest exercise of discretion, on a reasonable and factual deliberation of the proposals, and in accordance with Florida law and **DEPARTMENT** procedures and rules.

A public body has wide discretion in soliciting and accepting proposals for public improvements and its decision, when based on an honest exercise of discretion, will not be overturned even if it may appear erroneous and even if reasonable persons may disagree. Baxter's Asphalt & Concrete, Inc. v. Dep't of Transp., 475 So. 2d 1284, 1287 (Fla. 1st DCA 1985). In exercising its discretion in interpreting and applying the statute and **DEPARTMENT** procedures and rules in the manner it did in this case, the **DEPARTMENT'S** interpretation was not shown to be clearly erroneous. State Contracting, 709 So. 2d at 610. The **DEPARTMENT** also has the discretion to determine the legal sufficiency of a bid protest

before it is required to refer the bid protest to the Division of Administrative Hearings. D.A.B. Constructors, Inc. v. Dep't of Transp., 656 So. 2d 940, 942 (Fla. 1st DCA 1995)(citing Fort Howard Co. v. Dep't of Management Servs., 624 So. 2d 783 (Fla. 1st DCA 1993)(affirming denial of bid protest due to lack of standing)).

The Administrative Law Judge concluded, and the record in its entirety reveals, that the **DEPARTMENT'S** actions when the Technical Review Committee learned that **OHM** failed to disclose material information required by the RFP were reasonable and that the evidence did not form a sufficient basis to conclude that the **DEPARTMENT'S** actions were clearly erroneous, contrary to competition, arbitrary, or capricious.

OHM'S thirteenth exception to the Recommended Order, is rejected.

FINDINGS OF FACT

1. After review of the record in its entirety, it is determined that the Administrative Law Judge's Findings of Fact in paragraphs 1 through 110 of the Recommended Order are supported by competent, substantial evidence and are accepted and incorporated as if fully set forth herein.

2. The cost incurred by the **DEPARTMENT** for the attendance of the court reporter and the transcript of the proceeding is $3,219.00

CONCLUSIONS OF LAW

1. The **DEPARTMENT** has jurisdiction over the subject matter of and the parties to this proceeding pursuant to Chapter 120, Florida Statutes.

2. The Conclusions of Law in paragraphs 111 through 130 of the Recommended Order are fully supported in law. As such, they are adopted and incorporated as if fully set forth

herein.

3. Pursuant to Section 287.042(2)(c), Florida Statutes, "any person who files an action protesting a decision or intended decision pertaining to contracts administered by the department, a water management district, or a state agency pursuant to s.120.57(3)(b) shall post . . . a bond" and "[i]f, after completion of the administrative hearing process and any appellate court proceedings, the . . . agency prevails, it shall recover all costs and charges which shall be included in the final order or judgment, excluding attorney's fees. . . ."

ORDER

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

ORDERED that the Administrative Law Judge's Recommended Order is adopted in its entirety. It is further

ORDERED that the award of the subject contract, RFP-DOT-99/200-6-62DS, FIN Number 249943, to **Intervenor, WRS INFRASTRUCTURE AND ENVIRONMENT, INC.**, is confirmed. It is further

ORDERED that the **Respondent, STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION,** hereby retains jurisdiction over this matter for the sole purpose of

considering the Motion for Costs and any responses thereto, which shall be addressed by separate order.

DONE AND ORDERED this 27th day of September, 2001.

THOMAS F. BARRY, JR., P.E.
Secretary
Department of Transportation
Haydon Burns Building
605 Suwannee Street
Tallahassee, Florida 32399

FILED D.O.T. CLERK
2001 SEP 27 AM 7:33

NOTICE OF RIGHT TO APPEAL

THIS ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RULES 9.110 AND 9.190, FLORIDA RULES OF APPELLATE PROCEDURE, BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.110(d), FLORIDA RULES OF APPELLATE PROCEDURE, BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL, ACCOMPANIED BY THE APPROPRIATE FILING FEE, AND WITH THE DEPARTMENT'S CLERK OF AGENCY PROCEEDINGS, HAYDON BURNS BUILDING, 605 SUWANNEE STREET, M.S. 58, TALLAHASSEE, FLORIDA 32399-0458, WITHIN THIRTY (30) DAYS OF RENDITION OF THIS ORDER.

Copies furnished to:

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