

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MENTAL HEALTH RESOURCE)
CENTER, INC.)
)
Petitioner,)
)
vs.) Case No. 02-1998BID
)
DEPARTMENT OF CHILDREN)
AND FAMILY SERVICES,)
)
Respondent,)
and)
)
PSYCHOTHERAPEUTIC SERVICES,)
OF FLORIDA, INC.)
)
Intervenor.)
_____)

RECOMMENDED ORDER

A hearing was held pursuant to notice, on June 17 and 18, 2002, in Tallahassee, Florida, by Barbara J. Staros, assigned Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Bruce Culpepper, Esquire
Laura Boyd Pearce, Esquire
Akerman, Senterfitt & Eidson, P.A.
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For Respondent: William A. Frieder, Esquire
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For Intervenor: Thomas R. Tatum, Esquire
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STATEMENT OF THE ISSUE

Whether the proposed decision of the Department of Children and Family Services to award the contract for Florida Assertive Community Treatment (FACT) Programs in District 4 as set forth in RFP No. 01H02FP5, to Psychotherapeutic Services of Florida, Inc., is contrary to the Agency's governing statutes, the Agency's rules or policies, or the specifications of the RFP?

PRELIMINARY STATEMENT

On or about February 18, 2002, the Department of Children and Family Services (DCF) issued a Request for Proposals No. 01H02FP5 for FACT Programs for persons with severe and persistent mental illnesses for DCF's Districts 4, 7, and 11. Petitioner, Mental Health Resource Center, Inc. (MHRC), responded to the RFP for the proposed program in District 4.

On April 16, 2002, DCF posted the results of its evaluation committee in a document entitled "Proposal Tabulation" which indicated that Psychotherapeutic Services, Inc. received the highest score and that Petitioner received the second highest score of the proposals evaluated for District 4.

On April 17, 2002, MHRC filed a Notice of Intent to Protest DCF's intended action.

On May 9, 2002, MHRC filed an Amended Petition to Protest Department Action and for Referral to the Division of Administrative Hearings (DOAH). The case was referred to DOAH on or about May 16, 2002. A related case involving the same RFP was also forwarded to DOAH on May 16, 2002. On May 17, 2002, the undersigned, sua sponte, issued an Order of Consolidation consolidating this case with DOAH Case No. 02-1999BID and a formal hearing was scheduled for June 13, 2002.

On May 21, 2002, Psychotherapeutic Services of Florida, Inc., filed a Petition to Intervene in the protest involving RFP No. 01H02FP5 for DCF District 4. The Motion to Intervene was granted.

Petitioner filed an unopposed Motion to Sever from Case No. 02-1999BID. On May 29, 2002, the Motion to Sever was granted and an Amended Notice of Hearing was issued scheduling the hearing for June 17 and 18, 2002.

On June 11, 2002, Petitioner filed an Amended Motion to Amend Petition to Protest Department Action with a proposed Second Amended Petition to Protest Department Action and Referral to the Division of Administrative Hearings. Respondent and Intervenor filed objections to the Motion to Amend Petition. The motion was granted in part and denied in part.

The Second Amended Petition to Protest alleged the following disputed issues of material fact:

(a) Whether the PSFI proposal deviates materially from the terms, conditions and specifications set forth in the subject RFP (RFP No. 01H02FP5).

(b) Whether the proposal submitted by PSFI contains material misstatements of facts.

(c) Whether PSFI's proposal is in fact the most advantageous to the Department of Children and Families, the State of Florida, District 4 and individuals served.

(d) Whether the Evaluation Committee performed its duties in an objective and fair manner, consistent with the methodology specified in the RFP.

(e) Whether the Evaluation Committee members had the necessary experience and knowledge to fairly evaluate the proposals.

(f) Whether the Department's intended award to PSFI is contrary to the Department's governing statutes, rules, policies, and specifications set forth in the RFP.

(g) Whether MHRC's proposal is the most advantageous to the State.

(h) Whether the Department's intended award of the contract to PSFI is clearly erroneous, contrary to competition, arbitrary or capricious.

The parties filed a Prehearing Stipulation. Intervenor filed a Motion in Limine which was denied. At hearing, Petitioner presented the testimony of Stephen Poole, Timothy Griffith, Luther Cox, and Robert Sommers, and the deposition testimony of Phyllis Holder, Robert Miles, Cheryl Fordyce and Barbara Johanningsmeier. Petitioner's Exhibits numbered 1

through 24 were admitted into evidence. Respondent did not present any witnesses. Respondent's Exhibit numbered 1 was admitted into evidence. Petitioner's request for official recognition was withdrawn during the hearing. Intervenor presented the testimony of Randall Cooper and Richard Warfel. Intervenor's Exhibits numbered 1 through 7 were admitted into evidence.

A Transcript of the hearing, consisting of four volumes, was filed on August 5, 2002. The parties filed a Joint Request for Additional Time to file Proposed Recommended Order which was granted. The parties timely filed Proposed Recommended Orders which have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

Background

1. On or about February 18, 2002, DCF issued RFP No. 01H02FP5 for the implementation of Florida Assertive Community Treatment (FACT) Programs for persons with severe and persistent mental illnesses in DCF Districts 4, 7, and 11. The review in this case is limited to DCF's proposal to award a FACT contract in District 4. Four vendors submitted proposals for District 4, including Petitioner and Intervenor.

2. Section 5.2 of the RFP requires that each proposal include a title page as page two of the proposal and include the RFP number; title of proposal; prospective offeror's name; organization to which the proposal is submitted; name, title, phone number and address of person who can respond to inquiries regarding the proposal; and name of project director, if known.

3. The proposal submitted by Intervenor contained a title page identifying the offeror as Psychotherapeutic Services of Florida, Inc., with a mailing address in Chesterfield, Maryland. Further, every page of Intervenor's proposal had the name Psychotherapeutic Services of Florida, Inc., printed on the bottom left corner.

4. Section 6.1 of the RFP describes two phases of DCF's review of the proposals. The first is an initial screening of all proposals for what the RFP describes as "Fatal Criteria." The second is the qualitative review of each proposal using criteria set out in the RFP by an evaluation team.

Fatal Criteria

5. Section 5.4 of the RFP reads as follows:

5.4 RESPONSE TO INITIAL SCREENING REQUIREMENTS

The initial screening requirements are described as FATAL CRITERIA on the RFP Rating Sheet (see section 6.1). Failure to comply with all initial screening requirements will render a proposal non-responsive and

ineligible for further evaluations. The fatal criteria are:

a). Was the proposal received by the date, time and location as specified in the Request for Proposal (section 2.4)?

b). Was one (1) original and eight (8) copies of the proposal submitted and sealed separately? (section 5.12)?

c). Did the provider include a Proposal Guarantee payable to the department in the amount of \$1,000.00 (section 2.11)?

d). Did the application include the signed State of Florida Request for Proposal Contractual Services Acknowledgement Form, PUR 7033 for each proposal submitted?

e). Did the provider submit the Notice of Intent to Submit form contained in Appendix 2 by the required due date?

f). Did the provider register and attend the offeror's conference?

g). Did the proposal include the signed Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Contracts/Subcontracts (Appendix 6)?

h). Did the proposal include the signed Statement of No Involvement(Appendix 7)?

i). Did the proposal include the signed Acceptance of Contract Terms and Conditions indicating that the offeror agrees to all department requirements, terms and conditions in the Request for Proposal and in the Department's Standard Contract (Appendix 8)?

j). Did the proposal include a signed lobbying form (Appendix 9)?

k). Did the proposal include an audited financial statement for fiscal years 1999-2000 and 2000-2001?

l). Did the proposal include a certification of the offeror's good standing (Appendix 1)?

m). Did the proposal contain evidence the minimum staffing levels in section 3.11 will be hired and employed?

n). Did the proposal contain a signed Certification of a Drug-Free Workplace program (Appendix 10)?

o). Did the proposal contain a certification regarding electronic mailing capability as referenced in section 3.20 (Appendix 5)? (emphasis in original)

6. Section 6.1 of the RFP includes a Fatal Criteria rating sheet requiring "yes" or "no" responses by the reviewer, which included, among other provisions, the following:

4. Did the proposal include a signed Form PUR 7033?

* * *

11. Did the proposal include independent audited financial statement from a CPA firm for fiscal years 1999-2000 and 2000-2001?

Form PUR 7033

7. Section 5.1 of the RFP, entitled, STATE OF FLORIDA REQUEST FOR PROPOSAL CONTRACTUAL SERVICES ACKNOWLEDGMENT FORM, PUR 7033, requires proposers to manually sign an original Form 7033 on the appropriate signature line. The signed form 7033 must appear as the first page of the proposal. Form PUR 7033 is

not a form generated by DCF but is generated by the Department of Management Services. The RFP did not set forth any fatal criteria in connection with this form other than it be signed.

8. The proposal of Intervenor, PSFI, contained form PUR 7033 with the signature of its Chief Executive Officer, D. Cherry Jones, within the signature block designated as "authorized signature."

9. The name Psychotherapeutic Services appears on Intervenor's form 7033 in the block entitled "vendor name." The address which appears in the block designated as "vendor's mailing address" on Intervenor's form PUR 7033 is the same mailing address in Chesterfield, Maryland, that appears on the title page of Intervenor's proposal. The block designated on as "state purchasing subsystem (SPURS) vendor number" on Intervenor's form PUR 7033 is blank.

10. In completing the RFP forms designated as Appendix 1, Offeror Certification of Good Standing; Appendix 5, Certification of Electronic Mail Capability; Appendix 7, Statement of No Involvement; Appendix 8, Acceptance of Contract Terms and Conditions; and Appendix 10, Certification of a Drug-Free Workplace Program, Psychotherapeutic Services appears in the blank designated for the name of the vendor or offeror. These appendices were all signed by D. Cherry Jones.

11. Petitioner contends that the use by Intervenor of Psychotherapeutic Services or other shortened version of its full name instead of Psychotherapeutic Services of Florida, Inc., on Form PUR 7033 and the required appendices renders Intervenor's proposal non-responsive, creates confusion as to what entity was responding to the RFP, is misleading and, therefore, is contrary to competition. Petitioner notes that the Proposal Tabulation prepared by DCF referenced Intervenor as Psychotherapeutic Services, Inc., rather than Psychotherapeutic Services of Florida, Inc.

12. In Appendix 8 to Intervenor's proposal, the corporate documents from the Florida Department of State were for Psychotherapeutic Services of Florida, Inc.

13. As to the SPURS vendor number, the RFP did not require the provision of a vendor number on the PUR 7033 as a preliminary screening requirement of fatal criteria. The RFP does not contain a requirement that a proposer have an existing SPURS vendor number. According to Mr. Poole, there were no restrictions on who could submit a proposal. In response to a written inquiry, which asked whether local mental health agencies be given preference in the bidding process over out of state companies, DCF responded:

No. We want as many entities as possible to compete for these teams. The competition is fair and open to all who meet the requirements outlined in the RFP.

14. Thus, DCF encouraged all interested providers to submit proposals, not just those who had previously contracted with DCF. Accordingly, an offeror may not have an existing vendor number when submitting a proposal. Although Intervenor had previously contracted with DCF, the vendor number was not a specified requirement of the RFP.

15. Timothy Griffith is Deputy Executive Director of Psychotherapeutic Services of Florida, Inc. Mr. Griffith describes their use of Psychotherapeutic Services as similar to the use of a trademark or servicemark. The parent company of all Psychotherapeutic Services affiliates, including Psychotherapeutic Services of Florida, Inc., is Associated Service Specialists, Inc. The relationship between Psychotherapeutic Services of Florida, Inc., and Associated Service Specialists, Inc., as well as other affiliates, was set forth in sufficient detail in Intervenor's proposal.

16. Other than the assertions of Petitioner's President and Chief Executive Officer, Robert Sommers, as to his perception, there is no evidence that anyone in DCF or its evaluators were confused as to what entity was identified in the proposal submitted by Intervenor.

17. Stephen Poole is a Senior Management Analyst II with DCF, and is the procurement manager for the RFP. According to Mr. Poole, DCF looks within a proposal for the identity of the proposer on the title or cover page of the proposal. There was never any confusion in his mind as to what entity was making the offer to DCF. He understood Psychotherapeutic Services to be a "tradename." When asked what entity he was talking about when he refers to Psychotherapeutic Services, he replied:

I'm talking about Psychotherapeutic Services, Psychotherapeutic Services of Florida, or Psychotherapeutic Services, Inc. To me, they are one in the same. We have been under contract with Psychotherapeutic Services of Florida for other programs, FACT programs. And I, early on, got accustomed, as a matter of convenience and expediency, to refer to them as PSI.

18. Consistent with his testimony, Mr. Poole's reference to Psychotherapeutic Services, Inc., on the bid tabulation sheet was simply shorthand for Psychotherapeutic Services of Florida, Inc. Similarly, the bid tabulation sheet references Petitioner as Mental Health Resource Center even though it's full name is Mental Health Resource Center, Inc.

19. There is no evidence that the evaluators were confused or misled as to Intervenor's identity or corporate affiliations. Evaluator Robert Miles was not confused and considered Psychotherapeutic Services and Psychotherapeutic Services of

Florida, Inc. to be one and the same. Evaluator Jan Holder was not confused as to Intervenor's identity:

Q And we have been calling that company alternatively Psychotherapeutic and several other shortened versions of the name. Has that created any confusion in your mind as to what entity we're talking about?

A No.

20. Petitioner's assertion that Intervenor's proposal was non-responsive as a result of the use of an abbreviated form of Intervenor's name is not supported by the above findings.

Financial Statements

21. Petitioner asserts that Intervenor failed to meet the requirement set forth in Section 5.4k of the RFP, and referenced in paragraph 11 of the Fatal Criteria checklist, that proposers include independent audited financial statements for fiscal years 1999-2000 and 2000-2001. The RFP did not provide any definition, standard, guidelines or mandatory requirement for the format or content of financial statements, audits, or audited financial statements. The RFP simply required that they be included.

22. Intervenor's proposal contained audited financial statements for fiscal years 1999-2000 and 2000-2001. Intervenor's 2000-2001 audited financial statements consisted of an independent auditor's report from Nardone, Pridgeon & Company, P.A., Certified Public Accountants, dated August 10, 2001; balance sheets; statements of cash flow; statements of operations

and retained earnings (deficit); and personnel and operating expenses. However, four pages, consisting of the Notes to Financial Statements, were omitted. There is no dispute regarding the contents of the audited financial statements for 1999-2000 submitted by Intervenor.

23. The independent auditor's report for fiscal years 2000-2001 stated in pertinent part:

We have audited the accompanying balance sheets of Psychotherapeutic Services of Florida, Inc. as of June 30, 2001 and 2000, and the related statements of operations and retained earnings (deficit) and cash flows for the years then ended. . . . In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Psychotherapeutic Services of Florida, Inc. as of June 30, 2001 and 2000. . . . We conducted our audits to form an opinion on the 2001 and 2000 basic financial statements taken as a whole.

24. Luther Cox is a certified public accountant and has expertise in accounting, financial statements, and generally accepted accounting principles relative to financial statements. It is Mr. Cox's opinion that the notes to financial statements are a required element of an audited financial statement. According to Mr. Cox, notes to financial statements explain the financial statements to the reader and are, according to generally accepted accounting principals, an essential component to an independent audited financial statement. Mr. Cox

acknowledged, however, that there was no negative information which should have been disclosed in the subject auditor's opinion letter and that the letter was a "clean opinion," meaning that no adverse financial information was known to the auditors which otherwise would have been required to be reported.

25. Martin Kurtz is also a certified public accountant. He acknowledged that the omission of the notes is not consistent with the standards of the practice of accountancy in Florida. However, he was of the opinion that, based upon the way the independent auditor's opinion letter is written, the letter relates to a full set of financial statements. "They may not have all been presented in the proposal. But there was a full set of audited financial statements." Thus, the auditor's clean opinion letter included a review of the notes.

26. According to Mr. Kurtz, the text of Intervenor's proposal contains more information about the relationship between the parent company and Psychotherapeutic Services of Florida, Inc., than the notes to the financial statements.

27. With the above-competing opinions by certified public accountants, it is appropriate to examine the agency's use of the audited financial statements in its review of the proposals.

28. According to Mr. Poole, the requirement to have the proposals contain independently audited financial statements was to assure DCF that the offeror possessed sufficient financial

sophistication and organizational capacity to perform a FACT contract. In reviewing compliance with the requirement for an audited financial statement, DCF reviewed the submission to determine whether or not it had a letterhead from an independent auditor and whether there were financial statements. The submitted financial statements were not reviewed by a certified public accountant of DCF. According to Mr. Poole, DCF was looking generally for the "strength, administratively of the offeror. If it had the level of management expertise to be able to perform a contract in that amount of money of a million dollars."

29. The independent auditor's letter represents that Intervenor's financial statements for fiscal years 2000-2001 were indeed audited. Petitioner's assertion that Intervenor's proposal is non-responsive because of the omission of the notes to the financial statements is not supported by the above findings.

30. In further support for its assertion that Intervenor's omission of the notes to the financial statements renders Intervenor's proposal non-responsive, Petitioner asserts that the requirement for the inclusion of audited financial statements was not only considered within the fatal criteria of the RFP, but also was a "key consideration" for scoring criterion 36 of the RFP.

31. Organizational capacity is set forth in section 5.5(4) of the RFP which states in pertinent part:

To assist in the determination of the offeror's organizational capacity, please provide, as part of this section, the following:

4. A copy of the financial statements or audits for state fiscal years 1999-2000 and 2000-2001.

6. Evidence that the offeror has met its financial obligations in a timely and consistent manner without the need to incur loans or a line of credit to routinely meet its expenses. (emphasis in original)

32. Section 6.3.6 of the RFP contains certain criteria for the evaluators to score with regard to the organizational capacity of the proposers. Criterion 36 reads as follows:

36. What evidence did the proposal provide that the offeror has not had to obtain loans or a line of credit to routinely meet its financial obligations and expenses in a timely and consistent manner as referenced in section 5.5(4)?

Key considerations for scoring:

Its independently audited financial statements for fiscal years 1999-2000 and 2000-2001 support response.

Offeror's independently audited financial statements for the last two years give evidence of ability to start a new program without benefit of start-up funds. (emphasis in original)

33. Each of the evaluation criteria contained references to key considerations for scoring. The key considerations were to

assist the evaluators in assessing the merits of the proposal. In evaluating criterion 36 pertaining to lines of credit, it was the role of the individual evaluator to interpret the degree of routine reliance and assign accordingly a particular score from zero to three. Intervenor directly addressed loans and lines of credit in the text of its proposal in response to criterion 36. As with the other criteria, evaluators could score this criterion from zero to three. The Department deferred to the evaluators regarding how they interpreted offerors' responses to the requirements of 5.5(4). Thus, the omission of the auditor's notes in regard to criterion 36 goes to the weight of the information in the proposal, not whether fatal criteria were met.

Evaluation Committee Process

34. At the outset, all evaluators were to meet in Tallahassee to receive copies of the proposals they were to score at an initial meeting of the evaluators. One of the evaluators, Mr. Costlow, became ill before he arrived in Tallahassee to attend this meeting. Ms. Holder, the District 4 substitute for Mr. Costlow, did not attend the meeting and did not receive her copies of the proposals she was assigned to score until April 12, 2002. The rest of the evaluators received their copies on April 9, 2002, as scheduled. Petitioner alleges that Ms. Holder had insufficient time to review the three proposals for District

4. According to Ms. Holder, however, she did have sufficient time to adequately review them.

35. At the initial meeting of evaluators on April 9, 2002, Stephen Poole, the Department's procurement manager for this RFP, gave all the evaluators except Ms. Holder instructions as to how the evaluation was to be accomplished. Ms. Holder was not present at that meeting because she had not yet been appointed to serve in Mr. Costlow's place. Because of Ms. Holder's absence from this initial meeting, Petitioner alleges that she was unqualified to accomplish the task of evaluation having missed Poole's instructions, therefore rendering her scoring of its proposal not fair and contrary to the agency's procedures.

36. However, Mr. Poole gave Ms. Holder instructions over the telephone and those instructions were essentially the same as those given to the other evaluators. Ms. Holder was experienced in evaluating proposals and was not a novice to the process. Nevertheless, she was given Mr. Poole's home telephone number and told to contact him if any questions should arise. Ms. Holder was only required to evaluate the three proposals which pertained to District 4, not all of the proposals for all three districts covered by the RFP.

37. Petitioner also alleged that Ms. Holder was not qualified by training or experience to serve of the evaluation team. During Ms. Holder's twenty-year tenure with the Alcohol,

Drug Abuse and Mental Health Program Office, she served as an evaluator between 15 and 20 times for RFP's for Mental Health and Substance Abuse. Ms. Holder was the program director for Mental Health and Substance programs in District 4, with responsibility for developing contracts for substance abuse and mental services for adults and children. She is familiar with the PACT manual and the model developed by the National Association for the Mentally Ill. She has a bachelor's degree in psychology and sociology and a master's degree in rehabilitative counseling from the University of Florida.

38. The only evidence offered by Petitioner that Ms. Holder was not competent to perform her duties as an evaluator was testimony by Mr. Sommers, Petitioner's president and chief executive officer, that she does not answer her telephone messages as promptly as he would wish; that she did not correspond with him as quickly as he wanted her to; and other similar promptness issues.

39. Richard Warfel is a former DCF employee with extensive experience in the area of mental health services in District 4. He has been personally acquainted with Ms. Holder for many years and did not have any reason to question Ms. Holder's competence to perform her duties.

40. The evidence does not support Petitioner's assertion that Ms. Holder was unqualified to be an evaluator or was not sufficiently prepared to conduct the evaluation.

41. Petitioner contends that the evaluation committee did not perform its duties in an objective and fair manner consistent with the Rating Methodology specified in Section 6.3 of the RFP. Specifically, the members of the evaluation committee reviewed the proposals for each of the three districts in random order and did not compare competing proposals to one another within each district.

42. The members of the Evaluation Committee were given specific instruction by Mr. Poole as to how to conduct the evaluation. The evaluators were not required to go through each district's proposals before going through another, and they were to consider the RFP as the beginning and the ending of the universe in terms of the proposal. The evaluators were to read the proposals independently from one another and were to select a proposal at random and to score it based upon that proposal alone. They were not to compare one proposal to another, but evaluate a proposal on its own merit.

43. There was no substantial or material evidence presented by Petitioner to show that any of the members of the evaluation committee's review of the various proposals was not done in an

objective and fair manner consistent with the RFP and the instructions given to them by Mr. Poole.^{1/}

CONCLUSIONS OF LAW

44. The Division of Administrative Hearings has jurisdiction over the parties and subject matter in this case pursuant to Sections 120.569, and 120.57(1) and (3), Florida Statutes.

45. The burden of proof resides with Petitioner. See Section 120.57(3)(f), Florida Statutes.

46. The underlying findings of fact in this case are based on a preponderance of the evidence. Section 120.57(1)(j), Florida Statutes. The standard of proof is whether the proposed agency action was clearly erroneous, contrary to competition, arbitrary, or capricious. Section 120.57(3)(f), Florida Statutes.

47. The de novo proceeding in this case was conducted to examine DCF's proposed action in an attempt to determine whether that action is contrary to the agency's governing statutes, the agency's rules or policies, or the RFP specifications. See Section 120.57(3)(f), Florida Statutes, and State Contracting and Engineering Corporation v. Department of Transportation, 709 So. 2d 607 (Fla. 1st DCA 1998).

48. Section 2.9 of the RFP states that DCF reserves the right to waive minor irregularities when to do so would be in the best interest of the State of Florida. That section defines a minor irregularity as a variation from the RFP terms and conditions which does not affect the price of the proposal, or give the prospective offeror an advantage or benefit not enjoyed by other prospective applicants, or does not adversely impact the interests of DCF. See also Harry Pepper & Associates, Inc. v. City of Cape Coral, 352 So. 2d 1190, 1193 (Fla. 2nd DCA 1977).

49. A "responsive offeror" is a person who has submitted a proposal which conforms in all material respects to an invitation to bid or a request for proposals. Section 287.012(17), Florida Statutes (2001).

50. Intervenor's proposal conforms in all material respects to the RFP. Intervenor's use of less than its full name did not cause any confusion with DCF staff or the evaluators. When reading Intervenor's proposal, the identity of the offeror was not in doubt to DCF staff and its evaluators.

51. Intervenor's omissions of the notes to financial statements do not constitute a material deviation from the fatal criteria of the RFP. Intervenor's 2000-2001 complete financial statements were audited as required by the RFP. The auditor's opinion was a "clean opinion." The RFP did not contain guidelines or standards for the form or content of the audited

financial statements required by the RFP. DCF's purpose of requesting this information was to determine a level of sophistication and organizational capacity of an offeror. DCF did not undertake any detailed review by a certified public accountant to review the content of the audited financial statements. There was no evidence that the omission of the notes gave Intervenor any unfair advantage or misrepresented Intervenor's finances. In summary, the omission of the notes to financial statements constituted a minor irregularity waivable by the agency.

52. Petitioner failed to prove that the members of the evaluation committee did not have the necessary experience and knowledge to fairly evaluate the proposals. DCF designed the RFP evaluation process to allow each evaluator to independently review, evaluate, and score each proposal. There is no evidence that the evaluation process was not done in an objective and fair manner.

53. Petitioner failed to demonstrate by the applicable standard of proof (clearly erroneous, contrary to competition, arbitrary, or capricious) that DCF's proposed action to award the District 4 FACT contract to Psychotherapeutic Services of Florida, Inc., is contrary to the agency's governing statutes, the agency's rules or policies or the language of the RFP.

RECOMMENDATION

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

RECOMMENDED:

That the Department of Children and Families enter a final order dismissing the bid protest filed by Mental Health Resource Center, Inc.

DONE AND ENTERED this 27th day of September, 2002, in Tallahassee, Leon County, Florida.

BARBARA J. STAROS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 27th day of September, 2002.

ENDNOTE

^{1/} Petitioner asserts in its Second Amended Petition that Intervenor's response to criterion #8, Role of The Advisory Committee, contains material misstatements of fact. This issue is not addressed in Petitioner's Proposed Recommended Order. In any event, the evidence does not support a finding of any material misstatement of fact that would render Intervenor's proposal non-responsive.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 10 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.