

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

BAYVIEW CENTER FOR MENTAL )  
HEALTH, INC., )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 02-1999BID  
 )  
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 19 and 20, 2002, in Tallahassee, Florida, by Barbara J. Staros, assigned Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Gary J. Clark, Esquire  
Frank P. Rainer, Esquire  
Sternstein, Rainer & Clark, P.A.  
101 North Gadsden Street  
Tallahassee, Florida 32301

For Respondent: William A. Frieder, Esquire  
Department of Children and Family Services  
1317 Winewood Boulevard  
Building Two, Room 204  
Tallahassee, Florida 32399-0700

For Intervenor: Thomas R. Tatum, Esquire  
Brinkley, McNerney, Morgan  
Solomon & Tatum, LLP  
Post Office Box 522  
Fort Lauderdale, Florida 33302-0522

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 for District 11, as set forth in RFP No. 01H02FP5, to Psychotherapeutic Services of Florida, Inc., was 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 Florida Assertive Community Treatment (FACT) Programs for persons with severe and persistent mental illnesses in DCF's Districts 4, 7, and 11. Petitioner, Bayview Center for Mental Illness, Inc. (Bayview), responded to the RFP for the proposed program in District 11.

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 11.

On April 16, 2002, Bayview filed a notice of protest regarding DCF's intended action.

On April 26, 2002, Bayview filed a Formal Written Protest and Petition for Administrative Hearing with DCF. Bayview then filed an Amended Formal Written Protest and Petition for Administrative Hearing which was referred to the Division of Administrative Hearings (DOAH) on or about May 16, 2002. A related case involving the same RFP, Case no. 02-1998BID, 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. 02-1998BID 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 11. The Motion to Intervene was granted.

Petitioner in Case No. 02-1998BID 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 19, 2002.

On June 3, 2002, Petitioner filed a Motion to Amend Petition for Formal Administrative Hearing and Second Amended Formal Written Protest. The motion was granted.

The Second Amended Formal Written Protest was based upon the following:

(a) the selection of a bidder whose answers were, in part, non-responsive;

(b) the use of an evaluation team which in part, included persons not qualified and not authorized by law to review proposals of the financial magnitude of this RFP;

(c) scoring of competitive proposals by one evaluation team reviewer that was so dramatically different from all other reviewers as to suggest either the use of undisclosed criteria, erroneous scoring, undisclosed conflict of interest, or arbitrary and capricious scoring; and

(d) the resulting proposed award of a contract to Psychotherapeutic Services, Inc., (PSI) based on these erroneous, arbitrary and capricious scores is itself so erroneous, arbitrary and capricious that the award of contract should be overturned and awarded to Bayview as the most qualified bidder.

Intervenor filed a Motion in Limine which was granted to the extent that Petitioner waived any objection to the makeup of the evaluation committee by failing to timely bring a solicitation protest.

At hearing, Petitioner presented the testimony of Luther Cox, Stephen Poole, Barbara Johanningsmeier, Robert Ward, Susan Kelly and the deposition testimony of Neil Meister, Roman Roldan, Randall Cooper, Timothy Griffith, Celeste Putnam and Stephen Poole. Petitioner 's Exhibits 1 through 20, except for Exhibit 10, were admitted into evidence. Petitioner's Exhibit numbered

10 was rejected. Respondent's Exhibit numbered one, the deposition testimony of Robert Ward, was admitted into evidence. Intervenor presented the testimony of Timothy Griffith and Randall Cooper. Intervenor's Exhibit numbered 1, which was the deposition testimony of Martin Kurtz, was admitted into evidence.

A Transcript of the hearing, consisting of four volumes, was filed on August 20, 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 11. Three vendors submitted proposals for District 11, 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., (PSFI) 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 of every page.

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 by an evaluation team of each proposal using criteria set out in the RFP.

#### 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 PSFI's Chief Executive Officer, D. Cherry Jones, within the signature block designated as "authorized signature."

9. The name Psychotherapeutice [sic] 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.

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. No required appendix was omitted or unsigned in Intervenor's proposal.

11. Petitioner contends that the use by Intervenor of Psychotherapeutic Services or a 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 to fatal criteria and caused confusion within DCF as to the corporate status of the actual offeror.

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. Timothy Griffith is Deputy Executive Director of Psychotherapeutic Services of Florida, Inc. According to Mr. Griffith, the use of the term Psychotherapeutic Services refers to a group of companies that make up the Psychotherapeutic Services Group. 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., was set forth in sufficient detail in Intervenor's proposal.

14. 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.

15. Stephen Poole is a Senior Management Analyst II with DCF, and is the procurement manager for the RFP. There was never any confusion in his mind as to what entity was making the offer to DCF. He understood Psychotherapeutic Services to refer to Psychotherapeutic Services of Florida, Inc., and had a "common sense" understanding of who the offeror was.

16. 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 Bayview Center for Mental Health even though its full name is Bayview Center for Mental Health, Inc.

17. Likewise, his reference to "PSI" on the fatal criteria evaluation sheet "stood for and stands for, in our language, Psychotherapeutic Services of Florida, Inc."

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

#### Financial Statements

19. 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 RFP rating sheet, that proposers include independent audited financial statements for fiscal years 1999-2000 and 2000-2001. The RFP did not provide any definition, standard, guideline, or mandatory requirement for the format or content of financial statements, audits, or audited statements. The RFP simply required that they be included.

20. 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.

21. The independent auditor's report 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 their 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.

22. Luther Cox is a certified public accountant and has expertise in accounting and financial statements. It is Mr. Cox's opinion that the notes to financial statements are a required element of an audited financial statement. Mr. Cox's opinion was based in part on the Florida Board of Accountancy Rules in defining the term, "financial statement." Mr. Cox

acknowledged, however, that based upon the representation that the auditors provided in the first paragraph of their letter, the auditors reviewed all of the financial statements. Additionally, Mr. Cox acknowledged that based upon his review of the notes to the financial statements, 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.

23. Martin Kurtz is also a certified public accountant. He acknowledged that 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.

24. 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.

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

26. 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."

27. The independent auditor's letter represents that Intervenor's financial statements for fiscal years 2000-2001 were in fact 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.

28. In further support for its assertion that Intervenor's omission of the notes to the financial statements renders Intervenor's proposal non-responsive for failure to meet fatal criteria, 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.

29. Organizational capacity is set forth in section 5.5(4) of the RFP and 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)

30. Section 6.3.6 of the RFP contains certain criteria for the evaluators to score with regard to 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.

31. 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 proposals. In evaluating criterion 36 pertaining to lines of credit, it was the role of the individual evaluators 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 as to whether or not fatal criteria were met.

#### Evaluation Committee Process

32. Members of the Evaluation Committee were given instructions by Mr. Poole prior to commencing the qualitative review of each proposal. Each Evaluation Committee member signed



a conflict of interest statement indicating they had no conflicts. The members were specifically instructed that the proposals were to be reviewed independently from one another and from each other; that any problem an evaluator may have with a proposer was not to be considered as part of their score; that the universe began and ended within the confines of the proposal; and that they were to use a scoring protocol to affix their score and to report back the following week to give that score, but not to share their results with anyone until the briefing meetings that followed the qualitative review.

33. The Evaluation Committee consisted of employees of DCF, except for Barbara Johanningsmeier, who is a National Alliance for the Mentally Ill (NAMI) representative. Mr. Poole spoke to the executive director of NAMI explaining that the NAMI evaluator should be a person who is knowledgeable either through life experience or work of Florida's community mental health system; who has an understanding of the system of care that is publicly funded; and who has an interest and some knowledge and expertise in the area of programs either through employment or through other factors.

34. NAMI provided Ms. Johanningsmeier as the evaluator requested by DCF. Mr. Poole explained DCF's unquestioned acceptance of Ms. Johanningsmeier as an evaluator:

We accepted Mrs. Johanningsmeier as the representative of NAMI because of our relationship with NAMI and our shared vision and mission of a community mental health system of Florida that is responsive to the individual needs with persons with severe and persistent illness and that our goals in some ways are the same, that we want a responsive system to people with a very serious disability . . . . [T]here would be no reason to question the validity or expertise of a representative of NAMI because NAMI has an interest in Florida's publically funded community mental health system.

35. According to Celeste Putman, DCF's Director of Mental Health, the evaluation team included a NAMI representative to make sure that the team had a strong representative who really understood the needs of people with very severe, persistent mental illness, and who has worked closely with that population. Ms. Putnam explained that DCF has always felt that it is important to have a family member, someone who is close, from a personal standpoint, to the service delivery involved.

36. Ms. Johanningsmeier had experience evaluating at least three other similar procurements. Further, Ms. Johanningsmeier was a member of the Board of Directors of NAMI, Florida, at the time she served on the Evaluation Committee and was a member of a local Board of Directors of NAMI. She was familiar with the NAMI PACT manual. Ms. Johanningsmeier gave an extensive description of her personal experiences with the public and private mental

health systems in Florida, from her child's experience in those systems.

37. Ms. Johanningsmeier's purpose on the evaluation team was to represent NAMI and not to promote the NAMI viewpoint in the evaluation. She denied scoring any of the criteria out of bias toward or against any of the participants using criteria outside of those that were given to her in the RFP, or attempting to skew the score in any way.

38. Petitioner alleges that many of its responses to subjective questions were better than those of Intervenor and therefore should have been scored higher. Robert Ward, President and chief executive officer of Bayview, believed that Ms. Johanningsmeier scored Petitioner low, and as a result he felt there was either a bias of some kind or that the evaluator did not know what she was doing. Mr. Ward felt that something was wrong, but did know what it was.

39. Petitioner's expert witness, Dr. Susan Kelly, is a senior research consultant with a private company. She works with data analysis and research and has expertise in statistics with a Ph.D. in sociology. She conducted a statistical test of the scoring by all evaluators for the purpose of determining the existence of patterns or any kind of irregularities or differences in scoring. The statistical significance test performed by Dr. Kelly showed variations between the scores of

Ms. Johanningsmeier and two of the other reviewers. Dr. Kelly characterized Ms. Johanningsmeier's scores as an "outlier," but did not know the reason why there was a difference in scores between Ms. Johanningsmeier and the other evaluators.

Dr. Kelly's analysis did not involve any review of the RFP, the proposals or information regarding Ms. Johanningsmeier's background or position to the Evaluation Committee.

40. There was no substantial or material evidence presented by Petitioner to show that Ms. Johanningsmeier's scoring of the proposals was inconsistent with the scoring methodology in the RFP, clearly erroneous, contrary to competition, arbitrary or capricious.

#### CONCLUSIONS OF LAW

41. 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.

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

43. 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.

44. 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).

45. 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).

46. 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).

47. 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.

48. 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 letter 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.

49. Petitioner failed to prove that Ms. Johanningsmeier did not have the necessary experience and knowledge to fairly evaluate the proposals. There was no substantial evidence that Ms. Johanningsmeier's scoring was not done in an objective and fair manner.

50. 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 11 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 Bayview Center for Mental Health, 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  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675 SUNCOM 278-9675  
Fax Filing (850) 921-6847  
[www.doah.state.fl.us](http://www.doah.state.fl.us)

Filed with the Clerk of the  
Division of Administrative Hearings  
this 27th day of September, 2002.

COPIES FURNISHED:

Gary J. Clark, Esquire  
Frank P. Rainer, Esquire  
Sternstein, Rainer & Clark, P.A.  
101 North Gadsden Street  
Tallahassee, Florida 32301

William A. Frieder, Esquire  
Department of Children and Family Services  
1317 Winewood Boulevard  
Building Two, Room 204  
Tallahassee, Florida 32399-0700

Thomas R. Tatum, Esquire  
Brinkley, McNerney, Morgan,  
Soloman & Tatum, LLP.  
Post Office Box 522  
Fort Lauderdale, Florida 33302-0522

Paul F. Flounlacker, Jr., Agency Clerk  
Department of Children and Family Services  
1317 Winewood Boulevard  
Building 2, Room 204B  
Tallahassee, Florida 32399-0700

Josie Tomayo, General Counsel  
Department of Children and Family Services  
1317 Winewood Boulevard  
Building 2, Room 204  
Tallahassee, Florida 32399-0700

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.