

9-15-03

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DIV. OF ELECTIONS

8502456217 P.02

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MATTHEW BENDER & CO., INC.,

Petitioner,

vs.

CASE NO. 03-2440BID

STATE OF FLORIDA, DEPARTMENT
OF STATE

BJS-CWS

Respondent.

MOTION IN COMPLIANCE

Pursuant to section 120.57(1)(k) of the Florida Statutes, and to the Recommended Order entered on September 15, 2003, by the Honorable Barbara J. Staros regarding the above styled case, the undersigned attorney hereby files as Attachment 1 the Department of State's Final Order on this matter.

Respectfully submitted, on this 10th day of October 2003.



Marielba Torres Delgado
Florida Bar No. 0599042
Florida Department of State
Division of Elections
107 West Gaines Street, Suite 100
Tallahassee, Florida 32399-0250
(850) 245-6200 - Phone
(850) 245-6217 - Fax
Attorney for Florida Department of State

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Attachment 1

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DIV. OF ELECTIONS

8502456217 P.04

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

MATTHEW BENDER & CO., INC.,

Petitioner,

vs.

CASE NO. 03-2440BID

**STATE OF FLORIDA, DEPARTMENT
OF STATE**

Respondent.

FINAL ORDER

Pursuant to sections 120.569 and 120.57(1) of the Florida Statutes, the Florida Department of State enters its Final Order as follows:

Findings of Fact

The Department hereby adopts the Findings of Fact set forth in the Recommended Order with the qualifications that follow. With regard to Findings of Fact number 10, the Administrative Law Judge found that "The materials provided to Petitioner by the Department did not contain any repealed rules or information regarding a subject matter index or a cross-reference table." The Department respectfully states that the actual text of the rule, which was provided to the Petitioner, is the exclusive source for the creation of a subject matter index as stated by the Petitioner during court testimony. See hearing transcript page 33, line 25 thru page 34, line 5 and page 69, line 24 thru page 70, line 4¹.

¹ In the hearing transcript Page 33, line 25 thru page 34, line 5 Ms. Leigh Trippe's testimony reads as follows: "Absolutely not. I would not ever submit an index that was just an alphabetized table of contents.

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Further, a statutory cross reference table could also have been prepared by extracting information provided in the rule text since, following each rule, there is a statement setting forth the specific statutory authority and the laws implemented by the promulgation of each of the rules. See Joint Exhibit 7, the letter dated May 27, 2003, sent by the Florida Department of State to Matthew Bender & Co., Inc., with the attached test for printing of the Florida Administrative Code Annotated, and the enclosed disk. With regards to Findings of Fact number 16, the Department adopts it with the qualification that the identities of Ms. Cloud and Ms. Hutchins appear to have been inadvertently interchanged.

Conclusions of Law

The Department of State hereby adopts the Conclusions of Law set forth in the Recommended Order. However, for the same reasons stated above in the Findings of Fact section, the Department takes exception with Conclusions of Law numbers 24 and 25.

Recommended Disposition

Notwithstanding the Department of State's position regarding Findings of Fact number 10 and Conclusions of Law numbers 24 and 25, the Department hereby adopts the Recommendation entered by the Honorable Barbara J. Staros in Case No. 03-2440 BID.

Our indexes are done by a professional-level staff. They read every single word of every single section and create subject matter headings from a reading of the actual words themselves." Ms. Cloud's testimony on page 69, line 24 thru page 70, line 4 reads as follows: "Q. Now, did you intend that the - from the materials submitted, the vendor would create those tables and indexes for the entire FAC publication, or merely for the particular chapter that you sent? A. No, only for the rule that was presented in the test run."

Department of State's Final Order
Re: 2003-2004 Contract for Publication of the FAC
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THUS, IT IS HEREBY ORDERED THAT:

In accord with the Recommended Order entered by the Honorable Barbara J. Staros on September 15, 2003, the Department of State hereby awards Bid No. 695-100-(01 or 04)-03-7 to Matthew Bender & Co., Inc. a/k/a Lexis Nexis. The Department of State will work with Matthew Bender & Co., Inc. and the current Florida Administrative Code Annotated publisher, Darby Printing Company, to transfer the publishing duties from one vendor to the other. Transition will occur pursuant to the provisions of the existing contract with Darby Printing Company and to the questions and answers published by the Department during the original bid process commenced in May 2003. The transition process will commence immediately upon entry of the Department's Final Order, and shall be completed by November 2003. The first supplement of the Florida Administrative Code Annotated to be published by Matthew Bender shall be November 2003 supplement, distributed during the month of December 2003. Once the transition has been completed, Matthew Bender & Co., Inc. will publish the Florida Administrative Code Annotated for the remainder of the contractual period, which shall end on June 30, 2004. As permitted by the Contract for Publication, the Department shall have the option to renew the contract at such time, or may choose to terminate the contract and proceed with the applicable purchasing/procurement procedures.

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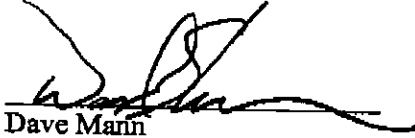
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DONE AND ORDERED this 9th day of October 2003.



Dave Marin
Deputy Secretary of State
Florida Department of State

Cc: Division of Administrative Hearings

Mary Piccard Vance, Vezina, Lawrence & Piscitelli, P.A.
Attorney for Matthew Bender & Co., Inc.

Barry Bridges,
Associate Director of Government Relations and Contracts
Matthew Bender & Co., Inc.

William Williams,
Attorney for Darby Printing Company, Inc.

Hugh Carter
President, Darby Printing Company, Inc.