

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

LAKEVIEW CENTER, INC., d/b/a )  
ACCESS BEHAVIORAL HEALTH, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 06-3412BID  
 )  
AGENCY FOR HEALTH )  
CARE ADMINISTRATION, )  
 )  
Respondent, )  
 )  
and )  
 )  
MAGELLAN BEHAVIORAL )  
HEALTH OF FLORIDA, INC., )  
 )  
Intervenor. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

On October 25 and 26, 2006, a hearing was held in Tallahassee, Florida, pursuant to the authority provided in Sections 120.569 and 120.57(1), Florida Statutes. The case was considered by Lisa Shearer Nelson, Administrative Law Judge.

APPEARANCES

For Petitioner: Seann Frazier, Esquire  
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For Respondent: Anthony Conticello, Esquire  
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For Intervenor: George Meros, Esquire  
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STATEMENT OF THE ISSUE

Whether the Agency for Health Care Administration's (the Agency's or AHCA's) decision to award the contract contemplated in RFP No. 0610, Area 9, is contrary to the Agency's governing statutes, the Agency's rules or policies, or the proposal specifications.

PRELIMINARY STATEMENT

On July 26, 2006, AHCA posted its notice of intent to award RFP No. 0610, Area 9, to Magellan Behavioral Health of Florida, Inc. (Magellan). On July 27, 2006, Lakeview Center, Inc., d/b/a Access Behavioral Health (Lakeview) filed a Notice of Protest signifying its intent to challenge the award. On August 4, 2006, a Formal Written Protest was filed with AHCA.

On September 11, 2006, AHCA forwarded the Formal Written Protest to the Division of Administrative Hearings (DOAH). On September 12, 2006, Magellan filed a Petition to Intervene. That same day, the Petition to Intervene was granted and the case was noticed for hearing October 10, 2006. By agreement of all parties, the case was continued and hearing was rescheduled for October 25 and 26, 2006. At hearing, Joint Exhibits numbered 1-4 were admitted. Petitioner presented the testimony

of five witnesses and Petitioner's Exhibits numbered 1-8 were admitted. AHCA and Magellan presented one witness, and Magellan's Exhibits numbered 3 and 5 were admitted into evidence. The parties stipulated at hearing to certain facts which are incorporated into the findings of fact below.

A three-volume hearing transcript was filed with the Division on November 7, 2006. AHCA and Magellan filed their Joint Proposed Recommended Order November 20, 2006, as well as a Renewed Joint Motion for Relinquishment of Jurisdiction. Petitioner requested a one-day extension to file a proposed recommended order, which was unopposed, and filed its Proposed Recommended Order November 21, 2006. Both Proposed Recommended Orders are considered to be timely filed and have been considered in the preparation of this Recommended Order. The Renewed Joint Motion for Relinquishment of Jurisdiction is denied.

#### FINDINGS OF FACT

1. On April 3, 2006, AHCA issued solicitation number AHCA RFP 0610, titled Prepaid Mental Health Plan, AHCA Areas 8 and 9.

2. The RFP sought a Prepaid Mental Health Plan vendor for certain Medicaid recipients in the Agency's Area 9, defined as Indian River, Martin, Okeechobee, Palm Beach and St. Lucie Counties.<sup>1/</sup>

3. Lakeview did not challenge the RFP specifications.

4. Lakeview, Magellan and Mental Health Network submitted responses to the RFP.

5. The Agency rejected the response filed by Mental Health Network because it failed to meet a mandatory requirement of the RFP.

6. The Agency accepted Lakeview and Magellan's proposals as responsive to the RFP.

7. The Agency employed three evaluators to review parts of the bids submitted. Those reviewers were Erica Carpenter, George Woodley and Jill Sorenson.<sup>2/</sup>

8. After calculation of the average ranking of the scores, Magellan was ranked as the highest scored bidder and Lakeview was ranked second.

Terms of the RFP

9. The RFP is made up of an initial two-page transmittal letter and 30 attachments. Relevant to this inquiry are terms contained in the transmittal letter and Attachments A, C, D and E.

10. Attachment A specifies the following with regard to submitting a proposal:

9. Respondent's Representation and Authorization. In submitting a response, each respondent understands, represents and acknowledges the following (if the respondent cannot so certify to any of the

following, the respondent shall submit with its response a written explanation of why it cannot do so)

\* \* \*

The product offered by the respondent will conform to the specifications without exception.

- The respondent has read and understands the Contract terms and conditions and the submission is made in conformance with those terms and submissions.
- If an award is made to the respondent, the respondent agrees that it intends to be legally bound to the Contract that is formed with the State.
- The respondent has made a diligent inquiry of its employees and agents responsible for preparing, approving, or submitting the response, and has been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, act or other conduct inconsistent with any of the statements and representations made in the response.
- The respondent shall indemnify, defend and hold harmless the Buyer and its employees against any cost, damage or expense which may be incurred or may be caused by any error in the respondent's preparation of its bid.
- All information provided by, and representations made by, the respondent are material and important and will be relied upon by the Buyer in awarding the contract. Any misstatement shall be treated as fraudulent concealment from the Buyer of the true facts relating to submission of the bid. A misrepresentation shall be punishable under law, including but not limited to, Chapter 817 of the Florida Statutes.

11. This provision is understood to indicate that the Agency will take all representations at face value, a conclusion that is consistent with the provisions in the following paragraph:

10. Performance qualifications. The Buyer reserves the right to investigate or inspect at any time whether the product, qualifications, or facilities offered by respondent meet the Contract requirements. Respondent shall at all times during the Contract term remain responsive and responsible. . . . If the Buyer determines that the conditions of the solicitation documents are not complied with, or that the product proposed to be furnished does not meet the specified requirements, or that the qualifications, financial standing, or facilities are not satisfactory, or that performance is untimely, the Buyer may reject the response or terminate the Contract. . . . This paragraph shall not mean or imply that it is obligatory upon the Buyer to make an investigation either before or after the award of the Contract, but should the Buyer elect to do so, respondent is not relieved from fulfilling all Contract requirements.

12. Attachment C of the RFP contains the special conditions relevant to this procurement, including the timeline for the solicitation, a description of mandatory requirements, provision for vendor questions and a vendor's conference, and required certifications to be included with any proposals. In terms of mandatory requirements, Section C.7 of Attachment C states:

C.7 Mandatory Requirements. The State has established certain requirements with respect to responses submitted to competitive solicitations. The use of "shall", "must", or "will" (except to indicate futurity) in this solicitation, indicates a requirement or condition from which a material deviation may not be waived by the State. A deviation is material if, in the State's sole discretion, the deficient response is not in substantial accord with the solicitation requirements, provides an advantage to one respondent over another, or has a potentially significant effect on the quality of the response or cost to the state. Material deviations cannot be waived. The words "should" or "may" in this solicitation indicate desirable attributes or conditions but are permissive in nature. Deviation from, or omission of, such desirable features will not in itself cause rejection of a response.

13. Sections C.13 and C.14 of Attachment C address several certifications which must be included with any response to the solicitation. At the end of each of these sections, is a statement in bolded and capital letters stating, "FAILURE TO SUBMIT ATTACHMENT [G , REQUIRED CERTIFICATIONS, SIGNED BY AN AUTHORIZED OFFICIAL, or ATTACHMENT J, GENERAL VENDOR ELIGIBILITY REQUIREMENTS, respectively] SHALL RESULT IN THE REJECTION OF A PROSPECTIVE RESPONSE. Similarly, Section C.15 states that an original technical response must be accompanied by a proposal guarantee payable to the State of Florida in the amount of \$5,000 and made in the form of a bond, cashier's check, treasurer's check, bank draft or certified check. As with

Sections C.13 and C.14, Section C.15 ends with a statement in bolded and capital letters, stating, "FAILURE TO INCLUDE THE PROPOSAL GUARANTEE WITH THE SUBMISSION OF THE ORIGINAL RESPONSE WILL RESULT IN THE REJECTION OF A PROSPECTIVE VENDOR'S RESPONSE."

14. Subcontracts for the project are discussed in Section C.20 of Attachment C. This section provides in pertinent part:

The vendor shall be responsible for the administration and management of all aspects of the contract and the Prepaid Mental Health Plan resulting from the RFP. This includes all aspects of network management, subcontracts, employees, agents and anyone acting for or on behalf of the vendor. The vendor may, with the consent of the Agency, enter into written subcontract(s) for performance of certain of its functions under the contract. The vendor must have subcontracts with all administrative and service providers who are not salaried employees of the plan prior to the commencement of services under this contract. . . .

The vendor must submit signed subcontracts, for a complete provider network in order obtain Agency approval for operation in an area, within sixty (60) days of the execution of this contract, for each proposed subcontracted provider. (Emphasis supplied.)

15. Section C.38 provides the general instructions for response preparation and submission. It specifies that the response shall include a transmittal letter; proof of appropriate licensure or application for same; an accreditation

certification; the proposal guarantee; a cross-reference table between the proposal and the RFP scope of service requirements; and the actual technical response. With respect to the technical response, the RFP requires that it be prepared in the order specified, with sections tabbed for ease of identification and evaluation. The RFP further states that "[s]pecific questions to be answered within these sections can be found in Attachment E."

16. Attachment D describes the scope of services sought through the solicitation. It provides a general background for issuing the RFP, describes its purpose, and the type of services that a successful vendor must provide. Included within this Attachment are many of the definitions pertaining to the services sought, and the Attachment outlines both mandatory and optional services to be provided by a successful vendor to enhance the plan's covered services for enrollees. The scope of services provides guidance concerning what must be included for each section of the technical response.

17. Nothing in the RFP required a respondent to submit letters of intent with potential subcontractors as part of its submission in response to the RFP.

18. Attachment E is entitled "Evaluation Criteria." The relevant portions of Attachment E provide the following:

E.1 Review of Mandatory Criteria.  
Responses to this solicitation will be evaluated against the mandatory criteria found in Part I, Technical Response Mandatory Criteria. Responses failing to comply with all mandatory criteria will not be considered for further evaluation.

E.2 Evaluation of Responses.  
Each response determined to be in compliance with all mandatory criteria will be evaluated based on the criteria and points scale delineated in Part II, Evaluation Criteria. Each response will be individually scored by at least three evaluators having expertise and knowledge of the services required by this solicitation. However, the Agency reserves the right to have specific sections of the responses evaluated by less than three individuals. Responses will be evaluated on a per area basis.

1. Evaluation points awarded will be based on the following point structure:

<u>Points</u>	
0	The component was not addressed.
1	The component contained significant deficiencies.
2	The component is below average.
3	The component is average.
4	The component is above average.
5	The component is excellent.

\* \* \*

E.3 Ranking of responses.  
Each evaluator will calculate a total score for each response. The Chairman will use the total point scores to rank the responses by evaluator (response with the highest number = 1. second highest = 2, etc.). The Chairman will then calculate an average rank for each response for all the evaluators.

The average rankings for each response shall be used to determine a recommendation for contract award for each area. . . .

(Emphasis supplied.)

19. Page 3 of 12 in Attachment E contains Part I, TECHNICAL RESPONSE MANDATORY CRITERIA, referenced in Section E.1, above. It states:

This evaluation sheet will be used by the Agency for Health Care Administration to designate responses as qualified or not qualified. If the answer to any of the questions in the table below falls into the "No" column, the response will be designated as "not qualified" and will not be considered for further evaluation.

	QUESTIONS	YES	NO
1	Did the response include the signed Attachment G, Required Certifications Form required in Section C.13?		
2	Did the response include the completed Attachment J, General Vendor Eligibility Requirements Form as required in Section C.14?		
3	Did the response include a transmittal letter, signed by an individual having the authority to bind the vendor, as outlined in Section C.38?		
4	Did the response include a copy of the vendor's certificate of authority issued by OIR; or documentation proving application for the certificate as required in Section C.38?		
5	Did the response include Attachment DD, Prepaid Mental Health Plan Attestation of Accreditation Status Form Required in Section C.38?		
6	Did the response include a proposal guarantee in the original Technical Proposal in the amount of \$5,000 as specified in Sections C.15 and C.38?		

20. Pages 4 through 12 of Attachment E identified the evaluation criteria used to score responses meeting the mandatory criteria identified in Part I. The general category "Organization and Corporate Capabilities" could receive a total of 80 points. Within that category, points would be awarded under the subcategories labeled legal entity; network; organizational structure; mental health care experience; community coordination and partnerships; management information system; administrative reporting; financial statements; legal actions; financial risk and insolvency protection; surplus fund requirement; and contractor's and subcontractor's facilities and network management.

21. The general category "Operational Functions" could receive a total of 90 points. The subcategories identified for scoring include the service area of proposed plan; outreach requirements; mental health care provider assignment procedures; enrollee services; grievance procedures; quality improvement requirements; care coordination; clinical records requirements; out-of-plan services; cost sharing policies; after hours access; and the proposed subcontractor/provider network.

22. The RFP anticipates that the winning proposer would contract with Community Mental Health Centers (CMHCs) to provide a portion of the services to be provided under the contract awarded pursuant to the RFP. Three CMHSs are located in Area 9:

Oakwood Center of the Palm Beaches, New Horizons of the Treasure Coast and South County Mental Health Center.

23. Oakwood Centers of the Palm Beaches and New Horizons of the Treasure Coast both operate multiple locations throughout Area 9. South County Mental Health Center operates from a single office in Delray Beach, Palm Beach County. Both Lakewood's and Magellan's proposals anticipated contracting with all three CMHCs. Neither had binding agreements with any of the CMHCs.

#### Review of the Proposals

24. AHCA found that both Magellan's and Lakeview's proposals met the requirements outlined in Part I, Technical Response Mandatory Criteria. As previously stated, the proposal submitted by Mental Health Network was rejected for not meeting this criteria. The Agency's decision that Lakeview's and Magellan's proposals were responsive to the RFP and would be evaluated is consistent with the terms of the RFP as specified in Attachment E.

25. Both Magellan's and Lakeview's proposals contained information for each of the technical sections of the RFP dealing with provision of a network of providers. Once the submissions were provided to the Evaluators for scoring, no evaluator gave a "0" for any section of either proposal. In other words, the Evaluators were satisfied that each submission

provided information for each section identified as mandatory under the scoring criteria.

26. Instructions for scoring proposals that met the requirements of the Technical Response Mandatory Criteria were provided by Barbara Vaughan of the Agency's procurement office, and by Deborah McNamara, who was in part responsible for preparing the RFP. Those instructions directed the Evaluators to use the evaluation criteria contained in the RFP. The instructions specified that each evaluator was to review the proposals separately and under no circumstance were they to discuss their evaluations with anyone other than the Chairman or the Procurement office. The evidence reflects that the Evaluators followed these instructions.

27. There are four sections of the RFP that could be said to address the assembling and coordination of a network providers: Section 3.B (Network); Section 3.E (Community Coordination and Partnerships); Section 3.L (Contractor's and Subcontractor's Facilities and Network Management); and Section 5.M (Subcontracts/Provider Network).

28. With regard to provision of a network under Organization and Corporate Capabilities (Section 3.B of the Detailed Evaluation Criteria Components), the Evaluators were instructed to consider Sections D.19 through D.23 of the RFP, titled Overview of Prepaid Mental Health Plan; General Service

Requirements; Medicaid Service Requirements; Additional Service Requirements and Minimum Access and Staffing Standards. The written instructions also directed the Evaluators to consider the following questions with respect to the proposed network:

- \* Are traditional community providers represented?
- \* Are rural areas sufficiently covered?
- \* Is there evidence that sufficient providers are available to cover the full range of required services?
- \* Are there innovations or does the vendor propose to expand the current provider community in a positive way?
- \* Has the vendor identified and responded to any gaps in the current system of care?

29. Magellan's proposal devoted 24 pages to explaining its proposed network. It affirmed that a contract for inclusion in the network would be offered to all of the providers in Section 409.912(4)(b)(7), Florida Statutes. Magellan advised that it sent proposed letters of intent to all CMHCs in Area 9. It disclosed that two of the CMHCs (Oakwood Center of Palm Beaches and New Horizons of the Treasure Coast) had informed Magellan that they were "owners/partners" with a competitor for the RFP, but that it fully expected both entities to participate in the network should Magellan be awarded the contract. It also noted that it had an existing contractual relationship for commercial patients with one of the CMHCs. Magellan's response regarding this component was responsive to the RFP.

30. Erica Carpenter gave both Lakeview and Magellan a score of 3 for this component. George Woodley gave both vendors a score of 4. Jill Sorenson gave Lakeview a score of 3 and Magellan a score of 2.

31. Under Community Coordination and Partnerships (Section 3.E), the Evaluators were given the following written instructions:

Consider:

- \* RFP, D. 22
- \* Are there existing collaborative agreements with community partners? If not, what are the plans to develop collaborative agreements?
- \* Will the vendor facilitate development of a community system of care?
- \* Are there any innovative approaches in the vendor's plans for community involvement?

32. With respect to Community Coordination and Partnerships, Magellan submitted a seven-page description of its relationships with community stakeholders, such as United Way; coordination of the partnership between Magellan and its providers; use of a database of community resources and other aspects of its proposed community coordination. Magellan's proposal for this component was responsive to the RFP.

33. Erica Carpenter awarded both Lakeview and Magellan 3 points for Community Coordination and Partnerships. George Woodley awarded 4 points to each. Jan Sorenson awarded 4 points to Lakeview and 3 points to Magellan.

34. Under Section 3.L (Contractor's and Subcontractor's Facilities and Network Management), the written instructions stated:

The adequacy, accessibility and quality of the proposed plan facilities as indicated in the vendor's facility standards plan.

Consider:

- \* RFP, D.23, B., 5.
- \* Is there evidence that the facilities are accessible to the disabled?

35. For this category, Magellan made assurances that its subcontractors would meet the seven standards required by AHCA. Magellan provided its facility standards plan as well as its physical security facility assessment protocol for monitoring providers and subcontractors for compliance with these requirements. Magellan also described its credentialing process for providers, its custom of organizational site reviews and its plan for disaster preparedness. Magellan's proposal for this component was responsive to the RFP.

36. Erica Carpenter awarded both Lakeview and Magellan 3 points for Contractor's and Subcontractor's Facilities and Network Management. George Woodley awarded 4 points each and Jan Sorenson awarded 3 points each.

37. Finally, under Section 5. M. (Subcontracts/Provider Network), the written instructions provided:

The quality, adequacy, acceptability and responsiveness of the vendor's protocol, policies and procedures for network management, including the types of providers selected, the selection process, and risk determination.

Consider:

- \* RFP, C.20
- \* What are the minimum criteria providers meet to be included in the network?
- \* How do the minimum criteria ensure providers are qualified to work with Severely and Persistently Mentally Ill and Seriously Emotionally Disturbed enrollees?

38. For this category, Magellan provided certification of network provider eligibility, and samples of Magellan contracts for facility, group and individual providers. The proposal states in pertinent part:

Partnership. The Magellan of Florida plan for network management is founded on our primary partnership with consumers, the Agency for Health Care Administration, (AHCA), and preferred providers Children's Home Society and Family Preservation Services of Florida, as well as a range of broader collaborative relationships with providers throughout Area 9. Our network will encompass all willing current Medicaid providers, ranging from major community provider agencies such as Oakwood Center of the Palm Beaches, New Horizons of the Treasure Coast, Healthy Solutions Resource Center, Suncoast Mental Health Center, South County Mental Health and Center for Child Development; to leading hospitals such as Fair Oaks Pavilion of Delray Medical Center, St. Mary's Medical Center, and Savannas Hospital; to specialty providers like Hibiscus Children's Center and Multilingual Psychotherapy Centers. We will help them to

continuously improve the quality of their efforts and to comply with State and Federal Medicaid requirements. (Emphasis supplied.)

Magellan also provided a reference table that identified requirements under AHCA's contract and where those requirements are met in Magellan's contract and/or addendum. Again, Magellan's proposal with respect to this component was responsive to the RFP.

39. Erica Carpenter awarded both Lakeview and Magellan 3 points for Subcontracts/Provider Network. George Woodley awarded 4 points each, and Jan Sorenson awarded 4 points to Lakeview and 3 points to Magellan.

40. If only these four areas were to be considered, Lakeview's scores were higher than Magellan's for these components of the RFP. These, however, reflect only a portion of the elements to be considered in determining the winner of the contract award. Ultimately, Magellan's proposal received a higher overall score than Lakeview's when all components of the proposals were considered.

#### CONCLUSIONS OF LAW

41. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this action in accordance with Sections 120.569 and 120.57(1), Florida Statutes.

42. As Petitioner, Lakeview has the burden to establish that the decision to award the contract to Magellan must be invalidated. As the party challenging the proposed agency action, Lakeview has the burden of proof in this proceeding and must show that the agency's proposed action is contrary to the agency's governing statutes, rules or policies, or the bid or proposal specifications. A de novo hearing was conducted to evaluate the action taken by the agency. Section 120.57(3)(f), Florida Statutes; State Contracting and Engineering Corp. v. Department of Transportation, 709 So. 2d 607 (Fla. 1st DCA 1998). The administrative law judge may receive evidence, as with any hearing held pursuant to Section 120.57(1), but the purpose of the proceeding is to evaluate the action taken by the agency based on the information available to the agency at the time it took the action. Id.

43. Agencies enjoy wide discretion when it comes to soliciting and accepting proposals, and an agency's decision, when based upon an honest exercise of such discretion, will not be set aside even where it may appear erroneous or if reasonable persons may disagree. Baxter's Asphalt and Concrete, Inc. v. Department of Transportation, 475 So. 2d 1284, 1287 (Fla. 1st DCA 1985); Capeletti Brothers, Inc. v. State, Department of General Services, 432 So. 2d 1359, 1363 (Fla. 1st DCA 1983). Section 120.57(3)(f) establishes the standard of proof as

whether the proposed action was clearly erroneous, contrary to competition, arbitrary or capricious.

44. A decision is considered to be clearly erroneous when although there is evidence to support it, after review of the entire record the tribunal is left with the definite and firm conviction that a mistake has been committed. United States v. U.S. Gypsum Co., 333 U.S. 354, 395 (1948). An agency action is capricious if the agency takes the action without thought or reason or irrationally. Agency action is arbitrary if is not supported by facts or logic. See Agrico Chemical Co. v. State Department of Environmental Regulation, 365 So. 2d 759, 763 (Fla. 1st DCA 1978). An agency decision is contrary to competition if it unreasonably interferes with the objectives of competitive bidding. See Wester v. Belote, 103 Fla. 976, 138 So. 721, 723-24 (1931).

45. To the extent that Petitioner is challenging the policies of Respondent, and the procedures for evaluating the proposals, Petitioner's argument must fail. In order to challenge the adequacy of the selection procedures, Petitioner must have filed a challenge to the RFP specifications. Having failed to do so, it cannot challenge the adequacy of those procedures in this proceeding. Capeletti Brothers, Inc. v. Department of Transportation, 499 So. 2d 855 (Fla. 1st DCA 1986).

46. Much of Petitioner's challenge is not, in reality, a challenge to the actions of the agency in evaluating the proposals. It is a challenge to the construction of the RFP itself, and whether Evaluators were to consider whether a proposal was to be considered responsive once the Part 1, Technical Response Mandatory Criteria. The RFP, however, makes it clear that if a respondent does not include a response to a particular section of the RFP, it will be given a 0 score for that component.

47. Petitioner takes issue with Magellan's proposal because it fails to provide letters of intent with the CMHCs and because it references existing commercial relationships with several providers in its proposed network. However, there is no requirement in the RFP that letters of intent be submitted. To do so is simply one method of demonstrating the ability to form a network contemplated by the RFP. Similarly, reference to commercial contracts simply indicates that Magellan has a previous relationship with the providers in question and believes that relationship can be extended to cover the services contemplated by the RFP.

48. Petitioner's challenge is not a challenge to the responsiveness of Magellan's proposal, but to the manner and quality of response submitted. For the undersigned to examine the quality of the responses would be to invade the province of

the Agency in its consideration of the proposals before it. As previously stated, the purpose of this proceeding is to evaluate the action taken by the Agency based on the information available to the Agency when it took action. Based on the evidence presented, no impropriety has been demonstrated.

RECOMMENDATION

Upon consideration of the foregoing findings of fact and conclusions of law, it is

RECOMMENDED:

That a final order be entered dismissing Petitioner's Formal Written Protest.

DONE AND ENTERED this 6th day of December, 2006, in Tallahassee, Leon County, Florida.



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LISA SHEARER NELSON  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 6th day of December, 2006.

ENDNOTES

<sup>1/</sup> The award for Area 8 is not at issue in this proceeding.

<sup>2/</sup> The Agency also used separate Evaluators to examine and score the Financial and Clinical Portions of the submissions. While the Petition alleged that the Agency erred in having these sections reviewed by only one or two "specialized" evaluators, no evidence was presented at hearing regarding this claim and no argument with respect to it is made in the Petitioner's Proposed Recommended Order. Accordingly, the Findings of Fact deal only with those portions of the RFP responses that were evaluated by Carpenter, Woodley and Sorenson.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have a 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.