

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ACS-ASSOCIATED CONTRACTUAL)
SERVICES, INC.,)
)
Petitioner,)
)
vs.) Case No. 98-4089
)
DEPARTMENT OF TRANSPORTATION,)
)
Respondent.)
_____)

RECOMMENDED ORDER

On November 9, 1998, a formal administrative hearing was held in this case in Tallahassee, Florida, before J. Lawrence Johnston, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: No Appearance

For Respondent: Kelley A. Bennett
Assistant General Counsel
Department of Transportation
605 Suwannee Street, Mail Station 58
Tallahassee, Florida 32399-0458

STATEMENT OF THE ISSUE

The issue in this case is whether the Department of Transportation should revoke the certification of ACS-Associated Contractual Services, Inc. (ACS), as a disadvantaged business enterprise (DBE) under Chapter 339, Florida Statutes (1997), and Florida Administrative Code Chapter 14-78.

PRELIMINARY STATEMENT

By letter dated October 31, 1997, the Department gave notice of intent to revoke the ACS's DBE certification, and ACS timely requested an informal hearing. For reasons not clear from the record, the Department retained jurisdiction until September 14, 1998, when it referred the matter to the Division of Administrative Hearings (DOAH) for a formal proceeding under Section 120.57(1), Florida Statutes. The referral misidentified the issue as being whether ACS's application for DBE certification should be granted; accordingly, the referral named ACS as the Petitioner and the Department as the Respondent. After the Department's Response to Initial Order, the case was scheduled for final hearing on November 9, 1998.

ACS did not appear at final hearing. The Department called one witness and had Respondent's Exhibits A, B, and C admitted in evidence.

FINDINGS OF FACT

1. ACS-Associated Contractual Services, Inc. (ACS), held a one-year certificate as a disadvantaged business enterprise (DBE) under Chapter 339, Florida Statutes (1997), and Florida Administrative Code Chapter 14-78, effective May 22, 1997, through May 21, 1998.

2. From the time of ACS's application for DBE certification, John Scribner had been ACS's President, primary contact with the Department, and one-third owner. By letter

dated October 10, 1997, Scribner advised the Department that he had become the majority owner and that his company no longer qualified for DBE certification.

3. ACS did not apply to renew its DBE certificate prior to its expiration on May 21, 1998, and has not applied for certification since. Ordinarily, these facts would moot a revocation proceeding, but the Department's Minority Program Office Manager testified that the Department has a curious policy under which it has been maintaining ACS's DBE certification until the resolution of these proceedings notwithstanding its earlier expiration.

CONCLUSIONS OF LAW

4. DBE certification is governed by Chapter 339, Florida Statutes (1997), and Florida Administrative Code Chapter 14-78. Florida Administrative Code Rule 14-78.005(7)(b) requires that a DBE be at least 51 percent owned by one or more "disadvantaged individuals." When a change occurs, and "disadvantaged individuals" no longer own at least 51 percent of the DBE, the Department must revoke the DBE's certificate. Section 339.0805(2), Florida Statutes (1997); Florida Administrative Code Rule 14-78.008(1)(a).

RECOMMENDATION

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

RECOMMENDED that the Department of Transportation enter a final order revoking ACS's certification as a disadvantaged business enterprise (DBE) under Chapter 339, Florida Statutes (1997), and Florida Administrative Code Chapter 14-78.

DONE AND ENTERED this 19th day of November, 1998, in
Tallahassee, Leon County, Florida.

J. LAWRENCE JOHNSTON
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 19th day of November, 1998.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 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.