

7-30-01

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DIVISION OF
ADMINISTRATIVE
HEARINGS

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION
Haydon Burns Building
605 Suwannee Street
Tallahassee, Florida

AT

METCALF & EDDY, INC.

Petitioner,

vs.

DOAH CASE NO.: 00-0494BID
DOT CASE NO.: 99-0249

PHM-clos

**STATE OF FLORIDA,
DEPARTMENT OF TRANSPORTATION,**

Respondent,

and

**WRS INFRASTRUCTURE AND
ENVIRONMENT, INC.,**

Intervenor.

FINAL ORDER

This proceeding was initiated by the filing of a Notice of Protest on October 25, 1999, and a Formal Protest on November 4, 1999, by **Petitioner, METCALF & EDDY, INC.** (hereinafter **METCALF & EDDY**), pursuant to Section 120.57(1), Florida Statutes, in response to a Notice of Intent to Award (Revised) posted by the **Respondent, DEPARTMENT OF TRANSPORTATION** (hereinafter **DEPARTMENT**), on October 20, 1999. On December 1, 1999, an Order Granting Intervention was issued at the request of **Intervenor, WRS INFRASTRUCTURE AND ENVIRONMENT, INC.** (hereinafter **WRS**). On January 28, 2000, the matter was referred to the Division of Administrative Hearings

(hereinafter DOAH) for assignment of an Administrative Law Judge and a formal hearing. In an Order entered February 18, 2000, the **METCALF & EDDY** protest was consolidated with the protest filed by OHM Remediation Services Corp. (hereinafter OHM), DOAH Case No. 00-0495BID.

A formal administrative hearing was held in this case in Miami, Florida, on March 5 through March 8, 2001, before Patricia Hart Malono, a duly appointed Administrative Law Judge. Appearances on behalf of the parties were as follows:

For Petitioner: Jose Garcia-Pedrosa, Esquire
 Ruden, McCloskey, Smith,
 Schuster & Russell, P.A.
 710 Brickell Avenue, Suite 1900
 Miami, Florida 33131

For Respondent: Brian F. McGrail, Esquire
 Brian A. Crumbaker, Esquire
 Assistant General Counsel
 Department of Transportation
 605 Suwannee Street, M.S. 58
 Tallahassee, Florida 32399-0458

For Intervenor: Betty J. Steffens, Esquire
 Samantha Boge, Esquire
 Post Office Box 82
 Tallahassee, Florida 32302-0082

At the hearing, **METCALF & EDDY** presented the testimony of Jon Berry, an employee of **WRS**; Mauricio Gomez, a contamination impact coordinator and environmental manager employed by the **DEPARTMENT** in District VI; Nancy Lyons, Contracts Administrator, employed by the **DEPARTMENT** in District VI; Lillian Costa, an environmental scientist employed by the **DEPARTMENT** in District VI; Javier Rodriguez, a project development engineer employed by the **DEPARTMENT** in District VI; Mark S.

Blanchard, METCALF & EDDY'S Vice President for Operations in Florida; Paul Lampley, a contamination impact coordinator employed by the DEPARTMENT in District VI; Gustavo Pego, the DEPARTMENT'S Director of Operations in District VI; and John Martinez, the DEPARTMENT'S Director for Production in District VI. METCALF & EDDY offered Exhibits 65 through 67 and 69, which were admitted into evidence. Neither the DEPARTMENT nor WRS presented the testimony of any witnesses or offered any exhibits into evidence with respect to the issues raised by METCALF & EDDY. The DEPARTMENT'S Motion for Official Recognition was granted at the hearing, and official recognition was taken of the Final Order entered by the DEPARTMENT on August 11, 1998, dismissing the bid protest filed in 1998 by METCALF & EDDY challenging the DEPARTMENT'S decision with respect to the award of a contract by the DEPARTMENT'S District IV.

The transcript of the proceedings was filed with DOAH on April 6, 2001.

On May 7, 2001, the DEPARTMENT and WRS each filed a Proposed Recommended Order, and on May 4, 2001, OHM filed its Closing Argument and Proposed Findings of Fact and Conclusions of Law. On May 8, 2001, OHM filed a Motion to Supplement Proposed Findings of Fact and Conclusions of Law, and on May 11, 2001, the DEPARTMENT filed a Motion to Supplement Proposed Recommended Order. On July 30, 2001, Judge Malono issued her Recommended Order. No exceptions to the Recommended Order were filed. On September 25, 2001, the DEPARTMENT filed a Motion for Costs.

STATEMENT OF THE ISSUE

As stated by the Administrative Law Judge in her Recommended Order, the issue

presented was: "Whether the Department of Transportation's proposed action, the award of the contract in question to WRS Infrastructure and Environment, Inc., is contrary to its governing statutes, its rules or policies, or the proposal specifications."

As noted by the Administrative Law Judge, based upon its presentation at the hearing and its proposed findings of fact and conclusions of law, **METCALF & EDDY** has apparently dropped two of the issues raised in its formal protest. The remaining issues as raised by **METCALF & EDDY** are that "Neither WRS nor OHM complied with the requirements of the subject request for proposals with respect to registration and SPURS numbers." and "Proposal respondents have been rejected by matters of considerably less significance than the infractions which Metcalf & Eddy has currently itemized against WRS and OHM."

BACKGROUND

The subject of this bid protest is the **DEPARTMENT'S** District VI Contamination Assessment and Remediation Contract for Project and Bid Number RFP-DOT-99/2000-6026DS, FIN Number 249943 (hereinafter the District VI contract). On October 20, 1999, the **DEPARTMENT** posted its Notice of Intent to Award (Revised) stating its intention to award the District VI contract to **WRS** as the highest ranked proposed. On November 4, 1999, **METCALF & EDDY**, the third highest ranked proposer, filed a Formal Protest. On December 1, 1999, an Order Granting Intervention was issued at the request of **WRS**. On January 28, 2000, the matter was referred to DOAH for assignment of an Administrative Law Judge and a formal hearing. On February 18, 2000, an Order was entered consolidating the **METCALF & EDDY** protest with the protest filed by OHM.

The hearing was originally scheduled for May 8 through 12, 2000. During the

pendency of the proceeding, the **DEPARTMENT** appealed a discovery order to the First District Court of Appeal. On April 24, 2000, the **DEPARTMENT** filed a Motion for Stay during the pendency of the appeal, which was granted in an order entered April 27, 2000. The final hearing was continued, and these cases were placed in abeyance pending issuance of the mandate of the First District Court of Appeal. The mandate was issued on December 28, 2000, and the final hearing took place on March 5 through 8, 2001.

FINDINGS OF FACT

1. After review of the record in its entirety, it is determined that the Administrative Law Judge's Findings of Fact in paragraphs 1 through 20 are supported by competent, substantial evidence and are hereby adopted in their entirety as if fully set forth herein.
2. The cost incurred by the **DEPARTMENT** for the attendance of the court reporter and the transcript of the proceeding is \$3,219.00.

CONCLUSIONS OF LAW

1. The **DEPARTMENT** has jurisdiction over the subject matter of and the parties to this proceeding pursuant to Chapter 120, Florida Statutes.
2. The Conclusions of Law in paragraphs 21 through 34 of the Recommended Order are fully supported in law. As such, they are adopted and incorporated as if fully set forth herein.
3. Pursuant to Section 287.042(2)(c), Florida Statutes, "any person who files an action protesting a decision or intended decision pertaining to contracts administered by the department, a water management district, or a state agency pursuant to s.120.57(3)(b) shall post . . . a bond" and "[i]f, after completion of the administrative hearing process and any

appellate court proceedings, the . . . agency prevails, it shall recover all costs and charges which shall be included in the final order or judgment, excluding attorney's fees. . . .”

ORDER

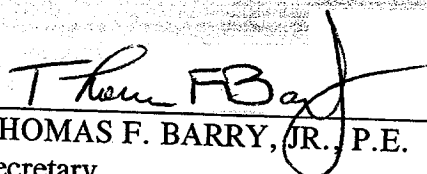
Based upon the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED that the Administrative Law Judge's Recommended Order is adopted in its entirety. It is further

ORDERED that the award of the subject contract, RFP-DOT-99/200-6-62 DS, FIN Number 249943, to **Intervenor, WRS INFRASTRUCTURE AND ENVIRONMENT, INC.**, is confirmed. It is further

ORDERED that the **Respondent, STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION**, hereby retains jurisdiction over this matter for the sole purpose of considering the Motion for Costs and any responses thereto, which shall be addressed by separate order.

DONE AND ORDERED this 27th day of September, 2001.


THOMAS F. BARRY, JR., P.E.
Secretary
Department of Transportation
Haydon Burns Building
605 Suwannee Street
Tallahassee, Florida 32399

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NOTICE OF RIGHT TO APPEAL

THIS ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RULES 9.110 AND 9.190, FLORIDA RULES OF APPELLATE PROCEDURE, BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.110(d), FLORIDA RULES OF APPELLATE PROCEDURE, BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL, ACCOMPANIED BY THE APPROPRIATE FILING FEE, AND WITH THE DEPARTMENT'S CLERK OF AGENCY PROCEEDINGS, HAYDON BURNS BUILDING, 605 SUWANNEE STREET, M.S. 58, TALLAHASSEE, FLORIDA 32399-0458, WITHIN THIRTY (30) DAYS OF RENDITION OF THIS ORDER.

Copies furnished to:

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