

4-5-01 DOAH AT

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

61 MAY -2 PM 11:42
ADMINISTRATIVE
HEARINGS

METCALF & EDDY, INC.,

Petitioner,

vs.

DOAH CASE NO.: 00-4853BID
DOT CASE NO.: 00-179

SOP

DEPARTMENT OF TRANSPORTATION,

Respondent.

_____ /

FINAL ORDER

This proceeding was initiated by **Petitioner, METCALF & EDDY, INC.** (hereinafter **METCALF**), filing a notice of intent to protest and protest bond with the Clerk of Agency Proceedings of the **Respondent, DEPARTMENT OF TRANSPORTATION** (hereinafter **DEPARTMENT**), via facsimile on October 10, 2000. The notice of intent to protest was filed in response to the **DEPARTMENT'S** Proposal Tabulation posted on October 6, 2000, announcing its intent to award ITB-DOT-00-01-4009, a contract for district-wide demolition contract(s) of indefinite quantity in District IV, to Cross Environmental Services, Inc., and C.G.R. Construction Company, Inc. **METCALF** timely filed its formal written protest with the Clerk of Agency Proceedings on October 20, 2000. On November 6, 2000, **METCALF** filed its Supplement to Formal Protest.

The **DEPARTMENT** referred the matter to the Division of Administrative Hearings (hereinafter **DOAH**) on December 5, 2000, for assignment of an Administrative Law Judge to

conduct a formal administrative hearing on the limited issue noted below.

A formal administrative hearing was held via video teleconferencing with the parties appearing in Fort Lauderdale, Florida, on January 24, 2001, before the Honorable Joyous D. Parrish, a duly appointed Administrative Law Judge. Appearances on behalf of the parties were as follows:

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

For Respondent: Brian A. Crumbaker, Esquire
 Assistant General Counsel
 Florida Department of Transportation
 Haydon Burns Building
 605 Suwannee Street, M.S. 58
 Tallahassee, Florida 32399

At the hearing, **METCALF** presented the testimony of one (1) witness: Mark Blanchard, Vice President of Operations for the State of Florida for **METCALF**. **METCALF'S** exhibits numbered 9 and 10 were admitted into evidence. The **DEPARTMENT** presented the testimony of one (1) witness: Susan Day, employed by EarthTech Consulting as the Property Management Administrator for the **DEPARTMENT**. The **DEPARTMENT'S** exhibit number 4 was admitted into evidence. Joint exhibits numbered 1 through 3, and 5 through 8, were also admitted into evidence.

METCALF filed its Proposed Recommended Order on February 15, 2001, and the **DEPARTMENT** filed its Proposed Recommended Order on February 22, 2001. On April 5, 2001, the Administrative Law Judge issued a Recommended Order. No exceptions to the Recommended Order were filed. On April 16, 2001, the **DEPARTMENT** filed a Motion for

Costs with the **DEPARTMENT'S** Clerk of Agency Proceedings. No response to the motion was filed.

STATEMENT OF THE ISSUE

As articulated by the Administrative Law Judge in the Recommended Order, the issue presented was: "Whether the Respondent's intended action to award the bid to C.G.R. Construction Company, Inc. (CGR), and Cross Environmental Services, Inc. (Cross) was clearly erroneous, arbitrary, capricious, or contrary to competition as alleged by the Petitioner, METCALF & Eddy, Inc. (Metcalf)."

FINDINGS OF FACT

After a review of the record in its entirety, it is determined that the Administrative Law Judge's Findings of Fact in paragraphs 1 through 20 of the Recommended Order are supported by the record and are accepted and incorporated as if fully set forth herein.

CONCLUSIONS OF LAW

1. The **DEPARTMENT** has jurisdiction over the subject matter of and the parties to this proceeding pursuant to Chapter 120 and Chapter 337, Florida Statutes.
2. After a review of the record in its entirety, it is determined that the Administrative Law Judge's Conclusions of Law in paragraphs 21 through 27 of the Recommended Order are fully supported in the law and are accepted and incorporated as if fully set forth herein.

ORDER

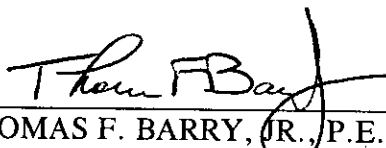
Based upon the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED that the Administrative Law Judge's Recommended Order is adopted in its entirety and the **Respondent, DEPARTMENT OF TRANSPORTATION**, may proceed to

award the subject contract to Cross Environmental Services, Inc., and C.G.R. Construction Company, Inc. It is further

ORDERED that, pursuant to the Motion for Costs filed by the **Respondent**, **DEPARTMENT OF TRANSPORTATION**, the **Petitioner**, **METCALF & EDDY, INC.**, shall pay within thirty (30) days of the date of this Final Order, to the **Respondent**, **DEPARTMENT OF TRANSPORTATION**, the sum of Three Hundred Ninety-Two and 60/100 Dollars (\$392.60), for costs incurred in the litigation of this matter, pursuant to Section 337.11(5)(b), Florida Statutes. Upon payment of this amount, the original bond posted by **Petitioner**, **METCALF & EDDY, INC.**, shall be returned.

DONE AND ORDERED this 2nd day of May, 2001.


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

FILED D.O.T. CLERK
2001 MAY -2 PM 12:43

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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Honorable Joyous D. Parrish
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