

4-25-01

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ADMINISTRATIVE HEARINGS  
TALLAHASSEE

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

PHOENIX MOWING AND  
LANDSCAPING, INC.,

Petitioner,

vs.

DOAH CASE NO.: ~~01-0971BID~~ 01-371 BID  
DOT CASE NO.: 00-212

2/1-0

DEPARTMENT OF TRANSPORTATION,

Respondent.

FINAL ORDER

This proceeding was initiated by **Petitioner, PHOENIX MOWING AND LANDSCAPING, INC.** (hereinafter **PHOENIX**), filing a notice of intent to protest and protest bond with the Clerk of Agency Proceedings of the **Respondent, DEPARTMENT OF TRANSPORTATION** (hereinafter **DEPARTMENT**), on December 27, 2000. The notice of intent to protest was filed in response to the **DEPARTMENT'S** bid tabulation posted on December 21, 2000, announcing its intent to award Contract No. E3A78, a contract for routine mowing of grassed and vegetated roadside areas and litter pick-up within the highway right-of-way in Gadsden and Leon Counties, Florida, to Willeby Construction, Inc. **PHOENIX** timely filed its formal written protest with the Clerk of Agency Proceedings on January 8, 2001.

The **DEPARTMENT** referred the matter to the Division of Administrative Hearings (hereinafter **DOAH**) on January 26, 2001, for assignment of an Administrative Law Judge to conduct a formal administrative hearing on the issues noted below.

A formal administrative hearing was held with the parties appearing in Tallahassee, Florida, on March 16, 2001, before the Honorable Stephen F. Dean, a duly appointed Administrative Law Judge. Appearances on behalf of the parties were as follows:

For Petitioner: Julius F. Parker, III, Esquire  
Pennington, Moore, Wilkinson, Bell & Dunbar, P.A.  
215 South Monroe Street, Suite 200  
Tallahassee, Florida 32301

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, **PHOENIX** presented the testimony of two (2) witnesses: Kelly Herman Pullam, president of **PHOENIX**; and Richard Norris, Contracts Administrator for the **DEPARTMENT'S** District III. The **DEPARTMENT** presented the testimony of four (4) witnesses: Wilson Carraway, vice-chairman of Farmers & Merchants Bank; Billy Willeby, Willeby Construction, Inc.; Richard Norris; and Patty Vickers, Assistant Contracts Engineer for the **DEPARTMENT'S** District III. **PHOENIX** submitted three (3) exhibits, and the **DEPARTMENT** submitted five (5) exhibits, all of which were admitted into evidence.

**PHOENIX** and the **DEPARTMENT** each filed a Proposed Recommended Order on April 9, 2001. On April 25, 2001, the Administrative Law Judge issued a Recommended Order. No exceptions to the Recommended Order were filed.

#### **STATEMENT OF THE ISSUE**

As articulated by the Administrative Law Judge in the Recommended Order, the issues presented were:

[W]hether the Department of Transportation (“Department”) erred by considering Willeby Construction, Inc. (“Willeby”) a qualified bidder; whether the requirement to submit a bid bond or certified funds check or draft (hereafter “security on the bid”) with the bid was a material requirement; whether the Department erred in treating Willeby’s failure to include security on the bid with its bid proposal as a minor, and thereby, an irregularity which could be waived; and whether said decision of the Department was contrary to the terms of the bid, contrary to law, or arbitrary and capricious.

### **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 24 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 Sections 120.569 and 120.57, 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 25 through 47 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. It is further

ORDERED that the Respondent, DEPARTMENT OF TRANSPORTATION, reject the bid of Willeby Construction, Inc., on Contract No. E3A78, and award the Contract to Petitioner, PHOENIX MOWING AND LANDSCAPING, INC.

DONE AND ORDERED this 21<sup>st</sup> day of May, 2001.



THOMAS F. BARRY, JR., P.E.

Secretary

Department of Transportation

Haydon Burns Building

605 Suwannee Street

Tallahassee, Florida 32399

**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:

Brian A. Crumbaker, Esquire  
Assistant General Counsel  
Florida Department of Transportation  
Haydon Burns Building, M.S. 58  
605 Suwannee Street  
Tallahassee, Florida 32399-0458

Julius F. Parker, III, Esquire  
Pennington, Moore, Wilkinson, Bell &  
Dunbar, P.A.  
215 South Monroe Street, Suite 200  
Tallahassee, Florida 32301

Richard Norris  
Professional Services  
Department of Transportation  
Post Office Box 607  
Chipley, Florida 32428-9990

The Honorable Stephen F. Dean  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060