

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

**MID-STATE PAVING CO., INC.,**

**Petitioner,**

**vs.**

**DOAH CASE NO.: 08-4272BID  
DOT CASE NO.: 08-061**

**DEPARTMENT OF TRANSPORTATION,**

**Respondent,**

**and**

**KAMMINGA & ROODVOETS**

**Intervenor.**

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**FINAL ORDER**

On July 10, 2008, the Department of Transportation (Department) posted notice that it intended to award contract T1285 for the construction of the one-way pair on State Road 600 through Lake Alfred in Polk County to Kamminga & Roodvoets (K&R). Petitioner, Mid-State Paving Co., Inc. (Mid-State), filed a Notice of Protest on July 15, 2008, and a formal written protest on July 24, 2008.

The matter was referred to the Division of Administrative Hearings (DOAH) for assignment of an administrative law judge and a formal hearing. K&R filed a Petition to Intervene that was granted on September 17, 2008.

An administrative hearing was held in Bartow, Florida, on October 14, 2008, before Lawrence P. Stevenson, a duly appointed administrative law judge. Appearances on behalf of the parties were as follows:

For Petitioner: James M. McCrae, Esquire  
Law Office of Jim McCrae  
Lake Mary Professional Campus  
1349 International Parkway, South  
Suite 2421  
Lake Mary, Florida 32746

For Respondent: C. Denise Johnson, Esquire  
Assistant General Counsel  
Department of Transportation  
605 Suwannee Street, M.S. 58  
Tallahassee, Florida 32399-0458

For Intervenor: George E. Spofford, Esquire  
Glenn Rasmussen Fogarty and Hooker, P.A.  
100 South Ashley Drive, Suite 1300  
Tampa, Florida 33602

Mid-State presented the testimony of one witness, Alvin Mulford, Vice President of Mid-State. The Department presented the testimony of Phillip Gregory Davis, Florida Department of Transportation (FDOT) State Estimates Engineer, and Richard Ryals, general engineering consultant, and the deposition testimony of David A. Sadler, FDOT Director of Office of Construction. The parties entered joint exhibits 1 and 2 upon the stipulation of all parties. The Department entered Respondent's exhibits 1 through 4, which were admitted into evidence. K&R entered Intervenor's exhibits 1 through 5, which were also admitted into evidence. The transcript of the hearing was filed on October 29, 2008. The Department timely filed its Proposed Recommended Order on November 10, 2008. Petitioner filed a motion to extend the time for filing which was granted on November 12, 2008. The K&R Proposed Recommended Order was

filed on November 12, 2008. Thereafter, the Petitioner filed its Proposed Recommended Order on November 14, 2008 pursuant to the order granting the extension. Judge Stevenson issued his Recommended Order on January 9, 2009. No exceptions were filed.

### **STATEMENT OF THE ISSUE**

The issue presented was whether the Department acted in a manner that was contrary to the agency's governing statutes, rules, policies, or the specifications in its proposed decision to award contract T1285 to K&R.

### **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 32 are supported by competent, substantial evidence, and are adopted and incorporated as if fully set forth herein.

2. The Department has incurred \$1,383.60 in taxable costs for transcript and mailing costs and charges.

### **CONCLUSIONS OF LAW**

1. The Department has jurisdiction over the subject matter of and the parties to this proceeding pursuant to Chapters 120 and 337, Florida Statutes.

2. The Conclusions of Law in paragraphs 33 through 46 of the Recommended Order are fully supported in law and are adopted 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 notice of protest filed by Mid-State Paving Co., Inc., challenging the award of contract T1285 is hereby dismissed. It is further

**ORDERED** that the motion for costs by the Department of Transportation is granted. Mid-State Paving Co., Inc., shall pay the sum of \$1,383.60 to the Department within thirty days of the date of this order or the amount shall be deducted from the bond posted by Mid-State Paving Co., Inc.

**DONE AND ORDERED** this 29<sup>th</sup> day of January, 2009.

  
Stephanie C. Kopelousos  
Secretary  
Department of Transportation  
Haydon Burns Building  
605 Suwannee Street  
Tallahassee, Florida 32399

FILED D.O.T. CLERK  
2009 JAN 29 AM 9:20

**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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