

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

FILED  
2010 MAY -7 A 11:24  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

SUNSHINE TOWING AT BROWARD,  
INC.,

Petitioner,

vs.

DOAH CASE NO.: 10-0134BID  
DOT CASE NO.: 09-116

DEPARTMENT OF TRANSPORTATION,

Respondent,

and

ANCHOR TOWING AND MARINE OF  
BROWARD, INC.,

Intervenor.

FINAL ORDER

On November 30, 2009, the Department of Transportation (Department) posted a notice that it intended to award the contract for RFP-DOT-09/10-4007FS. The notice indicated that the award would be made to Anchor Towing and Marine of Broward, Inc. (Anchor Towing). This contract was procured to provide Road Ranger Service Patrol on Interstate 95 in Martin County, St. Lucie County, and Indian River County (Treasure Coast). Sunshine Towing @ Broward, Inc. (Sunshine Towing) filed a Notice of Protest on December 3, 2009, and a formal protest on December 10, 2009.

The matter was referred to the Division of Administrative Hearings (DOAH) on January 12, 2010, for assignment of an administrative law judge and a formal hearing. Anchor Towing's Unopposed Petition for Leave to Intervene was also forwarded to the DOAH, and an order granting the petition was entered on January 15, 2010.

An administrative hearing was held in Ft. Lauderdale, Florida, on February 22, 2010, before John G. Van Laningham, a duly appointed administrative law judge.

Appearances on behalf of the parties were as follows:

For Petitioner: Mitchell A. Bierman, Esquire  
Weiss Serota Helfman, et al.  
2525 Ponce De Leon Boulevard., Suite 700  
Coral Gables, Florida 33134

Matthew H. Mandel, Esquire  
Weiss Serota Helfman, et al.  
200 East Broward Boulevard, Suite 1900  
Ft. Lauderdale, Florida 33301

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

For Intervenor: Miguel De Grandy, Esquire  
Miguel De Grandy, P.A.  
800 Douglas Road, Suite 850  
Coral Gables, Florida 33134

Stephen M. Cody, Esquire  
16610 SW 82<sup>nd</sup> Court  
Palmetto Bay, Florida 33157

Sunshine Towing presented the testimony of one witness, Fernicia Smart, Purchasing Agent for the Department, District Four. The Department presented the testimony of Gaetano

Francese, Project Manager for the Treasure Coast Road Ranger Service Patrol. Anchor Towing presented the testimony of Ann Margaret (Maggie) Ramos. Petitioner's Exhibits 1-9, 11 and 13 - 15 were received into evidence. Intervenor's Exhibits 5, 6, and 8 were received into evidence. The transcript of the hearing was filed on March 10, 2010. All of the parties filed Proposed Recommended Orders that were subsequently considered by the ALJ. Judge Van Laningham issued his Recommended Order on April 6, 2010. 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 specifications in its intended decision to award the contract arising from RFP-DOT-09/10-4007FS.

#### **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 24 are supported by competent, substantial evidence, and are adopted and incorporated as if fully set forth herein.
2. The Department has incurred \$772.12 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 287, Florida Statutes.
2. The Conclusions of Law in paragraphs 25 through 63 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 and formal protest filed by Sunshine Towing @ Broward, Inc., challenging the award of contracts under RFP-DOT-09-10-4007FS are hereby dismissed. It is further

**ORDERED** that the motion for costs by the Department of Transportation is granted. Sunshine Towing @ Broward, Inc., shall pay the sum of \$772.12 to the Department within 30 days of the date of this order or the amount shall be deducted from the bond posted by Sunshine Towing @ Broward, Inc.

**DONE AND ORDERED** this 5 day of May, 2010.



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

FILED U.S. CLERK  
2010 MAY -5 AM 10:13

**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 30 DAYS OF RENDITION OF THIS ORDER.**

Copies furnished to:

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Administrative Law Judge  
Division of Administrative Hearings  
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