



Florida Department of Transportation

RICK SCOTT
GOVERNOR

605 Suwannee Street
Tallahassee, FL 32399-0450

ANANTH PRASAD, P.E.
SECRETARY

December 7, 2012

FILED
2012 DEC 10 PM 12 02
DIVISION OF
ADMINISTRATIVE
HEARINGS

Elizabeth W. McArthur
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060

**COMMERCIAL INDUSTRIAL CORP. v. FDOT
DOT CASE NO. 12-090**

Dear Judge McArthur:

Enclosed for your records is a copy of the Final Order filed October 17, 2012, in the above-styled case.

Sincerely,

Patricia A. Parsons
Clerk of Agency Proceedings
(850) 414-5265

pap

Enclosure

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

FILED
2012 DEC 10 PM 12 03
DIVISION OF
ADMINISTRATIVE
HEARINGS

COMMERCIAL INDUSTRIAL CORP.,

Petitioner,

vs.

**DOAH CASE NO: 12-02870BID
DOT CASE NO: 12-090**

DEPARTMENT OF TRANSPORTATION,

Respondent.

_____ /

FINAL ORDER

On July 2, 2012, the Department of Transportation (Department) posted its notice of intended award of contract number E5R63 for the Daytona Avenue Bridge Replacement in Volusia County for District Five. The notice indicated that the intended award would be to Gregori Construction & Engineering, and declared that Commercial Industrial Corporation (Commercial) was non-responsive. Commercial filed a Notice of Protest on July 3, 2012, and a formal protest and bond on July 10, 2012.

This matter was referred to the Division of Administrative Hearings (DOAH) on August 28, 2012, for assignment of an administrative law judge and a formal hearing. An administrative hearing was held in Tallahassee, Florida, on September 28, 2012, before Elizabeth W. McArthur, a duly appointed administrative law judge.

For Petitioner: Commercial Industrial Corp, pro se, by
its designated representative,
Jay T. Blankenfeld, Vice President
11810 Northwest 115th Avenue
Reddick, Florida 32686

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

Commercial presented the testimony of two witnesses, Jay T. Blankenfeld, testifying in narrative form, and Alan Hyman, P.E., Director of Transportation Operations for the Department's District 5. The Department presented the testimony of Alan Hyman and Michelle Sloan, Procurement Services Manager for District 5. Joint Exhibits 1 and 2 were received into evidence. Petitioner also offered the Department's Exhibits 2 and 6A through 6E into evidence, which were received. The transcript of the hearing was filed on October 23, 2012. Both parties filed timely Proposed Recommended Orders, and to the extent the PROs were based on the evidentiary record made at the hearing, they were considered in the preparation of the Recommended Order. No exceptions to the Recommended Order were filed.

STATEMENT OF THE ISSUE

The issue in this case is whether the Department's intended decision to award contract E5R63 was contrary to the agency's statutes, rules, policies, or specifications.

FINDINGS OF FACT

1. After review of the record in its entirety, it is determined that the Administrative law Judge's Finding of Fact in paragraphs 1 through 38 are supported by competent, substantial evidence, and are adopted and incorporated as if fully set forth herein.

2. The Department has incurred costs in the amount of \$337.69 for the record of the Proceedings and has filed an unopposed Motion for Costs.

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 39 through 52 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 Commercial Industrial Corp., challenging the award of contract E5R63 are hereby dismissed. It is further

ORDERED that the motion for costs by the Department of Transportation is granted. Commercial Industrial Corp., shall pay the sum of \$337.69 to the Department within 30 days of the date of this order or the amount shall be deducted from the bond posted by Commercial Industrial Corp.

DONE AND ORDERED this 6th day of December, 2012.



Ananth Prasad, P.E.
Secretary
Department of Transportation
605 Suwannee Street
Haydon Burns Building
Tallahassee, Florida 32399-0458

FILED D.O.T. CLERK
2012 DEC -7 AM 9:53

NOTICE OF RIGHT TO APPEAL

THIS ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RULES 9.100 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:

C. Denise Johnson, Esquire
Assistant General Counsel
Department of Transportation
Haydon Burns Building
605 Suwannee Street, M.S. 58
Tallahassee, Florida 32399-0458

Elizabeth W. McArthur
Administrative Law Judge
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The DeSoto Building
1230 Apalachee Parkway
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Michelle Sloan
Procurement Services Manager
Department of Transportation, District 5
719 S. Woodland Blvd.
Deland, Florida 32720

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Commercial Industrial Corp.
11810 Northwest 115th Avenue
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