

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

**NATIONAL WATER MAIN  
CLEANING COMPANY,**

**Petitioner,**

**vs.**

**DOT CASE NO.: 16-058  
DOAH CASE NO.: 17-0589**

**DEPARTMENT OF TRANSPORTATION,**

**Respondent,**

**and**

**VACVISION ENVIRONMENTAL, LLC,**

**Intervenor.**

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**FINAL ORDER**

On December 7, 2016, the Department of Transportation (Department) posted a notice that it intended to award Contract No. E3Q37 to VacVision Environmental, LLC (VacVision). Petitioner, National Water Main Cleaning Company (NWMCC) filed a Notice of Intent to Protest and protest bond on December 12, 2016, and a formal protest on December 22, 2016.

The matter was referred to the Division of Administrative Hearings (DOAH) on January 24, 2017, for assignment of an administrative law judge (ALJ) and a formal hearing. VacVision filed a Motion to Intervene on January 31, 2017, which DOAH granted on January 31, 2017.

An administrative hearing was held in Tallahassee, Florida, on March 3, 2017, before the Honorable Suzanne Van Wyk, a duly appointed administrative law judge. Appearances on behalf of the parties were as follows:

For Petitioner: Geoffrey D. Smith, Esquire  
Smith & Associates  
Suite 202  
1499 South Harbor City Boulevard  
Melbourne, Florida 32901

For Respondent: Douglas Dell Dolan, Esquire  
Department of Transportation  
605 Suwannee Street, MS-58  
Tallahassee, Florida 32399-0458

For Intervenor: Megan M. Warren, Esquire  
McRae & Metcalf, P.A.  
2612 Centennial Place  
Tallahassee, Florida 32308

NWMCC presented the testimony of Salvatore Perri, President of NWMCC. The Department presented the testimony of Jared Kirkland, District Three Estimate Specialist; Marilyn Durrance, District Three Contract Specialist; Amanda Mauldin, District Three Contract Specialist; and Richard Norris, District Three Administrative Services Manager. VacVision presented the testimony of Wesley A. Kingery. Joint Exhibits 1, 2, 3, 4, 4A, 5, 6, and 7 were admitted into evidence. NWMCC offered exhibits 1 through 4 into evidence. The exhibits were admitted into evidence after the ALJ overruled the Department's objections. The Department's Exhibits 1-10 and 11, pages 1-114, were admitted into evidence without objection. VacVision did not offer any exhibits into evidence. The transcript of the hearing was filed March 17, 2017. All of the parties filed Proposed Recommended Orders that were subsequently considered by the ALJ. Judge Van Wyk issued her Recommended Order on April 19, 2017. None of the parties filed exceptions to the Recommended Order.

#### **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 Contract No. E3Q37.

### **FINDINGS OF FACT**

1. The Findings of Fact set forth in paragraphs 1-20 of the Recommended Order are supported by competent, substantial evidence and the Department adopts the Findings of Fact set forth in paragraphs 1-20 of the Recommended Order and incorporates them by reference.

2. None of the parties filed exceptions to the Findings of Fact in the Recommended Order.

3. The Department has incurred \$741.00 in taxable costs for transcript and mailing costs and charges.

### **CONCLUSIONS OF LAW**

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

B. The Conclusions of Law set forth in paragraphs 21-44 of the Recommended Order are supported by law and the Department adopts the Conclusions of Law set forth in paragraphs 21-44 of the Recommended Order and incorporates them by reference.

C. None of the parties filed exceptions to the Conclusions of Law in the Recommended Order.

### **ORDER**

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

**ORDERED** that National Water Main Cleaning Company is determined to have failed to establish that the Department's intended award of the Contract to VacVision Environmental, LLC, was contrary to the agency's governing statutes, rules, policies or solicitation specifications in its intended decision to award Contract No. E3Q37.

**ORDERED** that the motion for costs by the Department of Transportation is granted. National Water Main Cleaning Company shall pay the sum of \$741.00 to the Department within 30 days of the date of this order or the amount shall be deducted from the bond posted by National Water Main Cleaning Company

**DONE AND ORDERED** this 16<sup>th</sup> day of May, 2017.



**RACHEL D. CONE**  
Interim Secretary  
Department of Transportation  
605 Suwannee Street  
Haydon Burns Building  
Tallahassee, Florida 32399-0458

FILED D.O.T. CLERK  
2017 MAY 10 AM 11:02

**NOTICE OF RIGHT TO APPEAL**

**THIS ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY ANY PARTY 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 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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