

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

CROSS CONSTRUCTION SERVICES, INC.,

Petitioner,

vs.

**DOAH Case No. 20-4214BID
DOT Case No. 20-049**

DEPARTMENT OF TRANSPORTATION,

Respondent.
_____ /

CROSS ENVIRONMENTAL SERVICES, INC.,

Petitioner,

vs.

**DOAH Case No 20-4216BID
DOT Case No. 20-048**

DEPARTMENT OF TRANSPORTATION,

Respondent.
_____ /

FINAL ORDER

On August 24, 2019, the Department of Transportation (Department) posted a notice that the Request for Proposal DOT-RFP-20-5003-DAA procurement would be cancelled with the intent to readvertise with adjustments to the Scope and Pricing structure, and rejected all proposals to DOT-RFP-20-5003-DAA. Petitioner, Cross Construction Services, Inc., (Cross Construction) filed a Notice of Intent to Protest on August 26, 2020, and a formal protest on September 2, 2020, with a bond. Petitioner, Cross Environmental Services, Inc., (Cross Environmental) filed a Notice of Intent to Protest on August 25, 2020, and a formal protest on September 3, 2020, with a bond.

The matter was referred to the Division of Administrative Hearings (DOAH) on September 18, 2020, for assignment of an administrative law judge (ALJ) and a formal hearing. Simpson Environmental Services, LLC (Simpson Environmental) filed a Motion to Intervene on September 25, 2020. Cross

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Construction filed Petitioner's Objection to Simpson Environmental's Motion to Intervene on September 28, 2020. Cross Environmental filed Petitioner's Objection to Simpson Environmental's Motion to Intervene on September 29, 2020. On September 30, 2020, the ALJ issued an Order Denying Motion to Intervene.

An administrative hearing was held by Zoom conference on October 26, 2020 before the Honorable Linzie F. Bogan, a duly appointed administrative law judge, who appeared in Tallahassee, Florida. Counsel for Cross Construction and counsel for Cross Environmental appeared by Zoom teleconference in Tampa and Coral Springs respectively, and the Department appeared by Zoom teleconference in Deland, Florida.

Appearances on behalf of the parties were as follows:

For Petitioner: Brian A. Leung, Esquire
 Holcomb & Leung, P.A.
 303 West Cypress Street
 Tampa, Florida 33607
 Counsel for Cross Construction Services, Inc.

 Diane EH Watson, Esquire
 PO Box 1299
 Coral Springs, Florida 33524
 General Counsel for Cross Environmental Services, Inc.

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

Cross Construction offered the testimony of its President Tyler Lillibride and Department employees Jim Stroz and Jennifer Allcock. Cross Environmental offered the testimony from Mr. Stroz and Ms. Allcock, and its President James Smith. The Department offered the testimony of Michelle Sloan, District Five Procurement Manager, and Tim Yeager, President of Simpson Environmental. Joint Exhibits 1 through 10 were admitted into evidence. Cross Construction Exhibits 1 through 15 were admitted into evidence. Cross Environmental Exhibits 10 through 15 were admitted into evidence. Department Exhibits 11, 13, and 15 were also admitted into evidence. The transcript of the hearing was filed November 13,

2020. All of the parties filed Proposed Recommended Orders that were subsequently considered by the ALJ. Judge Bogan issued his Recommended Order on December 14, 2020. None of the parties filed exceptions to the Recommended Order.

A Motion for Costs has been filed by the Respondent on January 13, 2021 and will be addressed by a separate order.

STATEMENT OF THE ISSUE

The issue presented was whether the Department's action to reject all bids submitted in response to DOT-RFP-20-5003-DAA, relating to asbestos abatement, demolition, and removal services, was illegal, arbitrary, dishonest, or fraudulent.

FINDINGS OF FACT

1. The Findings of Fact set forth in paragraphs 1-42 of the Recommended Order are supported by competent, substantial evidence and the Department adopts the Findings of Fact set forth in paragraphs 1-42 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 \$1,428.05 in taxable costs for transcript of the proceeding.

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 43-65 of the Recommended Order are supported by law and the Department adopts the Conclusions of Law set forth in paragraphs 43-65 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 the Florida Department of Transportation's rejection of all proposals in response to Request for Proposal DOT-RFP-20-5003-DAA was not illegal, arbitrary, dishonest, or fraudulent, and the Cross Construction and Cross Environmental petitions are dismissed.

DONE AND ORDERED this 13th day of January, 2021.



KEVIN J. THIBAUT, P.E.
Secretary
Florida Department of Transportation
Haydon Burns Building
605 Suwannee Street
Tallahassee, Florida 32399

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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 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.

cc:

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