

BEFORE THE DIRECTOR OF THE
ARIZONA DEPARTMENT OF ADMINISTRATION

<p>AMERICAN TRAFFIC SOLUTIONS, INC., Appellant,</p> <p style="text-align: center;">vs.</p> <p>ARIZONA DEPARTMENT OF PUBLIC SAFETY, Respondent</p>	<p>) Case No. 08-0001 ADM</p> <p>)</p> <p>) DECISION AND ORDER</p> <p>) REGARDING STAY OF AWARD</p> <p>)</p> <p>)</p> <p>)</p>
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The awardee, Redflex Traffic Systems, Inc., has filed an objection to the continuation of the agency procurement officer's stay of the contract award pending the disposition of this appeal, pursuant to A.A.C. R2-7-A907(A). The Appellant ATS and the Respondent DPS have filed comments on the matter.

A.A.C. R2-7-A907(A) provides the Director with the authority to set aside a stay if contract performance is necessary "to protect the substantial interests of the State." The Director initially notes that it has not been helpful in addressing those interests to be provided with strident arguments that an award of the contract is illegal or will result in personal liability of government officials under A.R.S. § 35-211, or that the procurement process violates due process. The Director is particularly dismayed by the allegation that failure to continue a stay "would demonstrate DOA has already made up its mind" regarding the disposition of the appeal.¹

The sole consideration under A.A.C. R2-7-A907(A) is whether the stay is necessary to protect the substantial interests of the State. The record reflects that the issue of photo radar has created significant controversy at the state level for more than four years. It has been the subject of an Executive Order of the Governor, a pilot program in conjunction with the City of Scottsdale that was terminated, and a time-consuming procurement process. However, all doubt as to the interests and public policy of the State of Arizona was definitively resolved three months ago.

Specifically, on June 27, 2008, House Bill 2210 was signed into law as Chapter 0286, Laws of 2008. In that bill, the Legislature adopted A.R.S. § 41-1722, which provides,

A. Notwithstanding any other law, the department [of public safety] shall enter into a contract or contracts with a private vendor or vendors pursuant to chapter 23 of this title to establish a state photo enforcement system . . . [emphasis added.]

¹ Such unprofessional comments regarding the tribunal in which ATS has chosen to institute this appeal raise questions regarding compliance with E.R. 8.2 of Arizona's Rules of Professional Responsibility.

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Further, the immediate implementation of the photo enforcement project was deemed of such importance that of the 38 sections in the bill, the Legislature declared that the two sections relating to photo enforcement would be "effective retroactively to July 1, 2008." Section 37, Chapter 0286.

The Legislature mandated that DPS proceed with the photo enforcement project "notwithstanding any other law," and retroactively to a date three days after signature by the Governor. It is difficult to imagine a more emphatic statement by the Legislature that it considered the photo enforcement project necessary for the health and safety of the public of Arizona.

The Director is not disposed to substitute his judgment for so clear a declaration by the Legislature of the public policy interests of this State. As a consequence, it is my determination that contract performance is necessary to protect the substantial interests of the State.

IT IS ORDERED that the stay of the award of the contract in this matter is hereby vacated.

DATED this 23rd day of September, 2008.


WILLIAM BELL
Director

Copies of this Order sent by
FAX and by first class mail
this 23rd day of September, 2008, to:

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