

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

BIRD RIDES, INC.,

Petitioner,

Case No.

vs.

*Petition Filed Pursuant to
Fla. R. App. P. 9.100(f)
and 9.190(b)(3)

CITY OF TAMPA,

Respondents.

_____ /

**PETITION FOR WRIT OF CERTIORARI FROM FINAL
QUASI-JUDICIAL DECISION OF ADMINISTRATIVE BODY**

INTRODUCTION¹

Petitioner Bird Rides, Inc. ("**Bird**") seeks a writ of certiorari quashing the final quasi-judicial decision of Respondent City of Tampa (the "**City**") issued June 16, 2022, denying Bird's administrative appeal of the City's denial of Bird's bid protest. The City's decision is erroneous because (1) it failed to afford Bird due process throughout the course of its bid protest and administrative appeal thereof; (2) it departed from the essential requirements of the law in refusing to consider any of Bird's arguments raised for the first

¹ All references to the Appendix to this Petition are by page number (e.g., [A1] references Appendix page 1).

time in the appeal; and (3) the City's denial was not supported by competent substantial evidence.

Bird operates electric scooters in cities and counties around the world, and it has operated in Tampa since January 2019. Earlier this year, seeking to continue its operations in Tampa, Bird applied for Request for Proposal #41100521, City of Tampa Shared Micromobility Program Phase II (the "**RFP**"). After submitting a proposal, Bird was shortlisted along with three other proposers: Skinny Labs d/b/a Spin ("**Spin**"), Neutron Holdings, Inc. d/b/a Lime ("**Lime**"), and HELBIZ, FL, LLC ("**Helbiz**"). The City subsequently issued a Notice of Intent to Award (the "**Notice of Intent**"), with Helbiz and Spin as winners.

However, the City effectively chose to only send the Notice of Intent to the winning proposers—Helbiz and Spin. Critically, Bird and Lime did not receive copies of the Notice of Intent from the City. Rather, Bird received a copy of the Notice of Intent from someone else, on the day that bid protests were due. When Bird raised the lack-of-notice issue and requested a five-day extension of time to file its bid protest, the City denied the request for an extension.

When Bird asked for documents to support its challenge, the City failed to make timely and complete productions in response to Bird's public record

requests. As a result, Bird had no ability to support its substantive arguments on how the City's ranking of proposers was erroneous and why Bird should have been granted a permit.

After the City denied Bird's bid protest, Bird appealed. Pursuant to the City Code, a City-appointed hearing officer heard and decided the appeal. The hearing officer denied the appeal (the "**Denial**"). Despite the City's having already seriously handicapped Bird's ability to effectively challenge the City's actions (by failing to provide adequate notice and then failing to make a timely and adequate production of public records), the hearing officer went one step further. The hearing officer found that Bird had waived any arguments not raised in the bid protest, even those arguments that Bird could not have raised at the time. This decision flies in the face of basic principles of due process and is directly contrary to Florida law.

Moreover, the record before the hearing officer was devoid of competent substantial evidence to support the Denial of the appeal, and replete with competent substantial evidence to support reversal of the City's decision on the bid protest. While Bird has raised a number of reasons why the RFP process failed, any one of these would be enough to render the RFP process arbitrary and capricious. Taken together, it is clear that this Court

must quash the hearing officer's Denial, and City must re-compete the procurement.

BASIS FOR JURISDICTION

This Court has jurisdiction pursuant to article V, section 5(b) of the Florida Constitution and Florida Rules of Appellate Procedure 9.100(c)(2) and 9.190(b)(3). Florida courts utilize petitions for a writ of certiorari in reviewing quasi-judicial actions of local governments. See *Broward Cnty. v. G.B.V. Int'l, Ltd.*, 787 So. 2d 838 (Fla. 2001); *Bd. of Cnty. Comm'rs of Brevard Cnty. v. Snyder*, 627 So. 2d 469, 474-75 (Fla. 1993).

The City's Denial is a quasi-judicial final decision. See *De Groot v. Sheffield*, 95 So. 2d 912, 915 (Fla. 1957) ("[W]hen notice and a hearing are required and the judgment of the board are contingent on the showing made at the hearing, then its judgment becomes judicial or quasi-judicial as distinguished from purely executive."); City of Tampa Code § 2-282(f)(5)(f), (decision is final).² It is therefore reviewable by certiorari to circuit court as a matter of right. See *Miami-Dade Cnty. v. Omnipoint Holdings, Inc.*, 863 So. 2d 195, 198-99 (Fla. 2003) (citing *Fla. Power & Light Co. v. City of Dania*,

² Section 2-282 and other provisions of the City Code referenced herein are available at https://library.municode.com/fl/tampa/codes/code_of_ordinances?nodeId=COOR_CH2AD_ARTVFI_DIV3PUCO_S2-282PRPRPR.

761 So. 2d 1089, 1092 (Fla. 2000)); *G.B.V. Int'l*, 787 So. 2d at 843 (noting "first-tier certiorari review is not discretionary but rather is a matter of right").

STATEMENT OF FACTS

A. Factual Background.

Bird is a tech-driven mobility company that operates electric scooters in cities and counties around the world. [A2] Bird was one of the first scooter companies to operate in Tampa, and was part of the City's scooter pilot program. [A3] Bird has provided nearly one million eco-friendly rides to residents and visitors since January 2019. [A1] This certiorari proceeding involves Bird's proposal to continue its presence in Tampa.

This certiorari proceeding is not the first time that Bird has identified issues with the City's procurement process for the scooter program. In 2018, the City issued a Request for Applications ("**RFA**") for the scooter pilot program. [A3] Bird applied. *Id.* After the City initially rejected Bird's application for not including the City's own RFA materials, Bird filed a protest. *Id.* The City's Director of Purchasing denied the protest, and Bird appealed. *Id.* Eventually, the City cancelled and re-issued the RFA. *Id.* Later, the City accepted Bird, and Bird went on to successfully operate as part of the pilot program. *Id.*

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.