



Commonwealth of Kentucky  
Finance and Administration Cabinet  
**OFFICE OF THE SECRETARY**  
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Steven L. Beshear  
Governor

Jonathan Miller  
Secretary

February 8, 2008

No. 08-01

GAB Properties LLC  
Attn Gary A. Branham  
2982 KY 321  
Prestonsburg KY41653

RE: Determination of Protest: PR-1679, Floyd County

Dear Mr. Branham:

The Finance & Administration Cabinet has been forwarded your letter of protest to the award of a contract in response to the above solicitation. In the protest you contend that the award of a contract to Reworth Corporation is inappropriate due to "...properties located in a flood plane or floodway in violation of building codes." For the reasons stated herein, the protest is denied.

### **FACTUAL BACKGROUND**

The Environmental & Public Protection Cabinet has maintained a lease for the existing leased facility since April 1, 1977. The lease agreement was originally scheduled to expire June 30, 2007, and in response to an inquiry relative to the renewal of that agreement, the current lessee, Reworth Corporation, advised that it would require a rental rate increase.

As a result of that response, advertisements (invitation to lease) were placed in accordance with the provisions of KRS 56.803. On October 31, 2007, three proposals were submitted. The Commissioner of the Department for Facilities and Support Services selected the property offered by the Reworth Corporation because its proposal was the best proposal in the interest of the Commonwealth. A contract award to Reworth Corporation was initiated on November 1, 2007.

On November 16, 2007, GAB Properties LLC ("GAB") delivered a letter to Mr. John Brawner, Property Management Program Analyst, Leasing Branch, Division of Real Properties, objecting to the award of a contract to Reworth Corporation because "...[the] properties [were] located in a flood plane or floodway in violation of building codes.". Under KRS 45A.285, the Secretary of the Finance and Administration Cabinet,

or designee, has the responsibility of issuing a determination in response to any protest of an award of a state contract.

## **DETERMINATION**

Any actual or prospective bidder who is aggrieved in connection with the solicitation or selection for award of a contract may file a protest with the Secretary of the Finance and Administration Cabinet ("Secretary"). KRS 45A.285. GAB was an actual bidder to the invitation to lease so it has standing to protest the award.

A protest to an award must be made within two (2) calendar weeks within the date the protestor knew or should have known of the grounds for protest. KRS 45A.285. Here, the award was made on November 1, 2007; the protest was received on November 16, 2007. The protest was filed more than fourteen (14) days after the contract award and, therefore, is untimely. Further, the protest was delivered to the Division of Real properties, not to the Secretary of the Finance and Administration Cabinet, as is required by 45A.285.

GAB's protest contends that the award of a contract to Reworth Corporation is inappropriate due to "...properties located in a flood plane or floodway in violation of building codes."

After a review of the solicitation of PR-1679, the applicable statutes, and other relevant information, the Secretary finds and determines as follows:

1. The allegation that the "...properties are located in a flood plane or floodway..." appears to be correct, however, this is not grounds to overturn the award of the contract.

The Solicitation does not require that the property be located outside a floodplan. Moreover, based on a cursory review of the location of both properties via the Kentucky Flood Hazard Mapping system (<http://kygeonet.ky.gov/flood/viewer.htm>), it appears that both the Reworth Corporation property and GAB property are both located in areas designated with a flood insurance risk zone rating of "AE". Therefore, either property could represent some degree of floor risk for the tenant agency. The property offered by GAB would result in \$13,606.00 in recurring annual rental expenses, plus one time relocation costs estimated at \$37,500.00. Given the additional cost(s) to the agency associated with use of the property proposed by GAB, the location of the existing leased property, in and of itself, does not represent grounds to overturn the award of the contract.

2. The allegation that the "...properties are located in a flood plane or floodway in violation of building codes." is not correct and therefore is not grounds for a valid protest.

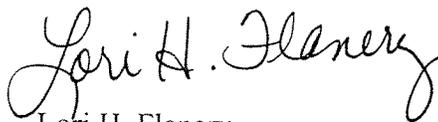
The Department of Housing, Buildings, & Construction was consulted in reference to this matter. They stated that they "do not enforce the flood plane requirements as this responsibility lies with the Environmental & Public Protection Cabinet, Division of Water and the local floodplain administrator. The building code is not applicable to existing buildings. It would only apply to new construction either new buildings or new additions."

Accordingly, upon review of the record, the protest of GAB is untimely and without merit. Further, the presumption of correctness in KRS 45A.280 applies, and GAB has failed to provide any compelling evidence to overcome this presumption. Since there is no basis to overturn this procurement, the protest must be **DENIED**. Pursuant to KRS 45A.280:

The decision of any official, board, agent, or other person appointed by the Commonwealth concerning any controversy arising under, or in connection with, the solicitation or award of a contract, shall be entitled to a presumption of correctness and shall not be disturbed unless the decision was procured by fraud or the findings of fact by such official, board, agent or other person do not support the decision.

In accordance with KRS 45A.285 (4), the decision by Finance Cabinet shall be final and conclusive.

For the Secretary  
Finance and Administration Cabinet  
By Designation



Lori H. Flanery  
Deputy Secretary

c: James F. Abbott, DFSS  
Nancy E. Brownlee, DRP  
Brien S. Hoover, DRP