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. 08-02

Robert L. Prewett
President
Mirotech, Inc.
203 Dove Creek Road
Frankfort, KY 40601

RE: Determination of Protest: RFP 590 0700000830 (OSHA Safety Training)

Dear Mr. Prewett:

The Finance & Administration Cabinet (the "Finance Cabinet") is in receipt of your letter of protest to the award of a contract based upon the above-referenced solicitation. In the protest you contend that (1) the procurement website inaccurately reported three separate bid prices when only one bid was submitted and (2) the Solicitation contained conflicting start dates. For the reasons stated herein, the protest is denied.

FACTUAL BACKGROUND

The Environmental & Public Protection Cabinet, Department for Environmental Protection ("EPPC-DEP") issued RFP 590 0700000830 (the "RFP") on September 11, 2007 for Safety Training. The RFP closed on September 14, 2007. Three timely proposals were submitted: one by Mirotech, Inc. ("Mirotech"); a second by The El Group, and the third by KCTCS-State Fire Rescue Training ("KCTCS"). The Evaluation Committee scored KCTCS as the best evaluated proposer. On December 4, 2007, KCTCS was awarded a contract based upon its response to the RFP. On December 7, 2007, Mirotech filed a protest with the Secretary of the Finance Cabinet (the "Secretary"). The procuring agency, EPPC-DEP, provided its response to the protest on December 20, 2007; KCTCS, the contract awardee, provided its response on January 4, 2008.

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. Mirotech was an actual proposer to the RFP so it has standing to protest the ward.

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 December 4, 2007; the protest was received on December 7, 2007. The protest was filed within fourteen (14) days after the contract award and, therefore, is timely.

Mirotech contends that (1) the eProcurement website inaccurately reported three separate bid prices when only one bid was submitted and (2) the Solicitation contained conflicting start dates.

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

1. The eProcurement website inaccurately reported three separate bid prices when only one bid was submitted.

The RFP sought a single lump-sum price (RFP, p. 2) based upon a defined scope of work (RFP, p.4). Mirotech, however, submitted pricing which was based upon the number of students. (Mirotech response to RFP, "Prices to Provide the Requested Training"). This resulted in various prices being reported in the eProcurement website. Given the variation in pricing, it was not possible to compare the Mirotech proposal with the other proposals. In fact, the Mirotech bid should have been declared non-responsive because it did not directly respond to the solicitation. Mirotech's protest on this point is, therefore, without merit.

2. The Solicitation contained conflicting start dates.

This protest ground is directed at the contents of the RFP. Mirotech submitted a proposal in response to the RFP. This constituted a waiver of objections to the RFP. *Parsons Precision Products, Inc.*, Comp. Gen. B-249940, 92-2 CPD 431 ("a bidder who participates in a procurement through the point of bid opening without objection is deemed to have acquiesced in the agency's statement of the terms and conditions."). In any event, the "Extended Description" (RFP, p. 2) clearly provided that "Contract will be for FY 08 . . .." This was confirmed during the vendor conference. RFP., p. 16. The protest on this ground has been waived, or, in the alternative, is without merit.

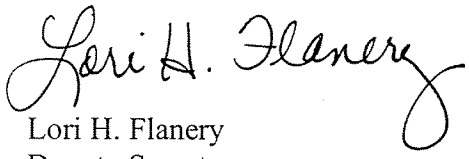
Accordingly, upon review of the record, the protest of Mirotech is without merit. Further, the presumption of correctness in KRS 45A.280 applies, and Mirotech has failed to provide any compelling evidence to overcome this presumption. Since there is no basis to overturn this procurement, the protest 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: EPPC-DEP
KCTCS-State Fire Rescue Training