



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. 08-04

Rhonda Stillman
Regional Chain Manager
Gordon Food Service
342 Gordon Industrial Drive
Shepherdsville, KY 40165

RE: Determination of Protest: RFB 758 0700002056.

Dear Ms. Stillman:

The Finance & Administration Cabinet (the "Finance Cabinet") is in receipt of your letter of protest, on behalf of Gordon Food Service ("GFS"), to the award of a contract based upon the above-referenced solicitation. In the protest you state two grounds for protest: (1) "item match-ups and quality grades" and (2) "value of one vendor verses [sic] multiple vendors." For the reasons stated herein, this protest is denied.

FACTUAL BACKGROUND

The Office of Material and Procurement Services ("OMPS") issued RFB 758 0700002056 (the "RFB") on December 12, 2007 for Grocery & Meat supply. Two contracts were to be awarded: one for the Grocery Line; a second for the Meat Line. The RFB closed on December 17, 2007. GFS submitted a bid in response to the RFB for both the Grocery Line and the Meat Line. Clems Refrigerated Foods submitted a bid for the Meat line only. After scoring the bids, on January 4, 2008, GFS was awarded the contract for the Grocery Line; Clems Refrigerated Food was awarded the contract for the Meat Line. By letter dated January 9, 2008 (received January 14, 2008), GFS filed a protest.

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. GFS was an actual bidder to the RFB 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 January 4, 2008; the protest was received on January 14, 2008. The protest was filed within fourteen (14) days after the contract award and, therefore, is timely.

GFS cryptically protests on the following grounds: (1) "item match-ups and quality grades" and (2) "value of one vendor verses [sic] multiple vendors for the Kentucky Facilities."

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

1. Item match-ups and quality grades.

The RFB allowed bidders to propose "or equal" items. RFB, Section 3. Bidders were required to state that all such "or equal" proposals met the required quality standards. RFB, Sections 3 and 4. There has been no showing that the items proposed by the winning bidder were not in accordance with the RFB. This ground for protest, therefore, is without merit.

2. Value of one vendor versus multiple vendors.

The ground for protest is directed at the contents of the RFB. A protest to a solicitation should be filed *before* the protestor actually submits a bid or proposal. Once a party submits a bid or proposal to a solicitation and the bids are opened, the protestor then has waived all objections to the solicitation document not previously raised. *See* 4 C.F.R §21.2(a)(1) ("Protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the time set for receipt of initial proposals shall be filed prior to bid opening or the time set for receipt of initial proposals."); *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.")

GFS submitted a bid in response to the RFB. Therefore, it has waived objections to the content of the RFB. This ground for protest, therefore, is without merit.

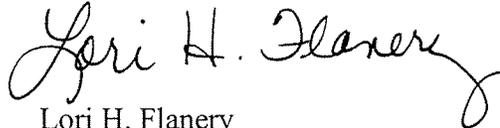
Accordingly, upon review of the record, the protest of GFS is without merit. The protest, therefore, must be **DENIED**. Pursuant to KRS 45A.280:

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

A handwritten signature in cursive script that reads "Lori H. Flanery". The signature is written in black ink and is positioned to the right of the typed name.

Lori H. Flanery
Deputy Secretary

cc: Kay Morris-Ryan