



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

Jonathan Miller
Secretary

August 11, 2008

No. 08-10

Thomas E. Ohs
Manager, Bid Contracts
Ecolab, Inc.
370 N. Wabasha EUC/13
St. Paul, MN 55102

RE: Determination of Protest: RFB 758 0700002437.

Dear Mr. Ohs:

The Finance & Administration Cabinet (the "Finance Cabinet") is in receipt of your letter of protest, on behalf of Ecolab, Inc. ("Ecolab"), to the award of a contract based upon the above-referenced solicitation. By its letter, Ecolab protests the determination of its bid as non-responsive. For the reasons stated herein, this protest is denied.

FACTUAL BACKGROUND

The Office of Material and Procurement Services ("OMPS") issued RFB 758 0700002437 (the "RFB") on January 23, 2008 for Laundry Products. The solicitation requested that a bidder propose an item and a price for each solicitation line item. The RFB closed on February 1, 2008. Ecolab and Southwestern Janitorial Supplies ("SJS") submitted bids. OMPS determined that Ecolab's bid was non-responsive because its bid proposed alternate prices and items for single solicitation line items. The contract was awarded to SJS on February 8, 2008. Ecolab submitted a protest by a letter dated February 19 (and received February 20), 2008.

DETERMINATION

After a review of the solicitation of RFB, the applicable statutes and regulations, and other relevant information, the Secretary finds and determines as follows:
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. Ecolab 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 February 8, 2008;

the protest was received on February 20, 2008. The protest was filed within fourteen (14) days after the contract award and, therefore, is timely.

Ecolab protests the determination that its bid was non-responsive because it submitted alternate bids. Ecolab argues that the RFB did not prohibit alternate bids.

The administrative regulation 200 KAR 5:021 incorporates the Finance and Administration Cabinet's "Manual of Policies and Procedures" ("FAP"). FAP 111-10-00 comprises the "General Conditions And Instructions For Solicitations And Contracts." These General Conditions are incorporated into each solicitation for commodities or services. FAP 111-10-00, Preface. Thus, these General Conditions were applicable to the RFB. FAP 111-10-00(20) provides:

MULTIPLE AND ALTERNATE BIDS: A bidder shall submit one response to the solicitation and shall not propose more than one model and brand for each bid item. Except for tiered pricing, multiple or alternate bids offering more than one bid price total or by line item shall be cause for rejection, unless specifically called for in the Solicitation.

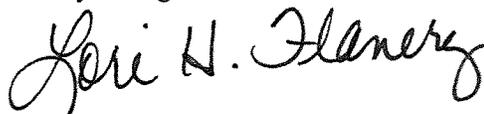
The RFB, therefore, incorporated the prohibition against alternate bids and the bid of Ecolab was properly deemed non-responsive.

Accordingly, upon review of the record, the protest of Ecolab 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



Lori H. Flanery
Deputy Secretary

cc: Melissa Jeffers, OMPS