



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

Jonathan Miller
Secretary

April 8, 2008

No. 08-16

John Kime
Bid Manager
Bucyrus Blades, Inc.
P.O. Box 628
260 East Beal Avenue
Bucyrus, Ohio 44820

RE: Determination of Protest: RFB 605 0800002503.

Dear Mr. Kime:

The Finance & Administration Cabinet (the "Finance Cabinet") is in receipt of your letter of protest on behalf of Bucyrus Blades, Inc. ("Bucyrus Blades") relating to RFB 605 0800002503 ("RFB 2503") for Snow Plow and Grader Blades.

FACTUAL BACKGROUND

The Kentucky Transportation Cabinet, Division of Purchases ("KYTC") issued RFB 605 0800002397 ("RFB 2397") on December 28, 2007 for Snow Plow and Grader Blades. This RFB closed on January 15, 2008. Valk Manufacturing Co. ("Valk"), Bucyrus Blades, DN Equipment LLC, and Holt Equipment Co. LLC submitted bids. Pursuant to a written Determination and Finding, Valk was determined to be the responsible, responsive bidder with the highest evaluated score. However, prior to an award, KYTC determined that RFB 2397 specifications were too restrictive. Therefore, KYTC cancelled RFB 2397.

Based upon revised specifications, KYTC issued RFB 2503 on February 25, 2008. RFB 2503 closed on March 5, 2008. Wayne Supply, St. Regis Culvert, DN Equipment LLC, and Valk submitted responsive bids. A bid submitted by Bucyrus Blades was deemed to be non-responsive. Valk was determined to be the most responsible, responsive bidder with the highest evaluated score.

On February 27, 2008, Bucyrus Blades submitted a written protest alleging that the solicitation for RFB 2503 was not cost effective since the blades would wear more quickly and cost more to maintain. For the reasons stated herein, this protest is DENIED.

DETERMINATION

After a review of the solicitation, the applicable statutes and regulations, the protest and responses thereto, and other relevant information, the Secretary of the Finance Cabinet ("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 Cabinet. KRS 45A.285. Bucyrus Blades intended to and did submit a bid in response to RFB 2503. Therefore, Bucyrus Blades has standing to protest RFB 2503.

A protest to a solicitation 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, RFB 2503 was issued on February 25, 2008; the protest was received on February 28, 2008. The protest was filed within two calendar weeks of the issuance of the solicitation and is timely.

The essence of Bucyrus Blades' protest is that RFB 2503 was not cost effective since the blades would wear more quickly and cost more to maintain.. This protest, therefore, is directed at the solicitation document. Bucyrus Blades, however, submitted a bid in response to the RFB 2503. This constituted a waiver of objections to the RFB. *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.")

Moreover, under KRS 45A.080, the Commonwealth purchases items through competitive sealed bidding by using "best value" criteria. "Best value" means a procurement in which the purchasing decisions are based on the primary objective of meeting the specific business requirements and best interests of the Commonwealth. KRS 45A.070(3). Thus, it is the Commonwealth that determines its business requirements as well as the specifications and criteria for each bid. In this case, the using agency, KYTC, determined the type of snow and grader blades it needed.

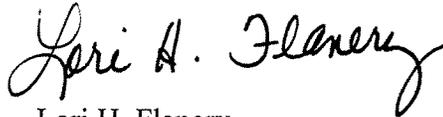
Bucyrus Blades has failed to state any violation of the statutes, regulations, or policies relating to this procurement. Bucyrus has not shown that KYTC's blade specification is irrational or arbitrary. Therefore, the determination of the using agency will not be disturbed.

Accordingly, upon review of the record, the protest of Bucyrus Blades is without merit. Further, the presumption of correctness in KRS 45A.280 applies and Bucyrus Blades has failed to provide sufficient 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 the Secretary 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".

Lori H. Flanery
Deputy Secretary

c: Earl Gresham, KYTC