



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

Jonathan Miller
Secretary

June 19, 2008

No. 08-17

Mark W. Leach, Esq.
Stites & Harbison PLLC
400 West Market Street, Suite 1800
Louisville, KY 40202

RE: Determination of Protest: RFP 736-0700000979.

Dear Mr. Leach:

The Finance & Administration Cabinet (the "Finance Cabinet") is in receipt of your letter of protest on behalf of Leslie, Knott, Letcher, Perry Community Action Council, Inc. ("LKLP") relating to RFP 736-0700000979 (the "RFP") for family Preservation and Reunification Services for the Eastern Mountain Service Region.

FACTUAL BACKGROUND

The Cabinet for Health and Family Services, Office of Contract Oversight ("CHFS-OCO") issued the RFP, as amended, on November 30, 2007. The RFP closed on December 7, 2007. Two proposals were submitted: one from LKLP and one from Buckhorn Presbyterian Child Welfare Agency ("Buckhorn"). After an evaluation, Buckhorn received the highest score; LKLP received the second highest score.

CHFS-OCO then informally notified Buckhorn and LKLP that each was to be awarded a contract to serve half of the counties in the Region. Upon further review, CHFS-OCO determined that Buckhorn, since it had been evaluated with the highest score, should be awarded the sole contract for the whole region. Therefore, on February 29, 2008, the RFP was awarded to Buckhorn.

On March 14, 2008, LKLP filed a protest. The protest alleged that the RFP did allow a partial Region award and that CHFS has not benefited from competitive bidding. 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. LKLP submitted a proposal in response to the RFP. LKLP has standing to protest the award under KRS 45A.285.

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. On February 29, 2008, LKLP was notified that it was not a successful proposer. On March 14, LKLP filed a written protest. Therefore, the protest was filed within two (2) calendar weeks after the award and is timely.

In its letter of protest, LKLP alleges that it had been orally notified that it was to be awarded a contract to serve eight counties of the service region.

This procurement was conducted as a Competitive Negotiation under KRS 45A.085A. KRS 45A.085(6) provides that the award shall be made to the responsible offeror whose proposal is determined to be the most advantageous to the Commonwealth.

LKLP is correct that a proposer *could* propose to serve a portion of the service region and an award *could* be made accordingly. RFP, p. 9 (Question 26); p. 20 (contracts may be awarded to more than one vendor per service region); p. 88 (Attachment C [selected counties for partial region proposal]). In this case, both Buckhorn and LKLP proposed to serve *the entire service region*. Buckhorn presented the highest evaluated proposal. An award to Buckhorn to serve all the counties in the service region is in accordance with the terms of the RFP. Any oral or informal notification otherwise was not in accordance with the RFP and not binding on the Commonwealth.

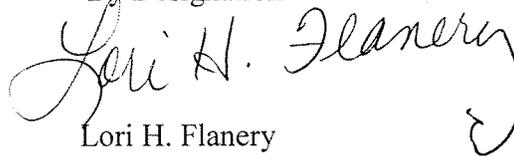
Accordingly, upon review of the record, the protest of LKLP is without merit. Further, the presumption of correctness in KRS 45A.280 applies and LKLP has failed to provide sufficient evidence to overcome this presumption. Since there is no basis to overturn this procurement, the protest must be **DENIED**. 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". The signature is written in black ink and is positioned to the left of the printed name and title.

Lori H. Flanery
Deputy Secretary

cc: Pat Niceley, CHFS-OCO