



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

Jonathan Miller
Secretary

April 23, 2009

No. 08-18

Johni Allen, President
Tri State Guardrail, Inc.
P.O. Box 3233
Pikeville, KY 41502

RE: Determination of Protest: RFB 605 0800002464.

Dear Mr. Allen:

The Finance & Administration Cabinet (the "Finance Cabinet") is in receipt of your letter of protest on behalf of Tri State Guardrail, Inc. ("Tri State Guardrail") to the award of a contract based upon the above-referenced solicitation. Tri State Guardrail's protest alleges that its bid was improperly rejected because a second bid sheet was found in its bid package. For the reasons stated herein, this protest is denied.

FACTUAL BACKGROUND

The Kentucky Transportation Cabinet, Division of Purchases ("KYTC") issued RFB 605 0800002464 ("RFB") on February 14, 2008 for District 12 Guardrail Maintenance. The RFP stated that it would be awarded to the responsible and responsive bidder whose bid offered "best value." In this case, "best value," was to be determined solely by the lowest price. The RFB closed on February 21, 2008. Sealed bids were submitted by Tri State Guardrail, George B. Stone, and Big Sandy Guardrail. At bid opening, the bids were publicly read aloud. At that time, Tri State Guardrail was the apparent low bidder. Yet, in a written Determination and Finding dated February 29, 2008, the bid of Tri state Guardrail was determined to be non-responsive since it had submitted two different bid sheets; an award was made to George B. Stone.

Tri State Guardrail filed a written protest on March 10, 2008. In its protest, Tri State Guardrail alleged that it did not submit a second bid sheet and, accordingly, it should have been awarded the contract as the responsive and responsible bidder whose low bid offered "best value."

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. Tri State Guardrail 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 RFB was awarded on February 29, 2008. The protest was filed within fourteen (14) days after the RFB was awarded and, therefore, is timely.

Tri State Guardrail has alleged that it did not submit a second bid sheet and, accordingly, it should have been awarded the contract as the responsive and responsible bidder whose bid offered "best value."

In analyzing the conduct of a procurement, the statutory scheme creates a presumption of correctness in the award. KRS 45A.280. Here, KYTC determined that Tri State Guardrail improperly submitted two separate bid sheets in its bid package. Tri State Guardrail denies submitting two separate bid sheets. Its unstated allegation is that KYTC or one of the other bidders improperly and surreptitiously included a second bid sheet in Tri State Guardrail's bid package. Tri State Guardrail alleges that there was some confusion during the public bid opening, including a period during which the bids were left unattended.

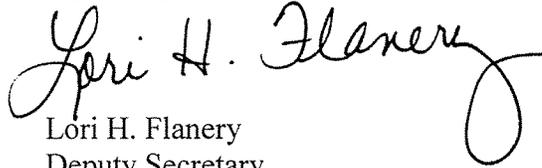
KYTC has submitted a written statement from its bid clerk who states the bids were never left unattended. After bid opening and upon further review, KYTC asserts that the second bid sheet was discovered in Tri State Guardrail's bid package. KYTC also notes that the second bid sheet it discovered was formatted identically to Tri State Guardrail's other bid sheet. KYTC adds that both these bid sheets were formatted differently from the bid sheets submitted by the two other bidders.

After reviewing all the evidence and arguments submitted by Tri State Guardrail and KYTC, Tri State Guardrail has not submitted sufficient evidence to overcome the statutory presumption. 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 above the printed name and title.

Lori H. Flanery
Deputy Secretary

cc: Kathryn Lyles, KYTC