



Commonwealth of Kentucky
Finance and Administration Cabinet
OFFICE OF THE SECRETARY
Room 383, Capitol Annex
702 Capital Avenue
Frankfort, KY 40601-3462
(502) 564-4240
Fax (502) 564-6785

Steven L. Beshear
Governor

Jonathan Miller
Secretary

April 8, 2008

No. 08-19

Mike Puthoff
Midwest Spray Booths
5716 Stone Lake Drive
Dayton, OH 45429

RE: Determination of Protest: RFB 156-08.

Dear Mr. Puthoff:

The Finance & Administration Cabinet (the "Finance Cabinet") is in receipt of your letter of protest, on behalf of Midwest Spray Booths ("Midwest") to the award of a contract based upon the above-referenced solicitation. By its letter, Midwest protests the determination to use the bid amount written in words instead of its bid amount written in numerals. For the reasons stated herein, this protest is denied.

FACTUAL BACKGROUND

The Division of Engineering and Contract Administration, Department For Facilities and Support Services ("DECA") issued RFB 156-08 (the "RFB") for Mayo Campus New Paint Spray Booth Installation. On March 4, 2008, bids were opened and read. Midwest's bid was the apparent low bidder at \$117,500. On March 5, 2008, however, DECA issued a written Determination and Finding that (1) Midwest bid \$117,500 in numerals but had also written "one hundred seventy thousand five hundred dollars"; (2) FAP 222-05-00(4)(c) provides that when there is a discrepancy between the numeric amount and the written amount in a bid, the written amount shall prevail, and (3) that, therefore, the bidder Collision Repair was the low bidder at \$119,928.00. Midwest submitted a protest by a letter dated March 5 (and received March 10th) 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. Midwest 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 March 5, 2008; the protest was received on March 10, 2008. The protest was filed within fourteen (14) days after the contract award and, therefore, is timely.

Midwest protests the determination to use the amount of its bid as written in words instead of its bid amount written in numerals.

The administrative regulation 200 KAR 5:021 incorporates the Finance and Administration Cabinet's "Manual of Policies and Procedures" ("FAP"). FAP 220-05-00 states the "Bidder Instructions for Construction Solicitations" Subsection 4 provides "Bidding Procedure. Sub-subsection (c) provides:

If indicated in the bidding documents, sums shall be expressed in both words and figures.
In the case of a discrepancy between the two, the amount in words shall prevail.
(Emphasis added).

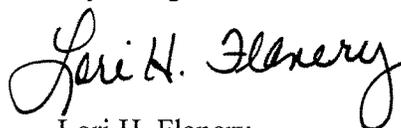
These procedures provide the rules for resolving discrepancies between written and numerical amounts in bids: the written amount prevails. The Determination and Finding correctly applied this rule to the award of the RFB.

Accordingly, upon review of the record, the protest of Midwest 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: Paul Gannoe, DECA