



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. 08-22

Charles G. Blincoe
President
KENTECH Machinery, Inc.
5801 Fern Valley Road
Louisville, KY 40228

RE: Determination of Protest.

Dear Mr. Blincoe:

The Finance & Administration Cabinet (the "Finance Cabinet") is in receipt of your letter of protest on behalf of KENTECH Machinery, Inc. ("KENTECH") to the award of a contract based upon a small purchase request. KENTECH's protest alleges that the awarded vendor did not meet the specifications of the bid request. For the reasons stated herein, this protest is denied.

FACTUAL BACKGROUND

The Kentucky Finance and Administration Cabinet, Office of Procurement Services ("OPS") issued an informal request for an Eisen Model 1740C Lathe or equal for the Shelby County Area Technology Center ("ATC"). KENTECH quoted the Eisen model. Graphel Corporation ("Graphel") provided a quote for the Kent USA ML-1740 model as an equal. On March 18, 2008, OPS issued a written Award Justification awarding the contract to Graphel as the low bidder. The model offered by Graphel was deemed acceptable by ATC.

KENTECH submitted a written protest dated March 24, 2008 (received March 25, 2008) alleging that the Kent model did not meet the specifications of the Eisen model, in other words, the Kent model was not an "or equal."

DETERMINATION

After a review of the solicitation, 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. KENTECH was an actual bidder 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 issued on March 18, 2008. The protest was received on March 25, 2008. The protest was filed within fourteen (14) days of the award and, therefore, is timely.

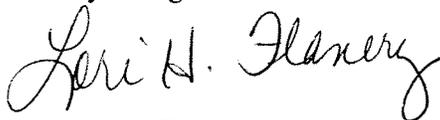
KENTECH's protest alleges that the awarded vendor did not meet the specifications of the bid request. A review of the specifications of the Eisen model and of the Kent model reveals that the two models are not identical. The bid request, however, asked for the Eisen model *or equal*. To be sure, the determination whether a competing model is "equal" or not is not a simple task. In general, an "or equal" product need not be identical, but only functionally equivalent. *Matter of: Ross Cook, Inc.*, 88-2 CPD ¶216 (Comp.Gen. 1988). In this case, the end user, Shelby County ATC, was advised that the Kent model had been proposed as an "or equal" product and the end user determined that this model was acceptable. This determination does not appear to be arbitrary or irrational. Therefore, there is no basis to overturn the award.

Accordingly, upon review of the record, the protest of KENTECH 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: Don Robinson, OPS