



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

Jonathan Miller
Secretary

June 26, 2008

No. 08-30

Alan Brock
President & Owner
National Workwear
P.O. Box 54950
Lexington, KY 40555

RE: Determination of Protest: RFB 758-0700002721.

Dear Mr. Brock:

The Finance & Administration Cabinet (the "Finance Cabinet") is in receipt of your letter of protest on behalf of National Workwear relating to RFB 758-0700002721 (the "RFB") for Footwear.

FACTUAL BACKGROUND

The Finance and Administration Cabinet, Office of Procurement Services ("OPS") issued the RFB on April 25, 2008. The RFP was modified once. One hundred total points were available to each bidder with the total score based upon the lowest price offered. The RFB closed on May 2, 2008. There were four bidders: Safety Shoe Distributors, the Wright Organization, National Workwear, and DelaCore Diversified Products LLC ("DelaCore").

A Determination and Finding determined that the bids from Safety Shoe Distributors and the Wright Organization were non-responsive since the bids did not include all items. The bid from National Workwear received 92.1 points. The bid from DelaCore received 100 points as the low bidder. The contract was awarded to DelaCore on May 21, 2008. By letter of June 2 (received June 3), National Workwear protested the award to DelaCore. National Workwear alleges that: (1) an unregistered company supplied the prices to DelaCore; (2) some manufactures may prevent the sale of items for re-sale; (3) some manufactures limit the geographic distribution of their products; (4) DelaCore may not be able to provide service for some products; and (5)

National Workwear has been unable to obtain a list of styles bid by DelaCore. For the reasons stated herein, its 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. National Workwear submitted a bid in response to the RFB. National Workwear, therefore, 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. The award was made on May 21, 2008. National Workwear protest was filed on June 3, 2008. Thus, the protest was filed within two (2) calendar weeks of the date of the award. The protest, accordingly, is timely.

In its letter of protest, National Workwear alleges that: (1) an unregistered company supplied the prices to DelaCore; (2) some manufactures may prevent the sale of items for re-sale; (3) some manufactures limit the geographic distribution of their products; (4) DelaCore may not be able to provide service for some products; and (5) National Workwear has been unable to obtain a list of styles bid by DelaCore.

There is a presumption of correctness in a procurement. KRS 45A.280. Accordingly, the protestor has the burden of proof to show that the action challenged is arbitrary, capricious, or contrary to law. *Commonwealth v. Yamaha Motor Manufacturing Corporation*, 237 S.W.3d 203, 206 (Ky. 2007) (citing *Pendleton Bros. v. Commonwealth*, 758 S.W.2d 24 (Ky. 1988)). With respect to each of National Workwear's grounds of protest, the Secretary finds and determines:

1. An unregistered company supplied the prices to DelaCore.

The RFB required that the bidder, not a vendor to the bidder, be qualified to do business in the Commonwealth. Accordingly, this ground of protest is without merit.

2. Some manufactures may prevent the sale of items for re-sale.

This ground for protest is based upon speculation. The bidder will be required to meet all the terms and conditions of the RFB. Accordingly, this ground of protest is without merit.

3. Some manufactures limit the geographic distribution of their products.

This ground for protest is based upon speculation. The bidder will be required to meet all the terms and conditions of the RFB. Accordingly, this ground of protest is without merit.

4. DelaCore may not be able to provide service for some products.

This ground for protest is based upon speculation. The bidder will be required to meet all the terms and conditions of the RFB. Accordingly, this ground of protest is without merit.

5. National Workwear has been unable to obtain a list of styles bid by DelaCore.

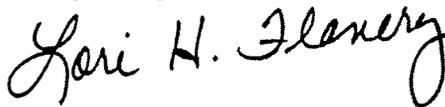
National Workwear may submit an Open Records request (KRS 61.870 et seq.) to obtain a copy of the DelaCore' bid form. A copy of an Open Records request form may be found at: <http://finance.ky.gov/ourcabinet/caboff/OGC/>.

Accordingly, upon review of the record, the protest of National Workwear is without merit. Further, the presumption of correctness in KRS 45A.280 applies and National Workwear 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



Lori H. Flanery
Deputy Secretary

cc: Kay Morris-Ryan, OPS