



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

August 11, 2008

No. 08-31

Michael D. Kalinyak
Hurt, Crosbie & May PLLC
The Equus Building
127 West Main Street
Lexington, KY 40507

RE: Determination of Protest: RFP 527-0700000989.

Dear Mr. Kalinyak:

The Finance & Administration Cabinet (the "Finance Cabinet") is in receipt of your letter of protest on behalf of Premier Integrity Solutions, Inc. ("PIS") relating to RFP 527-0700000989 (the "RFP") for Drug Testing services.

FACTUAL BACKGROUND

The Department of Corrections ("DOC") issued the RFP on March 19, 2008. The RFP had been modified three times to respond to vendor questions. The RFP was to be evaluated on the following basis: price – 80 points; references – 20 points. The RFP closed on April 2, 2008. There were eight bidders: AccuDiagnostics; ASAP Consulting; Drug & Alcohol Concentration Specialists, Inc.; Pharmatech, Inc.; PIS; MC Consultant Services Co., Inc.; Aegis Services Corporation; and Kroll Laboratory, Inc.

The DOC issued a written Determination and Finding on April 30, 2008. The Determination and Finding stated that the proposals of AccuDiagnostics; ASAP Consulting; Drug & Alcohol Concentration Specialists, Inc.; Pharmatech, Inc.; PIS; MC Consultant Services Co., Inc. were "non-responsive." Aegis Services Corporation was awarded 84 points; Kroll Laboratory, Inc. was awarded 98 points. Kroll Laboratory, Inc. was determined to be the highest ranked vendor.

On June 4, 2008, PIS filed a protest. PIS expressed concern that its proposal was not reviewed since its references were never contacted and it was never notified that its proposal had been determined to be not responsive. 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. PIS submitted a proposal in response to the RFP. PIS, 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 28, 2008. The PIS protest was filed on June 4, 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, PIS expressed concern that its proposal was never reviewed since its references were never contacted and it was never notified that its proposal was not responsive.

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 PIS’ protest, the Secretary finds and determines:

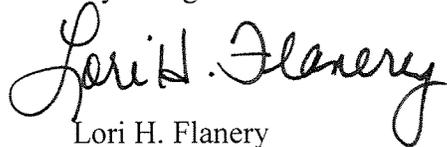
According to the April 30th Determination and Finding, PIS’ proposal was reviewed and found to be “non-responsive” because PIS failed to submit (1) a copy of accreditation by the American Board of Forensic Toxicology of a full-time, board-certified toxicologist and (2) documentation of employment of a full-time, board certified toxicologist. PIS has not provided any evidence to show that the Determination and Finding is incorrect or that it, in fact, provided the required information.

Accordingly, upon review of the record, the protest of PIS is without merit. Further, the presumption of correctness in KRS 45A.280 applies and PIS 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 black ink that reads "Lori H. Flanery". The signature is written in a cursive style with a large initial "L".

Lori H. Flanery
Deputy Secretary

cc: Mark D. Robinson, Director, Administrative Services DOC