



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

**Jonathan Miller**  
Secretary

August 22, 2008

**No. 08-38**

Lonnie Calvert  
2631 Wilhite Drive  
Lexington, KY 40503

RE: Determination of Protest: D.W. Wilburn, Inc.: MUS Center For Health & Research Project

Dear Mr. Calvert:

The Finance & Administration Cabinet (the "Finance Cabinet") is in receipt of your letter of protest relating to the award of contract to D.W. Wilburn, Inc. ("Wilburn") for the Morehead State University Center for Health & Research Project ("Project").

### **FACTUAL BACKGROUND**

The Division of Engineering and Contract Administration, Department for Facilities and Support Services ("DECA") has awarded a construction contract to Wilburn for the Project. By letter dated July 10, 2008 (received July 11, 2008), Mr. Lonnie Calvert protests the award to Wilburn and alleges that Wilburn was not a responsible bidder since Wilburn has a history of OSHA and Wage and Hour violations and has been involved in litigation on numerous construction projects. DECA provided a response dated August 12, 2008 contending that the protestor had not established standing to protest. On August 13, Wilburn provided a response disputing the merits of the allegations. On August 15, counsel for Wilburn added an additional response. 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:

The initial inquiry in determining a protest is whether the protestor has standing to protest. 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. Mr. Calvert has not provided any evidence to establish his standing to protest as an "actual bidder." 200 KAR 5:380, Section 2. Since Mr. Calvert did not submit a bid and is not an "actual bidder," Mr. Calvert lacks standing to protest.

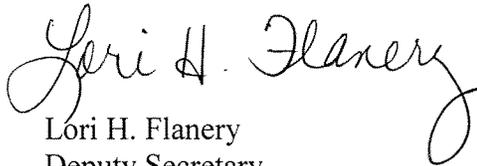
The Commonwealth has a great interest in the safety of its workers and that applicable Wage & Hours laws are complied with, however, a protest under the Kentucky Model Procurement Code (KRS Chapter 45A) does not provide an effective mechanism to police these public policies.

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: Paul Gannoe, DECA  
Doug Wilburn, D.W. Wilburn, Inc.