



Commonwealth of Kentucky
Finance and Administration Cabinet
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Steven L. Beshear
Governor

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Secretary

October 10, 2008

No. 08-40

Vivian Craig
Associate Director for Social Services
Green River Area Development District
3860 U.S. Highway 60 West
Owensboro, KY 42301-0200

RE: Determination of Protest: RFP 736 0800001079 (Green River CCC Service Area).

Dear Ms. Craig:

The Finance & Administration Cabinet (the "Finance Cabinet") is in receipt of your letters of protest on behalf of Green River Area Development District ("GRADD") relating to RFP 736 0800001079 ("RFP") for the Community Collaboration for Children ("CCC") Program for the Green River Service Area.

FACTUAL BACKGROUND

The Cabinet for Health and Family Services, Office of Contract Oversight ("CHFS-OCO") issued the RFP, as amended, on April 11, 2008. The RFP closed on April 18, 2008. GRADD submitted a proposal for the Green River Service Area. ENA, Inc. d/b/a NECCO ("ENA") was the best evaluated proposer for this Service Area. On June 23, 2008, ENA was notified that it was to be awarded a contract.

By letter dated June 19, 2008 (received June 23), GRADD protested the intent to award. On August 8, 2008 (received August 11), GRADD sent a supplement to its protest. On August 13, 2008, ENA filed a response to the initial protest. On August 27th, ENA filed a response to the supplemental protest on behalf of ENA. On August 29, ENA filed a supplemental response to the initial protest. On September 22, 2008, CHFS-OCO provided the Buyer's response to both the initial and supplemental protest. 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. GRADD submitted a proposal in response to the RFP. Therefore, GRADD has standing to protest the RFP.

A protest to a solicitation 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. On June 23, 2008, ENA was notified that it was to be awarded a contract. GRADD's protest was received on June 23, 2008 and was timely. GRADD's "follow-up" (supplemental protest) letter was received on August 11, 2008. GRADD made no attempt to rebut a presumption of untimeliness. 200 KAR 5:380. The August 11th letter, therefore, was untimely.

In its initial protest, GRADD poses four "questions" concerning ENA: (1) is it a non-profit agency? (2) do they have the required experience? (3) do they provide prevention services prior to Cabinet involvement? and (4) have they established strong, positive relationships with local DCBS offices and other community partners in the Green River area? In its "follow up" (supplemental protest) letter, GRADD elaborates on its contention that ENA lacks the required experience. GRADD cites to Section 1.10 of the RBP and notes that an applicant must show either (1) the applicant has an office in the CCC Service Area and six years of experience providing services or (2) the applicant has ten years of providing services in the CCC Service Area. GRADD contends that ENA's proposal does not evidence that it provided any services in the CCC Service Area.

A determination by an agency is entitled to a presumption of correctness. KRS 45A.280. A protester must clearly establish that a solicitation evaluation was irrational. This is not accomplished by the protester's mere disagreement with the agency's judgment. *Systems & Processes Engineering Corp.*, 88-2 CPD ¶478 (Comp.Gen 1988). The Secretary will not "substitute [his] judgment ... for that of the agency, but [will] intervene only when it is clearly determined that the agency's determinations were irrational or unreasonable." *Baird Corp. v. United States*, 1 Cl.Ct. 662, 664 (1983). If the agency shows that there was a reasoned basis for its decision, the award must be upheld. *Bowman Transp., Inc. v. Arkansas-Best Freight Sys., Inc.*, 419 U.S. 281, 285-86, 95 S.Ct. 438, 42 L.Ed.2d 447 (1974); *CRC Marine Servs., Inc. v. United States*, 41 Fed.Cl. 66, 83 (1998).

As an initial matter, GRADD has presented only questions, not evidence, about three of its objections. A mere question is insufficient to overcome the presumption of correctness. KRS 45A.280. In response to these three bare questions, CHFS-OCO states that ENA's proposal did evidence its non-profit status; ENA did indicate that they provided prevention services prior to Cabinet involvement in its technical proposal; and

ENA's technical proposal did evidence strong working relationships with the local DCBS office and community organizations.

On the fourth issue, GRADD's "follow up" (supplemental protest) letter does cite to a relevant section of the RFP concerning experience and argues that ENA's proposal does not satisfy the requirement. The RFP, Section 1.10, Eligible Applicants, provides:

Applicants must have a physical office located in the CCC Service Area for which they are proposing to deliver services and have at least six (6) years experience providing prevention based human services to high-risk families in the CCC Service Area for which they are proposing, OR, at least 10 years experience in providing prevention based human services to high-risk families in the CCC Service Area for which they are proposing. In all cases, it is preferred that potential vendors have experience providing human services to high-risk families that focus on the prevention of child abuse/neglect prior to any Cabinet involvement.

The RFP, Section 2.00, Scope of Work, Item E defines the Green River "CCC Service Area" as Union, Webster, Henderson, McLean, Daviess, Hancock, and Ohio Counties.

Page 4 of the ENA technical proposal states that ENA was selected in 2000 to provide a statewide network of Chafee Independent Living Services for Kentucky's foster youth from the ages of 12 to 21. This award facilitated the development of a new program in Owensboro, within the CCC Service Area. ENA provided these services for three years. The ENA proposal also references on page 3 the "Alternatives to Secure Detention" Program, which it administered beginning in 2000, for status offenders in the form of community based care. Program services included community service, home detention, electronic monitoring, and supervised foster care. In addition, page 7 of the ENA technical proposal indicates that ENA has been operating in Owensboro since 2000 starting with Chafee Independent Living Grant and then including electronic monitoring and foster care. The ENA technical proposal offers several references to their Owensboro office.

The determination by CHFS-OCO that ENA's technical proposal satisfied the experience requirements of RFP, Section 1.10, has a reasoned basis. GRADD has not shown that the agency's determination was arbitrary, capricious, or contrary to law. *Commonwealth of Kentucky v. Yamaha*, 237 S.W.3d 203, 206 (Ky. 2007).

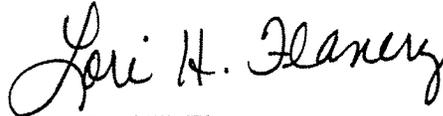
Accordingly, upon review of the record, the protest of GRADD is without merit. Further, the presumption of correctness in KRS 45A.280 applies and GRADD has failed to provide sufficient evidence to overcome this presumption. Since there is no basis to overturn this procurement, the protest must be **DENIED**. 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, flowing style.

Lori H. Flanery
Deputy Secretary

cc: Wendy Goodenough, Esq., ENA, Inc
Joan Graham, CPPB