



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

Jonathan Miller
Secretary

October 10, 2008

No. 08-41

Fernando Cuevas
Owner & CEO
Pro Right Industry Diamond Tools
And Equipment
8591 Club Estates Way
Lake Worth, FL 33467

RE: Determination of Protest: RFB 605 0800002976.

Dear Mr. Cuevas:

The Finance & Administration Cabinet (the "Finance Cabinet") is in receipt of your letter of protest on behalf of Pro Right Industry Diamond Tools And Equipment ("Pro Right") relating to RFB 605 0800002976 ("RFB") for PCC Pavement Walk-Behind Saw Blades.

FACTUAL BACKGROUND

The Kentucky Transportation Cabinet, Division of Purchases ("KYTC") issued RFB 605 0800002976 on June 19, 2008 for PCC Pavement Walk-Behind Saw Blades. The RFB sought bids for "200CC WET BLADE FOR HARD AGGREGATE/MEDIUM REBAR CUTTING. -DIAMETER: 26 INCHES -THICKNESS: .165 INCHES -SEGMENTS: 1 INCH." The RFB closed on January 26, 2008.

Six vendors submitted bids. The bid submitted by Pro Right was deemed to be non-responsive since the bid offered a product which did not meet the requested specifications. Diteq Corp. was determined to be a responsible, responsive bidder with the highest evaluated score. KYTC awarded a contract to Diteq Corp. on July 10, 2008.

On July 24, Pro Right filed a written protest. Pro Right concedes that the saw blades it offered were thicker than specified. Pro Right, however, argues that it proposed a higher quality blade. Moreover, Pro Right

asserts that Diteq Corp.'s product catalog indicates that Diteq Corp. does not offer saw blades which meet the RFB specifications as well. 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. Pro Right submitted a bid in response to the RFB. Therefore, Pro Right has standing to protest the RFB.

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. Here, a contract was awarded on July 10, 2008. Pro Right filed its written protest on July 24, 2008. The protest was filed within two (2) calendar weeks of the award and is timely.

In its protest, Pro Right concedes that the saw blades it offered were thicker than specified but argues that it proposed a higher quality blade than specified. Further, Pro Right asserts that Diteq Corp.'s product catalog indicates that Diteq Corp. does not offer saw blades which meet the RFB specifications as well.

A competitive sealed bid (an RFB) is "responsive" if it conforms in all material respects to the invitation for bids. KRS 45A.070(7). The RFB required a blade with a thickness of .165 inches; Pro Right proposed a blade with a thickness of .187 inches. KYTC determined this proposal to be non-responsive. Pro Right asserts that its blade is of higher quality due to its thickness; KYTC contends that the extra thickness causes the blade to cut more slowly. In addition, KYTC states that the blade proposed by Pro Right was of a size which would result in the blade becoming too hot during use.

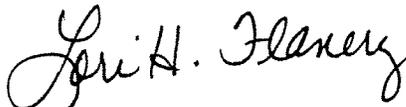
A determination by an agency is entitled to a presumption of correctness. KRS 45A.280. A protester must clearly establish that a solicitation evaluation was irrational. This is not accomplished by the protester's mere disagreement with the agency's judgment. *Systems & Processes Engineering Corp.*, 88-2 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). KYTC has demonstrated a reasoned basis for its decision. Pro Right concedes that its blade did not meet specifications. The determination of KYTC that Pro Rights' bid was non-responsive was not arbitrary, irrational, or capricious. Finally, KYTC points out that Diteq Corp. bid its Blade C-23 D12029 which is 26" X .160" x 1" and did meet the specifications of the RFB.

Accordingly, upon review of the record, the protest of Pro Right is without merit. Further, the presumption of correctness in KRS 45A.280 applies and Pro Right 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: Earl Gresham, KYTC