



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

Jonathan Miller
Secretary

October 29, 2008

No. 08-44

Debbie Gundlach
Borden Decal
4700 South Stallion Drive
Gilbert, AZ 85297

RE: Determination of Protest: RFB 605-0800003111.

Dear Ms. Gundlach:

The Finance & Administration Cabinet (the "Finance Cabinet") is in receipt of your letter of protest on behalf of Borden Decal relating to RFB 605-0800003111 (the "RFB") for 2009 IFTA and Kit Decals.

FACTUAL BACKGROUND

The Kentucky Transportation Cabinet, Division of Purchases ("KYTC") issued the RFB on August 6, 2008. The RFB was to be scored as follows: the earliest complete delivery (5 points); lowest price (95 points). The RFB closed on August 21, 2008.

Borden Decals submitted a bid. Upon evaluation by KYTC, Midwest Labels and Decals, Inc. ("Midwest") was determined to be the highest scoring bidder. KYTC issued an award to Midwest on September 4, 2008.

Borden Decal filed its written protest on September 9, 2008. KYTC submitted its comments on the protest on September 12, 2008. Midwest submitted a written response on September 25, 2008. In its protest, Borden Decal questions Midwest's bid since Borden Decal believes that Midwest's lower price indicates that Midwest will use a lower quality material and a lower quality printing method. For the reasons contained 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. Borden Decal submitted a bid in response to the RFB. Borden Decal, therefore, has standing to protest the award under KRS 45A.285.

A protest to an award filed with the Secretary 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 September 4, 2008. The Borden Decal protest was fax'ed to the General Counsel of the Finance Cabinet on September 9, 2008. The protest was not filed with the Secretary as required by KRS 45A.285.

In its letter of protest, Borden Decal questions Midwest's bid since Borden Decal believes that its lower price indicates that Midwest will use a lower quality material and a lower quality printing method.

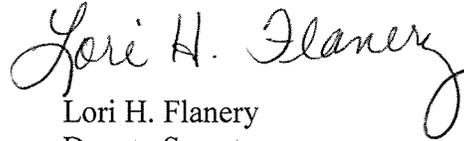
A determination by an agency is entitled to a presumption of correctness. KRS 45A.280. A protester must clearly establish that a solicitation evaluation was irrational or contrary to law. This is not accomplished by the protester's mere disagreement with the agency's award. *Systems & Processes Engineering Corp.*, 88-2 CPD ¶478 (Comp.Gen 1988). Borden Decal's protest is based upon speculation. It has provided no evidence or proof that the award to Midwest is arbitrary, capricious, or contrary to law. *Commonwealth of Kentucky v. Yamaha*, 237 S.W.3d 203, 206 (Ky. 2007). The bidder will be required to meet all the terms and conditions of the RFB. Midwest has provided actual printed samples which were deemed acceptable by KYTC. Accordingly, this ground of protest is without merit.

Accordingly, upon review of the record, the protest of Borden Decal was not properly filed and is without merit. Further, the presumption of correctness in KRS 45A.280 applies and Borden Decal 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: Ben McCray, KYTC