STEVEN L. BESHEAR
GOVERNOR

FINANCE AND ADMINISTRATION CABINET
OFFICE OF GENERAL COUNSEL
392 CAPITOL ANNEX
FRANKFORT, KY 40601
(502) 564-6660
(502) 564-9875 FAX

JONATHAN MILLER
SECRETARY

E. JEFFREY MOSLEY
GENERAL COUNSEL
OFFICE OF GENERAL COUNSEL

August 3, 2009

No. 09-04

Darenda D. Watkins
CMW Inc
400 E. Vine Street, Suite 400
Lexington, KY 40507

RE: Determination of Protest: RFP 785 0800001594

Dear Mr. Watkins:

The Finance & Administration Cabinet ("FAC") is in receipt of your letter of protest on behalf of CMW, Inc. ("CMW") relating to RFP 785 0800001594 ("RFP") for Architectural and Engineering Services. The specific concerns raised in your protest related to allegation of unprofessional behavior by members of the Selection Committee during the evaluation process.

FACTUAL BACKGROUND

The Finance Cabinet, Division of Engineering and Contract Administration ("DECA") issued RFP 785 0800001594 on November 14, 2008. The RFP sought responses for Architectural and Engineering Services for the Replacement of Eastern State Hospital. The RFP closed on December 3, 2008 at 3 p.m. at which time responses were to be submitted. CMW, Inc. was one of the vendors who submitted a response. On January 29, 2009, CMW was advised, in accordance with KRS 45A.825(10), that it had not been selected for award. At this point, DECA began contract negotiations with the best evaluated vendor. CMW filed this protest, received on February 18, 2009, alleging inappropriate conduct during the interview process. An actual contract was awarded and approved in the state eprocurement system on June 22, 2009.

DETERMINATION

KRS 45A.285(2) establishes the statutory grounds under which a protest may be filed. The statute notes in pertinent part:

> Any actual or prospective bidder, offeror, or contractor 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.

The protest does not contest the solicitation itself. It also does not challenge the actual selection for award of contract, or the merits therein. Therefore, the protest fails to adequately establish standing under 45A.285(2) to protest.

Pursuant to 200 KAR 5:380, Section 3(3), a protest which fails to establish standing to protest shall be summarily determined and denied. It is also important to recognize that KRS 45A.280 clearly states:

> 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.

This presumption of correctness also applies and CMW has failed to provide adequate or sufficient evidence to overcome this presumption. Accordingly, this protest is **DENIED.** 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

Robin Fields Kinney

Robin Fields Kinney
Executive Director
Office of Administrative Services

cc: Paul Gannoe, DECA