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August 7, 2009

No. 09-18

Todd Hensley
Apex Trailer Sales, Inc
2807 Sable Mill Lane
Jefferson, Indiana 47130

RE: Determination of Protest: RFB 605 0900003958

Dear Mr. Hensley:

The Finance & Administration Cabinet ("FAC") is in receipt of your letter of protest on behalf of Apex Trailer Sales, Inc. ("Apex") relating to RFB 605 0900003958 ("RFB"), which was issued to award a contract for a 35 Ton Lowboy Trailer and a 35 Detachable Lowboy Trailer for the Kentucky Transportation Cabinet. The specific concern raised in your protest relates to the winning vendor's equipment allegedly not meeting specifications.

FACTUAL BACKGROUND

The Kentucky Transportation Cabinet Division of Purchases ("KYTC") issued a Request for Bids ("RFB") on May 28, 2009. The RFB closed on June 5, 2009. Apex was one of the vendors who submitted a response. A contract award was made on June 16, 2009 to Twamco Trailer Co., Inc. ("Twamco"). Apex filed a protest which was received on June 25, 2009.

DETERMINATION

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. Apex submitted a bid in response to the RFB. Therefore, Apex has standing to protest the award of the RFB. A protest to an award of contract must be made within two (2) calendar weeks after the award. KRS 45A.285. The protest was received on June 25, 2009, within two calendar weeks after contract award, and is timely.

Apex alleges in its protest that the winning vendor's equipment does not meet the specifications outlined in the RFB. However, upon review of the record, Twamco agreed to meet all specifications required by the solicitation. In addition, upon receipt of the protest, the Commonwealth again verified that Twamco would comply with all the specifications required by the solicitation and resulting contract. KYTC has also confirmed that it conducts an extensive receiving inspection of all equipment ordered, prior to the acceptance of all products received and is satisfied that adequate safeguards are in place to ensure proper performance under the contract awarded.

In reviewing a protest, this Office will not reevaluate the proposals at issue, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the requirements of the solicitation as a whole and applicable statutes and regulations. In other words, that the decision was not procured by fraud and that the findings of fact support the decision. KRS 45A.280 is also clear:

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.

Upon review of the record, it appears that the contract award was in accordance with the requirements of the solicitation as a whole and applicable statutes and regulatory procedures. The presumption of correctness in KRS 45A.280 clearly applies and Apex has failed to provide any compelling evidence which would overcome this presumption. This protest must be **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 Kinney
Executive Director
Office of Administrative Services

cc: Peggy Stratton, KYTC
Don Speer, FAC OPS