Commonwealth of Kentucky
Finance and Administration Cabinet
OFFICE OF ADMINISTRATIVE SERVICES
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Robin Kinney
Executive Director

August 13, 2009

No. 09-20

Thomas D. Clines
Chief Executive Officer
United Mail LLC
4410 Bishop Lane
Louisville, KY 40218

RE: Determination of Protest: Contract Award for RFP 758 0900001694

Dear Mr. Clines:

The Finance & Administration Cabinet ("FAC") is in receipt of your letter of protest on behalf of United Mail LLC ("United"). The specific concerns raised in the protest relate to the Commonwealth's award of a contract, as a result of RFP 758 0900002694, to Walz Certified Mail Solutions ("Walz").

FACTUAL BACKGROUND

The Office of Procurement Services ("OPS") issued a Request for Proposals ("RFP") on April 7, 2009. The RFP closed on May 1, 2009. United was one of the vendors who submitted a bid. A contract award was made to Walz on June 30, 2009. United filed a protest of the contract award, dated July 9, 2009 and received on July 13, 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. United submitted a bid in response to the RFP. Therefore, United has standing to protest the award of the RFP. A protest to an award of contract must also be made within two (2) calendar weeks after the award. KRS 45A.285. The protest was received on July 13, 2009, within two calendar weeks after contract award and is timely.

The protest essentially alleges that, since United was the lowest cost bidder, it should have been awarded the contract. The protest also alleges that oral presentations should have been conducted.

In reviewing a protest, this Office will not revaluate 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. This solicitation was issued under KRS 45A.085 as a request for proposals. KRS 45A.085(6) notes that:

> Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the Commonwealth, taking into consideration price and the evaluation factors set forth in the request for proposals.

Therefore, cost is not the sole basis for contract award under KRS 45A.085. The RFP clearly stated that an evaluation would be conducted in two (2) parts, based upon a technical proposal evaluation (as established by evaluation factors Section 60 of the RFP) and a cost proposal evaluation (as established by evaluation factors in Section 70 of the RFP). Section 80 of the RFP also noted that a third phase, an evaluation based upon oral presentations, would be conducted at the discretion of the agency, but would not be required, if oral presentations would not affect the final rankings.

Upon review of the record, Walz received 1041.3 points for technical, while United received 368.21 points. Walz received 434.21 points for cost, while United, as the lowest cost vendor, received the maximum score of 480. As a result of the evaluation process, Walz had a higher combined score (1475.51), than United (848.21). This was consistent with the evaluation factors set forth in the RFP and KRS 45A.085(6). Furthermore, the difference in combined scores between Walz and United (1475.51 – 848.21 = 627.30) was large enough, that oral presentations (which were only worth 420) would not have affected the final rankings. Therefore oral presentations were not conducted in accordance with the Section 80 of the RFP and KRS 45A.085(7)(c).

Upon review of the record, and based on the foregoing, the contract award was in accordance with the requirements of the solicitation as a whole and applicable statutes and regulatory procedures. KRS 45A.280 is 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.

The presumption of correctness in KRS 45A.280 clearly applies and United has failed to provide compelling evidence which would overcome this presumption. Therefore, 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: Don Speer, FAC OPS