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August 10, 2009

No. 09-22

Brian F. Haara  
Tachau Meek  
2400 National City Tower  
101 South 5<sup>th</sup> Street  
Louisville, KY 40202-3115

RE: Determination of Protest: MA-0900004649 and MA 758 0900004653

Dear Mr. Haara:

The Finance & Administration Cabinet ("FAC") is in receipt of your letter of protest on behalf of Toshiba Business Solutions – Kentucky ("Toshiba"). The specific concerns raised in the protest relate to the Commonwealth's award of contracts to Xerox Corporation and Ricoh America, without similar award to the protesting party.

### **FACTUAL BACKGROUND**

On behalf of the Commonwealth Office of Technology ("COT"), the Office of Procurement Services ("OPS") partnered with the Western State Contracting Alliance ("WSCA") to engage in a cooperative purchasing procurement of contracts for multifunctional copiers. The State of Nevada was the lead WSCA agent on the procurement and managed the entire competitive procurement from start to finish. As a result of the WSCA procurement, multiple contracts were awarded. Each participating state then made a decision on how many of these contracts to select for individual state award. The Commonwealth of Kentucky initially opted to enter into contracts with the two multi-purpose contract holders, Xerox Corporation and Ricoh America. Toshiba was one of the vendors who obtain a contract from the WSCA procurement, but was not initially selected by OPS for a Kentucky contract. Toshiba filed a protest of this decision. However, OPS subsequently made contract awards to all the winning vendors from the WSCA procurement.

**DETERMINATION**

The protest essentially challenges the selection of only two (2) vendors from the WSCA procurement for contract award by the Commonwealth of Kentucky. However, OPS subsequently made contract awards to all winning vendors from the WSCA procurement. Therefore, the issue under which standing was appropriate under the original protest (selection of only two (2) vendors for contract award) is now moot. Any issues relating to the actual WSCA procurement itself must be directed to the State of Nevada, as the lead WSCA agency on the procurement. Therefore, 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 Kinney  
Executive Director  
Office of Administrative Services

cc: Don Speer, FAC OPS