

Steven L. Beshear
Governor

Commonwealth of Kentucky
Finance and Administration Cabinet
Office of Administrative Services
Room 183, Capitol Annex
702 Capital Avenue
Frankfort, KY 40601
(502) 564-5781
Fax (502) 564-4279

Jonathan Miller
Secretary

Robin Fields Kinney
Executive Director

October 9, 2009

No. 09-23

Mike Green
Vice President, Sales
MGI Traffic Control Products
P.O. Box 421
Fairland, IN 46126

RE: Determination of Protest: RFB 605 1000000067.

Dear Mr. Green:

The Finance & Administration Cabinet (the "Finance Cabinet") is in receipt of your correspondence on behalf of MGI Traffic Control Products ("MGI") relating to RFB 605 1000000067 ("RFB") for "Qwick Kurb Products."

FACTUAL BACKGROUND

The Kentucky Transportation Cabinet, Division of Purchases ("KYTC") issued the RFB on July 30, 2009. The RFB closed on August 6, 2009. Three vendors submitted bids: MGI, Comade, Inc. and Saf Ti Co., Inc. According to the written Determination and Finding, Safe Ti Co., Inc. was awarded 97.50 points; Comade, Inc. was awarded 92.63 points; and MGI was awarded 60.01 points. A contract was awarded to Saf Ti Co., Inc. on August 26, 2009.

On August 24, 2009, MGI transmitted a facsimile letter of protest to the Finance Cabinet Office of the Secretary. On that same date, MGI sent a facsimile memorandum to KYTC informing KYTC that MGI desired to withdraw its first protest and included with the memorandum a second protest. MGI never transmitted this memorandum and second protest letter to the Finance Cabinet. By letter dated September 11, 2009 (and received September 22, 2009) and sent to the Finance Cabinet Office of General Counsel, MGI provided further support for its protest. On September 9, 2009, Saf Ti Co., Inc. provided a written response to the first protest. On September 24, 2009, KYTC provided a written response to all the correspondence it had received from MGI concerning the RFB. For the reasons stated herein, this protest is DENIED.

DETERMINATION

After a review of the solicitation, the applicable statutes and regulations, the protest, 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. MGI submitted a bid in response to the RFB. Therefore, MGI has standing to protest the award of the RFB.

A protest to an award must be made to the Secretary of the Finance Cabinet 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 posted on August 26, 2009. MGI sent four separate documents concerning the award of the RFB.

The first was a facsimile protest letter dated August 24, 2009 at 11:32 a.m. which was sent to (502) 564-6785 which is the "fax" number for the Office of the Secretary. 200 KAR 5:380 Section 3(1) provides:

A protest shall be filed with the Secretary of the Finance and Administration Cabinet by personal delivery, U.S. mail, or by a private express mail service. The Secretary of the Finance and Administration Cabinet shall not accept a protest submitted by electronic transmission, including facsimile transmission or electronic mail.

Accordingly, the August 24, 2009 11:32 a.m. facsimile letter was not properly filed with the Secretary and will be disregarded.

The second document is a facsimile memorandum dated August 24, 2009 at 2:10 p.m. which was sent to (502) 564-7069 which is a "fax" number at KYTC. The Office of the Secretary has no record of receipt. This memorandum was addressed to KYTC and advised KYTC that MGI wished to withdraw its initial protest and to replace it with a second protest. This document was not properly filed with the Secretary and will be disregarded.

The third document is a facsimile letter dated August 24, 2009 at 2:11 p.m. which was sent to (502) 564-7069 which is a "fax" number at KYTC. The Office of the Secretary has no record of receipt. This letter appears to be the new protest letter. This document was not properly filed with the Secretary and will be disregarded.¹

The fourth document is a letter dated September 11, 2009. This letter was sent by facsimile transmission on September 14, 2009 at 8:59 a.m. to (502) 564-9875 which is the "fax" number of the Office of General Counsel for the Finance Cabinet. A "hard copy" of this September 11th letter was received by the Office of General Counsel on September 22, 2009.

The September 11th letter appears to be a third protest letter. It was never presented to the Office of the Secretary. Moreover, this fourth document was not received within two calendar weeks of the date of award. This document was not properly filed with the Secretary, is untimely, and will be disregarded.

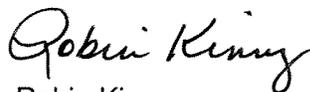
¹The second and third documents only came to the attention of the Finance Cabinet on September 9th when KYTC forwarded them in response to a request to comment on the first document.

Accordingly, upon review of the record, the protest of MGI was never properly filed with the Office of the Secretary, is untimely, and is therefore **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



Robin Kinney
Executive Director
Office of Administrative Services

cc: KYTC, Div. of Purchases