

Commonwealth of Kentucky
Finance and Administration Cabinet
Office of Administrative Services
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Steven L. Beshear
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Jonathan Miller
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Robin Fields Kinney
Executive Director

January 5, 2010

No. 09-35

Joseph T. Phillips
Vice President
Nuday, Inc.
2127 Commercial Dr.
Frankfort, KY 40601.

RE: Determination of Protest: RFB 55-10.

Dear Mr. Phillips:

The Finance & Administration Cabinet (the "Finance Cabinet") is in receipt of your letter of protest, on behalf of Nuday, Inc. ("Nuday") to the award of a contract based upon the above-referenced solicitation. By its letter, Nuday protests the determination to use the bid amount written in words instead of its bid amount written in numerals. For the reasons stated herein, this protest is denied.

FACTUAL BACKGROUND

The Division of Engineering and Contract Administration, Department for Facilities and Support Services ("DECA") issued RFB 55-10 (the "RFB") for Emergency Operations Storm Drainage, Boone National Guard Center. On October 6, 2009, bids were opened and read. Nuday's bid offered a price of which was indicated in numerals as "\$42,750" but was written in words as "Forty Two Hundred Thousand Seven Hundred Fifty Dollars." Given the discrepancy between the numerical and written bid amounts, DECA determined that Nuday's bid amount was \$420,750. While a bid amount of \$42,750 would have resulted in Nuday being the lowest bidder, a bid amount of \$420,750 resulted in Nuday being the highest bidder. Nuday was not awarded the contract. Nuday submitted a protest by a letter dated October 6 (and received October 7th) 2009.

DETERMINATION

After a review of the solicitation of RFB, the applicable statutes and regulations, and other relevant information, the 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 and Administration Cabinet ("Secretary"). KRS 45A.285. Nuday was an actual bidder to the RFB so it has standing to protest the award.

A protest to an award must be made within two (2) calendar weeks within the date the protestor knew or should have known of the grounds for protest. KRS 45A.285. Here, the award was made on October 6, 2009; the protest was received on October 7, 2007. The protest was filed within fourteen (14) days after the contract award and, therefore, is timely.

Nuday protests the determination to use the amount of its bid as written in words instead of its bid amount written in numerals.

The administrative regulation 200 KAR 5:021 incorporates the Finance and Administration Cabinet's "Manual of Policies and Procedures" ("FAP"). FAP 220-05-00 states the "Bidder Instructions for Construction Solicitations" Subsection 4 provides "Bidding Procedure." Sub-subsection (c) provides:

If indicated in the bidding documents, sums shall be expressed in both words and figures. ***In the case of a discrepancy between the two, the amount in words shall prevail.*** (Emphasis added).

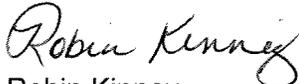
These procedures provide the rules for resolving discrepancies between written and numerical amounts in bids: the written amount prevails. This rule was correctly applied by DECA to Nuday's bid for the RFB.

Accordingly, upon review of the record, the protest of Nuday is without merit. The protest, therefore, must be **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 Finance Cabinet shall be final and conclusive.

For the Secretary
Finance and Administration Cabinet
By Designation


Robin Kinney
Executive Director
Office of Administrative Services

cc: Paul Gannoe, DECA