



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

Steven L. Beshear
Governor

Jonathan Miller
Secretary

Robin Fields Kinney
Executive Director

January 5, 2010

No. 09-38

Richard Hueston
Director of Government Affairs
Alberta Ltd. dba The Bingo Paper Company
P.O. Box 1393
Lewiston, NY 14092

RE: Determination of Protest: RFB 758-1000000359.

Dear Mr. Hueston:

The Finance & Administration Cabinet (the "Finance Cabinet") is in receipt of your letter of protest on behalf of Alberta Ltd. dba The Bingo Paper Company ("BPC") relating to RFB 758-1000000359 (the "RFB") for bingo paper.

FACTUAL BACKGROUND

The Finance Cabinet, Office of the Controller, Office of Procurement Services ("OPS") issued the RFB on October 9, 2009. The RFB sought bids for "charitable games bingo paper." A bidder was required to offer one of three specified brands. The RFB process provided that potential bidders could submit questions concerning the RFB until October 16, 2009. The RFB was then scheduled to close on October 26, 2009.

After issuance of the RFB, BPC informed OPS that it also provided a brand of bingo paper. By amendment, on October 19, OPS revised the RFB to include BPC among the specified allowable brands and to extend the closing date to November 2, 2009. OPS did not extend the date for submitting questions concerning the RFB. On October 23, BPC pointed out to OPS that the date for submitting questions had not been extended. Nevertheless, on November 2, 2009, BPC submitted a bid in response to the RFB. OPS has not yet issued an award.

BPC filed its written protest by letter dated November 6, 2009 which was received and filed on November 16, 2009. In its protest, BPC alleges that it was improperly prevented from asking questions concerning the RFB. For the reasons contained herein, this protest is denied.

DETERMINATION

After a review of the solicitation, the applicable statutes and regulations, the protest and responses thereto, and other relevant information, the Secretary of the Finance Cabinet (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 Cabinet. KRS 45A.285. BPC submitted a bid in response to the RFB. BPC, therefore, has standing to protest the award under KRS 45A.285.

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. According to BPC's own summary, it was aware as of October 23, 2009 that it would not be able to ask questions concerning the RFB according to the revised RFB schedule. BPC filed its protest on November 16, 2009. This protest was not filed within two (2) calendar weeks after the date BPC knew of its protest grounds. The protest, accordingly, is untimely.

In its protest, BPC alleges that it was improperly prevented from asking questions concerning the RFB.

BPC's protest is a protest to the timeline which was expressly stated in the RFB document. BPC's protest, therefore, is a protest to the solicitation document (the RFB). A protest to a solicitation should be filed *before* the protestor actually submits a bid or proposal. Here, BPC filed this protest *after* submitting its bid. Once a party submits a bid or proposal to a solicitation and the bids are opened, the protestor then has waived all objections to the solicitation document not previously raised. See 4 C.F.R. §21.2(a)(1) ("Protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the time set for receipt of initial proposals shall be filed prior to bid opening or the time set for receipt of initial proposals."); *Parsons Precision Products, Inc., Comp. Gen. B-249940, 92-2 CPD 431* ("a bidder who participates in a procurement through the point of bid opening without objection is deemed to have acquiesced in the agency's statement of the terms and conditions.") As a result, BPC has waived its objection to the solicitation process.

Accordingly, upon review of the record, the protest of BPC is untimely and has been waived. Further, the presumption of correctness in KRS 45A.280 applies and BPC has failed to provide sufficient evidence to overcome this presumption. Since there is no basis to overturn this procurement, the protest 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 the Secretary shall be final and conclusive.

For the Secretary
Finance and Administration Cabinet
By Designation

A handwritten signature in cursive script that reads "Robin Kinney".

Robin Kinney
Executive Director
Office of Administrative Services

cc: Sherita Miller, OPS