

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

40297

FILE: B-184391

DATE: December 15, 1975

MATTER OF: Valley Construction Company

97597

**DIGEST:**

1. Protester's contention that low bidder was a dissolved corporation and therefore lacked capacity to contract was without merit in view of certificate from state of incorporation to effect that low bidder was corporation in good standing.
2. "A" was "low bidder for purposes of award" under "Additive or Deductive Items" clause because "A" offered most features of work within funds available at bid opening. "A" offered lowest price for the base bid plus first four additive alternates; "B" offered lowest price for the base bid plus all eight additive alternates. Agency properly limited request for additional funds to amount necessary for award to "A", because award of entire project to "B" would have permitted manipulation of selection of low bidder after bid opening contrary to intent of IFB.
3. Allegation that arrangement of additive alternates in bid schedule did not logically reflect their priority and importance to entire project is dismissed as untimely because filed after bid opening.
4. Contention that unbalanced bids were received, first raised almost four months after bid opening, is dismissed as untimely.

Valley Construction Company (Valley) has protested against the award of a contract to Townsco Contracting Company, Inc. (Townsco) pursuant to invitation for bids (IFB) No. DACA21-75-B-0013, issued by the Savannah District, Corps of Engineers, for some miscellaneous repairs to Hunter Army Airfield.

Valley's initial contention is that the contract is a nullity because prior to award Townsco, an Oklahoma corporation, had been dissolved. This contention is without merit. Although Valley has provided us with certificates of dissolution for "Townsco Construction Co." and "Townsco, Inc.", the procuring agency has obtained a certificate from the Secretary of State of Oklahoma which establishes that "Townsco Contracting Company, Inc.", to which the instant contract was awarded, was in existence at the time of award and is in good standing with the Department of State of Oklahoma.

Valley's next contention, and in our view its principal one, is that the Corps of Engineers used an improper procedure for awarding the contract. The work to be done was divided into a base bid plus eight additives, which were to be evaluated as follows under the "Additive or Deductive Items" clause of the IFB:

"The low bidder for purposes of award shall be the conforming responsible bidder offering the low aggregate amount for the first or base bid item, plus or minus (in the order of priority listed in the schedule) those additive or deductive bid items providing the most features of the work within the funds determined by the Government to be available before bids are opened. If addition of another bid item in the listed order of priority would make the award exceed such funds for all bidders, it shall be skipped and the next subsequent additive bid item in a lower amount shall be added if award thereon can be made within such funds. For example, when the amount available is \$100,000 and a bidder's base bid and four successive additives are \$85,000, \$10,000, \$8,000, \$6,000, and \$4,000, the aggregate amount of the bid for purposes of award would be \$99,000 for the base bid plus the first and fourth additives, the second and third additives being skipped because each of them would cause the aggregate bid to exceed \$100,000. In any case all bids shall be evaluated on the basis of the same additive or deductive bid items, determined as above provided. The listed order of priority need be followed only for determining the low bidder. After determination of the low bidder as stated, award in the best interest of the Government may be made to him on his base bid and any combination of his additive or deductive bid items for which

funds are determined to be available at the time of award, provided that award on such combination of bid items does not exceed the amount offered by any other conforming responsible bidder for the same combination of bid items." (Emphasis added.)

Our review of the file shows that Townsco was correctly selected as the "low bidder for purposes of award." The funds available at the time of bid opening were \$439,140. Of the three bids submitted, Townsco's base bid of \$403,623 was the only one within that amount. Since the base bids of Valley and the other bidder, Mid-South, exceeded the funds available at bid opening, the point at which the addition of an additive "would make the award exceed such funds for all bidders" was dependent upon the additive's effect upon Townsco's bid.

Additive I would be eliminated from the evaluation since its addition would result in even Townsco's bid exceeding the funds available. Townsco's bid upon Additive II in the amount of \$15,117 would be included in the evaluation since its addition would not raise Townsco's total bid above the funds available at the time of bid opening. Additives III through VII would be excluded from evaluation for the same reason as Additive I. Townsco's bid of \$16,933 for Additive VIII could be added to its base bid plus its Additive II bid without exceeding the available funds.

As we observed above, even the base bids of Valley and Mid-South were in excess of the funds available at bid opening. Townsco's price of \$435,673 for the base bid plus Additive II and VIII would result in the selection of that bidder as low for the purposes of award since it offered "the most features of the work" within the available funds.

Valley's protest is concerned with the manner in which the Corps requested additional funds after Townsco had been selected as "the low bidder for purposes of award" under the procedure described above. Valley notes that Townsco is the low bidder only to the extent of the base plus Additive I through IV. Beginning with Additive V and continuing through Additive VIII, Valley becomes the low bidder. Valley claims the Corps erred in requesting only enough additional funds to support an award to Townsco of its base bid plus the first four additives.

The Corps tacitly admits that at the time of award sufficient funds were available to have completed the entire project. However,

it emphasizes that the last sentence of the "Additive or Deductive Items" clause provides that the award to the previously-determined "low bidder" (Townscoc) is limited to that firm's base bid and any combination of items which "does not exceed the amount offered by any other conforming responsible bidder for the same combination of bid items." Therefore, the Corps felt itself restricted to requesting additional funds only to the extent necessary to make award to Townscoc on the combination of base and alternative bid items upon which that firm was low.

We understand that the present method of bid evaluation was adopted in response to allegations that the selection of low bidders was being manipulated after bid opening through the amount of funds which were made available for contracting. The method of bid evaluation used in this case precludes the Government from manipulating the selection of the low bidder because the determinative factor is the amount of funds available prior to the opening of bids. Once the low bidder is selected on this basis, we believe the "Additive or Deductive Items" clause properly limits the award to him to those combinations of items for which his bid is low. The award to Townscoc was therefore proper and we must reject Valley's contention that it should have received the award.

Valley has also argued that the arrangement of additive alternates in the bid schedule did not logically reflect their priority and importance to the entire project, and that unbalanced bids were received. These arguments were untimely filed and therefore will not be considered on their merits.

Valley's allegations concerning the structuring of the bid items were not made until after bid opening, whereas section 20.2 (b) (1) of our bid protest procedures requires that protests based upon alleged improprieties in an invitation for bids must be filed prior to bid opening.

Valley's allegation that unbalanced bidding occurred was filed with this Office almost four months after bids were opened, well beyond the 10-day period prescribed by section 20.2 (b) (2) of our bid protest procedures. ✓

In view of the above, Valley's protest is denied.

  
Deputy Comptroller General  
of the United States