

**DECISION**



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

60135 97763

FILE: B-184577

DATE: November 11, 1975

MATTER OF: Sterling Engineering and Construction Company, Inc.

**DIGEST:**

1. Where solicitation provided for insertion of bid price for entire work (basic bid) and insertion of bid prices for deductive items (alternates), and stated that evaluation of bids would be made on bases of basic bid and all alternates, it was proper to evaluate basic bid without deductive items since award was made for entire work. However, agency is advised to clarify its evaluation provision for future use.
2. FPR, unlike ASPR, imposes no duty on contracting officer to record amount of funds available prior to bid opening for base bids and alternates when amount of funding is in doubt. Therefore, determination of actual available funding, and the consequential determination whether alternates, if any, will be applied, may properly be made after bid opening in case of civilian agency. However, adoption of uniform Government-wide policy is recommended.

Sterling Engineering and Construction Co., Inc. (Sterling) has protested the contract award under invitation for bids CI 75-E103. The solicitation was issued by the Environmental Protection Agency (EPA), National Environmental Research Center, Cincinnati, Ohio, for construction of an addition to the existing structure at the EPA's National Marine Quality Laboratory, Narragansett, Rhode Island.

The bid sheet provided for the insertion of bid prices for the "basic bid (total work)" and for each of nine "alternates." Each alternate deleted various segments of the total work so that the prices submitted for these alternates were deductions from the basic bid price submitted for the total work. The record indicates that the alternates were included in the event that all basic bids submitted exceeded the funds available for the total work.

Upon the opening of bids, it was ascertained that Cumberland Construction Company, Inc. had submitted the lowest bid for the total work in the sum of \$3,680,000, and award was made to Cumberland on that basis since sufficient funds were available.

Sterling objects to the award, contending that the solicitation required that bids should have been evaluated based on the total work as reduced by all of the alternates. Sterling's bid was low on that basis. In this connection, the protester refers to language on the bid sheet stating:

"Evaluation of bids shall be made on the bases of the total price for basic bid and all alternates."

Notwithstanding the availability of funds to permit an award for the total work, the protester contends that an award may be made only to the bidder evaluated to be low on the basis of all nine deletions.

In our opinion, the above quoted provision could have stated more precisely that bids would be evaluated based on the work actually awarded. Therefore, we suggest that the agency clarify this provision for future use. However, even if the protester had interpreted the evaluation provision as contended, we do not see how it would have been prejudiced thereby, since its basic bid should have remained the same under either interpretation (the agency's or the protester's) of the evaluation provision.

In support of its position, Sterling refers to our decision, B-171813, February 19, 1971, which is published at 50 Comp. Gen. 583 (1971). In that case the solicitation stated that while award would be made on the basis of the lowest base bid, bids also were required to be submitted for certain additive bid items. We held that irrespective of the provision in the solicitation regarding the methodology of selection, the lowest bidder must be measured by the total work to be awarded since any measure which incorporates more or less than the work to be contracted for in selecting the lowest bidder does not obtain the benefits of full competition. Thus, although the protester cites our prior decision in support of its protest, we think the rationale stated therein requires award on the basis of the lowest bid for the work awarded.

Sterling further argues that the estimated price range of \$2,500,000 - \$3,000,000 was set out in the schedule of the IFB and suggests that a differing determination of available funds after bid opening may not be consistent with the integrity of the competitive bidding system.

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In the course of prior protests, it has been argued that the reservation by the Government of the option to make an award on the basis of available funds at a period sometime after bid opening, and at a sum higher than anticipated at the time of bid opening, permits the manipulation of funds in a manner that may suggest favoritism. See H.M. Byars Construction Company, 54 Comp. Gen. 320 (1974), 74-2 CPD 233 and citations therein. As in that case, the instant protest involves a procurement to which the Federal Procurement Regulations (FPR) are applicable. The FPR, unlike the Armed Services Procurement Regulation (ASPR) 2-201(b) (xli)(1974 ed.), has no provision requiring that a contracting officer determine and record, prior to bid opening, the amount of funds available for a procurement involving base bids and alternates. To the contrary, the amount of funding available for the project may be ascertained at a time after bid opening when additional funding may become available. Such contingency may legitimately govern the extent of the work to be performed. See B-147061, November 13, 1961.

In the interest of establishing, to the maximum extent practicable, consistent procurement procedures between the civilian agencies and the military departments, we are recommending by letters of today to the Director, FPR Division and the Chairman, ASPR Committee that they consider adopting a uniform policy in this area.

Accordingly, the protest is denied.

  
Deputy Comptroller General  
of the United States