

DECISION



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

60632

FILE: B-185322

DATE: March 11, 1976

MATTER OF: Blount Brothers Corporation; Darin and
Armstrong, Inc.

98492

DIGEST:

1. Propriety of rejection of all bids for wastewater treatment plant by EPA grantee is to be determined according to State and local law of grantee.
2. Bidders in Ohio have no basis to complain even if rejection of all bids for wastewater treatment plant by EPA grantee is arbitrary.

Blount Brothers Corporation (Blount) and Darin and Armstrong, Inc. (D&A), each filed a complaint against the rejection of all bids and subsequent resolicitation by the Cleveland Regional Sewer District (CRSD) for the Westerly Advanced Wastewater Treatment Project, contracts III-IV, financed in substantial part (75 percent) by a grant from the Environmental Protection Agency (EPA) pursuant to title II of the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500.

Four bids were received on the project. The bids as evaluated on the basis of the lump-sum price plus the projected carbon regeneration system (CRS) operating cost, except for Turner Construction Company (Turner), whose bid was incomplete in the latter respect, were as follows:

Blount	\$76,449,664
D&A	78,001,359
Terminal Incorporated	82,693,000
Turner	83,742,550

After bid opening, protests were received by CRSD against an award to Blount on the basis that Blount and its proposed CRS supplier failed to comply with the technical information submission requirements by the time provided in the advertised specifications.

Blount defended against the protests on the ground that the omissions were informalities that could be waived. The protests against Blount advocated an award to D&A. The defense recommended an award to Blount.

The CRSD Board of Trustees held a special meeting on August 14, 1975, to consider the disposition of the bids. The CRSD General Counsel advised the Board that there were three choices available. First, the Board could reject all bids as a matter of law and specific reservation in the solicitation, if it determined that the rejection was in the best interests of the District. Second, the Board could deny the protests. Third, the Board could grant the protests and declare the Blount bid ineligible for consideration. Representatives of Blount and D&A and other protesters were provided an opportunity to address the Board. By a vote of 5 to 2, the Board decided to reject all bids. In that regard, CRSD Resolution 94-75, in pertinent part, stated:

"Section 1. That this board hereby determines that it is in the best interests of the District to reject all bids received, pursuant to Resolution No. 36-75, on July 16, 1975 for the construction of improvements to the Westerly Wastewater Treatment Plant, Westerly Contract III-IV."

Both Blount and D&A appealed to the EPA Regional Administrator who sustained the CRSD determination to reject all bids. Blount and D&A thereafter filed a complaint with our Office.

The EPA regulations for construction contracts of grantees provide for the rejection of all bids by a grantee. 40 C.F.R. § 35.938-4 (h)(2) (1975). The regulations are an implementation of the procurement standards set forth in Office of Management and Budget Circular No. A-102, Attachment O. 40 C.F.R. § 35.938-2 (1975). The Attachment O procurement standards provide in paragraph 3c(5):

"* * * all bids may be rejected when it is in the grantee's interest to do so, and such rejections are in accordance with applicable State and local law, rules and regulations."

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Therefore, it is apparent that the propriety of the rejection of all bids by the grantee is to be determined according to State and local law.

In State ex rel. Hussey v. Cincinnati, 3 Ohio C.C.R. 542 (1888), a case involving the rejection of all bids by the Board of Public Affairs of Cincinnati, the Ohio Court said:

"The board having in this instance, exercised the option expressly reserved to it by the advertisement for proposals, and granted to it in the bid made by Hussey himself, we are utterly unable to see any legal ground for Complaint by him, or anything which would in the least degree justify a court in requiring the board to do that which it was stipulated between the parties it was not bound to do.

"There was certainly nothing illegal or against public policy in making such a provision, but on the contrary, it is a wise and beneficent one, which might in many instances, go far to protect the rights of the city. Therefore, if the rejection of all the bids in this case, including that of the relator, had been a mere arbitrary act of the board, and an unwise exercise of the discretion conferred by the law and the stipulations of the parties upon it, we cannot see how the court can rightly interfere in a case of this kind. * * *"

Thus, even if the rejection of all bids is arbitrary, a bidder in Ohio has no basis to complain. That is the rule as long as the rejection is not to accomplish fraud or favoritism. State ex rel. Hippard & Schauss v. Franklin County, 1 Ohio C.C.R. 194 (1885). No suggestion is made in that regard with respect to the immediate rejection.

Thomas Construction Company, Incorporated, et al., 55 Comp. Gen. 139 (1975), 75-2 CPD 101 and Copeland Systems, Inc., 55 Comp. Gen. 390 (1975), 75-2 CPD 237, cited by the parties as authority for the application of basic principles of Federal procurement policy on competitive bidding, are not relevant, since as indicated above State law controls the rejection of all bids in the immediate situation.

Accordingly, in the circumstances, the determination of CRSD to reject all bids is not subject to question and the complaints of Blount and D&A are denied.



Deputy Comptroller General
of the United States