

DOCUMENT 13878

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**[Agency Awarded Base Bid Without Ambiguous Alternative].
B-187188. December 15, 1976. 3 pp.**

**Decision re: Longman Cabinet Co.; by Robert F. Keller, Deputy
Comptroller General.**

**Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law II.
Budget Function: General Government: Other General Government
(206).**

**Organization Concerned: Haggerty Millwork Corp.; District of
Columbia: Superior Court.
Authority: 4 C.F.R. 20.4.**

**Company protested contract award to competitor for work
in the new District of Columbia Superior Court Building. The
solicitation provided that base bid would be awarded with or
without alternatives. Specifications for one of several additive
alternatives were ambiguous. Agency's determination to award
base bid without ambiguous alternate to avoid prejudice to
bidders will not be questioned. (Author/DJM)**

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P. Ayer
Proc II

DECISION



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

FILE: D-187148

DATE: December 15, 1976

MATTER OF: Loughman

DISCUSSION:

Where solicitation provided that base bid would be awarded with or without alternatives, and specifications for one of several additive alternates were ambiguous, agency's determination to award base bid without ambiguous alternate in order to avoid prejudice to bidders will not be questioned.

Loughman Cabinet Company (Loughman), a division of Bank Building and Equipment Corporation of America, protests the award of a contract to Haggerty Millwork Corporation (Haggerty) for certain work in the new District of Columbia Superior Court Building under Invitation for Bids (IFB) No. 1188-AA-02-05-CC, issued June 16, 1976 by the District of Columbia Department of General Services (DCGS).

The solicitation called for a base bid and three individual additive alternate bids. It further provided that award would be:

"* * * make for lump sum to one bidder on the basis of the amount stated for the Base Bid plus Additive Alternates No. 1, 2 and/or 3, any, all or none of which may be accepted and as totaled by the Contracting Officer."

Six bids were received by bid opening on July 27, 1976, including the following two bids:

Haggerty

Base Bid	\$1,351,000
Alternate No. 1	463,000
Alternate No. 2	73,000
Alternate No. 3	3,600

Loughman

Base Bid	\$1,397,300
Alternate No. 1	441,900
Alternate No. 2	53,300
Alternate No. 3	1,487

B-187142

Attached to the Loughman bid was a Supplement to Alternate No. 1 (Supplement) which read as follows:

"If G.F. Business Equipment Inc. Tilt Swivel Chair #7027 and Swivel only Chair #7048-R, * * * are acceptable deduct the sum of \$23,924.00.

"If J.P. Redington standard radial pew [seats] * * * are acceptable deduct the sum of \$49,128.00."

Loughman submitted the Supplement in an effort to overcome an ambiguity in the specifications. The bid form sought a price for Alternate No. 1, which price was to cover:

"* * * furnishing and installing fixed seating including jury chairs, witness chairs, theater type courtroom public seating and pew type courtroom public seating as shown on the drawings and as specified in Section 12.6 * * *"
(Emphasis supplied.)

The ambiguity arose out of the underscored portion of Alternate No. 1, above. The pew type seating shown in the drawings was of a continual radial nature while the pew type seating specified in Section 12.6 was only described as that kind which was supplied by Sauder Mfg. Company (Sauder). However, Sauder did not supply continual radial pews; it only supplied the straight pew or the segmented pew. Further, prior to bid opening Loughman had attended a pre-bid conference at which the question of whether DCGS would consider substitutes, in lieu of the specified seating designs, was raised. Loughman understood the answer to be:

"* * * to the effect that the District of Columbia was interested in economical purchases, and would entertain offers on products that were the quality, design, and function equivalent of the specified product. No qualifications or special conditions were applied to this possible equivalent product offering process."

Loughman states that it discovered the ambiguity when, in response to its request for a quotation, Sauder informed Loughman that Sauder's capability was limited to straight or segmented pews. Loughman indicates that it orally notified DCGS prior to bid opening of the inconsistency between the named supplier's

B-187148

capability and the drawings and specifications. DCGS is said to have told Loughman that given the circumstances DCGS would just have to consider segmented paws which did not conform to the drawings. Loughman further alleges that DCGS acknowledged that an addendum should have been issued to that effect.

It appears that at this point Loughman located a manufacturer who could supply the continual radial pawr shown in the drawings. Loughman then sought to cover both aspects of the ambiguity simultaneously, through the use of the Supplement. Loughman reasoned as follows:

"The bid document states clearly that the written specification takes precedent over the drawings and standards. However, the written specification for the paws merely gives the source, Sauder Mfg. Co., and refers the bidder to the drawings for details. We therefore followed the only substantive information in writing, i.e. 'Sauder Mfg. Co.' and entered our bid on Alternative Additive #1 based on the segmented paw of Sauder, which is at variance to the drawings, the non-binding oral interpretation by Mr. Graber notwithstanding per Standard Contract Revisions Article 7 Instructions to Bidders. We then, through a supplement to Alternative Additive #1 offered a standard radial paw conforming to the drawings and specifications as a deduct of Forty Nine Thousand One Hundred Twenty Eight Dollars (\$49,128.00) from the total Alternative Additive #1 bid."

The upshot of the above is that Loughman would have been low bidder only if DCGS had awarded Alternate No. 1 and had evaluated Loughman's bid upon the basis of Loughman's Supplement to Alternative No. 1.

However, after bid opening DCGS determined that the specifications for Alternate No. 1 were not "finite enough to achieve the quality desired for this facility and at a competitive price." Consequently, DCGS decided to proceed with award of the Base Bid and Alternate No. 2 only, notwithstanding the protest. DCGS has indicated that it will satisfy its Alternate No. 1 requirements through the GSA Schedules.

In support of its position DCGS cites Article 8 of the Instructions to Bidders which reads:

B-187148

"ALTERNATE BIDS--Alternate bids will not be considered unless called for in the Bid Form."

In addition, DCGS cites Article 9 of the Instructions to Bidders which provides:

"BIDS FOR ALL OR PART--Where bids are not qualified by specific limitations, the District reserves the right to award all or any of the items according to its best interests."

Finally, it states that the "Manner of Award" provision of the solicitation (quoted previously) permitted award with or without any of the alternate items.

Loughman, urging that it is the only responsive bidder, argues that DCGS has admitted that the radial pew offered in the Supplement was acceptable to the Architect and that DCGS knew this prior to bid opening. Loughman argues that had Loughman merely submitted one price for Alternate No. 1, instead of two, and had that one price been the low Supplement price, then DCGS would probably have awarded the Alternate No. 1 to Loughman. Loughman stresses that DCGS has indicated that one reason for DCGS not availing itself of the low Supplement price was the high probability that such a course of action would result in a protest from other bidders.

It is our opinion that DCGS was correct in its assessment of the situation with which it was confronted. We do not know what DCGS might have done had Loughman merely submitted its Supplement price rather than two separate prices for Alternate No. 1. We can say that had Loughman been low bidder under both of its two separate prices for Alternate No. 1, then we would agree that Alternate No. 1 could be awarded to it without prejudicing other bidders. However, since Loughman was not the low bidder under its "segmented pew" bid, DCGS properly concluded that other bidders might have been prejudiced by the ambiguous specification.

Moreover, we find Loughman's argument that Alternate No. 1 was an integral part of the procurement which had to be awarded to be without merit. The solicitation clearly reserved the right to pick and choose among the alternates. In view of the circumstances, we find no reason to question DCGS's decision not to award Alternate No. 1.

B-187148

Finally, Loughman has alleged that DCGS's letter to this Office, dated September 14, 1976, which reads in pertinent part,

"This contract must be awarded and I propose to proceed with the award of the base bid and Additive Alternate No. 2 only * * *,"

failed to comply with our bid protest procedure requirement that an agency desiring to make an award notwithstanding a protest notify the Comptroller General of its intent to do so, 4 CFR § 20.4 (1976). We need not decide this question, since we have concluded that the award was proper in any case.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States