

Cummingham



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Connie Hall Company
File: B-223440.2
Date: November 18, 1986

DIGEST

Where funds determined available prior to bid opening are insufficient to cover the lowest base bid, award may be made, if additional funds can be obtained, only to the bidder submitting the lowest bid for the base work. After funds are obtained, award may also include additive items--within the order stipulated in the bidding documents--but only if some other responsible bidder has not submitted a lower bid on that combination.

DECISION

Connie Hall Company (Connie Hall) protests the decision of the Corps of Engineers, Department of the Army, to award a contract to Roebbelen Engineering, Inc. (Roebbelen), for electrical construction work.

We deny the protest.

The IFB established three bidding schedules ("A," "B," and "C,") for the work. Schedules "A" and "B" each contained two separate line items of work; in addition, only Schedule "A" contained two "additive" items for additional work that was required to be priced by bidders. Schedule "C" was a combined schedule which showed all four of the basic items shown on Schedules "A" and "B" plus the two additive items. Under the IFB, bidders were free to bid on a single schedule or any combination of schedules. The IFB also stated that if "base bids exceed[ed] the total Estimated Amount limitation of \$3,500,000 for Schedule 'A' or the total of items one and two of Schedule 'C,' Schedules 'A' and 'C' [might] be rejected and Schedule 'B' [might be awarded]." The Army has informally told us that the above \$3,500,000 dollar limit was erroneous because, at the time of bid opening, only

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\$3,243,992 of Military Construction Army (MCA) funds were actually available to fund the items listed in Schedule "A" and repeated in Schedule "C."

Although the record is not entirely clear why the \$3,500,000 figure was listed in the IFB instead of \$3,243,992, the contracting officer has provided us with a detailed explanation as to how the figure of \$3,243,992 was computed, and there is no showing otherwise that this revised figure was in error as of the time of bid opening. In any event, even if the \$3,500,000 figure is used, Roebbelen is still the lowest bidder, as described below.

As to the determination of the low bidder(s) in these circumstances, both the Army and Connie Hall point to clause 30 of the IFB, which states that the low bidder for purposes of award is the conforming responsible bidder offering the low aggregate amount for the first or base bid item, plus (in the order of priority listed in the schedule) those additive bid items providing the most features of the work within the funds determined by the government to be available before bids are opened. A "bid item skipping" provision was also part of clause 30. This provision stipulated that if addition of any bid item (including additive items) would make the proposed contract exceed available funds for all bidders, the item was to be skipped and the next subsequent item was to be added if award could be made within the funding limit. The IFB also stated that the listed order of priority for items of work was to be followed only for determining the low bidder. After determination of the low bidder, as stated, award in the best interest of the government was to be made to the low base bid and any combination of additive items for which funds were determined to be available at the time of the award, provided that award on such combination of bid items would not exceed the amount offered by any other conforming responsible bidder for the same combination of bid items.

We have also concluded that, where funds determined available prior to bid opening are insufficient to cover the lowest base bid, award may be made, if additional funds can be obtained, only to the bidder submitting the lowest bid for the base work and that after funds are obtained award may include additive items--within the order stipulated in the bidding documents--but only if some other responsible bidder has not submitted a lower bid on that combination. Utley-James, Inc., B-198406, June 16, 1980, 80-1 C.P.D. ¶ 417.

After two other bidders were allowed to withdraw their bids because of mistakes, the Army had before it the next lowest bids, for comparison purposes, of Connie Hall and Roebbelen,

and the listed figure of \$3,500,000 in MCA funds available for Schedule "A" work only (and the comparable items found on Schedule "C" including the additive items found there). These bids--exclusive of additive items--were:

	"Schedule A"	"Schedule B"	"Schedule C"
(1) Connie Hall -	\$3,319,448	\$1,446,906	\$4,655,984
(2) Roebellen -	\$3,500,000	\$1,372,400	\$4,602,300

The Army also had enough funds (from a separate funding category which could not be used to fund Schedule "A" work) to award all of Schedule "B" work (and only those comparable items found on Schedule "C"). Given these facts, Roebellen's Schedule "C" bid for all the non-additive, base bid items was \$89,546 less than the combined award price (\$4,691,846) for the same work to Connie Hall on Schedule A at \$3,319,446 and Roebellen on Schedule B at \$1,372,400. Consideration of the bids for additive item two after additive item one is skipped under the above skipping provision does not affect the determination of Roebellen as low bidder. Specifically, Connie Hall's \$26,400 price advantage resulting from a comparison of additive two prices (Connie Hall-\$30,600; Roebellen-\$57,000) does not overcome Roebellen's \$53,684 overall price advantage for all the base items of Schedule "C." The addition of additive one prices (Connie Hall-\$537,338; Roebellen-\$658,000) to the base bid prices of these bids would not have been proper as the totals would exceed the \$3,500,000 of funds available under Schedule C.

Even using the figure of the stated funds available (\$3,243,992) does not change the determination of Roebellen's status as low bidder since that funding would not permit any award under Schedule A either to Connie Hall or Roebellen, leaving Roebellen as the low bidder under Schedules "B" and "C." Thus, Roebellen was properly determined to be the low bidder under clause 30.

The Army has also informed us that after determining Roebellen as the low bidder it sought and received additional MCA funds of \$57,000 to support an award to Roebellen under Schedule "C" including additive item two; however, MCA funds were not sought to support an award under additive item one. The seeking and receipt of MCA funds for an additive one

award would have been contrary to clause 30 since Connie Hall, rather than Roebellen, submitted the lowest bid for all of Schedule "C" including the two additive items.

The protest is denied.

for *Seymour Efron*
Harry R. Van Cleve
General Counsel