

*K. Riback*



**Comptroller General  
of the United States**

Washington, D.C. 20548

**Decision**

**Matter of:** General Chemical Services Inc.

**File:** B-241595

**Date:** January 30, 1991

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Darcy V. Hennessy, Esq., Hennessy Law Office, for the protester.  
Craig R. Schmauder, Esq., Department of the Army, for the agency.  
Katherine I. Riback, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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**DIGEST**

Bid was properly rejected where at time of bid opening bidding corporation's charter had been revoked for nonpayment of franchise taxes.

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**DECISION**

General Chemical Services Inc. protests the rejection of its bid under invitation for bids (IFB) No. DACW62-90-B-0045, issued by the Army Corps of Engineers for the removal and disposal of PCB's. Its bid was rejected because the contracting officer learned that the company's corporate status had expired because of a failure to pay state franchise taxes. General contends that despite its past failure to pay franchise taxes, its status as a corporation has been continuous because the Secretary of State of Delaware retroactively reinstated its corporate charter when it paid its overdue franchise taxes.

We deny the protest.

The IFB was issued on July 5, 1990, with bid opening on August 7. General's bid was the lowest of the four bids received. In its bid, General identified itself as a Delaware corporation doing business at an address in Missouri. When the agency contacted the Office of the Secretary of State of Delaware on August 29, to confirm General's corporate status, it was informed that the company's status as a corporation existing under the laws of Delaware had expired on March 1, due to nonpayment of franchise taxes. Shortly after that conversation, the agency received a certificate under seal

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from the Secretary of State, State of Delaware, certifying that General's corporate charter had been "inoperative and void" due to its failure to pay franchise taxes. See Del. Code Ann., tit. 8, § 510 (1974). The contracting officer therefore determined that General was not eligible for award and on September 25 notified General of the rejection of its bid. General responded by submitting to the agency a "Certificate of Good Standing" issued by the Office of the Secretary of State, State of Delaware, certifying that General was "in good standing and has a legal corporate existence . . . as of the date shown below," which was October 1. (Emphasis added.) This correspondence did not mention General's corporate status at the time of bid opening, August 7. Later, General provided the agency with a "Certificate of Renewal" dated October 4, that stated that General "is in good standing and has a legal corporate existence not having been canceled or dissolved so far as the records of this office show and is duly authorized to transact business." See Del. Code Ann., tit. 8, § 312(e) (1974). The award of the contract has been stayed pending the outcome of General's protest.

General contends that its bid should be accepted because its charter was reinstated after bid opening but before award, and is now considered as having been in continuous existence since its original incorporation. Additionally, in its comments on the agency report, the protester maintains that even during the time that the corporate charter was revoked, a bid submitted in its corporate name would bind the corporation.

As the contracting agency points out, we have previously upheld the rejection of a bid submitted by a Delaware corporation in circumstances identical to those here. Delaware East Wind, Inc., B-221314, Mar. 12, 1986, 86-1 CPD ¶ 246. In that decision, we stated that as a general rule a sealed bid award may not be made to an entity different from that which submitted the bid, and where a bid represents that it was submitted by a corporation, it should be disregarded if no such corporation exists. Otherwise, we stated, irresponsible parties could undermine sound competitive bidding procedures by submitting bids that could be avoided or backed up by the real principals as their interests might dictate. In so holding, we considered and rejected the protester's contention that under a decision of the Delaware Supreme Court, Frederick G. Krapf & Son, Inc. v. Gorson, 243 A.2d 713 (Del. 1968), a Delaware corporation whose charter had been revoked for nonpayment of franchise taxes nevertheless could be bound by a bid submitted in its corporate name.

Here, in support of its contention that its corporate form survived for bidding purposes during the period when its

corporate charter was revoked, General also has relied on the Krapf decision, especially the court's language that "a corporate officer may enter into a contract binding on the corporation, even after forfeiture of the charter, particularly when, as at bar, the forfeiture came about by inadvertence." 243 A.2d at 715. In our view, however, that statement when read in context does not support the protester's position. The Krapf decision deals exclusively with the rights of a contract creditor against the president of a corporation that had its charter revoked due to nonpayment of Delaware franchise taxes. It stands for the proposition that under Delaware law, the corporate form survives, despite a revoked charter, sufficiently enough to validate a contract signed while the charter was revoked and therefore supports a remedy by the creditor against the corporation instead of the corporate officer who signed the contract. Because the decision deals with creditor's rights and does not mention the bidding process at all, we do not agree that it stands for the proposition that the corporate form of a corporation with a revoked charter survives for bidding purposes.

Federal procurements must proceed in an orderly fashion. That means contracting officers have to be able to make decisions based on the information available at the time. We do not believe that a state statute that provides for retroactive reinstatement of a corporation can supersede a federal contracting officer's need to make contract award decisions on the basis of information that is current at the time of the decisionmaking. Thus, we believe that a federal contracting officer must be able to rely on the information provided by the state of incorporation concerning the bidder's corporate status at the time of the inquiry, without regard to the possibility of future retroactive reinstatement of corporate status.

Moreover, it is a basic principle of federal procurement law that a bidder may not be permitted the option, after bid opening, of validating a bid that otherwise would be rejected. Seaboard Elecs. Co., B-237352, Jan. 26, 1990, 90-1 CPD ¶ 115. Obviously, permitting a bidder to seek and obtain retroactive corporate reinstatement after bid opening would be inconsistent with this principle.

The protest is denied.

  
James F. Hinchman  
General Counsel