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Comptroller General
of the United States

Washington, D.C. 20548

3391910

Decision

Matter of: Casper Construction Company, Inc.

File: B-253887

Date: October 26, 1993

Thomas B. Forsythe for the protester.
Allen W. Smith, Department of Agriculture, for the agency.
David Hasfurther, Esq., and Linda C. Glass, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Bid was properly rejected where at the time of bid opening the protester's corporate charter had been involuntarily dissolved by the state in which it had been incorporated.

DECISION

Casper Construction Company, Inc. protests the rejection of its bid under invitation for bids (IFB) No. 16-93-57, issued by the Forest Service, Wallowa-Whitman National Forest, for the removal of slash from logging areas by means of machine and grapple piling and for the subsequent burning of the slash. Casper's bid was rejected because the corporation had been involuntarily dissolved by the state of Oregon.

We deny the protest.

The IFB was issued on May 5, 1993. It required the submission of individual and total prices for two items. Item No. 1 required bidders to machine pile slash for natural regeneration and planting and then to burn the resultant slash. Item No. 2 required bidders to grapple pile slash for natural regeneration and then to burn the resultant slash. Bids were opened on June 7. Casper submitted the low bid of $18,041.64 on item No. 2.

The contracting officer initiated a review of the responsibility of Casper. During the review, the contracting officer telephoned the office of the Oregon Secretary of State to verify the validity of Casper's representation in its bid that Casper was incorporated in

the state of Oregon. The staff person in the Office of the Secretary informed the contracting officer that, after the Office was notified that Casper's agent for legal services had resigned and after a 30-day period allowed for the appointment of a new agent had elapsed, the corporation had been involuntarily dissolved on January 20, 1993. According to the staff person in the Secretary's office, Oregon law provides that a corporation that has been administratively dissolved may not conduct any business except that necessary to "wind up" and liquidate its business and affairs. The contracting officer also sought to confirm that Thomas B. Forsythe who signed the bid as "PRES/SEC" was a corporate officer for Casper. The Secretary's office advised that no list of corporate officers existed since the corporation had been in existence for less than 1 year. The contracting officer reviewed the Oregon law which appeared to confirm the Oregon Secretary's opinion that a dissolved corporation could not conduct any new business. She subsequently asked for a legal opinion from the agency legal counsel. He advised her that the general rule in Oregon provided that the dissolved corporation lacked legal capacity to contract and recommended that she reject Casper's bid.

In view of this information, the contracting officer concluded that Casper lacked the legal capacity to contract to perform the work.

On June 15, after being told by another contracting officer that Mr. Forsythe had told him that Casper was not dissolved, the contracting officer again telephoned the office of the Secretary of State and was again told that Casper had been dissolved. Accordingly, on June 15, award was made to Avery Contracting for $23,340.48, and a letter was sent to Casper informing it that award had been made to another bidder. On June 17, after a conversation with Mr. Forsythe, the contracting officer again called the office of the Secretary of State and was informed that Casper had been dissolved but that its incorporation had been reinstated on June 15. According to Oregon statutes, the reinstatement of a corporation takes effect as of the effective date of the administrative dissolution. Oregon Revised Statutes § 60.651 (1991).

Casper argues that it should receive the award since it is properly incorporated in the state of Oregon. It questions the contracting officer's reliance on merely verbal information given by an unnamed person in the office of the Secretary of State. The contracting officer maintains that the award was proper because at the time of award, the only information the contracting officer had showed was that Casper could not conduct business of the type required under the IFB due to the administrative dissolution of its incorporation.

As a general rule, a sealed bid award m
entity different from that which submit
where a bid represents that it was subm
tion, it should be disregarded if no su
exists. General Chem. Servs. Inc., B-2
91-1 CPD ¶ 94. Otherwise, irresponsib
undermine sound competitive bidding pro
bids that could be avoided or backed up
as their interests might dictate. Id.
bid was properly rejected. At the time
June 7, the corporation had been disso
Oregon since January 20, and was not re
award on June 15. Consequently, at the
Casper was not a legally sufficient cor
purposes.

Federal procurements must proceed in an
That means contracting officers have to
decisions based on the information avai
The record shows that prior to making a
contracting officer contacted the offic
State for Oregon on three occasions and
corporation had been involuntarily diss
January 20. While the protester mainta
corporate status has never been dissolv
that on June 15, the protester filed an
reinstatement of corporate status with
State which specifically stated that th
been dissolved on January 20. On this
contracting officer properly determined
bid opening, the protester was not a le
corporation. We further believe that a
must be able to rely on the informatio
state of incorporation concerning the
status at the time of the inquiry, wit
possibility of future reinstatement of

Moreover, the fact that Casper was rei
award decision does not affect the awa
principle of federal procurement law t
be permitted the option, after bid ope
bid that otherwise would be rejected.
B-237352, Jan. 26, 1990, 90-1 CPD ¶ 1

The protest is denied.

Robert P. Murphy
for James F. Hinchman
General Counsel