

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

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FILE: B-183642

DATE: May 20, 1975

MATTER OF: Grimaldi Plumbing &amp; Heating Co., Inc.

**DIGEST:**

1. Maintaining employee morale of two affiliated firms and good business relations with subcontractors are legitimate business reasons to submit two bids by affiliated concerns for IFB to replace steam plant and rehabilitate electrical distribution and does not violate certification of Independent Price Determination, since there is no evidence that multiple bids provided unfair competitive advantage or was prejudicial to Government or other bidders.
2. Multiple bidder had no option to obtain award at higher bid in anticipation that it would not perform on low bid contract requirement that 20 percent of work be done with own forces, since it committed itself to perform in accordance with specifications by bidding without exception and could be required to perform in accordance with 20 percent requirement.

Counsel for the Naval Facilities Engineering Command (Navy) has requested that our Office decide the protest submitted to it by the Grimaldi Plumbing & Heating Co., Inc. (Grimaldi). The protest was submitted in connection with invitation for bids (IFB) N62467-73-B-0550 to replace a steam plant and rehabilitate the electrical distribution of the Naval Support Activity in New Orleans, Louisiana.

Of the eight bids received, Grimaldi's was second low at \$988,000. Neptune Construction Co. (Neptune) was low at \$984,214. The sixth low bid of \$1,140,171 was submitted by Resor Plumbing & Heating (Resor). Grimaldi protests on the grounds that since Neptune and Resor are commonly owned their bids were not arrived at independently. This is alleged to violate the certification of "Independent Price Determination."

"4. INDEPENDENT PRICE DETERMINATION

"(a) By submission of this bid, each bidder certifies, and in the case of a joint bid each party thereto certifies as to his own organization, that in connection with this procurement:

(1) The prices in this bid have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

(2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, in the case of a bid, or prior to award, in the case of a proposal, directly or indirectly to any other bidder or to any competitor; and

(3) No attempt has been made or will be made by the bidder to induce any other person or firm to submit or not to submit a bid for the purpose of restricting competition.

"(b) Each person signing this bid certifies that:

(1) He is the person in the bidder's organization responsible within that organization for the decision as to the prices being bid herein and that he has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above; or

(2) (i) He is not the person in the bidder's organization responsible within that organization for the decision as to the prices being bid herein but that he has been authorized in writing to act as agent for the persons responsible for such decision in certifying

that such persons have not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above, and as their agent does hereby so certify; and (ii) he has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above.

"(c) This certification is not applicable to a foreign bidder submitting a bid for a contract which requires performance or delivery outside the United States, its possessions, and Puerto Rico.

"(d) A bid will not be considered for award where (a)(1), (a)(3), or (b) above, has been deleted or modified. Where (a)(2) above, has been deleted or modified, the bid will not be considered for award unless the bidder furnishes with the bid a signed statement which sets forth in detail the circumstances of the disclosure and the head of the agency, or his designee, determines that such disclosure was not made for the purpose of restricting competition."

Specifically, Grimaldi alleges that the certifications of subparagraphs 4(a)(1) and 4(a)(2) have been violated because the same individual signed both bids as president of the respective firms. Grimaldi also notes that both Resor and Neptune have the same address listed in the New Orleans telephone directory.

Counsel for the Navy proposes to accept the low bid of Neptune. Counsel cites decisions of our Office that have held that multiple bids by commonly owned firms are not per se prohibited (51 Comp. Gen. 403 (1972)) and may be rejected only if there is evidence that the multiple bids were a subterfuge to restrict competition (Informatics, Incorporated, B-181642, February 28, 1975).

Generally, our Office views the certification of independent price determination "\* \* \* only as indicating that the prices quoted \* \* \* were not discussed with or communicated to any competitor of the two firms or to any prospective bidder other than themselves, and that no attempt had been made to induce any other

person or firm to submit or not to submit an offer for the purpose of restricting competition." 51 Comp. Gen., supra. In that decision we affirmed our position stated at 39 Comp. Gen. 892 (1960) that there are legitimate business reasons that may prompt multiple bids from two or more commonly owned and/or controlled companies. Therefore, absent evidence which indicates that a restriction on competition was the result of the multiple bidding or that bidders gained an undue competitive advantage, the Government may not reject an otherwise low bid solely because it was one of two or more bids submitted by commonly owned and/or controlled firms. See 10 U.S.C. § 2305 which requires that award be made to the low responsible bidder.

In 52 Comp. Gen. 886 (1973) we discussed various legitimate reasons that support a decision to submit multiple bids. These include: (1) to compensate for a suspicion that the quote of one's subcontractor was intentionally high so that the subcontractor could submit a low bid as a prime contractor (51 Comp. Gen., supra); (2) to receive partial awards so that each company could perform the amount awarded short of the full quantity (39 Comp. Gen., supra, and Informatics, Incorporated, supra); (3) to protect a functioning plant's continued operation where the prospective purchase of a new plant was not fully completed at the time of bidding (52 Comp. Gen., supra); (4) to avoid a possible unfavorable preaward survey by both firms offering to perform in the acceptable facilities of the parent firm (B-151459, July 8, 1963).

In all of these cases, the salient inquiry is whether the submission of multiple bids worked to the prejudice of the Government or other bidders. The reasons for the two bids, in this case, were outlined in a submission from counsel for Neptune to the Navy. As represented, the two bids were prepared independently by separate staff. It was acknowledged that Neptune and Resor are affiliated concerns. Neptune is a general contractor and Resor is a mechanical contractor. Each has its own staff and independently prepares its own bids.

Counsel for Neptune states that the IFB presented a project which contained roughly a third each of electrical, mechanical and general construction work. Therefore, both Neptune and Resor could both submit bids as prime contractors since either could perform a third of the work. Both bids were based on using the

B-183642


same quote of the same electrical subcontractor. The difference is that Neptune, while preparing its own estimate for the general contracting portion, utilized Resor's price for the mechanical work. Resor, on the other hand, rather than utilizing Neptune's price for the general contracting, prepared its own estimate. Since this was not Resor's field of expertise, its estimate for this portion was substantially higher than Neptune's.

Mr. Resor, the president of both firms, determined to submit both bids when presented to him for two reasons. The first was his concern that not submitting Resor's bid would be bad for the morale of its employees. The second reason was to maintain good relations with Resor's potential subcontractors. It was feared that if Resor did not submit a bid after requesting a quote from a potential subcontractor, future subcontract quotes might be viewed as wasted effort.

It is our opinion that the reasons set forth by Neptune constitute legitimate business reasons to submit the two bids.

Further, Grimaldi suggests that Neptune may have been attempting to reserve an option to itself to obtain the award at the higher bid in anticipation that it would not perform 20 percent of the work with its own forces as required by clause 63 of the General Provisions of the contract and that other general contractors were not bidding as general contractors, but as subcontractors. However, Neptune received no option, since it committed itself to perform in accordance with the specifications by bidding without exception and could be required to perform the contract in accordance with the 20-percent requirement. 41 Comp. Gen. 106 (1961).

There is no evidence that the submission of the two bids gave either firm an unfair competitive advantage or prejudiced the Government or other bidders. Therefore, we concur in the Navy's proposed acceptance of the Neptune bid on this matter.

  
Deputy Comptroller General  
of the United States