

DECISION



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

FILE: B-186157

DATE: August 10, 1976 ⁶¹³²⁴ 98701
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MATTER OF: Praxis, Ltd.

DIGEST:

Where available funding increases prior to award, funds may be reallocated, even if reallocation affects determination of schedule under which award is to be made.

By invitation for bids (IFB) No. YA-511-IFB6-80, and subsequent amendments, the Bureau of Land Management (BLM) of the Department of the Interior solicited bids for the McGrath Fire Control Station Mess Hall renovation and water system in McGrath, Alaska. The bid schedule consisted of five bid items which were assembled in combinations into five separate schedules. The "BASIS OF AWARD" clause indicated that only that schedule would be awarded which would be in the best interest of the Government.

Praxis, Ltd., was the low bidder on schedule "B." S & S Contracting was the low bidder on the other schedules.

The Praxis bid was determined to be nonresponsive. A determination was made for an award to S & S on schedule "B" in the amount of \$286,000 on the basis of funds available in that amount. When Praxis learned of the disqualification of its bid, it protested. As a result of the protest, the Praxis bid was reviewed by the Department of the Interior Office of the Regional Solicitor which decided that the bid was responsive. In view of the determination, Praxis withdrew the protest. However, an additional \$30,000 was made available for the project and S & S was awarded schedule "C" in the bid amount of \$316,000.

Praxis has protested that the procurement was "engineered" to be awarded to S & S. In that connection, Praxis contends that the award should have been limited to the amount of \$286,000 determined to be available when schedule "B" was approved for award. Further, Praxis states that the congressional delegation was advised initially that S & S would be awarded the contract under schedule "B."

However, it is alleged that when Praxis was determined the low responsive bidder on schedule "B," the agency decided to award under schedule "C" so as to award the contract to S & S. Additionally, Praxis states that it was not informed of the Regional Solicitor's determination of responsiveness until 6 days after it was made when the contracting officer considered the procurement to be urgent. Also it questions the need for an award on April 1 when S & S had extended its bid to April 12. Finally, it notes that the contract was awarded to S & S without requiring an experience questionnaire when one was requested from Praxis.

With respect to the contention that the award should have been limited to the amount determined to be due for schedule "B," our Office has indicated that when the actual funds available increase prior to award the funds may be reallocated even if the reallocation affects the determination of the schedule under which an award is to be made. H. M. Byars Construction Company, 54 Comp. Gen. 320 (1974), 74-2 CPD 233. Interior has stated that through detailed engineering estimates made after the original budget estimates it was determined that additional funds were available to make an award on schedule "C."

Further, Interior has indicated that the reason the congressional delegation was not immediately notified when the Praxis bid was determined to be responsive was that the contracting officer had not received an experience questionnaire from Praxis and completed a determination of responsibility for Praxis. In that regard, Interior has advised that the reason an award was made to S & S without the requirement of an experience questionnaire when one was requested from Praxis was that BLM had prior experience with the contractor and it was known to be responsible.

Moreover, although Praxis has pointed out the delay in notifying it when it was determined to be responsive and the haste in making an award to S & S when the additional funds were made available, which Interior has explained as routine in the first instance and due to urgency in the second, the fact remains that additional funds were determined to be available before an award was made under schedule "C" and the contracting office was entitled to rely upon the funds in making an award. H. M. Byars Construction Company, *supra*.

However, by letter of today, we are recommending again to the Federal Procurement Regulations Division that it consider adopting provisions for the Federal Procurement Regulations similar to those

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in the Armed Services Procurement Regulation, relating to procurements involving additive or deductive items. See H. M. Byars Construction Company, supra.

Deputy

R. F. Kelly
Comptroller General
of the United States