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**DECISION**



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

**FILE: B-190637**

**DATE: April 27, 1978**

**MATTER OF: Weldon Wilson, d/b/a Advance Moving and Storage  
Company**

**DIGEST:**

1. ICC decision in Bud's Moving & Storage, Inc., Petition for Declaratory Order did not involve employment by certificated carrier of uncertificated carrier to perform transportation services.
2. Failure to furnish certificate of affiliates is informality which may be cured after bid opening.

Invitation for bids (IFB) F34612-77-B-0019 was issued by the Base Procurement Office, Altus Air Force Base, Oklahoma, for packing, crating and draying services in the Altus Air Force Base area. Chevalley Moving and Storage, Inc., of Oklahoma City (Chevalley of Oklahoma) is the apparent low bidder for Areas I and II of Schedules I and II, outbound and inbound services. Weldon Wilson, d/b/a Advance Moving and Storage, Inc. (Wilson), protests award to Chevalley Moving and Storage, Inc., of Altus, Oklahoma (Chevalley of Altus), the corporation Wilson understood was the apparent low bidder. No award has been made on Schedules I and II pending our decision on the protest.

Wilson, who holds Interstate Commerce Commission (ICC) operating authority, alleges that paragraph B-20 of the IFB, as amended, "\* \* \* establishes as a bidder qualification the possession in his own name of an ICC permit number as a carrier to cover the transportation functions required by the solicitation." Wilson contends that Chevalley of Altus does not have ICC operating authority in its own name.

Paragraph B-20, as amended, titled "EVIDENCE OF STATE AND LOCAL AUTHORITY" reads:

"Each bidder shall submit an affidavit with his bid certifying that he possesses any and all required state and local permits, including ICC permit number, necessary to perform any resultant contract. (See Special Provision J-7.)"

Special Provision J-7, titled "OPERATING AUTHORITY", reads in part:

"A. The Interstate Commerce Commission (ICC) requires that each contractor involved in Government personal

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property movement service contracts must hold in its own name ICC Operating Authority as a carrier to cover the transportation or the arranging of transportation of shipments moving in interstate commerce. An agent of an ICC authorized carrier cannot use that carrier's ICC Operating Authority in performance of such a contract."

Two separate corporations named Chevalley are involved in the protested bid. Chevalley of Oklahoma holds ICC operating authority in its own name for the service to be performed in the Altus, Oklahoma, area. Chevalley of Altus does not have ICC operating authority. Chevalley of Oklahoma is 90 percent owned by Don and Nina Chevalley. Don Chevalley, Nina Chevalley and Maxine Hicks each own one third of Chevalley of Altus. Both corporations, therefore, are under the principal common ownership of Don and Nina Chevalley.

The face of the Chevalley bid identifies Chevalley of Oklahoma as the bidder. Paragraph 5 of the IFB is titled "AFFILIATION AND IDENTIFYING DATA." There Chevalley of Oklahoma is identified as the parent company but the Employee Identification (E.I.) number for Chevalley of Altus is listed in the space for the offeror's (bidders) E.I. number and the E.I. number for Chevalley of Oklahoma City is listed in the space for parent E.I. number. In letters of January 23 and 28, 1978, Don E. Chevalley, in response to requests for clarification of the bid, explained the common ownership of the two corporations, and that Chevalley of Oklahoma City was intended to be the bidder and would employ the local facilities of Chevalley of Altus to perform the services. With the bid Chevalley furnished the affidavit required by paragraph B-20 of the IFB together with a copy of the ICC order, served December 5, 1963, in Docket MC-120684(Sub-No. 1), granting appropriate operating authority to Chevalley of Oklahoma City.

On the basis of this information the contracting officer concluded that Chevalley of Oklahoma City was the bidder and that the bid is correct and acceptable under Special Provision J-7 of the IFB. We believe that this conclusion is reasonably supported by the form of the bid and the evidence presented in clarification after bid opening.

Wilson, however, construes the decision of the ICC in Bud's Moving and Storage, Inc., Petition for Declaratory Order, 126 M.C.C. 56 (1977) (Bud's), to require that the person which actually performs the service must hold the ICC operating authority in its own name,

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and that Chevalley of Oklahoma City must perform the service and may not employ another; i.e., Chevalley of Altus. This is not, however, what was involved in Bud's, nor what was held by the ICC.

In Bud's, a carrier without appropriate ICC operating authority bid on a Government pack and crate contract, intending to employ its principal, a separate carrier with ICC operating authority, to perform the actual service. The ICC held that the carrier which assumed the responsibility for the contract must hold the appropriate ICC operating authority. The facts in the present instance are the reverse of the facts in Bud's. Here Chevalley of Oklahoma City is the bidder on the Government pack and crate contract and holds appropriate ICC authority in its own name, but intends to employ a noncertificated carrier to perform the service.

In Sillco Inc., B-188026, April 29, 1977, 77-1 CPD 296, our Office recognized that Bud's dealt with a specific situation and that it was questionable whether Bud's rationale was meant to apply in other situations. See also, District Moving and Storage, Inc. - Reconsideration, B-188200, June 16, 1977, 77-1 CPD 435. And the Bud's rationale does not apply here. Thus, Chevalley of Oklahoma's intended use of Chevalley of Altus does not dilute the responsibility of Chevalley of Oklahoma because it is well settled in law that a carrier can employ another carrier as its agent to perform transportation services for it. B-189382, January 6, 1978, and the cases cited therein; 49 U.S.C. 311(a) (1970).

In the present instance the contracting officer has considered the effect of the Bud's decision and determined that the bidder under the IFB is Chevalley of Oklahoma City, which holds appropriate ICC authority in its own name and is therefore the contracting carrier assuming responsibility for the transportation service. We find that this decision is supported by the law and the facts of record.

Wilson also alleges that the Chevalley bid did not contain information concerning affiliates as required by Paragraph B-11 of the IFB.

Paragraph B-11 requires each bidder to submit with his bid an affidavit stating whether the bidder has any affiliates, the names and addresses of all affiliates of the bidder, and the names and addresses of all persons and concerns exercising control or ownership of the bidder. With the bid was submitted a statement of affiliates which was not deemed adequate by the contracting officer. After bid opening the affidavit of affiliates was corrected. As corrected it was reviewed by the contracting officer and by legal counsel and found acceptable.

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We have held that failure to furnish similar certifications does not affect the responsiveness of the bid and may be furnished after bid opening. See Bryan L. and F. B. Standley, B-186573, July 20, 1976, 76-2 CPD 60. Since the failure to provide the certification has been satisfactorily cured after bid opening, the bid is not subject to rejection on this ground.

Protest denied.

  
Deputy Comptroller General  
of the United States