

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

60083

FILE: B-184099

DATE: October 24, 1975

MATTER OF: Oscar Holmes & Son, Inc.
Blue Ribbon Refuse Removal, Inc.97792³**DIGEST:**

1. Protests against affirmative determination of responsibility by contracting officials are not reviewed by GAO except for actions which are tantamount to fraud or misapplication of definitive responsibility criteria contained in solicitation.
2. Agency determination that low bidder satisfies experience requirement in solicitation for refuse removal is reasonable even though its previous contracts may not have required use of compaction type refuse removal trucks as required in instant case.
3. Bid submitted in corporate name may be accepted even though firm became incorporated after bid opening since person signing bid as president of yet to be incorporated firm also owned and operated predecessor unincorporated business entity and agency considers either the incorporated entity or the signatory of the bid to be financially responsible and capable of performance.

Blue Ribbon Refuse Removal, Inc. (Blue Ribbon) protests the award of a contract to "Oscar Holmes & Son, Inc." (Holmes), the low bidder, under invitation for bids (IFB) No. N62477-75-C-0967, issued for trash removal services by the Naval Surface Weapons Center, White Oak Laboratory, Silver Spring, Maryland.

Bid opening was scheduled for May 13, 1975. Holmes' bid, executed on May 13, 1975, by "Oscar Holmes, Jr., President," was submitted in the name of "Oscar Holmes & Son, Inc." The bid certified that the firm was a corporation incorporated in the State of Maryland.

Blue Ribbon argues that an award should not be made to Holmes since (1) its bid is unreasonably low, (2) it does not meet the solicitation requirement for three years of experience with similar refuse contracts and (3) it was not a Maryland corporation at the time of bid opening.

With regard to the allegation that the work cannot be performed at the price bid, the record shows that Navy advised the bidder that its low bid varied substantially from the higher Government estimate and other bids and requested the firm to verify its bid. It is reported that Holmes has confirmed the accuracy of its bid price.

Moreover, the Navy reports that it considers Holmes to be a responsible prospective contractor. This Office does not review protests against affirmative determinations of responsibility, unless either fraud is alleged on the part of procuring officials or where the solicitation contains definitive responsibility criteria which allegedly have not been applied. See Central Metal Products, Inc., 54 Comp. Gen. 66 (1974). Affirmative determinations are based in large measure on subjective judgments which are largely within the discretion of procuring officials who must suffer any difficulties experienced by reason of a contractor's inability to perform. However, we will continue to consider protests against determinations of nonresponsibility to provide assurance against the arbitrary rejection of bids.

Regarding the qualifications of the prospective contractor, the solicitation provided as follows:

1.25 QUALIFICATIONS OF CONTRACTOR: The low bidder will be required to demonstrate, as a condition precedent to award, that he is capable of performing a service contract of this magnitude as follows:

(1) Submit evidence satisfactory to the Officer in Charge of Construction to show that:

(a) The company has a minimum of three (3) years experience in refuse services contracts.

(b) The company has successfully performed a similar contract of similar magnitude within the past three years.

(c) The company has sufficient financial resources to meet the incurred obligations, if awarded;

(d) The company has sufficient equipment and personnel to successfully perform this contract if awarded or can show the ability to obtain them.

The low bidder has satisfied the Navy that it meets the experience provision of the solicitation by providing references to similar, although not identical, refuse removal contracts together with financial information indicating net worth sufficient to perform the contract pending receipt of progress payments. In our opinion, the record supports the Navy's determination that the low bidder satisfies the experience requirement of the solicitation even though its previous contracts may not have involved the use of compaction type trucks as required for performance of the instant contract. The Navy is satisfied that Holmes either has the proper equipment or can obtain it.

The Navy reports that on June 2, 1975, the Maryland Department of Assessments and Taxation received and approved the articles of incorporation of "Oscar Holmes & Son Trucking Corporation." It is Navy's position that since the low bidder is now a Maryland corporation, award to it should be permitted even though it was not a corporation at the time of bid opening. The basis for Navy's position is that by signing the bid Oscar Holmes bound either the corporation or himself personally on warranty of his authority and that Oscar Holmes is personally responsible and apparently capable of performing the contract.

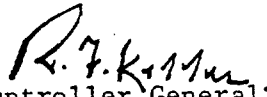
As a general rule an advertised award may not be made to an entity different from that which submitted the bid. For example see 41 Comp. Gen. 61 (1954), where we held that since the bidder, "Louis Rochester," was represented in the bid to be a corporation the bid should be disregarded if no such corporation existed. The rationale for objecting to award to an entity other than that named in the bid was set out in 33 Comp. Gen. 549, 550 (1954). We stated that such action could serve to undermine sound competitive bidding procedures in that it would facilitate the submission of bids through irresponsible parties, whose bids could be avoided or backed up by the real principals as their interests might dictate.

In our opinion award to Holmes would not undermine the competitive bidding process. There is no question here of an attempt by a bidder to retain the option of avoiding the Government's acceptance of its bid. Apparently, Oscar Holmes owned the predecessor unincorporated business entity and Oscar Holmes & Son Trucking Corporation, which is also managed and owned by Oscar Holmes, is substantially the same concern for purposes of performance. The Navy considers the firm to be financially responsible and capable of performance irrespective of whether its liabilities are limited to corporate assets or to the personal assets of Oscar Holmes.

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Finally we note that the low bidder's formally incorporated name is Oscar Holmes and Son Trucking Corporation but that the name stated on the bid is Oscar Holmes and Son, Inc. In our opinion the shortened name in the bid instrument is not a material deviation requiring rejection of the bid since the identity of the corporation intended is clear and can be ascertained. 6 Fletcher Cyclopedia of Private Corporations (Perm Ed.) § 2444.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States