



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: J. M. Cashman, Inc.

File: B-225558

Date: April 15, 1987

DIGEST

Because the Federal Acquisition Regulation prohibits firms suspended at the time of bid opening from contracting with the government, such firms may not be considered for award even though they may no longer be suspended at the time of award.

DECISION

J. M. Cashman, Inc., protests any award by the Naval Facilities Engineering Command of a contract to Great Lakes Dredge & Dock Company under invitation for bids (IFB) No. N62470-84-B-4426 because Great Lakes was suspended from government contracting at the time of bid opening. The agency argues that since the suspension of the firm has subsequently expired, it is now eligible for award.

We sustain the protest.

The IFB was issued on September 29, 1986. Bid opening was on October 30. Great Lakes was the low bidder, while Cashman was second low. After informing Great Lakes by letter of November 12, 1986, that its bid was rejected because of the suspension, the Navy subsequently decided that the bid should be considered because Great Lakes' suspension had been lifted as of November 28. No award has been made.

Cashman contends that no award may be made under the IFB to Great Lakes, citing the Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.404-2(g) (1986), which provides: "Bids received from any person or concern that is suspended, debarred, or ineligible (see Subpart 9.4) shall be rejected if the period of suspension . . . has not expired as of the bid opening date."

We agree with the protester. We recently held in a decision concerning a similar situation that FAR, 48 C.F.R. § 14.404-2(g), mandates the rejection of a bid received from a bidder suspended at the time of bid opening, and that the

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regulation does not vest the contracting agency with the discretion to do otherwise.^{1/} Southern Dredging Co., Inc., B-225402, Mar. 4, 1987, 87-1 CPD ¶ ____.

Based on the regulation and our decision in Southern Dredging Co. Inc., B-225402, supra, we conclude that the bid from Great Lakes should not be considered, since the bidder was suspended from contracting with the government as of the October 30 bid opening.

The pre-FAR decisions of this Office are no longer controlling on the issue of when a suspension must be lifted in order for a suspended bidder to become eligible for award. Prior to the FAR, the regulations did not in all instances require the rejection of bids received from bidders suspended at the time of bid opening. For this reason, and since a firm's suspension related to the issue of responsibility, we said that a suspended firm's eligibility for receiving an award should be determined at the time of award and not at the time of bid opening. See, e.g., Bauer Compressors, Inc., 63 Comp. Gen. 303 (1984), 84-1 CPD ¶ 458. Now, however, the FAR clearly establishes the time of bid opening as the point at which a suspended bidder's eligibility for award is determined. Southern Dredging Co., Inc., B-225402, supra.

With respect to our decision, Skip Kirchorfer, Inc., B-215784, Dec. 3, 1984, 84-2 CPD ¶ 606, cited by the agency, that case is inconsistent with our holding in Southern Dredging and was overruled in that case.

We sustain the protest. The agency should award the contract to the protester if it finds the firm otherwise eligible for award.

for 
Comptroller General
of the United States

^{1/} The Department of Defense Federal Acquisition Regulation Supplement, 48 C.F.R. § 209.405(a)(1) (1985), provides for rejection of bids received from suspended bidders unless a written determination is made that there is a compelling reason to make an exception. This regulation purportedly implements FAR, 48 C.F.R. § 9.405(a) (1986), which provides that an agency should not award a contract to a suspended bidder unless there is a compelling reason to do so. The agency has not argued that there is a compelling reason in this case for considering Great Lakes for award.