



Comptroller General  
of the United States  
Washington, D.C. 20548

"BEST COPY AVAILABLE"

Pogany  
1480831

## Decision

**Matter of:** Caddell Construction Co., Inc.

**File:** B-249879; B-249879.2

**Date:** November 24, 1992

Timothy Sullivan, Esq., and Martin R. Fischer, Esq., Dykema Gosset, for the protester.  
Donald O. Pratt, Esq., Canterbury, Stuber, Pratt, Elder & Gooch, for Young Enterprises, Inc., an interested party.  
Lester M. Hunkele, III, Esq., Department of Veterans Affairs, for the agency.  
Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Where protester complains that alternate item in invitation for bids should have been evaluated by agency in selecting a firm for award, protest is dismissed as academic where proposed awardee is low whether or not alternate item is evaluated for award purposes.
2. Allegation that agency manipulated amount of funding available is denied where record shows that agency reasonably evaluated deduct alternate items in invitation for bids to reduce project costs to come within previously established budget constraints for two construction projects that were the subject of lump-sum appropriation by Congress.

### DECISION

Caddell Construction Co., Inc. protests the proposed award of a contract to Young Enterprises, Inc. under invitation for bids (IFB) No. 9223-AE, issued on behalf of the Department of Veterans Affairs (VA) by its architect/engineering (A-E) firm, Dahl/Braden/PTM, Incorporated and F&S Partners, Incorporated, a Joint Venture.<sup>1</sup> The IFB was for the construction of an Energy Center building at the VA Medical Center, Dallas, Texas. Caddell alleges that the

<sup>1</sup>For simplicity, VA and the Joint Venture are at times interchangeably referred to in this decision as the agency.

agency intends to make an award to Young by deviating from the solicitation's award evaluation methodology and, in a supplemental protest, also alleges that the agency improperly manipulated the "funds available" to ensure award to Young.

We dismiss the protest in part and deny it in part.

The IFB, issued June 22, 1992, requested prices for a base bid (item No. 1--General Construction) and four deduct alternate items (A through D). The agency included these deduct alternate items in order to identify "live without" items should funding not be available for all work specified in the base bid. Deduct alternate item B required the construction of a tunnel using precast concrete materials which the agency expected to result in a savings as compared to the preferred method of pouring concrete in-place. The IFB contained the following method of award:

"Bidders shall submit prices for Bid Item 1; (Base Bid) and Deduct Alternates A, B, C, and D. The Government intends to award a single contract to the responsive, responsible bidder that offers the low aggregate amount for Item 1 plus deduct alternates B, C, A and D (in that order of priority) which are necessary to stay within the funds available at the time of award. If the award includes alternates, none will be skipped."

Bid opening was scheduled for July 28, 1992. On July 27, the agency's A/E firm learned that deduct alternate item B, if implemented, would result in additional costs rather than a savings.<sup>2</sup> After consulting with VA, the A/E firm's representative states that she telephoned all bidders on July 27, and read them a written statement. She essentially told each bidder that if deduct alternate B is an "add amount," the bidder should delete the "deduct" notation in the schedule for that item and insert "add" with the appropriate additional dollar amount. Alternatively, she advised each bidder that it was permissible to submit a no-bid for that item. She further stated that if an "add amount" was bid for deduct alternate item B, VA would "skip" that alternate item for evaluation purposes. She made brief written notes of her conversation with each bidder, including the protester's representative.

---

<sup>2</sup>The A/E firm learned from a bidder that potential subcontractors had found that there were no precast concrete contractors operating or available at that time, and that "start-up" costs for such contractors would be "costly."

VA received eight bids. One bidder withdrew its bid because of a mistake. All other bidders recognized that deduct alternate item B would result in increased performance costs. Some bidders deleted the word "deduct" and inserted the word "add" in its place, while other bidders chose not to submit a bid for that item. (The protester bid an "ADD \$978,000" for alternate item B.) In evaluating bids, the agency ignored deduct alternate item B in selecting the proposed awardee, Young, since evaluation of that item would not have resulted in a deduction to the base bid. This protest followed.

As its first contention, the protester argues that the award methodology as stated in the IFB mandates evaluation of the base bid and all alternates, and that therefore "none [can] be skipped." According to the protester, "skipping" alternate item B would be "contrary to the solicitation's express requirements." The protester also flatly denies ever having been orally informed on July 27 of the change to alternate item B and states that it bid that item as an additive item due to its "own diligence." In this connection, the protester complains that a written amendment should have been issued by the agency.

The short answer is that our independent review of all bids submitted shows that Caddell would not have been low whether or not alternate item B was included in the evaluation as bid by each bidder (i.e. either no-bid or as an additive item). Specifically, the awardee's evaluated price without item B is \$18,292,106, while the protester's is \$18,324,000. With item B evaluated, the awardee's evaluated price is still lower than the protester's evaluated price (\$18,472,306 versus \$19,302,000). Since Young is low regardless of whether item B is evaluated, and since it is not our practice to consider academic questions, we dismiss this protest ground. See BVR, Inc., B-209511, Jan. 28, 1983, 83-1 CPD ¶ 96.

Caddell also argues that the agency manipulated funding after bid opening to make award to Young.<sup>3</sup> Caddell argues that VA did have funds available to award the contract to Caddell on its base bid but improperly chose not to allocate available funds.

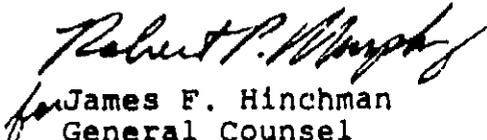
We find no evidence of manipulation, nor of unfairness to bidders because of the agency's actions. The record shows that Congress earmarked \$30,800,000 for construction of a

---

<sup>3</sup>The protester was low for the base bid alone and thus has the direct economic interest to protest the agency's decision to consider the deduct items in selecting a firm for award. See 4 C.F.R. § 21.0 (1992).

Spinal Cord Injury Unit and an Energy Center. These funds were to cover not only basic construction costs, but also expenses for A/E services, construction management fees, and possible change order work. VA's determination of how those funds would be allocated between the Spinal Cord Injury Unit and the Energy Center was based on cost estimates completed in April 1992. In those cost estimates, construction of the Spinal Cord Injury Unit was estimated at a total cost of \$10,713,000; VA's cost estimate for construction of the Energy Center was \$16,830,000. This amount fell substantially short of Caddell's base bid, and, in our view, the agency therefore reasonably evaluated and considered all available deduct alternate items. There is no evidence in the record that VA manipulated any funds for the purpose of depriving the protester of an award. Rather, the record shows that VA in good faith simply followed its previous cost allocations for the two projects based on the cost estimates prepared in April 1992. We therefore deny this protest ground.

The protest is dismissed in part and denied in part.

  
for James F. Hinchman  
General Counsel