

DECISION



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

FILE: B-205526

DATE: August 16, 1982

MATTER OF: Ebsco Interiors

DIGEST:

Where corporation submits bid in name of trade style first registered after bid opening and record does not evidence use of that trade style prior to bid opening, bidder has not adequately identified itself as the party to be bound. The facts that the bidding corporation is described in bid as parent corporation of bidder and that bid was signed by president of corporation may show honest error on part of bidder, but they do not evidence necessary intent to bind named bidder.

Ebsco Interiors protests the award of a contract for carpeting to Smith & Smith Carpet Corporation under invitation for bids No. DACA84-81-B-0261 issued by the U.S. Army Corps of Engineers. Ebsco primarily contends that award could not have been made to Smith & Smith as it was not a legal entity which could be bound to perform. For the reasons set forth below, we sustain the protest.

Background

On August 25, 1981, the Corps issued the subject invitation seeking carpeting for shipment to Japan. Four firms responded by the September 16 bid opening date. The low bid was submitted in the name of "Smith & Smith Carpet Corp." of Dalton, Georgia and signed by Charles L. Smith as president. The accompanying bid forms indicated the contract would be performed at Smith & Smith's plant in Dalton and stated that the bidder was a corporation, incorporated in Georgia. The bid also showed that Ebony Sales Company, Inc. of the same mailing address in Dalton, Georgia was the bidder's parent company.

The contracting officer requested a Dun & Bradstreet financial report and a preaward survey from the Defense Contract Administration Services (DCAS). In reply, the contracting officer received a telegraphic report from Dun & Bradstreet dated September 22 that furnished generally favorable information on Ebony Sales Company, Inc. and its president Charles L. Smith. In its telegraphic report of September 25, DCAS advised that Smith & Smith Carpet Corp. had the necessary equipment and adequate employees to do the work and that the firm had satisfactorily completed two prior Government contracts during the year.

Based on these reports, the contracting officer concluded that Smith & Smith was a responsible bidder and awarded it the contract on September 29. A few days later the contracting officer received an amended Dun & Bradstreet report advising that "Smith & Smith and Ebony Carpets" had been added as trade styles by Ebony Sales Company, Inc. Shortly thereafter, by mailgram of October 6, to the contracting officer, Ebsco protested award to Smith & Smith Carpet Corp.

Protest

Ebsco complains that Smith & Smith Carpet Corp., the entity named on the bid, did not exist and does not currently exist as a corporation and was therefore ineligible to receive the award.

The awardee states that while Smith & Smith Carpet Corp. is not a separate business organization, Smith & Smith Carpets is a registered trade name of Ebony Sales Company, Inc. Ebony Sales Company, Inc. is a corporation incorporated in Georgia in 1979 and its facility was the subject of the DCAS survey and was used to perform the contract. The record indicates, however, that Smith & Smith Carpets was not registered as a trade name in Georgia until five days after bid opening.

¹ The abbreviation "Corp." was, according to the awardee, inadvertently attached to the trade name on the bid.

While the contracting officer argues that the award to Smith & Smith Carpet Corp. was proper because Smith & Smith Carpet Corp. was not a separate entity from Ebony Sales Company, Inc. but merely a trade name referring to Ebony Sales Company, Inc., the Corps of Engineers Headquarters takes the position that the award was erroneous because Smith & Smith Carpet Corp. does not exist as a legal entity which could be contractually bound. Nevertheless, the Corps maintains that since the award was based on an "honest factual error" and since the contract has been performed it is not possible for it to grant the protester any relief.

We agree with the protester and the Corps that the award to Smith & Smith Carpet Corp. was erroneous.

The protester and the Corps correctly argue that in general a contract cannot be awarded to any entity other than the one which submitted the bid. Martin Company, B-178540, May 8, 1974, 74-1 CPD 234. This rule does not automatically prohibit an award in cases like this where a bidder uses a trade name instead of its formal corporate name in its bid. Rather, the rule is generally to be applied to situations like that in Martin Company, supra, where it was not clear from the face of the bid which of two or more legal entities is the bidder. Where trade names are used but it is possible to sufficiently identify the actual bidder so that it would not be able to avoid the obligation of the bid, acceptance of the bid is proper. See Mark II, Inc., B-203694, February 8, 1982, 82-1 CPD 104; Jack B. Imperiale Fence Co., Inc., B-203261, October 26, 1981, 81-2 CPD 339.

Here, while Smith & Smith Carpet Corp. shared a common address and president with Ebony Sales Company, Inc., unlike the bids in the Imperiale and Mark II cases, its bid did not contain any direct or indirect reference to Ebony Sales Company, Inc. as the entity to be bound. The only mention of Ebony Sales Company, Inc. in the bid was the identification of it as the parent company of Smith & Smith Carpet Corp. and the reference to the bidder

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as a Georgia corporation. (Smith & Smith Carpet Corp. is not registered as a Georgia corporation while Ebony Sales Company, Inc. is.) Further, although the contracting officer states that Ebony Sales Company, Inc. has used Smith & Smith Carpets as a trade name for a number of years, there is no evidence in the record (as there was in Imperiale) of that firm's using the Smith & Smith name prior to the subject bid. The fact that Ebony Sales Company, Inc. registered Smith & Smith Carpets as a trade name with the State of Georgia shortly after bid opening is not evidence that the Smith & Smith name has been used prior to this bid.

Thus, we do not find it clear from the circumstances here that the bid submitted by Smith & Smith Carpet Corp. could legally bind Ebony Sales Company, Inc. Therefore, the award to Smith & Smith Carpet Corp., which was not a legal entity or a registered trade name of Ebony Sales Company, Inc. at the time of bid opening, was improper. However, since, as the Corps states, the award seems to have been the result of an honest error and the contract has been performed, we are unable to recommend corrective action.

The protest is sustained.

Wilton J. Jordan
for
Comptroller General
of the United States