

**DECISION****THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 205481  
27226**FILE:** B-212194.2**DATE:** January 16, 1984**MATTER OF:** Precision Construction Company**DIGEST:**

Bid submitted in corporate name may be accepted even though the firm became incorporated after bid opening since the firm was estopped under applicable state law from denying its corporate existence and award to the bidder would be an award to the same entity which submitted the bid and would thus not undermine the competitive bidding process.

Precision Construction Company (Precision) protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DACW43-83-B-0053, issued by the Corps of Engineers, Department of the Army (Corps), for culvert valve rehabilitation.

We sustain the protest.

The low bid was submitted in the name of "Precision Construction Company" and was signed by Carl F. Yaegel, who was identified as president. The bid certified that the firm was a corporation incorporated in the state of Missouri. The contracting officer reports that the firm was determined to be nonresponsive on the basis that "Precision Construction Company" was not a legal entity under the law of Missouri, Mo. Ann. Stat. § 351.075 (1975), as of the May 18, 1983, bid opening date. The contracting officer further reports that Precision did not become a legal entity under the law of Missouri until May 25, 1983, when the secretary of state of Missouri issued a Certificate of Incorporation to Precision.

The record indicates that on May 17, 1983, the day before bid opening, Charles W. Clark, a sole proprietor until that date, entered into a stock subscription agreement as 100-percent shareholder in Precision. Precision's counsel also advised Mr. Clark to hold himself out as a corporation at all times. At a meeting of Precision's Board of

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Directors (Mr. Clark being the sole director) held the same day, Mr. Yaegel was appointed attorney-in-fact. Precision's officers consisted of Mr. Yaegel as president and Mr. Clark as secretary/treasurer. Precision subsequently filed its Articles of Incorporation with the secretary of state on May 23, 1983.

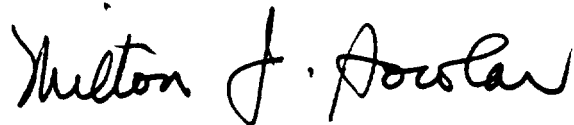
Precision contends either that it was a "de facto" corporation as of the bid opening date or that its bid, at worst, contained a minor informality or irregularity which is waivable under Defense Acquisition Regulation § 2-405 (1976 ed.) (Defense Acquisition Circular No. 76-17, September 1, 1978) since its principals would be bound to honor its bid as partners.

The Corps contends that Precision's bid was nonresponsive under the general rule that an advertised award may not be made to an entity different from that which submitted the bid, citing Martin Company, B-178540, May 8, 1974, 74-1 CPD 234. The Corps further alleges that, unlike the situation in Protectors, Inc., B-194446, August 17, 1979, 79-2 CPD 128, Precision was not a de facto corporation as of the bid opening date under Missouri law.

In Protectors, Inc., supra, we held that a bidding entity which incorporated in Florida 12 days after bid opening would be estopped under Florida law from denying its corporate existence on the bid opening date. We concluded that since there was no question of an attempt by the bidder to retain the option of avoiding the government's acceptance of its bid, award to the bidder would be an award to the same entity which submitted the bid and would thus not undermine the competitive bidding process.

In this case, as of the bid opening date, Mr. Clark had entered into a stock subscription agreement, and Precision had held a meeting of its Board of Directors, had appointed officers, and had submitted a bid on the instant IFB as a corporation. We hold that Mr. Clark and Mr. Yaegel had thus held themselves out as a corporation such that Precision was estopped from denying its corporate existence. See Pacific Intermountain Express Co. v. Best Truck Lines, Inc., 518 S.W.2d 469 (Mo. App. 1974). Accordingly, we find our decision in Protectors, Inc., supra, to be controlling, and we believe that Precision intended to and is clearly bound by its bid as of bid opening.

We sustain the protest. However, because performance has been substantially completed, no remedial action is practical.

A handwritten signature in black ink, reading "Milton J. Fowler". The signature is written in a cursive style with a large, prominent initial "M".

Acting Comptroller General  
of the United States