

DECISION

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

FILE: B-186786

DATE: September 20, 1976

MATTER OF: Service Enterprises, Inc.

61508

98015

DIGEST:

1. Protest against alleged improprieties in solicitation not filed prior to bid opening with either contracting agency or GAO is untimely.
2. There is no legal principle on which an award may be disturbed merely because a bidder might have submitted below cost bid.
3. GAO does not review protests against affirmative determinations of responsibility by contracting officials except in cases of fraud or misapplication of definitive responsibility criteria set out in solicitation. While it is doubtful whether special standard of responsibility relative to manning charts was such definitive criterion, it was nevertheless applied.

Service Enterprises Inc. (Service), has protested the award of a contract made by the Naval Regional Procurement Office (NRPO), Philadelphia, Pennsylvania, under invitation for bids (IFB) No. NO0140-76-B-6536.

Bids were opened on May 26, 1976. An award was made to Artistic Caterers, Inc. (Artistic), on June 21, 1976. By mailgram dated June 21, 1976, Service protested the award to this Office on the following grounds:

1. The IFB was defective by omitting monitoring guidelines in the Food Service Rating Sheet and the Sanitation Rating Form.
2. The price by Artistic is grossly insufficient to meet the intent and purpose of subparagraphs C53 and C56 of section C of the IFB.

The first allegation goes to the adequacy of the specifications. In this regard, section 20.2(b) of our Bid Protest Procedures, 4 C.F.R. part 20 (1976), provides in pertinent part:

B-186786

"(b)(1) Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening.
* * *"

The alleged improprieties in the solicitation were apparent prior to bid opening. Since Service's protest was not filed with either NRPO or this Office until after bid opening, it is untimely and not for consideration on the merits.

In regard to the allegation that Artistic's bid price is insufficient to meet the purpose and intent of subparagraphs C53 and C56, we have repeatedly held that we are aware of no legal principle on the basis of which an award may be precluded or disturbed merely because the low bidder submitted a below cost bid. Parsons Custom Products, Inc., B-185104, November 14, 1975, 75-2 CPD 311.

We believe that to properly reject a bid as being unreasonably low would require a determination that the bidder is not responsible. In this vein, our 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, Incorporated, 54 Comp. Gen. 66 (1974), 74-2 CPD 64; Yardney Electronics Corporation, 54 Comp. Gen. 509 (1974), 74-2 CPD 376.

The subparagraphs which Service contends Artistic does not comply with read as follows:

"C53 AWARD OF CONTRACT

One contract award for all of the services solicited is contemplated. Bidder offering less than all of the services solicited are not acceptable.

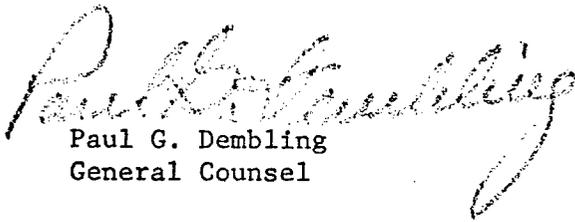
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"C56 SPECIAL STANDARDS OF RESPONSIBILITY

In determining the bidder's responsibility, consideration will be given to whether the bidder's manning charts insure that the total hours offered, including the manning distribution in space/job categories prior to, during, and after meal hours and at peak periods, present an effective, well planned management approach to performance of the services required."

We question whether the special standard of responsibility set out in subparagraph C56 is a specific and objective responsibility criterion so as to allow our review. See Yardney Electric Corporation, supra; Data Test Corporation, 54 Comp. Gen. 499 (1974), 74-2 CPD 365, affirmed 54 Comp. Gen. 715 (1975), 75-1 CPD 138. The interpretation of the manning charts to insure an "effective, well planned management approach to performance of the services required" is one of subjective judgment which essentially turns on the general business judgment of the contracting officer. In any event, the record shows that the requirement concerning the manning charts was applied and Artistic received a favorable recommendation on this and other factors related to responsibility.

Accordingly, we must decline to consider the merits of the protest.


Paul G. Dembling
General Counsel