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DECISION



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

FILE: B-187526

DATE: November 2, 1976

MATTER OF: Arvol D. Hays Construction Company

DIGEST:

Protester alleges that large number of low bids indicates that bidders did not understand scope and complexity of contract or that IFB was defective. However, there is no legal basis to preclude or disturb contract award merely because other bidders may have submitted bids which protester believes are too low. Disparity in bid prices does not automatically indicate defects in IFB.

Arvol D. Hays Construction Company (Hays) protests award to any other firm under invitation for bids (IFB) No. DACA63-76-B-0216 issued by Fort Sam Houston, Texas. The protester claims that other bids were too low in that some bidders apparently underestimated the scope of the work and did not properly consider the manpower and facilities necessary for performance of the contract. Hays alternatively contends that the number of allegedly extremely low bids indicates that the IFB may be defective.

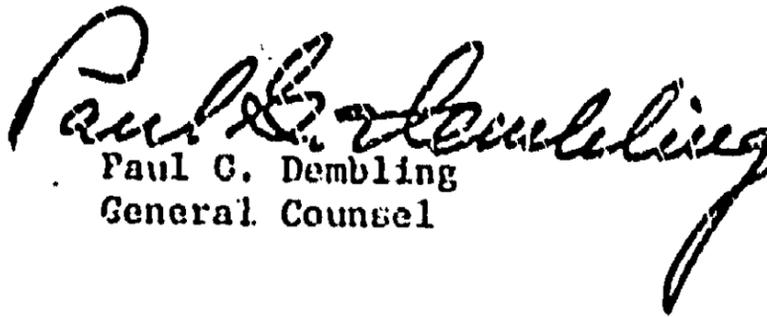
Regarding the allegation that other bid prices were too low to meet the purposes of the contract, we have repeatedly held that we are aware of no legal principle on the basis of which an award may be precluded or disturbed merely because the low bidder submitted a below cost bid. Caltex Engineering Co., B-166525, June 2, 1976, 76-1 CPD 355. To properly reject a bid as being extremely low would require a determination that the bidder was nonresponsible. A.C. Electronics, Inc., B-185553, May 3, 1976, 76-1 CPD 295. While it does not appear that the contracting officer has yet made a determination as to the responsibility of the low bidder, it should be noted that this Office does not review protests concerning affirmative determinations of responsibility, absent allegations of fraud on the part of contracting officials or of the failure to

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apply definitive responsibility criteria. Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 365, affirmed 54 Comp. Gen. 715 (1975), 75-1 CPD 138. While we do consider protests involving negative determinations of the protester's responsibility in order to provide assurance against the arbitrary rejection of bids, affirmative determinations are based in large measure on subjective judgments which are largely within the discretion of the procuring officials who must suffer any difficulties resulting by reason of a contractor's inability to perform.

Hays also contends that the IFB may not have adequately described the scope and complexity of the required work as indicated by the disparity between its bid price and other bid prices. However, while Hays points to the low bids as indicating that the IFB may have been defective, no specific provision of the IFB has been cited in this regard. The fact that there is a wide disparity in bid prices does not automatically indicate that the IFB was defective. In the absence of more specific information, indicating the alleged defects in the IFB and the possible prejudice to one or more bidders resulting therefrom, we are unable to consider this point further. J. C. L. Services, Inc., B-181009, April 16, 1974, 74-1 CPD 198. In any event, it should be noted that a protest involving alleged defects in the solicitation which were apparent prior to bid opening would be untimely at this point. 4. C.F.R. 20.2 (b) (1) (1976).

Accordingly, we must decline to further consider the matter.


Paul G. Dembling
General Counsel