

5801

a 2nd submission
Part II

DECISION



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

FILE: B-191451 DATE: March 24, 1978

MATTER OF: Braswell Shipyards, Inc.

DIGEST:

1. Where protester's initial submission indicates protest is without legal merit, GAO will render decision on matter without requesting report from procuring agency.
2. Low bidder's ability to obtain steel at a lower price than that available to protester because of low bidder's corporate affiliation does not render low bid nonresponsive.
3. Fact that firm may be able to bid lower price than another firm does not preclude Government from taking advantage of low bid since statute and regulations require award on basis of most favorable cost to the Government, provided bid is responsive and bidder responsible.

Braswell Shipyards, Inc. protests the award of a contract under invitation for bids (IFB) N62670-78-B-0019, issued by the Supervisor of Shipbuilding, Mayport Naval Station, Jacksonville, Florida, for the "regular overhaul of the USS Koelsch (FF-1049), to "Bethlehem Shipyard [Bethlehem] * * * a division of Bethlehem Steel" on the basis that Bethlehem is "nonresponsive as their price is based on unfair competition [because] Bethlehem enjoys a lower price for steel as a division of Bethlehem Steel than any other company * * * thereby creating unfair competition, which is discriminatory."

We believe this case falls within the ambit of our decisions which hold that where it is clear from a protester's initial submission that the protest is

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without legal merit, we will decide the matter on the basis of the protester's submission without requesting a report from the procuring activity pursuant to our Bid Protest Procedures, 4 C.F.R. Part 20 (1977). See Western Branch Diesel, Inc., B-190407, December 21, 1977, 77-2 CPD 494 and cases cited therein.

Protester's assertion that the Bethlehem bid is nonresponsive because that firm is able to obtain steel at a lower price, even if true, is clearly without merit. The question of responsiveness of a bid concerns only whether the bidder has unequivocally offered to provide the requested items in total conformance with the terms and specification requirements of the invitation. 46 Comp. Gen. 434 (1966); 17 id. 554 (1938); see Shnitzer, Government Contract Bidding, 237, 238 (1976). Therefore, a bidder's potential ability to obtain raw materials necessary for the performance of the contract at a lower cost than that available to the protester does not render its bid nonresponsive.

Moreover, the fact that one firm may be able to bid a lower price than another firm does not preclude the Government from taking advantage of that low bid. In fact Armed Services Procurement Regulation 2-101 (iv) (1976) requires award to be made "to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, price and other factors considered." This is consistent with the statutory mandate in 10 U.S.C. 2305(c) (1970), which we have uniformly interpreted to require award on the basis of the most favorable cost to the Government, provided the bid is responsive and the bidder responsible. D.E.W. Incorporated, B-181835, December 5, 1974, 74-2 CPD 314.

The protest is summarily denied.

P. J. Kettner
Deputy Comptroller General
of the United States