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DECISION



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

J. Carter
Proc I

FILE: 3-192190

DATE: August 16, 1978

MATTER OF: Systems & Programming Resources Inc.

DIGEST:

1. GAO will not consider protest that award of service contract at too low price to support competitive wage rates constitutes violation of Office of Federal Procurement Policy letter establishing policy against "wage busting" for professional employees. Alleged violations of executive branch policy, as opposed to law or regulation, are not within GAO bid protest function.
2. Fact that low offeror may have submitted below-cost offer does not constitute legal basis for precluding or disturbing contract award.
3. Question of inability of offeror who has presented below-cost offer to perform resulting contract pertains to affirmative determination of offeror's responsibility. GAO no longer reviews affirmative determinations of responsibility absent certain exceptions not present here.
4. Protest is summarily denied where protester's initial submission to this Office fails to allege that award of contract was contrary to law or regulation.

Systems & Programming Resources Inc. (SPRI), has protested the award of a contract to another offeror under request for proposals (RFP) No. CH-FT-78-017 issued by the General Services Administration on March 31, 1978.

SPRI states that the estimated price at which the contract was awarded is not sufficient to support competitive wage rates for the level of employees

specified in the RFP and contends that only inadequate or noncomplying performance will result. In support of this contention, SPRI furnished a table of wage rates times hours requested in the RFP for each type of employee for categories from systems analyst through typist; this table shows an aggregate contract cost of \$689,170, or \$133,485 in excess of the award price of \$555,685. SPRI also argues that the award of the contract at this price constitutes a condonation of "wage busting" in contravention of Policy Letter 78-2, entitled "Preventing 'Wage Busting' for Professionals: Procedures for Evaluating Contractor Proposals for Service Contracts," issued by the Office of Federal Procurement Policy (OFPP) on March 29, 1978.

We note at the outset that the requirements of OFPP Policy Letter 78-2 are an expression of executive branch policy rather than requirements established by law or regulation. We consider alleged violations of such policies not to be within the bid protest decision function of this Office. See Comten Inc. - Request for Reconsideration, B-186983, March 9, 1977, 77-1 CPD 173; Kasper Brothers, B-188276, February 8, 1977, 77-1 CPD 99. In any event, Policy Letter 78-2 establishes an effective implementation date of April 1, 1978, and applies by its terms to "all future solicitations." The policy established in this letter does not, therefore, apply to this solicitation. Consequently, we will not consider this question.

With regard to the allegation that the offer is unreasonably low, we have repeatedly held that the mere fact that an offeror may have submitted a below-cost offer does not constitute a legal basis for precluding or disturbing a contract award. Composition Roofers Union Local 8, B-187332, December 17, 1976, 76-2 CPD 507.

As regards the issue of the inability of an offeror who has submitted a below-cost offer to perform a resultant contract, our Office has discontinued the practice of reviewing protests involving a contracting officer's affirmative determination of the responsibility of a contractor except in cases involving actions by procurement officials which are tantamount to fraud, or where the solicitation contains definitive responsibility criteria which allegedly have not been applied. Central Metal Products, Inc.,

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54 Comp. Gen. 66 (1974), 74-2 CPD 64. Since the responsibility of the low offeror has not been challenged on either of these bases, we will not review the matter.

In consideration of the foregoing and after reading the protester's initial submission to this Office in the light most favorable to the protester, we find it demonstrates affirmatively that SPRI is not entitled to the relief claimed since no allegation has been made that the award of the contract was contrary to law or regulation. Accordingly, the protest is summarily denied. See Hawthorn Melody, Inc., B-190211, November 23, 1977, 77-2 CPD 406; Alaska Industrial Coating, Inc., B-190295, October 12, 1977, 77-2 CPD 290.

R. J. Keenan
Deputy Comptroller General
of the United States