

N. Hantzer

PL II

14383

DECISION



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

FILE: B-199398

DATE: July 23, 1980

MATTER OF: Arkansas Valley Dredging Co.

DIGEST:

1. Protest which alleges mistake in apparent low bid will not be considered pursuant to GAO Bid Protest Procedures because prospective contracting parties, not protester, must assert rights and bring forth all necessary evidence to resolve mistake-in-bid question.
2. Low bid which does not take exception to solicitation requirements is not nonresponsive merely because bid is unusually low or because bidder may not have necessary equipment available to perform work.
3. Protest concerning low bidder's ability to meet contractual requirements at bid price will not be considered as GAO will not review affirmative determination of responsibility except in circumstances not applicable here.

Against

Arkansas Valley Dredging Company (Arkansas) *[pro-* tests ~~the proposed award of a contract~~ for dredging to Midwest-Souter (Midwest), the low bidder, under solicitation No. DACW66-80-B-0065, issued by the Army Corps of Engineers.

Arkansas alleges that the gross disparity between Midwest's low bid and the other bids should have put the contracting officer on constructive notice of an error in the low bid. Midwest bid \$685,681.11 while Arkansas was the second low bidder at \$1,062,975.60. Although a preaward warning of possible mistake in another's bid could be sufficient cause for the contracting officer to seek verification of that bid, we do not believe a protester should be heard to argue the possibility of a mistake in the bid

~~011413~~ 112861

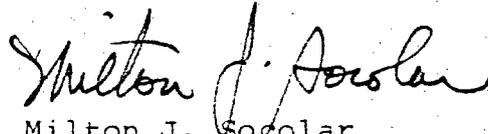
price because the parties to the prospective contract, not the protester, must assert rights and bring forth all evidence necessary to resolve a possible mistake. Engineering Research, Inc., B-187067, August 6, 1976, 76-2 CPD 134. The agency has informed us that they have requested verification from the low bidder. Accordingly, we will not consider or decide this issue pursuant to our Bid Protest Procedures, 4 C.F.R., Part 20 (1980).

Arkansas asserts that Midwest's bid should be rejected as nonresponsive because its low price indicates Midwest fails to understand the requirements of the solicitation and because Midwest has committed the dredge named in its bid to perform work under another Government contract. Unless something on the face of a bid limits, reduces or modifies the obligation of a prospective contractor to perform in accordance with the invitation, the bid must be considered responsive. Science Applications, Inc., B-193479, March 8, 1979, 79-1 CPD 167. Since Arkansas has not alleged that Midwest's bid did not conform with the requirements of the invitation, we have no basis to conclude that Midwest's bid is nonresponsive. Midwest, therefore, will be bound to perform in accordance with the terms and conditions of the invitation. Radio TV Reports, B-192958, July 12, 1979, 79-2 CPD 27.

Arkansas contends that Midwest will not be able to perform the contract at its allegedly unreasonably low bid price and that it would be unconscionable and not in the Government's best interest to make award to Midwest. The mere fact that a bidder may have submitted a below-cost bid does not constitute a legal basis for precluding the contract award. Eastern Brokers, Inc. and Jan Pro Corporation, B-193774 January 31, 1979, 79-1 CPD 75. Arkansas' assertion that Midwest will not be able to perform (because of both Midwest's low bid price and the alleged unavailability of the dredge) raises a question of Midwest's responsibility. This Office does not review protests of affirmative determinations of responsibility unless fraud on the part of the procuring officials

is shown, or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Eastern Brokers, Inc. and Jan Pro Corporation, supra. Neither exception is applicable here as it does not appear that the agency has yet made a determination regarding Midwest's responsibility.

The protest is dismissed.


Milton J. Socolar
General Counsel