

**DECISION**



*Allow*  
*PL 2*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

*[Protest Alleging That Accepted Offer Was Unreasonable]* <sup>15452</sup>

FILE: B-201064

DATE: November 18, 1980

MATTER OF: R. E. Skinner & Associates

*D1603944 Low*

**DIGEST:**

1. Protest alleging defective wage determination which is filed after closing date for receipt of proposals is untimely and not for consideration on merits.
2. Allegation that accepted offer is so unreasonably low that contractor will be unable to perform and meet Service Contract Act requirements involves challenge to affirmative determination of responsibility which GAO does not review except in circumstances not applicable here.
3. Submission of below cost offer is not basis for precluding acceptance of offer. Allegations regarding possible violation of anti-trust laws properly are for referral to Department of Justice.

R. E. Skinner & Associates protests the award of a contract under solicitation No. R6-3-80-83 issued by the Department of Agriculture, U.S. Forest Service to Bishop Surveying. Skinner primarily objects to Bishop's very low price, questioning how Bishop can perform at the contract price and meet Service Contract Act requirements and asserting that Bishop's bid price constitutes predatory pricing in violation of anti-trust laws. Skinner also questions the Department of Labor wage rate that was included with the solicitation.

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The last allegation is untimely and will not be considered. Our Bid Protest Procedures require protests based on alleged improprieties in a solicitation which are apparent prior to closing date for receipt of proposals to be filed prior to that date. 4 C.F.R. § 20.2(b)(1) (1980). Any alleged deficiency in the wage determination therefore should have been protested prior to the closing date. CSA Reporting Corporation, 59 Comp. Gen. 338 (1980), 80-1 CPD 225.

With respect to Bishops' ability to perform at the bid price, that involves a matter of bidder responsibility. We do not consider protests of affirmative determinations of responsibility unless either fraud is alleged on the part of procuring officials or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Automated Informational Retrieval Systems, Incorporated, April 21, 1980, 80-1 CPD 275. Neither exception is applicable here.

Moreover, we point out that the submission of a below-cost offer is not a basis for rejecting the offer. See, e.g., 49 Comp. Gen. 311 (1969); Urban Enterprises, B-200858, October 27, 1980, 80-2 CPD \_\_\_\_\_. In this connection, and with respect to the predatory pricing allegation, it has been held that the Robinson-Patman Act, 15 U.S.C. 13 (1976), which prohibits the selling of goods at prices below those normally charged for the purpose of destroying competition, is not applicable to Government contracts. 38 Op. Atty. Gen. 539 (1936); B-151577, July 16, 1963. In any event, we do not consider allegations of anti-trust violations. If the protester has evidence that Bishops's pricing may violate the anti-trust laws, it should be referred to the Department of Justice. Swiss-Tex Incorporated, B-200809, B-200810, October 31, 1980, 80-2 CPD \_\_\_\_\_.

The protest is dismissed.

*Harry W. Socolar*  
for Milton J. Socolar  
General Counsel