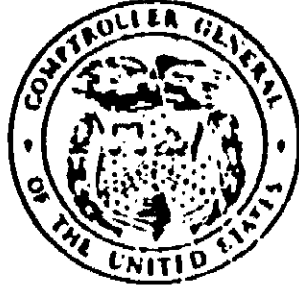


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DECISION



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

FILE: B-205512

DATE: December 8, 1981

MATTER OF: Complete Building Maintenance Co., Inc.

DIGEST:

1. Allegation by unsuccessful bidder that other bids were too low because bidders will not be able to comply with the solicitation's alleged minimum manning requirements is not a basis upon which the award of a contract may be challenged. Rejection of a bid as too low requires the agency to find the bidder nonresponsive.
2. GAO does not review affirmative determinations of responsibility unless fraud on the part of procuring officials is shown or the solicitation contains definitive responsibility criteria which have allegedly not been met.

Complete Building Maintenance Co., Inc. protests the award of a contract for janitorial services to D'Hani and Co., under solicitation No. EME-B-0015, issued by the Federal Emergency Management Agency. Complete, the highest bidder, alleges that the bids of seven other bidders should be declared nonresponsive since the bids were below the alleged minimum manning requirements set forth in the solicitation if the wages to be paid are to comply with the Department of Labor wage rate determination under the Service Contract Act, 41 U.S.C. § 351 (1976). The protester also contends that the other bidders failed to include certain other costs in calculating their bids. Complete does not allege that either D'Hani or any of the other bidders took any specific exception to the solicitation's requirements.

We have held that the submission of a bid which may be below cost does not itself constitute a legal basis for precluding a contract award. Columbia Loose-Leaf Corporation, B-193659, January 23, 1979, 79-1 CPD 45. Proper rejection of a bid as too low requires a determination that the bidder is nonresponsive. See Futronics Industries, Inc., B-185896, March 10, 1976, 76-1 CPD 169. Here, the award of the contract to D'Hani is regarded as

an affirmative determination of that firm's responsibility. 41 C.F.R. 1-1-1.1204(a) (1980). This Office does not review protests against affirmative determinations of responsibility unless either fraud is shown on the part of the procuring officials or the solicitation contains definitive responsibility criteria which allegedly have not been met. Consolidated Elevator Company, B-190929, March 3, 1978, 78-1 CPD 166.

The protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel