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

FILE: B-206910.2 DATE: May 10, 1982

MATTER OF: Tombs & Sons, Inc.

DIGEST:

1. GAO will not consider a protest of a bidder's small business size status, because the Small Business Administration, not GAO, has statutory authority to determine small business size status for Federal procurements.
2. Allegation that a bid price is too low to permit satisfactory performance does not provide a valid basis to challenge an award to a bidder that is determined to be responsible.
3. Incumbent's protest that another bidder gained an unfair competitive advantage under the solicitation for the new contract because it learned what the protester's total receipts were under the prior contract is denied, since such information generally is available to the public and both parties had the same opportunity to offer prices for the current contract based on knowledge of prior contract prices and receipts.

Tombs & Sons, Inc. protests any award to Integrity Management International, Inc., the low bidder under Army invitation for bids (IFB) No. DABT 31-82-B-0042. The IFB, to provide food services at Fort Leonard Wood, Missouri, was set aside for small business concerns. The protester contends that Integrity does not meet the small business size standard listed in the IFB, and that its bid price is too low to permit Integrity to perform the contract requirements. We

Dismiss these grounds of protest. Tombs, the incumbent contractor, also argues that Integrity had an unfair competitive advantage because, through a protest that Integrity filed with the Small Business Administration (SBA) against Tombs' size status with respect to another solicitation, Integrity learned what Tombs' total receipts were under the prior contract. We summarily deny this protest ground.

The SBA, not this Office, has statutory authority to determine matters of small business size status for Federal procurements, 15 U.S.C. § 637(b) (Supp. III 1979); Kelley Name Pin Co., Inc., B-204735, September 22, 1981, 81-2 CPD 242; Any size status challenge must be made according to SBA procedures, see Defense Acquisition Regulation (DAR) § 1-703(b)(1) (1976 ed.), rather than through a bid protest. Technical Food Services, Inc., B-203742.2, September 15, 1981, 81-2 CPD 219. Therefore, we will not consider the issue of Integrity's size status. See Compulaser Incorporated, B-206834, April 12, 1982, 82-1 CPD _____.

Concerning Tombs' allegation that Integrity's bid price is too low, the fact that a bid may be below cost does not provide a valid basis to challenge an award to a firm that is determined responsible, and such a determination must be made before any contract award. See Technical Food Services, Inc., supra. The procurement regulations, however, do caution that where there is reason to believe that a responsible firm has "bought-in," the contracting officer should assure that amounts the contractor excluded in developing its original contract price are not recovered in the pricing of change orders or otherwise. DAR § 1-311.

Finally, we deny Tombs' protest that Integrity gained an unfair advantage through the disclosure of Tombs' receipts under the previous year's contract. Such information generally is available to the public, and since

both firms had the same opportunity to offer prices for the current contract based on knowledge of prior contract prices and receipts, we fail to see how Integrity enjoyed an unfair advantage.

The protest is dismissed in part and summarily denied in part.

Milton J. Amster
for, Comptroller General
of the United States