

Holder
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DECISION



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

FILE: B-210799, B-210799.2

DATE: March 8, 1983

MATTER OF: All Weather Contractors, Inc.; Bradley
Trucking Company

DIGEST:

1. Allegation that firm is not a qualified minority business under the District of Columbia Minority Contracting Act (act) is for consideration by the District of Columbia under provisions of the act.
2. Contention that a bid price is below cost or a "buy in" bid does not provide a valid basis to challenge an award to a bidder that is determined responsible, and such a finding is required prior to an award.

All Weather Contractors, Inc. (AWCI), and Bradley Trucking Company protest the proposed award of a contract to Hardy and Sons (H&S), the low bidder under solicitation No. 0028-AA-23-0-3-MR, issued by the District of Columbia (D.C.). Both protesters allege that H&S is not a registered or otherwise eligible minority business enterprise under D.C. law and, thus, is not eligible for award under this procurement, which is designated for a sheltered market, that is, a procurement limited to minority bidders certified pursuant to the D.C. Minority Contracting Act of 1977 (act), as amended, D.C. Code §§ 1-1141 through 1-1151, 1-1104, 1-1107 and 1-1110 (1982). AWCI also alleges that H&S's bid is nonresponsive because its price for two items solicited is unrealistic and its overall bid price is too low when compared to other bidders.

We dismiss the protests.

Regarding H&S's status as a minority business eligible for award under this sheltered market procurement, we have stated that the proper forum for the resolution of this matter is the District's Minority Business Opportunity Commission (Commission), not GAO. Section 9(e) of the act allows any person to prefer charges of a violation of the act to the Commission against any applicant for registration or contractor already registered. The section provides for an expedited hearing by the Commission on the charges and for

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revocation of the registration, or other action, as determined proper. Thus, this issue is not for our consideration. S&N Trucking Company; Condor Transportation Company, B-197125, B-197125.2, January 28, 1980, 80-1 CPD 75.

AWCI also alleges that H&S's bid price on two items is unrealistic and its total bid price is too low and, thus, renders the bid nonresponsive. The fact that a bid may be below cost or constitutes a "buy-in" 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. 48 Fed. Reg. 1932 (1983) (to be codified 4 C.F.R. § 21.3(g)(4)); Tombs & Sons, Inc., B-206810.2, May 10, 1982, 82-1 CPD 447; Biospherics, Inc.-- Reconsideration, B-203419.4, March 16, 1982, 82-1 CPD 246.

We dismiss the protests.

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