

DECISION

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

FILE: B-209941**DATE:** May 24, 1983**MATTER OF:** United Contract Services, Inc.**DIGEST:**

The submission of a below cost bid does not preclude award to that bidder if the contracting officer judges that the bidder is responsible, that is, that it can meet the contract's requirements at the bid price. Moreover, GAO will not review an affirmative determination of responsibility absent a showing of possible fraud by contracting officials or that the solicitation contained a definitive responsibility criterion that was misapplied.

United Contracting Services, Inc. (UCS) protests the award of a contract to any firm other than itself under invitation for bids (IFB) No. F41685-82-B-0021 issued by the Air Force for vehicle operation and maintenance services at Laughlin Air Force Base. UCS was the high bidder, but alleges that all other firms submitted below cost bids. The Air Force, however, intends to award the contract to the second low bidder. (The low bidder was permitted to withdraw its bid.)

We dismiss the protest.

UCS is the incumbent contractor, having been awarded a similar contract in December 1980. The new contract is for a 9-month base period with two 1-year options. The IFB indicated that bids would be evaluated for award by adding the total price for all options to the total price for the base contract period.

Bid opening date was October 14, 1982. A total of 10 bids were received, and Total Maintenance, Inc. was the apparent low bidder. Subsequently, Total Maintenance withdrew its bid. Maytag Aircraft Corp. was the next low bidder with a bid of \$698,471 for the base period and

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\$947,676 and \$978,408 for the respective option years. UCS bid \$1,234,737 for the base period and \$1,747,911 and \$1,867,222 for the option periods. UCS states that it did not file a protest immediately after bid opening because, based on the submitted bids, UCS expected the Air Force to find Maytag and all other bids too low. When it became apparent, however, that the Air Force did in fact intend to award the contract to another bidder, UCS filed this protest with our Office on November 19, 1982.

The Air Force argues that UCS's protest is untimely, since UCS knew or should have known the grounds for its protest no later than the public bid opening date of October 14, 1982, and should have filed the protest within 10 working days after that date. Timeliness, however, is not always measured from bid opening. Grounds for protest do not arise until the protester has learned of agency action or intended action that is inconsistent with what the protester believes to be incorrect or inimical to its interest. Werner-Herbison-Padgett, B-195956, January 23, 1980, 80-1 CPD 66. There is no indication in the record that UCS did not protest the matter within 10 working days of the time it learned that the Air Force did intend to award the contract to someone other than UCS. Thus, resolving any doubts with respect to timeliness in favor of the protester, we find the protest timely. Ikard Manufacturing Company, B-192578, February 5, 1979, 79-1 CPD 80.

UCS alleges that Maytag has submitted a bid that is too low essentially because Maytag is not fully aware of the requirements of the contract. ¹

¹ UCS refers to Maytag's bid as "unbalanced." Unbalancing, however, involves whether each bid item carries its share of the cost of the work plus profit, or whether the bid is based on nominal prices for some work and enhanced prices for other work, so that there is a reasonable doubt that award to the bidder will not result in the lowest ultimate cost to the Government. See Propserv Incorporated, B-192154, February 28, 1979, 79-1 CPD 138. It is clear from UCS's submissions that the protest involves below cost bidding, not unbalancing.

We frequently have stated that the contention that the low bidder submitted a below cost bid does not in itself provide a valid basis to challenge the proposed award of a contract. See Liberty County Refuse Company, B-204549, December 23, 1981, 81-2 CPD 491. Acceptance of the bid will bind the awardee to perform at the price offered in the bid, and the fact that it may incur a loss at the bid price thus does not justify the rejection of an otherwise acceptable bid. See American Mutual Protective Bureau, B-200570, October 22, 1980, 80-2 CPD 311. In this regard, Defense Acquisition Regulation (DAR) § 1-311 (1976 ed.) cautions that where a below cost bid is suspected, a contracting officer should assure that amounts excluded from the contract price are not recovered in the pricing of change orders, or in follow-on procurements.

UCS's allegation that Maytag's bid is unreasonably low, and the protester's suggestion that Maytag does not understand the scope of work, actually concern Maytag's responsibility, that is, its ability to perform the contract at the bid price. See Markhurd Aerial Surveys, Inc., B-210108, January 17, 1983, 83-1 CPD 51; Gupta Carpet Professionals, Inc., B-204260, August 24, 1981, 81-2 CPD 172. The contracting officer must find Maytag responsible before awarding the firm the contract, DAR § 2-407, and we do not review affirmative responsibility determinations except where fraud or misapplication of definitive responsibility criteria is alleged, which is not the case here. See Ellsworth Street Associates, B-206859, June 21, 1982, 82-1 CPD 611. The reason for our limited role is that responsibility determinations normally are based on the subjective business judgment of the procuring officials, and thus are not readily susceptible to reasoned review. See Mayfair Construction Company, 58 Comp. Gen. 105 (1978), 78-2 CPD 372.

The protest is dismissed.

Harry R. Van Cleve
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