

31106

4920109
PL-D

DECISION



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

FILE: B-218575

DATE: May 9, 1985

MATTER OF: Adept Waste Systems, Inc.

DIGEST:

1. Allegation that the low bid was unreasonably low or a "buy-in" does not provide a valid basis on which to challenge a contract award. Such a protest questions the bidder's responsibility, which GAO does not review except in limited circumstances.
2. Whether a bidder in line for award may have engaged in collusive bidding is a matter for the contracting officer to consider in determining the bidder's responsibility. Furthermore, the Department of Justice and not GAO has jurisdiction over allegations of collusive bidding practices.

Adept Waste Systems, Inc. (Adept), protests the award of a contract under solicitation No. F41800-85-B-0082 issued by the Air Force for refuse collection and disposal at Kelly Air Force Base, Texas. Adept, the third low bidder under the solicitation, protests award of a contract under the solicitation to either Gonzalez Sanitation (Gonzalez) or to Moore Service, Inc. (Moore), respectively, the low and second low bidders.

Adept alleges that Gonzalez is not a responsible bidder because its bid is unreasonably low. Adept advises that the prior year's contract price for these services was \$517,908.43 in contrast to Gonzalez's bid of \$207,431.29, some 60 percent less. 1/ The protester asserts that since Gonzalez could not obtain the necessary equipment and perform at this price and would in fact be "buying in" on this solicitation, the contracting officer could not in good faith and absent fraud find Gonzalez to be a responsible bidder.

The fact that a bid may be below cost or a "buy-in" does not provide a valid basis to challenge an award to a

1/ Adept indicates that the solicitation was for a multiyear procurement and that Gonzalez's bid price was \$240,611.92 per year for the second and third years.

firm which is determined to be responsible. All Weather Contractors, Inc.; Bradley Trucking Co., B-210799, B-210799.2, Mar. 8, 1983, 83-1 C.P.D. 238. Also see Ambulancias de Emergencias, Inc., B-216936, Nov. 26, 1984, 84-2 C.P.D. ¶ 562. Whether the bidder will be able to meet contract requirements in light of its offered price is a matter of responsibility to be determined by the contracting officer. We will not disturb a contracting officer's affirmative determination that a firm is responsible absent a showing of possible fraud or bad faith on the part of the contracting officer or that definitive responsibility criteria were not applied. New Texas Corp., B-216813, Nov. 6, 1984, 84-2 C.P.D. ¶ 509. Neither exception is present here. Adept has provided no evidence to support its allegation that the contracting officer could not in good faith or absent fraud find Gonzalez responsible. We wish to point out that a protester bears a heavy burden of proof when alleging bad faith on the part of government officials and must show by virtually irrefutable proof that these officials had a specific and malicious intent to injure the protester. Ebonex, Inc., B-213023, May 2, 1984, 84-1 C.P.D. ¶ 495.

Adept also argues that both Gonzalez's and Moore's bids should be rejected on the basis that the two companies "engaged in collusive bidding practices." The basis for this contention is Adept's assertion that Gonzalez is owned and operated by a former senior manager of Moore and has in the past entered into an arrangement with Moore whereby Moore provides Gonzalez with the equipment and support necessary to perform its contracts. 2/ Adept presumes that Gonzalez has entered into an agreement with Moore to obtain the necessary equipment to perform under the contract.

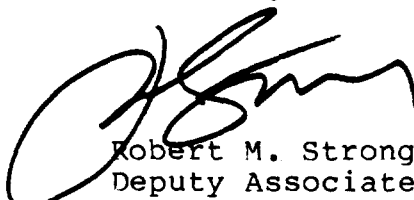
Collusive practices involve action among bidders to set prices or to restrict competition by inducing others not to submit bids. See Towson Industrial Maintenance Corp., B-199349, Oct. 7, 1980, 80-2 C.P.D. ¶ 248. Adept has not presented any evidence to support its allegation that Gonzalez and Moore attempted to set prices or restrict competition under the solicitation. As for the alleged relationship between the owner of Gonzalez and Moore, Gonzalez has advised us that it is not owned or operated by a former employee of Moore. We need not determine whether

2/ Adept advises that it has also filed a size status protest against Moore.

the owner of Gonzalez was formerly employed by Moore since such a relationship would not by itself indicate collusion between bidders. See Aarid Van Lines, Inc.--Reconsideration, B-206080.2, Mar. 15, 1982, 82-1 C.P.D. ¶ 239, and Towson Industrial Maintenance Corp., B-199349, supra, 80-2 C.P.D. ¶ 248 at 2. Furthermore, the fact that there may be a business relationship between Gonzalez and Moore, e.g. the renting of equipment, does not in any way support an allegation of collusive bidding practices.

Lastly, we note that whether a bidder in line for award may have engaged in collusive bidding is a matter of the bidder's responsibility which is for determination by the contracting officer. In addition, the Department of Justice and not our Office has jurisdiction over allegations of collusive bidding practices. See Keystone Elevator Co., Inc., B-215546, July 20, 1984, 84-2 C.P.D. ¶ 72.

The protests are dismissed.



Robert M. Strong
Deputy Associate General
Counsel