

DECISION



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

FILE: B-220006.2

DATE: September 9, 1985

MATTER OF: International Service Corporation

DIGEST:

Protest that apparent low bid should be rejected as unbalanced is dismissed for failure to state a valid basis for protest where the protester says only that the bidder's price for an item is too low, but does not allege that the bid contains enhanced prices for other items or that acceptance of the bid might not result in the lowest cost to the government. Such a protest is actually a challenge to the apparent low bidder's responsibility, a matter that GAO generally does not review.

International Service Corporation protests any award of a contract to R.G. & B, Inc. under solicitation No. 65503-85-B-0035, which Elison Air Force Base, Alaska, issued for maintenance of base family housing. We dismiss the protest.

The protester argues that the agency must reject the apparent low bid submitted by R.G. & B, Inc. because that firm's bid for item No. 001--furnishing all labor, materials and transportation necessary to maintain 1163 housing units, mechanical rooms and garages--is "significantly less than cost." The protester alleges that R.G. & B, Inc. cannot perform the work required by this item for the amount that it bid, which the protester says is 34 percent lower than the current contract for this work despite a 30 percent increase in wages alone in the 3 years since that contract was awarded. The protester contends that the R.G. & B, Inc. bid should be declared nonresponsive, citing in support of this contention a solicitation provision that states that a bid that is materially unbalanced as to prices for basic and option quantities may be rejected as nonresponsive. The bid submitted by R.G. & B, Inc. is

unbalanced, implies the protester, because its price for basic bid item No. 001 is only 48 percent of its total bid while this item historically has constituted between 60 and 70 percent of the work to be performed.

A determination of whether an allegedly unbalanced bid is nonresponsive involves a two-step analysis. The bid first must be mathematically unbalanced in that it contains nominal prices for some items and enhanced prices for others. A mathematically unbalanced bid may be accepted for award. Central Texas College, B-216388, Sept. 26, 1984, 84-2 CPD ¶ 361. To be rejected as nonresponsive, a mathematically unbalanced bid must also be materially unbalanced, which means there must be a reasonable doubt that acceptance of the bid ultimately will result in the lowest cost to the government. International Shelter Systems, Inc., B-218167, May 15, 1985, 64 Comp. Gen. ____, 85-1 CPD ¶ 549.

The protester has not made a case for viewing the bid from R.G. & B, Inc. as materially unbalanced. While the protester contends that the prices submitted by that firm for the basic item No. 001 may be only nominal, the protester does not allege that other prices in the bid are enhanced. Moreover, even if it could be shown that the bid is mathematically unbalanced, there is not even an allegation that the bid is materially unbalanced, that is, that it may not result in the lowest cost to the government. See Porta-John Corp., B-218080, Mar. 19, 1985, 85-1 CPD ¶ 325.

Although the protester has styled its protest as one questioning the responsiveness of an allegedly unbalanced bid, the thrust of the protest is that the protester believes that, at least with respect to item No. 001, the bid submitted by R.G. & B, Inc. is below cost. The submission of a below-cost bid is not illegal, however, and the government cannot withhold award merely because a responsive bid is below cost. Alan Scott Industries, B-219096, June 20, 1985, 85-1 CPD ¶ 706. Whether a low price is so low that the bidder will not be able to perform the contract satisfactorily is a question concerning the bidder's responsibility, Libby Corp., B-218367.2, Apr. 10, 1985, 85-1 CPD ¶ 412, a question the contracting officer must resolve in the affirmative prior to award. Federal Acquisition Regulation, 48 C.F.R. § 9.103 (1984). This

Office does not review affirmative responsibility determinations unless it is shown that the determination may have been made fraudulently or in bad faith or that definitive responsibility criteria stated in the solicitation may not have been met. Bid Protest Regulations, 4 C.F.R. § 21.3(f)(5) (1985). The protester has alleged neither of these exceptions here.

Because the protester has failed to state a valid basis for protest, the protest is dismissed. 4 C.F.R. § 21.3(f); Command Systems, B-218093, Feb. 15, 1985, 85-1 CPD ¶ 205.



Ronald Berger
Deputy Associate
General Counsel