



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Peter Gordon Co.  
File: B-224011  
Date: September 15, 1986

---

### DIGEST

1. Protest alleging that two lowest bids were nonresponsive because their prices would not cover their costs is dismissed because the allegation concerns responsibility, not responsiveness, and the General Accounting Office does not review affirmative determinations of responsibility in the absence of conditions not present here.
2. Protest contending that agency should order a preaward survey to determine if the two lowest bidders' prices include all costs concerns bidder responsibility and the depth of investigation necessary to make a determination thereon. This is a matter primarily within the broad discretion of the contracting officer who, prior to awarding the contract, must make an affirmative determination of responsibility. General Accounting Office will not review such a determination in absence of conditions not present here.
3. Where the third lowest bidder protests the responsiveness of the second lowest bid but presents no evidence that the lowest bid is nonresponsive or otherwise ineligible for award, General Accounting Office will not consider the merits of the allegation, since the protester would not be in line for the award even if its protest were sustained.

---

### DECISION

Peter Gordon Co. protests the award of a contract to any firm other than itself by the Department of the Navy under invitation for bids (IFB) No. N62477-84-B-0460. The IFB solicited bids for the repair of roofs and figures at the United States Naval Academy. According to the protester, the contractor will be required to furnish approximately 22 tons of granite which will be carved into ship sculptures for the main roof of Mahan Hall. Gordon contends that the two lowest bids are nonresponsive because they do not include the cost of the

036718

granite in their bid prices. Gordon further contends that a preaward survey of the two lowest bidders should be conducted because their bids are below cost and neither bidder will be able to complete the project at its bid price. Finally, Gordon argues that the second lowest bid is also nonresponsive because it did not acknowledge receipt of a material amendment.

We dismiss the protest.

Gordon asserts that the government's estimate for the project was \$356,620, that the lowest bid received was \$552,210, the next lowest bid was \$606,733 and that its own bid was \$1,244,000. Gordon argues that its contention that its competitors' bids do not include the cost of the granite "can be verified by a careful review of the Specifications in conjunction with an inferentially-based analysis of their bids by one having knowledge of the costs to be incurred. . . ."

Gordon's protest provides no basis to consider the two lowest bids nonresponsive. Responsiveness involves whether the bid as submitted reflects an unequivocal offer to provide the supplies or services specified in the solicitation, so that acceptance of the bid would bind the contractor to meet the government's needs in all significant respects. Power Test, Inc., B-218123, Apr. 29, 1985, 85-1 CPD ¶ 484. Gordon does not, however, contend that either of the lowest bidders took any exception to the terms and conditions of the IFB.

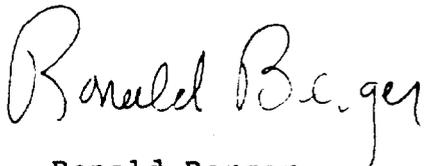
The fact that Gordon's competitors may have submitted bid prices that will not cover their costs provides no basis for a protest. Ambulancias de Emergencias, Inc., B-216936, Nov. 26, 1984, 84-2 CPD ¶ 562. A bidder's ability to perform the contract at the price it bid is a matter of responsibility for the agency to determine before contract award. K & P Inc., B-219608, Aug. 1, 1985, 85-2 CPD ¶ 121. Our Office will not review an agency's affirmative determination of responsibility in the absence of a showing of possible fraud or bad faith by the procuring officials or that definitive responsibility criteria may not have been met. Environmental Aseptic Servs. Admin., B-218239, Mar. 5, 1985, 85-1 CPD ¶ 276. Gordon has submitted no evidence indicating that any of these exceptions should be applied here.

Gordon's contention that the Navy should order a "preaward audit" of the two lowest bidders also raises an issue of bidder responsibility since it involves the depth of the investigation necessary to make a responsibility determination. This is a matter primarily within the broad discretion

of the contracting officer who is not required to have a preaward survey conducted for each procurement. Sermor Inc.--Reconsideration, B-219132.2, Oct. 23, 1985, 85-2 CPD ¶ 444.

Gordon also alleges that the second lowest bidder failed to acknowledge receipt of a material amendment to the IFB and is therefore nonresponsive. In view of the fact that there is no evidence that the lowest bid is nonresponsive or otherwise ineligible for award, we need not consider the merits of this allegation, since the contract will be awarded to the lowest bidder and Gordon will not be in line for the award even if we sustain the protest on this issue. See Eastman Kodak Co.--Request for Reconsideration, B-220646.2, Mar. 24, 1986, 86-1 CPD ¶ 289.

The protest is dismissed.



Ronald Berger  
Deputy Associate  
General Counsel