



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Atlantic-Corey Crane Service, Inc.

File: B-224253

Date: December 4, 1986

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### DIGEST

1. Bidder's failure to complete contractor responsibility questionnaire does not require rejection of bid as nonresponsive since information concerning responsibility may be submitted any time prior to contract award.
2. Whether a bidder is capable of performing a contract concerns the firm's responsibility, and General Accounting Office will not review a contracting officer's determination that a bidder is responsible except in limited circumstances.
3. The government's acceptance of a below-cost bid by a responsible firm is not legally objectionable.
4. Protest against the procuring agency's acceptance of an allegedly unbalanced bid is denied where there is no allegation or indication that the award will not result in the lowest ultimate cost to the government.
5. There is nothing objectionable in procuring agency permitting low bidder to reduce its bid further, to actual total of line items, based on mistake.

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### DECISION

Atlantic-Corey Crane Service, Inc. (ACC), protests the proposed award of a contract to John D. Hartnett and Son, Inc. (Hartnett), under invitation for bids (IFB) No. FWS5-86-033, issued by the United States Fish and Wildlife Service, Department of the Interior. We deny the protest in part and dismiss it in part.

The IFB, issued for the construction of water control structures, required bidders to submit prices for 15 line items and provided that the award would be made to the low responsible bidder based on the lowest aggregate total. The

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IFB also required bidders to complete and submit a contractor responsibility questionnaire concerning the bidder's past performance and financial resources. Four bids were received, including the low bid of \$420,008.25 from Hartnett and ACC's second low bid of \$477,835. In reviewing the bids, the agency found that the total of the 15 line item costs in Hartnett's bid was \$407,408.25 rather than the \$420,008.25 total indicated in the bid. The agency called Hartnett, and the firm verified that the line item prices were correct and that the true intended total was \$407,408.25. Because sufficient funds are not available, no contract under this solicitation has been awarded. If the funds become available, the agency intends to award the contract to Hartnett.

ACC protests that Hartnett's bid should be rejected as nonresponsive because Hartnett failed to complete the financial resources portion of the contractor responsibility questionnaire; that Hartnett is a nonresponsible firm and thus ineligible for the award; that Hartnett's bid should have been rejected because of the pricing error it contained; and that Hartnett submitted an unbalanced bid as demonstrated by Hartnett's low prices for line items 7 (\$1), 8 (\$35,777), 9 (\$39,500) and 12 (\$0.25), which are substantially below the other bidders' prices for these line items.

Whether a bidder has the financial resources to perform a contract concerns the firm's responsibility, see Merret Square, Inc., B-220526.2, Mar. 17, 1986, 86-1 C.P.D. ¶ 259, rather than bid responsiveness, which concerns a bidder's unequivocal promise, as shown on the face of the bid, to provide the exact items or services requested by the IFB. Spectrum Communications, B-220805, Jan. 15, 1986, 86-1 C.P.D. ¶ 49. An agency may permit a prospective awardee a reasonable period of time after bid opening to supply information related to responsibility since the contract award, and not bid opening, is the critical time for determining the firm's ability to perform. See Base-Operation-Management-Service Inc., B-218223, Feb. 26, 1985, 85-1 C.P.D. ¶ 242. Consequently, Hartnett's failure to complete the financial portion of the contractor responsibility questionnaire did not require the agency to reject Hartnett's bid.

ACC suggests that Hartnett is not a responsible firm because Hartnett never has performed a contract of this magnitude. Before awarding a contract, the contracting officer is required to make an affirmative determination of the prospective awardee's ability to perform. Our Office will not review a contracting officer's affirmative determination of responsibility absent a showing of possible fraud or bad faith on the part of procurement officials or an agency

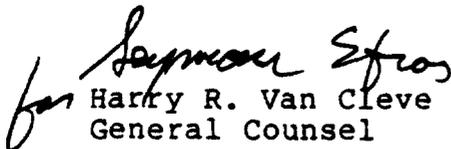
failure to apply definitive responsibility criteria that were stated in the solicitation. McNaughton Book Service, B-221299, Apr. 4, 1986, 86-1 C.P.D. ¶ 326. Since there is no indication that these exceptions apply here, this basis of protest will not be considered.

ACC's allegation that Hartnett's bid is unbalanced is without merit. Even where a bid is mathematically unbalanced--where the bid is based on nominal prices for some items and enhanced prices for others--it may be accepted for award unless there is a reasonable doubt that award will result in the lowest overall cost to the government, that is, unless the bid is materially unbalanced. See Porta-John Corp., B-218080, Mar. 19, 1985, 85-1 C.P.D. ¶ 325. ACC does not assert that an award to Hartnett will result in other than the lowest cost to the government, but only that Hartnett did not bid high enough on certain line items. As we find no other evidence that Hartnett's fixed-price bid will not result in the lowest cost to the government, the bid is not improperly unbalanced.

ACC's real concern regarding Hartnett's prices for certain line items is that Hartnett submitted a below-cost bid, which is a bid that does not reflect the bidder's performance cost. See ABC Appliance Repair Service, B-221850, Feb. 28, 1986, 86-1 C.P.D. ¶ 215. There is nothing illegal in the submission and acceptance of a below-cost bid, however, so long as the agency has judged the bidder able to perform at the contract price, which involves a matter of responsibility that, as explained above, we do not review. Id.

Finally, ACC argues that Hartnett's bid should have been rejected rather than corrected once it was found to contain a pricing error. However, since the bid was already low and simply was corrected further downward, and since the price as corrected was apparent from the bid (it was the actual total of the line items), we see nothing objectionable in the agency's decision to correct Hartnett's bid. See generally R & R Contracting, Inc., B-217412, Mar. 1, 1985, 85-1 C.P.D. ¶ 260.

The protest is denied in part and dismissed in part.

  
for Harry R. Van Cleve  
General Counsel