



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: A.C. Clayton & Associates

File: B-225886

Date: December 19, 1986

DIGEST

1. There is no legal basis for objecting to the submission or acceptance of a below-cost bid; whether a bidder can meet the contract requirements in light of its low bid is a matter of bidder responsibility, the affirmative determination of which General Accounting Office does not review except in limited circumstances.
2. Protest of alleged solicitation deficiencies is untimely and will not be considered where not filed prior to bid opening and "significant-issue" exception to timeliness requirements does not apply.

DECISION

A.C. Clayton & Associates protests the award of a contract to any other firm under invitation for bids (IFB) No. N62470-86-B-5872, issued by the Department of the Navy for crane rail cleaning and inspection services. We dismiss the protest.

Clayton states that it was the second low bidder on the IFB, but that an award to the low bidder would be improper because that firm's bid is so low that it cannot possibly perform the contract work as required.

The fact that the low bidder may have submitted a bid that will not cover its costs, that is, a below-cost bid, does not provide a sustainable basis of protest. Peter Gordon Co., B-224011, Sept. 15, 1986, 86-2 C.P.D. ¶ 300. A bidder's ability to perform the contract as required, at the price bid, is a matter of bidder responsibility for the agency to determine before contract award. K & P Inc., B-219608, Aug. 1, 1985, 85-2 C.P.D. ¶ 121. Our Office will not review an agency's affirmative determination of a bidder's responsibility except in limited circumstances not relevant here. Bid Protest Regulations, 4 C.F.R. § 21.3(f)(5) (1986).

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Clayton also alleges that there were several deficiencies in the IFB. A protest based on alleged solicitation improprieties is untimely, however, where, as here, it is not filed before bid opening. 4 C.F.R. § 21.2(a)(1). In this respect, Clayton concedes that these alleged solicitation deficiencies were apparent prior to bid opening but explains it did not protest at that time because it hoped they would be corrected. There is no indication that Clayton was advised the IFB would be corrected, however, or that Clayton ever formally protested the issues to the agency. While we encourage the resolution of such matters at the agency level, a bidder's attempt to do so does not operate to suspend our timeliness requirements. See York International Corp., B-223248, June 17, 1986, 86-1 C.P.D. ¶ 561.

Clayton suggests that even if these arguments are untimely, they are significant issues which our Office should consider. Under the "significant-issue" exception to our regulations' timeliness requirements at 4 C.F.R. § 21.2(c), we will consider untimely protests where they raise issues of widespread interest to the procurement community which have not previously been decided. Bell Atlanticom Systems, Inc., B-222601.2, June 30, 1986, 86-2 C.P.D. ¶ 19. While the IFB deficiencies alleged here may be important to Clayton, they are not significant within the meaning of our regulations.

The protest is dismissed.


Robert M. Strong
Deputy Associate
General Counsel