



The Comptroller General
of the United States

Washington, D.C. 20548

Morrow

Decision

Matter of: Marine Electric Railway Products Division, Inc.

File: B-227308

Date: June 17, 1987

DIGEST

1. Allegation that bid was below cost does not provide a sustainable basis of protest.
2. Possible violation of anti-trust laws is properly for consideration by the Department of Justice, not by the General Accounting Office.

DECISION

Marine Electric Railway Products Division, Inc. (MERPD), protests the alleged submission of a below-cost bid by Beckman Industrial Corporation, under invitation for bids (IFB) No. N00024-87-B-4244, issued by the Naval Regional Contracting Center, Washington, D.C., for various quantities of salinity indicating panels and other hardware items. We dismiss the protest.

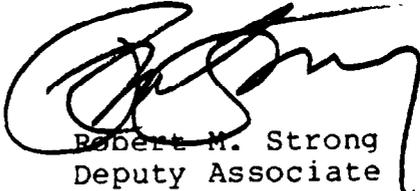
MERPD states that due to certain qualification requirements in the IFB only MERPD and Beckman were qualified to bid on the IFB. MERPD maintains that its products are significantly cheaper to produce than Beckman's products and it has been the low bidder on three prior procurements for these items. Beckman's bid prices were twice those of MERPD on those procurements. MERPD advises that in this procurement Beckman's bid prices were 60 percent less than MERPD's prices. Thus, it argues that since Beckman can only furnish the same equipment that was previously qualified, its bid was below its cost of manufacture. MERPD contends that Beckman's bid constitutes a "buy in" in order to monopolize the market in violation of the anti-trust laws.

The fact that a bidder may have submitted a below-cost bid that will not cover its costs does not provide a sustainable basis of protest. A bidder's ability to perform the contract as required, at the bid price, is a matter of bidder responsibility for the agency to determine before award. See A.C. Clayton Associates, B-225886, Dec. 19, 1986, 86-2 C.P.D. ¶ 694. Our Office will not review an

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agency's affirmative determination of a bidder's responsibility except in limited circumstances not pertinent here. See 4 C.F.R. § 21.3(f)(5) (1986). Although MERPD argues that our failure to review its case will permit the procuring agency to become a party to acts that violate the anti-trust laws, our Office cannot consider allegations of anti-trust violations because these are matters to be considered by the Department of Justice. Therefore, to the extent that MERPD believes that Beckman violated the anti-trust laws, it properly should refer the evidence to the Department of Justice. See Independent Metal Strap Company, Inc., B-223894, Aug. 18, 1986, 86-2 C.P.D. 196.

The protest is dismissed.



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