



The Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Electronetics Corporation
File: B-229934
Date: January 19, 1988

DIGEST

1. The fact that an offer may be below-cost or represent a buy-in is not a basis for rejecting the offer where the offeror is determined to be responsible.
2. Allegation that preaward survey of protester's facility was not adequate is without merit where protester was not in line for award, and the agency thus was not required to conduct survey at all.

DECISION

Electronetics Corporation protests the award of a manufacturing contract to Mid-America Engineering and Manufacturing under Department of the Army request for proposals (RFP) No. DAAA09-87-R-0610. Although, according to Electronetics, the award was to be made to the low, technically acceptable offeror, and Electronetics' proposed price was higher than Mid-America's, Electronetics asserts that improprieties occurred in the procurement which should invalidate the award. We dismiss the protest.

Electronetics first argues that Mid-America's award price of \$3,149.40 per unit, compared to its own proposed price of \$3,934.83, reflects intentional underbidding by the awardee, and amounts to unfair competition. As we have stated on numerous occasions, however, there is nothing improper either in a firm's proposing what may be a below-cost price to obtain a government contract (i.e., buying-in), or in the government's accepting the offer after determining that the firm is responsible. See, e.g., Environmental Technology Corp., B-225479.3, June 18, 1987, 87-1 CPD ¶ 610 (agency's acceptance of below-cost proposal from responsible offeror not legally objectionable). Since the agency here necessarily determined Mid-America to be responsible when it awarded the firm the contract, Mid-America's alleged below-cost offer is not a basis for overturning the award.

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Electronetics questions the Army's determination that Mid-America is responsible, asserting that the firm lacked significant preparation, such as production and inspection plans. We will not review the Army's affirmative responsibility determination since Electronetics has neither alleged nor shown that the determination may have been made fraudulently or in bad faith, or that definitive responsibility criteria in the solicitation were not met. See Seaton Van Lines, Inc., B-217298, Jan. 8, 1985, 85-1 CPD ¶ 26.

Electronetics also alleges that in conducting preaward surveys, the Army actually visited only Mid-America's facilities, and thus did not thoroughly survey Electronetics' facilities. Since Electronetics was not in line for award, however, the Army was not required to conduct a preaward survey of Electronetics. See generally Galaxy Custodial Services, Inc., et al., 64 Comp. Gen. 593 (1985), 85-1 CPD ¶ 658 (no useful purpose served in reviewing responsibility of offeror to whom agency is not intending to make award). Thus, the fact that the Army did not conduct a thorough survey of Electronetics is immaterial.

Electronetics also contends that a letter the Army sent Mid-America requesting that the firm review its price and verify that nothing had been omitted constituted an opening of discussions that necessitated opening negotiations with all offerors. It is well established that an agency may contact an offeror, without opening negotiations, to clarify uncertainties or irregularities so long as that offeror is not given an opportunity to modify or revise its proposal in a manner essential to a determination of its acceptability. Federal Acquisition Regulation § 15.601; Sea-Land Service, Inc., B-219665 et al., Dec. 17, 1985, 85-2 CPD ¶ 677. It appears that the Army's alleged communication to verify Mid-America's price constituted such a clarification.

The protest is dismissed.



Ronald Berger
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General Counsel