

Berninger



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Select Investigative Services, Inc.--Request
for Reconsideration

File: B-235768.3

Date: August 1, 1989

DIGEST

1. Request for reconsideration of dismissal of protest challenging awardee's allegedly below-cost bid is denied since submission of a below-cost offer or "buy-in" does not provide a basis for challenging an award.

2. Contention that awardee will not comply with terms of a collective bargaining agreement incorporated in solicitation constitutes a challenge to agency's affirmative determination of responsibility, which General Accounting Office does not review absent a showing of possible fraud or bad faith or failure to apply definitive responsibility criteria.

DECISION

Select Investigative Services, Inc., requests reconsideration of our dismissal of its protest challenging the award of a contract to Swanson Group, Inc., under invitation for bids (IFB) No. 273-89-B-0005, issued by the National Institute of Environmental Health Sciences (NIEHS) for security guard services. Select alleged that Swanson submitted a below-cost offer which provided it with an unfair advantage over all other bidders. We have dismissed the protest on the ground that the submission of a below-cost offer, or a "buy-in," does not provide a basis for challenge of the award.

In its request for reconsideration, Select reiterates its challenge to Swanson's allegedly below-cost bid and its contention that Swanson will not comply with a collective bargaining agreement incorporated in the solicitation.

We deny the request for reconsideration.

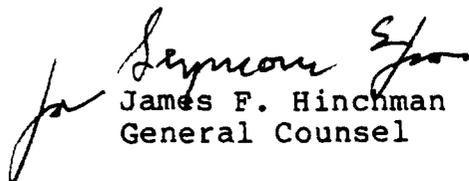
Select's contention that Swanson submitted a bid that will not cover its costs and is allegedly an attempted "buy-in"

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provides no basis for protest. American Maid Maintenance, B-225571, Jan. 9, 1987, 87-1 CPD ¶ 47. A bidder, in its business judgment, may decide to submit a below-cost bid, Aztech Electric, Inc. and Rod's Electric, Inc., B-223630, Sept. 30, 1986, 86-2 CPD ¶ 368, and the fact that a protester believes that another bidder's prices are too low does not render that bidder's bid nonresponsive. J.D. Bertolini Industries, Ltd., B-219791, Aug. 19, 1985, 85-2 CPD ¶ 193. Here, since Swanson took no exception to any terms of the IFB, including the collective bargaining agreement, its bid is responsive and Swanson is bound to comply with the terms of the agreement. James M. Smith, Inc., B-213063, Oct. 12, 1983, 83-2 CPD ¶ 459.

Moreover, to the extent that Select alleges that Swanson will be unable to comply with the collective bargaining agreement, that allegation raises the issue of contractor responsibility. American Maid Maintenance, B-225571, supra. NIEHS has found Swanson to be responsible. Since the determination that a bidder or offeror is capable of performing a contract is based in large measure on subjective judgments, 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 have not been met. Bid Protest Regulations, 4 C.F.R. § 21.3(m)(5) (1988); DOD Contracts, Inc., B-227689.2, Dec. 15, 1987, 87-2 CPD ¶ 591. None of these circumstances is alleged or evident here.

The request for reconsideration is denied.


James F. Hinchman
General Counsel