



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Hose-McCann Telephone Company, Inc.

File: B-240382.3

Date: September 24, 1990

Sam Zalman Gdanski, Esq., for the protester.

Catherine M. Evans, Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest that awardee's price is unreasonably low is essentially a challenge against contracting officer's affirmative determination of responsibility and does not establish the likelihood that, as alleged, offerors were not competing on equal basis.

DECISION

Hose-McCann Telephone Company, Inc. protests the award of a contract to the Alton Iron Works, Inc., under request for proposals (RFP) No. N00104-89-R-E853, issued by the Navy for reel cable. Hose-McCann alleges that, although it was instrumental in the development of the specifications for the required cable, the agency awarded the contract to Alton at a much lower price than that offered by the protester. Hose-McCann argues that Alton's low price indicates that it did not understand the requirement, and concludes that offerors were not competing on the same basis.^{1/}

We dismiss the protest.

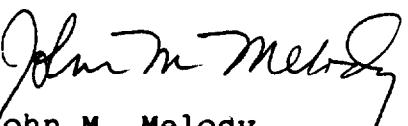
^{1/} This is Hose-McCann's second protest to our Office of the award to Alton. We dismissed the first protest without a decision on July 16, 1990 because it failed to state a basis of protest as required by our Bid Protest Regulations, 4 C.F.R. § 21.1(c)(4) (1990). Upon Hose-McCann's request for reconsideration, we affirmed the dismissal. Hose-McCann Tel. Co., Inc.--Recon., B-240382.2, Aug. 6, 1990, 90-2 CPD ¶. This protest is timely filed because Hose-McCann learned of Alton's price on September 7.

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The submission of a below-cost offer is legally unobjectionable; whether a contract can be performed at the offered price is a matter of the offeror's responsibility. Cajar Defense Support Co., B-237426, Feb. 16, 1990, 90-1 CPD ¶ 286. We will not review a contracting officer's affirmative determination of responsibility absent a showing of possible fraud or bad faith or a failure properly to apply definitive responsibility criteria. 4 C.F.R. § 21.3(m)(5); ALM, Inc., B-225679.3, May 8, 1987, 87-1 CPD ¶ 493. As price was the only evaluation factor for award, in making award to Alton the agency necessarily concluded that the firm could perform at its offered price, i.e., that the firm was responsible. Thus, Hose-McCann's allegation to the contrary provides us with no basis to review the award. Cajar Defense Support Co., B-237426, supra.

Hose-McCann argues that our decision in Baytex Marine Communications, Inc., B-237183, Feb. 8, 1990, 90-1 CPD ¶ 164, in which we found that offerors were not competing on an equal basis, compels a similar finding here. We disagree. We sustained Baytex's protest based on our conclusion that the agency failed to establish an equal basis for competition, because it allowed offerors to provide their own interpretations of a requirement for spare parts; thus, the successful offeror was the one that had proposed the fewest and least expensive spare parts. Here, in contrast, the requirement was for a single, specific item--cable--and, according to Hose-McCann, included a detailed set of specifications. Indeed, Hose-McCann informs us that the procurement was delayed while the agency sought to assure that all offerors were competing on the basis of the same drawings. Given this amount of detail in the solicitation, the mere fact that Hose-McCann considers Alton's price too low is insufficient to establish the likelihood that offerors were not competing on an equal basis.

The protest is dismissed.



John M. Melody
Assistant General Counsel