



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Hutchinson Contracting Company, Inc.

File: B-241742

Date: November 6, 1990

George H. Hutchinson III for the protester.
Catherine M. Evans, Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Protest that awardee's price is unreasonably low is dismissed as essentially a challenge against contracting officer's affirmative determination of responsibility, which General Accounting Office will not review absent circumstances not present here.
2. General Accounting Office does not consider allegations of predatory pricing in violation of the Robinson-Patman Act because that Act is not applicable to government contracts and violations of antitrust laws are within the jurisdiction of the Department of Justice.

DECISION

Hutchinson Contracting Company, Inc. protests the award of a contract to the low bidder, Taylor-Moore Inc., under invitation for bids (IFB) No. DAKF36-90-B-0082, issued by the Department of the Army for supply and installation of range hood fire extinguishing systems at Fort Drum, New York. Hutchinson alleges that Taylor-Moore's bid is unreasonably low, and as such may violate the Robinson-Patman Act.

We dismiss the protest.

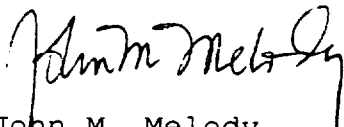
The submission of a below-cost bid is legally unobjectionable; whether a contract can be performed at the offered price is a matter of the bidder's responsibility. Atlantic Maintenance, Inc., B-239621.2, June 1, 1990, 90-1 CPD ¶ 523. We will not review a contracting officer's affirmative determination 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) (1990); ALM, Inc., B-225679.3, May 8, 1987, 87-1 CPD ¶ 493. Neither of those circumstances is present here.

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In addition, we do not consider allegations of possible violations of the Robinson-Patman Act, 15 U.S.C. § 13 (1988), which prohibits the selling of goods at prices below those normally charged for the purpose of restricting competition; the Act is not applicable to government contracts. In any event, allegations of antitrust violations are for the Justice Department to consider. Randolph Eng'g, Inc., B-214785, Apr. 6, 1984, 84-1 CPD ¶ 391.

Hutchinson, the third low bidder, also alleges that the bid of the second low bidder is nonresponsive for failure to include required descriptive literature. As we have found that the proposed award to Taylor-Moore, the low bidder, is proper, we need not consider the responsiveness of the second low bid.

The protest is dismissed.


John M. Melody
Assistant General Counsel