

J. Thomas



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Winsquared Technologies, Inc.

File: B-265928

Date: September 6, 1995

DECISION

Winsquared Technologies, Inc. protests the award of a contract to Advanced Medical Applications, Inc. by the Department of Veterans Affairs under request for proposals No. 600-029-95.

We dismiss the protest.

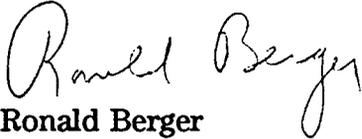
Winsquared contends that "Advanced's bid is not responsible because Advanced cannot responsibly perform the work for the amount indicated." Winsquared states that Advanced's offer was 50 percent less than Winsquared's offer. However, the submission of a below cost offer is not a valid basis to object to a contract award. An offeror, in its business judgment, properly may decide to submit a price that is extremely low. Diemaster Tool, Inc., B-238877, Apr. 5, 1990, 90-1 CPD ¶ 375. An agency decision that the contractor can perform the contract at the offered price is an affirmative determination of responsibility which we will not review absent a showing of possible fraud or bad faith on the part of procurement officials, or that definitive responsibility criteria in the solicitation may have been misapplied. JWK Int'l Corp., B-237527, Feb. 21, 1990, 90-1 CPD ¶ 198. Neither exception applies here.

Winsquared also states that "Advanced should be ineligible for a contract award because Advanced has contracted to provide the contracting agency computer software which is in violation of copyrighted software" According to Winsquared, there is ongoing litigation over the software between Winsquared and Advanced. This is also is not for our review. First, whether Advanced can meet contract requirements is a matter of responsibility, the affirmative determination of which, as we stated above, we will not review. Second, a patent or copyright holder's remedy for a violation of its patent rights that results from a government procurement is a suit for money damages against the government in the Court of Federal Claims. 28 U.S.C. § 1498 (1988 and Supp. V 1993). Consequently, that

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forum, not our Office, considers allegations of possible copyright infringements in connection with procurement actions. Diversified Technologies; Almon A. Johnson, Inc., B-236035, Nov. 6, 1989, 89-2 CPD ¶ 427.

The protest is dismissed.

A handwritten signature in cursive script that reads "Ronald Berger".

Ronald Berger
Associate General Counsel