

DOCUMENT RESUME

02682 - [A1752765]

[Buy-In Alleged in Award of Contract]. B-189165. June 15, 1977.
2 pp.

Decision re: Inter-Con Security Systems; by Paul G. Dembling,
General Counsel.

Issue Area: Federal Procurement of Goods and Services:
Reasonableness of Prices Under Negotiated Contracts and
Subcontracts (1904).

Contact: Office of the General Counsel: Procurement Law II.
Budget Function: General Government: Other General Government
(806).

Organization Concerned: Detective Intelligence Service, Inc.
Authority: 54 Comp. Gen. 499. 54 Comp. Gen. 715. B-185553
(1976). B-187152 (1976). B-185896 (1976).

Protest of contract award for guard services alleging
buy-in was denied, as award may not be challenged on these
grounds. That bidder may suffer loss because he must pay
prevailing wage does not justify rejecting low bid unless low
bidder is nonresponsible. GAO does not review affirmative
determinations of responsibility by contracting officer.
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Proc II

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-189165

DATE: June 15, 1977

MATTER OF: Inter-Con Security Systems, Inc.

DIGEST:

1. The possibility of a buy-in is not a proper basis upon which the validity of an award may be challenged.
2. Fact that bidder may incur a loss because he must pay prevailing wage rate does not justify rejecting otherwise acceptable bid unless low bidder is nonresponsible. However, to the extent protester objects to contracting officer's affirmative determination of responsibility GAO does not review such matters except in circumstances not applicable here.

Inter-Con Security Systems, Inc. (Inter-Con) protests the award of a contract for armed uniform guard services to Detective Intelligence Service, Inc. (Detective). Invitation for bids (IFB) No. PBS-BMD-77-0053 was issued by the General Services Administration (GSA) on March 21, 1977. On May 16, 1977 a contract for service areas 5, 8, and 9 of the IFB were awarded to Detective.

The IFB requires the bidder to pay the minimum wages and fringe benefits for the applicable service areas set forth in Department of Labor wage determinations. Essentially Inter-Con states that Detective's bid price to the Government for performing the guard services is less than its cost for providing such services. Inter-Con asserts that the only way Detective can avoid a financial loss "is to violate the law and pay lower wages than required and to violate the contract by not providing required training, uniforms and equipment." Inter-Con also states that Detective is attempting a buy-in.

The possibility of a buy-in is not a proper basis upon which the validity of an award may be challenged.

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The procurement regulations do not provide for a rejection of such bids and the fact that a low bidder may incur a loss at its bid price does not justify rejecting an otherwise acceptable bid. A. C. Electronics, Inc., B-185553, May 3, 1976, 76-1 CPD 295. This rule applies even where a contractor may incur a loss if wages as set out in the applicable wage determination are paid. See, e. g., Simco Electronics, B-187152, August 31, 1976, 76-2 CPD 209.

Furthermore, to properly reject a bid as being extremely low would require a determination that the bidder is nonresponsible. See Futronics Industries, Inc., B-185896, March 10, 1976, 76-1 CPD 169. However, our Office does not review protests concerning affirmative determinations of responsibility, unless either fraud is shown on the part of procuring officials or the solicitation contains definitive responsibility criteria, which allegedly have not been met. Central Metal Products, Inc., 54 Comp. Gen. 499 (1974), 74-2 CPD 365 affirmed 54 Comp. Gen. 715 (1975), 75-1 CPD 138. Neither exception is alleged in this case.

Accordingly, the protest is dismissed.


Paul G. Dembling
General Counsel