

T name

**DECISION**



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

10,622

FILE: B-195216

DATE: June 29, 1979

MATTER OF: Industrial Maintenance Services, Inc.

CNG 00513

**DIGEST:**

1. Protest questioning responsiveness of low bid is denied as low bidder took no exception to any solicitation requirements.
2. Protest concerning low responsive bidder's ability to meet contractual requirements at bid price is not for consideration as GAO will not review affirmative determination of responsibility except in circumstances not applicable here.

Industrial Maintenance Services, Inc. (Industrial), protests the proposed award of a requirements contract by the Department of the Army to Starlite Services, Inc. (Starlite), the low bidder under invitation for bids (IFB) No. DABT10-79-B-0099 for custodial services at Fort Benning, Georgia, from July 1, 1979, through June 30, 1980. Industrial contends that Starlite's bid of \$531,261.94 is so low that it cannot reflect what Industrial calculates to be the "absolute minimum" number of employees required to perform the services. Industrial, the fourth low bidder at \$629,155.61, also makes the same argument with respect to the second and third low bidders.

DLB 01997

ACC 00026

This case is one in which it is clear from the protester's initial submission that the protest is without legal merit, and we will decide the matter on the basis of this submission without requesting an agency report. See e.g. Fire & Technical Equipment Corp., B-192408, August 4, 1978, 78-2 CPD 91.

The solicitation's Schedule listed 16 items of services, and an estimated number of square feet for each. Items 1 through 9 required reference to the IFB's "Performance Schedules" for the custodial services, their frequencies, and buildings involved with respect to

ALLEGATION THAT AWARDEE'S BID

00574

each item. Paragraph 9 of IFB Section F, "Description/ Specifications," required separate work forces for each of two of the numerous buildings to be serviced, and that the contractor provide an "adequate" number of workers during performance, the paragraph contained three tables to show the number of workers that was considered "adequate" according to the square footage involved.

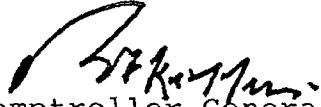
A bidder was only to insert on the Schedule unit prices for the 16 items; it was not required to indicate the method used to arrive at the prices, or the number of personnel the bidder intended to use in contract performance. Award would be made on the basis of the low aggregate bid for all items.

Industrial suggests that if one calculates the number of personnel necessary to constitute an "adequate" workforce for an item pursuant to the tables in IFB section F, and considers service frequency, a union agreement that allegedly prescribes the number of hours per week that a union member must work, labor costs, and other factors, the result would be a bid price substantially higher than Starlite's. Industrial argues that the calculations show that Starlite must not intend to meet the workforce requirement.

However, Industrial presents no evidence that Starlite's bid actually indicates that the firm has taken exception to any of the solicitation's requirements. The bid therefore must be considered "responsive," i.e., it represents an offer to perform the exact thing called for in the IFB. 49 Comp. Gen. 553, 556 (1970). The question of whether Starlite has the apparent ability to do so involves the firm's responsibility, Defense Acquisition Regulation Section 1, part 9 (1976 ed.), and we have been informally advised by the Army that Starlite has been determined to be a responsible firm. Our Office does not review protests against affirmative determinations of responsibility unless either fraud on the part of procuring officials is alleged, or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Meyers Industries, Inc., B-192128, July 21, 1978, 78-2 CPD 60. Neither exception is applicable here.

Accordingly, acceptance by the Army of Starlite's bid would effectively bind the firm to perform in accordance with the invitation's requirements at the contract prices. Edw. Kocharian & Company, Inc., 58 Comp. Gen. 214 (1979), 79-1 CPD 20. Whether or not Starlite in fact provides an "adequate" number of personnel during performance is a matter of contract administration, and is not for our consideration. Virginia-Maryland Associates, B-191252, March 28, 1978, 78-1 CPD 238.

The protest is summarily denied in part and summarily dismissed in part.

  
Acting Comptroller General  
of the United States