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Burt Jopkes

Form. II

DECISION



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

FILE: B-189146

DATE: January 21, 1977

MATTER OF: Potomac Industrial Trucks, Inc.

DIGEST:

1. Protest concerning affirmative determination of responsibility will not be considered on merits.
2. The possibility of a buy-in is not a proper basis upon which the validity of an award may be challenged.
3. While wide range in bid prices may suggest possibility that solicitation was inadequate, that fact alone does not establish protestable issue. Protester must allege in what respect solicitation is inadequate and where protest indicates that no such inadequacy is apparent to protester, dismissal is required.
4. Insofar as protest suggests possibility of mistake in bid, matter is not for consideration pursuant to bid protest function beyond advising procuring agency of possible mistake for verification purposes.

Potomac Industrial Trucks, Inc. protests any award under IFB M00600-76-a-0082, issued by the Navy Yard, Washington, D.C. (Navy).

Specifically, the protester takes exception to any award to the apparent two lowest bidders, Roach Manufacturing Corporation (Roach) and Shiffer Industrial Equipment Company (Shiffer), as follows:

"The protest of the award to Shiffer is based upon that Company's previous performance record on federal Government contracts. The protest of an award to Roach is based upon that company's pattern of bidding practices, namely, exceptionally low bid prices followed by * * * exceptionally large and apparently unjustified price modifications to the contract."

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Evidently Potomac believes that the Navy should find Shiffer nonresponsible. However, this Office no longer reviews protests concerning affirmative determinations of responsibility, absent allegations of fraud on the part of contracting officials or other circumstances not alleged to apply here. Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64. While we do consider protests involving negative determinations of the protestor's responsibility in order to provide assurance against the arbitrary rejection of bids, affirmative determinations are based in large measure on subjective judgments which are largely within the discretion of the procuring officials who must suffer any difficulties resulting by reason of a contractor's inability to perform.

Regarding Potomac's view that Roach unjustifiably has benefited from modifications of prior contracts with the Government, we note that such modifications are matters of contract administration and are not for determination by this Office. Furthermore, the possibility of a buy-in is not a proper basis upon which the validity of an award may be challenged. The procurement regulations do not provide for 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; Caltex Engineering Co., B-186525, June 2, 1976, 76-1 CPD 355.

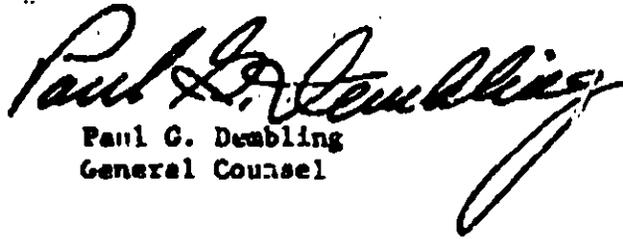
In addition, Potomac asserts that the bids received evidence "an extraordinarily wide price range" which in its view casts doubt on the adequacy of the Navy's specifications. Although a wide range in bids may suggest that bidders have submitted offers based upon disparate interpretations of an agency's requirements, the fact of price variation alone does not establish an issue upon which a protest may be pursued. Potomac indicates its desire to assert this portion of its protest "until due consideration can be given to the adequacy of specification and drawing requirements." While Potomac's concerns may be appropriate for consideration by the contracting officer, they are at best premature for purposes of a protest to this Office. In this regard a protest concerning the adequacy of a solicitation must state where in the solicitation the inadequacy lies. Apparently, the protestor is not aware of any specific inadequacy in the solicitation.

Moreover, insofar as a protest suggests a discrepancy in bid price and the possibility of a mistake, we do not consider

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or decide such issues pursuant to our Bid Protest Procedures, beyond advising the agency concerned that, for purposes of verification, the possibility of mistake has been suggested. Engineering Research, Inc., B-187077, August 6, 1970, 4-1 CPD 154.

Accordingly, we are closing our file in this matter without further action.


Paul G. Debling
General Counsel