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DECISION

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

FILE: B-194066.2

DATE: September 12, 1979

MATTER OF: Cacciamani Brothers

DIGEST:

1. [Protest that awardee is not small business]
is denied where amendment to IFB withdrew small business set-aside, eliminating requirement that awardee be small business concern.
2. GAO does not consider protest of affirmative determination of responsibility where protester does not allege fraud on part of procurement officials or noncompliance with IFB definitive responsibility criteria.
3. Below-cost bid and possibility of buy-in do not provide legal bases to challenge award.
4. Protest of correction of bid after bid opening is denied where correction involved omission of figure required by IFB to be inserted for computation of low bidder for evaluation purposes only and did not affect price to which awardee is entitled under contract.

Cacciamani Brothers (Cacciamani), protests the award of a contract to Reading Crane & Engineering Co. (Reading) under invitation for bids (IFB) N62472-79-B-4551, on the grounds that Reading is not a small business and has not affirmatively demonstrated its responsibility. Cacciamani further protests the correction of Reading's bid after bid opening which increased the bid by \$15,000. For the reasons stated below, Cacciamani's protest is denied in part and dismissed in part.

The background of the protest is as follows: On January 30, 1979, the Naval Facilities Engineering Command issued the subject IFB for preventive maintenance, inspection, load testing and certification of cranes at the Philadelphia Naval Shipyard (Shipyard), Philadelphia, Pennsylvania. Although the Navy originally

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set aside the procurement for small business, Amendment 1, issued on February 16, 1979, withdrew the set-aside and deleted the definition of small business. Bids were opened on March 13, 1979, with the following result:

Reading	\$137,069.50
United States Crane Certification Bureau	\$210,775.00
Cacciamani	\$229,560.00

The Government estimate was \$251,845.00. On May 2, 1979, the Navy permitted a correction of Reading's bid to \$152,069.50, and subsequently awarded a contract to Reading.

Since Amendment 1 withdrew the set-aside there was no requirement that the awardee be a small business. Consequently, we deny the portion of the protest concerning Reading's failure to meet the definition of small business.

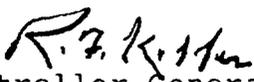
Regarding Reading's responsibility, Cacciamani points to the fact that Reading's bid was 80 percent lower than the Government estimate. We do not review protests against affirmative determinations of responsibility unless the protester alleges either that procuring officials committed fraud or that the solicitation contained definitive responsibility criteria which have not been applied. Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64; Yardney Electric Corporation, 54 Comp. Gen. 509 (1974), 74-2 CPD 376.

An award may not be withheld or disturbed merely because the low bid is below cost. Bristol Electronics, Inc., B-190341, August 16, 1978, 78-2 CPD 122. While a below-cost bid may indicate the possibility of a buy-in, that also is not a proper basis upon which to challenge an award since there is nothing inherently illegal about a buy-in. Harris Management Co., B-193049, May 30, 1979, 79-1 CPD 382. Consequently, we dismiss this allegation.

Finally, we deny the protest as it relates to the correction of Reading's bid because the purported correction does not affect the amount to which Reading would be entitled under the contract. The contract is an indefinite quantity contract with no fixed total contract price. Reimbursement is to be based on the unit price offered for each service required and on the manufacturer's list price, minus any offered discount, for replacement parts required under the contract. For bid evaluation purposes only, the IFB required the bidder to multiply its unit price for each service by the Government's estimate of the number of times that service would be required. The product of these figures provided the Navy with an estimate of the cost to the Government of having the bidder perform the particular service. The IFB also estimated that the successful bidder would have to supply \$15,000 worth of replacement parts, and required the bidder to total the estimated cost of replacement parts, minus any offered discount on the parts, and the estimated costs of performing each service. The resulting sum formed the basis for comparing bids.

Reading misunderstood the IFB directions concerning the cost of replacement parts, and failed to include the estimated cost of replacement parts in its calculations. Instead, believing that the space for calculating the cost of replacement parts was a space for entering an offered discount, Reading entered "0" because it intended to offer no discount. The correction of \$15,000 only involved the inclusion of \$15,000 for replacement parts in the figure used to evaluate Reading's bid, as provided for by the IFB, and does not affect the amount which Reading ultimately will be paid under the contract. Reading, of course, remained the low bidder by almost \$60,000.

The protest is denied in part and dismissed in part.


Deputy Comptroller General
of the United States