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DECISION



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

[Protest of Army Contract Award]

FILE: B-198745

DATE: May 22, 1980

MATTER OF: Harris Systems Pest Control, Inc. ✓

DIGEST:

1. Neither submission of bid below Government estimate nor excessively low bid nor protester's view that bidder cannot perform contract is basis for rejection of bid. Rejection of bid alleged to be too low or because of prospective inability of bidder to perform contract requires determination of nonresponsibility. GAO does not review affirmative responsibility determinations, absent circumstances not present here.
2. Agency is not required to equalize competition merely because firm's advantageous position resulted from previous contract award.

Harris Systems Pest Control, Inc. (Harris), the fourth low bidder under invitation for bids No. DABT51-80-B-0056 issued by the Department of the Army, protests the award of a contract to any bidder other than itself.

Harris contends that the first and second low bidders may be unable to obtain the bonding required by the IFB, and thus should not be awarded a contract. The third low bidder, Harris maintains, is the incumbent contractor and should not be entitled to award because it, like the other bidders, submitted an extremely low bid below the Government estimate. In addition, the protester contends that its high bid should receive special consideration and be "equitably balanced" because it will incur start-up costs, not incurred by the incumbent contractor. In any event, the protester asks that the Government not exercise the options under the contract, if this protest is unsuccessful.

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We are dismissing the protest.

The submission of a bid below the Government estimate, even a below-cost bid, is not a proper basis upon which to challenge the validity of a contract award. Inter-Con Security Systems, Inc., B-189165, June 15, 1977, 77-1 CPD 434. Proper rejection of a bid as extremely low requires a determination that the bidder is nonresponsible, that is, that the bidder cannot or does not intend to perform in accordance with contract requirements. Futronics Industries, Inc., B-185896, March 10, 1976, 76-1 CPD 169. Similarly, rejection of a bid because of the prospective inability of a bidder to obtain bonding would also require a determination that the bidder is nonresponsible. Our Office does not review protests of affirmative determinations of responsibility, which would necessarily be involved here as a prerequisite to award, unless either fraud is shown on the part of the procuring officials or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Neither exception is applicable in this case.

While a very low bid may also suggest the possibility of a buy-in (an attempt to obtain an award by knowingly offering a price less than anticipated costs with the expectation either to increase the contract price during performance or to receive future contracts at high enough prices to recover the losses on the original contract), Defense Acquisition Regulation § 1-311 (1976 ed.) does not preclude the acceptance of a bid for that reason. The regulation mainly cautions the contracting officer to assure that amounts excluded in the "buying in" contract are not recouped through change orders or follow-on contracts. Allied Technology, Inc., B-185866, July 12, 1976, 76-2 CPD 34. Regardless of which bid is accepted, the contractor will be required to perform the contract in strict compliance with its terms. Moorehead Electric Co., Inc., B-192075, August 9, 1978, 78-2 CPD 109.

Further, there is no requirement for the Government to provide special consideration to a bidder because it will incur costs that the incumbent contractor may not incur or to equalize competition merely because one firm's advantageous position results from

previous contract awards. See ABC Refuse Collection, Inc., B-194216, June 4, 1979, 79-1 CPD 388; Field Maintenance Services Corporation, B-185339, May 28, 1976, 76-1 CPD 350. Any new bidder would be in the same situation as the protester, and there is no indication that any advantage accruing to the incumbent contract was unfairly gained. Lastly, there is no reason at this time to conclude the option periods should not be exercised.

Larry R. Van Cleave
for Milton J. Socolar
General Counsel