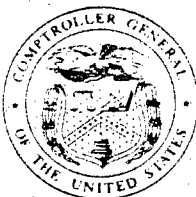


15117 Jeldaan PL# 46

DECISION



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

FILE: B-200531

DATE: October 9, 1980

MATTER OF: GAP Instrument Corporation DL605307

DIGEST:

1. Acceptance of bid that competitor argues is below cost is not improper where bidder is determined to be responsible.
2. Protest that bidder cannot perform at bid price is dismissed, since bidder was determined to be responsible and GAO does not review affirmative determinations of responsibility except in circumstances not applicable here.

GAP Instrument Corporation (GAP) [protests the award of a contract to Forway Industries (Forway) under invitation for bids (IFB) N00104-80-B-0579, issued by the Department of the Navy (Navy). The IFB solicited bids for position indicators. GAP protests the award to Forway because the firm's (1) "shockingly low bid price" represents a loss to the company and an undue risk to the Government and (2) Forway's poor performance on a prior contract for a similar item impacts on the firm's capability to perform and represents the Navy's lax "enforcement of the contract terms." GAP presents certain figures, including material and nonrecurring costs, to indicate that Forway's bid price barely covers such costs. According to GAP, Forway's price does not even compensate for manufacturing costs. With respect to Forway's performance capability, the protester notes that on the prior contract Forway was 14 months delinquent on delivery of the item. In light of this evidence, GAP concludes that Forway's bid price could only be the result of "gross error."

Against Contract Award
DL605308
AGC00001

We dismiss the protest.

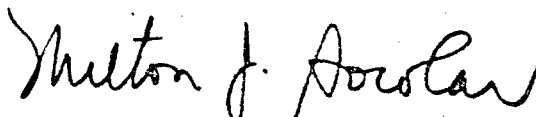
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Even if GAP's allegation that Forway submitted a below-cost bid is correct, there is no legal prohibition against the acceptance of such a bid from a responsible firm. Cacciamani Brothers, B-194066.2, September 12, 1979, 79-2 CPD 189. In this connection, we point out that the award to Forway necessarily involved an affirmative determination of responsibility, Defense Acquisition Regulation 1-902 (1976 ed.) and in fact, GAP states that the Navy received a favorable preaward survey report on Forway. Thus, we will not object to an award to Forway merely because it may have submitted a below-cost bid.

To the extent GAP questions Forway's past performance and its ability to perform under this IFB, these matters concern Forway's responsibility, i.e., its ability to perform the contract. Here, the Navy in awarding the contract to Forway made an affirmative determination of the firm's responsibility which we do not review unless either fraud is alleged on the part of procuring officials or the solicitation contains definitive responsibility criteria which allegedly have not been applied. The Hedlog Company, B-195963, January 10, 1980, 80-1 CPD 31. Neither exception is applicable here.

GAP also questions the Navy's refusal to delay an award pending the resolution of its protest. However, the record shows that the Navy made an award to Forway before GAP filed its protest.

The protest is dismissed.



Milton J. Socolar
General Counsel