

Mr Roberts

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DECISION



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

[Protest Alleging Submission of Below Cost Bid]

FILE: B-200570

DATE: October 22, 1980

MATTER OF: American Mutual Protective Bureau

DIGEST:

1. Allegation of below cost bid which would result in loss contract and inability to perform contract provides no basis upon which award may be challenged.
2. GAO does not review affirmative determination of responsibility absent circumstances not present here.

American Mutual Protective Bureau (AMP) protests any award of a contract to Apocalypse, Inc. under invitation for bids (IFB) No. DAKF03-80-B-0054 issued by the Department of the Army for security guard services at Fort MacArthur, California. AMP argues that Apocalypse is "nonresponsive" because it submitted a below cost bid which will not allow Apocalypse to perform the contract in a "competent manner without operating at a loss or committing wage or labor violations." AMP asks that we investigate this situation and rule on the matter.

[We have held that the submission of 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. 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 rejection of an otherwise acceptable bid. A.C. Electronics, Inc., B-185553, May 3, 1976, 76-1 CPD 295. This rule applies even where a contractor may incur a loss if wages as set out in the applicable wage determination are paid. See, e.g., SIMCO Electronics, B-187152, August 31, 1976, 76-2 CPD 209.

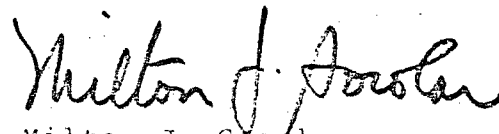
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In this connection, we decline AMP's request that we investigate alleged potential wage and labor violations by Apocalypse, since (the Department of Labor, not the General Accounting Office, has the responsibility for administration and enforcement of the labor statutes involved in this procurement.) SIMCO Electronics, supra.

Although AMP characterizes Apocalypse as being "nonresponsive" because of an alleged lack of financial capability to perform a "loss contract," (this is clearly a matter of the "responsibility" of Apocalypse and does not concern the responsiveness of that firm's bid.) In this regard, rejection of Apocalypse would require a determination that the bidder is nonresponsive or incapable of performance. See Futronics Industries, B-185896, March 10, 1976, 76-1 CPD 169. However, this Office does not review protests which question the procuring agency's affirmative determination of responsibility except in circumstances not present here. See Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64. Furthermore, we point out that in the instant procurement, which is a total small business set-aside, no small business concern may be precluded from award because of nonresponsibility without referral of the matter to the Small Business Administration for a final disposition under the Certificate of Competency procedure. 15 U.S.C. § 637(b)(7) (Supp. I, 1977).

Based on the foregoing, (further case development is unnecessary in this instance since it is clear from AMP's initial submission that the issues raised are not reviewable under our bid protest procedures.) Kurz-Kasch, Inc.--Request for Reconsideration, B-192604, October 31, 1978, 78-2 CPD 311.

(The protest is dismissed.)



Milton J. Socolar  
General Counsel