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**DECISION**



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

**FILE:** B-203473

**DATE:** October 1, 1981

**MATTER OF:** Microtech Industries, Inc.

**DIGEST:**

1. Protest concerning bidder's ability to meet contractual requirements is not for consideration as GAO will not review affirmative determination of responsibility in absence of showing of fraud or allegation that definitive responsibility criteria in solicitation were misapplied.
2. Even if bid on service contract for four month base period and two 1-year options is mathematically unbalanced, bid may be accepted unless it is also materially unbalanced, that is, reasonable doubt exists that award would not result in lowest ultimate cost. Such question need not be resolved, however, since it concerns third low bid and there is no indication in record that agency will reject two lower bids.
3. Although solicitation does not contain notice to bidders that option prices would be evaluated as required by regulations, bidders were not prejudiced as this information was provided during prebid conference.
4. Since there is no evidence in record that agency made determination required by regulations prior to the evaluation of option prices, GAO recommends that solicitation be canceled and requirement readvertised unless agency can either show that proper determination was in fact made or makes such determination prior to making award.

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Microtech Industries, Inc. protests the award of a contract to any firm other than itself under invitation for bids (IFB) 81-13 issued by the Federal Communications Commission (FCC) for computer output microfiche services. Microtech, the fourth low bidder, contends that East Coast C.O.M., Inc. (ECC), the low bidder, is not responsible because it defaulted on a prior contract and has not made changes which would enable it to perform this contract. Microtech also contends that Tri-State Micrographics (TSM), the second low bidder, is not capable of performing the contract.

Whether a bidder should be awarded a contract in view of a prior default or whether a bidder has the ability to perform the contract are matters relating to the bidder's responsibility, which must be determined by the contracting officer prior to award. Our Office does not review protests against affirmative determinations of responsibility unless either fraud on the part of the procuring official is shown or the solicitation contains definitive responsibility criteria which allegedly have not been applied. The Nedlog Company, B-203263, July 7, 1981, 81-2 CPD 17. Neither is the case here. Microtech merely complains that ECC and TSM will not be able to meet the solicitation requirements. Consequently, this matter is not for our review.

The protester next asserts that the bid of AmeriCOM of Washington, Inc., the third low bidder, should be rejected because it is materially unbalanced and its price for the second option year is so low that the bidder will not be able to perform during that year.

The contract is for a four month period from June 1 through September 30, 1981, with option provisions for two additional periods, Fiscal Year (FY) 1982 and FY 1983. Bids were received from nine firms. The total bid prices (with discount) submitted by the four lowest bidders are as follows:

ECC	\$101,297.10
TSM	\$130,416.50
AmeriCOM	\$131,364.675
Microtech	\$132,192.69

Bidders were asked to submit unit prices for original and duplicate microfiche whose estimated volumes were as follows:

	<u>Base Period</u>	<u>FY 1982</u>	<u>FY 1983</u>
Original microfiche	4,000	10,400	11,450
Duplicate microfiche	200,000	650,000	715,000

The two low bidders, ECC and TSM, submitted uniform prices for all three periods. ECC, for example, bid \$.40 per original microfiche and \$.06 per duplicate microfiche for the base period and both option years. The protester, as well as the fifth through ninth bidders, bid increasingly higher prices for FY 1982 and FY 1983 when compared to the base period. Only AmeriCOM lowered its prices during the term of the contract: its unit price for original microfiche supplied during the base period, \$1.50, declined to \$1.25 in FY 1982 and \$.80 in FY 1983. Similarly, its price for duplicate microfiche declined from \$.095 during the base period to \$.08 in FY 1982 and \$.05 in FY 1983. The effect of AmeriCOM's decreasing prices and Microtech's increasing prices is that AmeriCOM's price for the base period and for FY 1982 is higher than Microtech's. However, in FY 1983 AmeriCOM's price is lower than Microtech's and when the entire potential duration of the contract is considered, AmeriCOM's price is \$828.02 lower than Microtech's.

With regard to the question of whether AmeriCOM's bid is unbalanced, our Office has recognized the twofold aspects of unbalanced bidding. The first is a mathematical evaluation of the bid to determine whether each bid item carries its share of the cost of the work plus profit, or whether the bid is based on nominal prices for some work and enhanced prices for other work. The second aspect--material unbalancing--involves an assessment of the cost impact of a mathematically unbalanced bid. A bid is not materially unbalanced unless there is a reasonable doubt that award to the bidder submitting a mathematically unbalanced bid will not result in the lowest ultimate cost to the Government. Thus, only a bid found to be materially unbalanced may not be accepted. Propserv Incorporated, B-192154, February 28, 1979, 79-1 CPD 138.

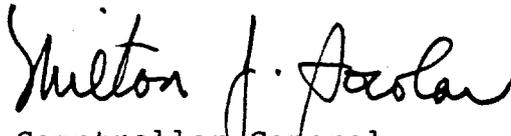
In evaluating the bids submitted for this procurement, the FCC evaluated the total price offered--the prices for the four month base contract period and the two option years. After making the evaluation, the FCC concluded that AmeriCOM's bid represented the third lowest ultimate cost to the Government, \$828.02 lower than Microtech's. However, Microtech maintains that AmeriCOM's prices for the second option year are so much lower than its prices for the base period that AmeriCOM will not be able to perform the services in that option year. Apparently Microtech believes that this possibility of nonperformance raises a reasonable doubt whether AmeriCOM's bid offers a lower ultimate cost to the Government, thereby making the bid materially unbalanced and thus nonresponsive.

Although AmeriCOM's bid prices for the second option year are lower than its prices for the base contract period, the question of whether a bidder has the financial capacity to perform at its bid price is a matter relating to an agency's affirmative determination of a bidder's responsibility and, as stated above, our Office does not review protests which question such determinations except in circumstances not present here. International Business Investments, B-202164.2, June 8, 1981, 81-1 CPD 459. Moreover, we need not resolve at this time the question of whether AmeriCOM's bid was materially unbalanced since the agency may well make award to one of the first two low bidders.

Although the parties have not raised the matter, we find that the solicitation was deficient as it did not include a provision informing bidders that option prices would be evaluated as required by Federal Procurement Regulations (FPR) § 1-1.1503(c) (1964 ed. amend 213, 46 Fed. Reg. 7966 (1981)). It does not appear that the omission was prejudicial to any of the bidders as this information was revealed during a prebid conference.

More importantly, however, we find no indication in the record that the FCC complied with FPR § 1-1.1506 prior to evaluating the option prices. This regulation requires

that before option prices can be evaluated a person in the agency above the contracting officer level must determine that there is a known requirement which exceeds the basic quantity but (1) that quantity is a learning or testing requirement or (2) due to the unavailability of funds, the agency cannot exercise the option at the time of award. Even if the FCC did not comply with this provision, we see no prejudice to either the Government or the bidders by an award to either the first or second low bidder since their prices were the same for both the basic and option periods. If, however, the two low bids are rejected, unless the agency can show that the necessary determination has been made or makes such a determination prior to award, the solicitation should be canceled and the requirement readvertised. We are so advising the agency.



**Acting** Comptroller General  
of the United States