

**DECISION**



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

120071

**FILE:** B-208402, B-208402.2

**DATE:** December 7, 1982

**MATTER OF:** Bormon Investment Co.; Crown Laundry and  
Dry Cleaning

**DIGEST:**

1. GAO no longer reviews protests against affirmative determinations of responsibility unless fraud is alleged on the part of procuring officials, or the solicitation contains definitive responsibility criteria which have been misapplied.
2. GAO will not review agency's determination of bidder's capability to perform at stated bid price. Fact that competitor considers another's bid too low does not constitute a legal basis for precluding award, and whether contractor performs in accordance with specifications is a matter of contract administration and not for GAO review.
3. Acceptance by the Government of an unreasonably low bid--or even a below-cost bid--is not illegal and the possibility of a "buy-in" does not provide a basis upon which an award may be challenged once a contracting officer makes an affirmative determination of responsibility.
4. When a solicitation contains a level payment provision, requiring prices for basic bid period and option periods to be uniform, a bid which offers disparate pricing for basic and option periods normally must be rejected.

Bormon Investment Company (Bormon) and Crown Laundry and Dry Cleaners (Crown) protest the award under invitation for bids (IFB) No. DAHC77-82-B-0107 to Integrity Management International (Integrity) for the operation and maintenance of a Government-owned, contractor-operated (GOCO) laundry facility at Schofield Barracks, Hawaii. Bormon protests the award to Integrity, alleging Integrity's bid is not the most advantageous to the Government because Integrity is not a responsible laundry contractor and that Integrity's 3-year bid is based upon prices greatly less than cost. Crown protests that the contracting officer erroneously rejected its bid as nonresponsive and contends award to Integrity or Bormon is improper as Crown's bid is the most advantageous to the Government.

For the following reasons, the protests are denied in part and dismissed in part.

The IFB for a fixed-price, requirements-type contract was issued on May 28, 1982. Pursuant to Defense Acquisition Regulation 1-1503(d)(i) (1976), two option periods at prices no higher than those of the initial period, without evaluating the option quantities, were included in the solicitation. The contracting officer determined any exercise of the options would merely extend the performance periods of the contract, with cost increases for any extensions not being significant when compared with the base period. In order to avoid frontloading, buy-in's or unbalanced bids, prices were solicited for the base year only, with the two option periods being straightlined.

Eight bids were opened on July 15, 1982, with Crown submitting the low bid. The contracting officer determined Crown's bid to be nonresponsive for failing to straightline its prices for the first and second option periods by using varying prompt-payment discounts for the option years, thereby, in effect, changing its prices for those periods in violation of solicitation paragraph H.40a. Integrity and Bormon were the second and third low bidders, respectively. A preaward survey recommended complete award to Integrity and award was made to Integrity on July 27, 1982.

Crown contends that its bid was improperly rejected because it bid the same dollar amounts for the initial contract period and the 2 option years and only varied the amount of its prompt-payment discount. Crown argues that if the contracting officer had followed paragraph M.1(e), Evaluation of Bids, contained in the IFB, its bid would have been considered acceptable for award. That clause reads:

"e. Award will be based on the lowest aggregate price for Lots 1 thru 7 exclusive of the option terms specified in the special provisions."

Crown cites in support of its argument our decision in Crown Laundry and Cleaning, B-196118, January 30, 1980, 80-1 CPD 82, wherein we found a solicitation was defective because the procuring agency attempted to evaluate option prices inconsistently with the stated evaluation factors.

The Crown decision is inapplicable to the facts here since the contracting officer evaluated the bids and awarded the contract to Integrity based solely on the basis of it being the low responsive bid for the initial contract period in accordance with the IFB.

While Crown argues that since the options were not to be considered in the award process, its varying of the prompt-payment discount is irrelevant, we disagree. We have recognized that a bid may be rejected where a solicitation requires option prices be no higher than the price for the base quantity and, even though only the base quantity is evaluated, a bidder prices the options higher. To permit award to such a bidder where the base bid is low, but the option prices higher than those of other bidders, is prejudicial to other bidders and to the Government because it deprives the Government, from a practical standpoint, of the benefit of the option. Orlotronics Corporation, B-200382, April 22, 1981, 81-1 CPD 308.

This is the situation here, where Crown, low on the initial period, varied its prompt-payment discount from as high as 50 percent in the initial year to as low as 1/4 of 1 percent in the second option year. While Crown was low on the base year, Crown was higher than Integrity on both option years. Therefore, we find Crown's bid was properly rejected.

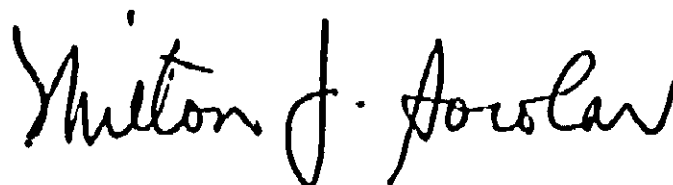
Bormon protests that Integrity is not a responsible laundry contractor. Bormon charges that Integrity's nonresponsibility will add to the procurement costs to the Government. Bormon challenges Integrity's ability to perform the contract awarded to it due to its lack of experience as a laundry contractor, though the contracting officer made an affirmative determination of Integrity's responsibility via the preaward survey. We no longer review protests against affirmative determinations of responsibility unless fraud is alleged on the part of the procuring officials, or the solicitation contains definitive responsibility criteria which have been misapplied. Hybrid Abstracts, B-207083, May 24, 1982, 82-1 CPD 488; Patterson Pump Co., B-204694, March 24, 1982, 82-1 CPD 279. Since Bormon's allegations do not include charges of fraud or misapplication of definitive responsibility criteria, we will not review the contracting officer's determination as to Integrity's ability to perform.

Bormon alleges that Integrity's bid is below cost and, therefore, acceptance of the bid is not in the best interest of the Government. Here, again, the contracting officer determined Integrity to be responsible and able to perform at the bid price and we will not review an agency's determination of a bidder's capability to perform at the bid price. E. C. Campbell, Inc., B-204253, February 2, 1982, 82-1 CPD 76. We have held that acceptance by the Government of an unreasonably low bid--or even a below-cost bid--is not illegal and the possibility of a "buy-in" does not provide a basis upon which an award may be challenged once a contracting officer makes an affirmative determination of responsibility, as here. National Office Moving Co., Keahey Moving & Storage, B-203304, B-203304.2, January 4, 1982, 82-1 CPD 4. Likewise, the fact that a competitor considers another's bid too low does not constitute a legal basis for precluding award. W. M. Grace, Inc., B-205537, February 1, 1982, 82-1 CPD 74. Also, whether a contractor performs in accord with specifications is a matter of contract administration, which is the responsibility of the contracting agency. Biospherics Inc.--Reconsideration, B-203419.4, March 16, 1982, 82-1 CPD 246.

B-208402  
B-208402.2

5

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*for*   
Comptroller General  
of the United States