

DECISION



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

26573

FILE: B-213211

DATE: October 24, 1983

MATTER OF: Ellsworth Street Associates

DIGEST:

Submission of an allegedly below-cost bid does not constitute a basis for objecting to the award of a contract.

Ellsworth Street Associates (ESA) protests award to any bidder other than itself under invitation for bids (IFB) No. DAHA19-83-B-0013 issued by the Department of the Army for the provision of food service attendants for the Massachusetts Air National Guard, Otis Air National Guard Base, Falmouth, Massachusetts. ESA alleges that the other bidders bid below cost since multiplication of the required manning levels times the required wage rates yields costs greater than the prices bid by the other bidders. It is unclear whether ESA believes that the below-cost bids are the result of bidder error or that the bidders are attempting a buy-in.

There is no indication that any of the lower bidders has claimed a mistake. However, if the prices are so unreasonably low as to suggest error, the contracting officer is required to seek verification of the bid intended prior to award. Zimmerman Plumbing and Heating Company, B-211879, June 24, 1983, 83-2 CPD 16. We have no basis to assume that the contracting officer will not seek appropriate verification if deemed necessary or, in the event of a claimed mistake, process the claim under applicable regulation.

If the bidders are attempting a buy-in, there is no basis for objecting to the award of a contract because it is well established that the practice of below-cost bidding is not illegal and the government cannot withhold an award merely because the low bid is below cost. Zimmerman Plumbing and Heating Company, supra.

Finally, the low bidder's ability to perform the contract at the bid price is a matter of responsibility. Prior to award the agency must affirmatively

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decide that the awardee is responsible. We will not review that determination absent a showing of fraud or bad faith on the part of the contracting officer or that definitive responsibility criteria in the IFB were not met, because such a determination is based in large measure on subjective judgments which generally are not readily susceptible of reasoned review. 4 C.F.R. § 21.3(g)(4) (1983), as amended by 48 Fed. Reg. 1931 (1983). The necessary showing to invoke our review has not been made here.

ESA's request for a conference on its protest is denied as it would serve no useful purpose. Zimmerman Plumbing and Heating Company, supra.

Harry R. Van Cleve

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Acting General Counsel