

Tool 31258

DECISION



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

FILE: B-218829

DATE: May 16, 1985

MATTER OF: BUR-TEL Security Protection
Systems

DIGEST:

1. There is nothing illegal in the government's acceptance of a below-cost bid so long as the bidder is found to be responsible.
2. GAO does not review affirmative determinations of responsibility except in limited circumstances which protester has failed to establish here.
3. Whether potential awardee will perform in accordance with all of the terms of a solicitation is a matter of contract administration not for review under GAO's Bid Protest Regulations.

BUR-TEL Security Protection Systems (BUR-TEL) protests the proposed award of a contract to either of the two lowest bidders under invitation for bids (IFB) No. BEP-85-34(A), issued by the Bureau of Engraving and Printing, United States Department of the Treasury. We dismiss the protest.

As its bases for protest, BUR-TEL contends that the contracting officer "abused his discretion and violated applicable laws and regulations in failing to reject bids which were clearly collusive or erroneous on their face, from bidders who were neither responsive to the IFB or responsible." In support of these allegations, BUR-TEL has provided a series of computations in an effort to show that the apparent low bidder, Plan Systems, Inc. (PSI), bid below cost on the solicitation's requirements. BUR-TEL also alleges that neither PSI nor the second low bidder, Simplex Electric, would perform the contract in accordance with all of its terms.

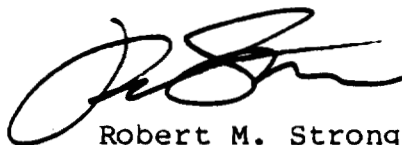
There is nothing illegal in the government's acceptance of a below-cost bid so long as the bidder is found responsible. Danline Inc., B-215878, July 31, 1984, 84-2 C.P.D. ¶ 145. Rather, the question of whether a bidder can adequately perform the contract at its bid price depends on

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the responsibility of the bidder. Before award, the agency must make an affirmative determination of the awardee's responsibility. Aeroglide Corp., B-215484, July 2, 1984, 84-2 C.P.D. ¶ 9. The determination of a prospective contractor's ability to perform necessarily involves a subjective business judgment for procuring officials and, thus, is not readily susceptible to our review. D.D.S. Pac., B-216286, Apr. 12, 1985, 85-1 C.P.D. ¶ _____. We therefore will not review affirmative responsibility determinations unless the protester, which bears the burden of proving its case, shows possible fraud or bad faith on the part of procurement officials, or the solicitation contains definitive responsibility criteria that allegedly have not been applied. See section 21.3(f)(5) of our Bid Protest Regulations, 4 C.F.R. § 21.3(f)(5) (1985). BUR-TEL has not made the necessary showing here.

Although BUR-TEL generally alleges that the two lowest bidders are "nonresponsive" to the IFB's requirements, these allegations actually relate to the firms' responsibility. See Alan Scott Industries, et al., 63 Comp. Gen. 610 (1984), 84-2 C.P.D. ¶ 349. BUR-TEL's speculative assertion as to whether either of the potential awardees will perform the contract in accordance with all of its terms is a matter of contract administration. As such, it is the responsibility of the contracting agency and is not encompassed by our bid protest function. See section 21.3(f)(1) of our Bid Protest Regulations, supra, and Advanced Structures Corp., B-216102.2; B-216102.3, Mar. 28, 1985, 85-1 C.P.D. ¶ ____.

The protest is dismissed.



Robert M. Strong
Deputy Associate General Counsel