

DECISION



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

FILE: B-222448.4

DATE: June 6, 1986

MATTER OF: Harvard Interiors Manufacturing Co.

DIGEST:

1. Protest that bids were unreasonably low or "buy-ins" does not provide a valid basis to challenge a possible contract award. Such a protest questions the bidder's responsibility which the General Accounting Office does not review except in limited circumstances not present here.
2. Allegation that foreign firms are subsidized by their governments provides no basis for rejecting those firms' bids.

Harvard Interiors Manufacturing Co. (Harvard) protests the possible award of a contract to Urdan Industries, Ltd. (Urdan), Israel Military Industries (IMI), under solicitation No. DAAH01-86-B-0002, issued by the United States Army Missile Command for missile launchers.

We dismiss the protest pursuant to section 21.3(f) of our Bid Protest Regulations, 4 C.F.R. § 21.3(f) (1985).

Harvard, the third low bidder under the solicitation, contends that Urdan and IMI, Israeli firms which are the first and second low bidders, respectively, submitted unreasonably low bids from which we should infer that (1) those firms do not understand the requirements of the specifications and (2) that they are attempting to "buy-in" to the contract. The protester also contends that the lower bids reflect an unfair advantage that these foreign-based firms have over domestic firms because of the Israeli labor pool available to them.

Finally, on the basis of information and belief, Harvard alleges that, as of bid opening, Urdan and IMI have not contacted the "only known producer" of a required insulator coating compound. Therefore, the protester argues that their bids should be rejected because they cannot provide a product which has the required insulator coating compound.

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In our view, all of Harvard's grounds for protest relate to the question of Urdan's and IMI's responsibility. Harvard states, and the agency concurs, that the Army has not yet selected an awardee. Moreover, our Office was advised that the contracting officer has not made a responsibility determination on IMI.^{1/} Consequently, the allegation that the Army will improperly award a contract is speculative and premature. See Mil-Craft Mfg., Inc., B-214015, May 7, 1984, 84-1 C.P.D. ¶ 512.

In any event, we will not consider the merits of the issues asserted. The protester has no legal basis to object to the submission or acceptance of a competitor's low or below-cost bid, assuming the offeror is found responsible, although the contracting officer is expected to take appropriate action to ensure that the contractor does not recover any resultant losses through change orders or otherwise. See Environmental Aseptic Services Administration, B-218239, Mar. 5, 1985, 85-1 C.P.D. ¶ 276.

Furthermore, before any contract can be awarded, an agency must find the bidder responsible. We will not review a challenge to an affirmative determination absent a showing of possible fraud or bad faith on the part of contracting officials or an allegation that a specific responsibility criterion was not met. 4 C.F.R. § 21.3(f)(5) (1985); see also Command Systems, B-218093, Feb. 15, 1985, 85-1 C.P.D. ¶ 205 at 2. Harvard does not state that either exception would apply here.

As to the remaining issue of competitive advantage allegedly enjoyed by Urdan and IMI, we note that there is no requirement that contracting agencies equalize whatever advantages foreign firms may have because they are not subject to the same socio-economic requirements that must be met by domestic firms. Thus, any economic advantage enjoyed by a foreign bidder provides no basis for rejecting the foreign bid. See Omega Machine Co., B-204471, Dec. 3, 1981, 81-2 C.P.D. ¶ 442; cf. The Hygenic Corp., B-215110, May 24, 1984, 84-1 C.P.D. ¶ 571.

^{1/} The Army has rejected the low bid of Urdan as nonresponsive--a determination which that firm is protesting before our Office. Should we uphold the Army's rejection of Urdan's bid, IMI would be next in line for award.

The protest is dismissed.

A handwritten signature in black ink, appearing to read 'R. Strong', is written over the printed name.

Robert M. Strong
Deputy Associate General Counsel