

DECISION

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

FILE: B-222628 **DATE:** June 17, 1986
MATTER OF: Automated Power Systems, Inc.

DIGEST:

1. There is nothing illegal in the acceptance of a below-cost bid submitted by a responsible firm.
2. Complaint that low bid in current competitive procurement--\$63.75/item--shows that the government paid that same firm an unreasonably high price--\$100/item--in the past, when the bidder was in a sole-source position, does not state a basis for protest since it provides no challenge to the propriety of the current award. To the extent the protest challenges that bidder's integrity and business ethics for purposes of the competitive award, those are elements of responsibility, and GAO does not review an affirmative determination in that respect except in limited circumstances.
3. Whether a firm should have been included on a superseded qualified products list (QPL) is not relevant to the propriety of award to that firm under an invitation restricted to bidders on the current QPL, since the protester admits that the bidder properly is on the current QPL and does not suggest that the bid otherwise is unacceptable.

Automated Power Systems, Inc. (APS), protests the proposed award of a contract to C-R Control Systems, Inc. (C-R), under Coast Guard invitation for bids (IFB) No. DTCG36-86-B-00048 for lampchangers. A lampchanger is part of the beacon assembly on buoys used in and around navigable waters. We dismiss the protest.

The procurement was limited to sources on a recently established qualified products list (QPL), which included APS, C-R, and one other firm. APS states that C-R had been

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the only source on the predecessor QPL and had charged the Coast Guard more than \$100 per item in previous purchases. APS protests that C-R's bid of \$63.75 per lampchanger under the IFB therefore may represent an attempted buy-in, which APS complains is an unfair competitive practice. Alternatively, APS suggests that if the unit price of \$63.75 in fact reflects C-R's reasonable production and operations costs, then, at \$100 per lampchanger, the government paid C-R an unreasonably high price in the past. Finally, APS complains that although C-R's product properly qualifies for the new QPL, it may not have been tested adequately before being included on the superseded QPL.

The speculation that C-R's bid may be too low to cover the firm's costs does not prove a basis to object to the award. The reason is that there is nothing improper in the government's acceptance of a below-cost bid, so long as the bidder is judged capable of performing at that price. Pacific Fabrication, B-219837.2, Aug. 30, 1985, 85-2 C.P.D. ¶ 263. The procurement regulations only require that the contracting officer take appropriate action to assure that any resultant losses are not recovered through change orders or otherwise. See Federal Acquisition Regulation (FAR), 48 C.F.R. § 3.501-2(a) (1984); K & P Inc., B-219608, Aug. 1, 1985, 85-2 C.P.D. ¶ 121.

APS's complaint about the price the Coast Guard paid C-R in the past does not state a cognizable basis for protest, since it does not challenge the propriety of the currently proposed award. See 4 C.F.R. § 21.1 (1986). To the extent the issue does involve C-R's integrity and business ethics in terms of the current award, these matters are elements of the firm's responsibility. FAR, 48 C.F.R. § 9.104-1(d). Our Office does not review an affirmative determination of responsibility, which precedes any contract award, absent a showing of fraud or bad faith by government officials, or that definitive responsibility criteria were not met. See 4 C.F.R. § 21.3(f)(5). Neither exception applies here.

Finally, since the propriety of C-R's inclusion on the old QPL does not affect the validity of award under the current IFB, we will not consider this issue. In this respect, as stated above, APS does not object to C-R's inclusion on the current list, nor does APS suggest that C-R's bid otherwise is unacceptable. See C-R Control Systems, Inc., B-220017.2, Feb. 14, 1986, 86-1 C.P.D. ¶ 162.

The protest is dismissed.

A handwritten signature in black ink, appearing to read 'R. Strong', with a large, sweeping initial 'R'.

Robert M. Strong
Deputy Associate
General Counsel