

DECISION



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

FILE: B-187067

DATE: August 6, 1976

MATTER OF: Engineering Research, Inc.

DIGEST:

1. Protest which alleges mistake in apparent low bid is not for consideration pursuant to GAO Bid Protest Procedures because contracting parties, not protester, must assert rights and bring forth all necessary evidence to resolve mistake-in-bid question. Possibility of mistake is referred to agency for verification.
2. Protest alleging buy-in is not for consideration since ASPR § 1-311 does not provide for rejection of bids in such cases.
3. Protests concerning an affirmative determination of responsibility are no longer reviewed by GAO except for reasons not applicable in this case.
4. Allegation that apparent awardee failed to execute "Affirmative Action Program" provision in solicitation for supply contract involves a question of bidder responsibility, not responsiveness and failure to complete such provision may be waived as minor informality or irregularity under ASPR § 2-405(vi).

Engineering Research, Inc. (ERI) of Indianapolis, Indiana, protests award to any other firm under Naval Regional Procurement Office (Navy) IFB N00019-76-B-0007, for MK 1 wing assemblies for the Sidewinder Missile system. Four grounds of protest are stated.

First, ERI suggests that the apparent low bidder, ACME Machine & Tool Company (ACME) must have made a mistake in pricing its bid because ACME is a small company, has never produced wing assemblies before, and quotes a low unit price of \$221.60. ERI bid a unit price of \$234.65. In B. R. Abbot Construction Company, B-186263, May 26, 1976, 76-1 CPD 344,

we stated that even though preaward warning of possible mistake in another's bid could be sufficient cause for verifying bid, we questioned whether such a protester should be heard to argue the possibility of a mistake in contract price because the parties to the contract, not the protester, must assert rights and bring forth all necessary evidence. Accordingly, we will not consider or decide such issues pursuant to our Bid Protest Procedures, beyond advising the agency concerned that, for purposes of verification, the possibility of mistake has been suggested.

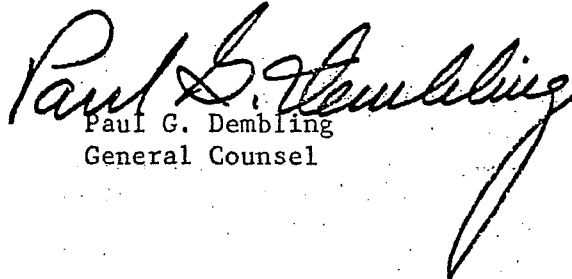
ERI also asserts that the ACME bid is intended to "buy-in" to the MK 1 program and that its bid should be rejected for that reason. In Allied Technology, Inc., B-185866, July 12, 1976, 76-2 CPD _____, we have recently held that we will not consider such allegations, since the Armed Services Procurement Regulation (ASPR) § 1-311 does not provide for rejection of bids where "buying-in" is suspected.

ERI apparently believes the Navy should find ACME non-responsible, suggesting that ACME has not and could not build the required wing assemblies at the offered price within the required time frame and that an "in-depth pre-award survey should be conducted before any contract is awarded to" ACME. In this connection, every award imports an affirmative determination of the successful bidder's responsibility. However, this Office no longer reviews protests concerning affirmative determinations of responsibility, absent allegations of fraud on the part of contracting officials or other circumstances not stated here. Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64. While we do consider protests involving negative determinations of the protester's responsibility in order to provide assurance against the arbitrary rejection of bids, affirmative determinations are based in large measure on subjective judgments which are largely within the discretion of the procuring officials who must suffer any difficulties resulting by reason of a contractor's inability to perform.

Finally, ERI states that ACME failed to execute the "Affirmative Action Program" provision in this solicitation for a supply contract and that its bid should be considered nonresponsive. In Royal Industries, B-185571, March 1, 1976, 76-1 CPD 139, we observed that this requirement concerns bidder responsibility rather than bid responsiveness, and may be completed after bid opening. Moreover, we noted that even where such a clause is applicable,

ASPR § 2-405(vi) provides that any such bid deficiency is a minor deviation which may be corrected after bid opening.

In view of the foregoing, ERI's protest is dismissed.


Paul G. Dembling
General Counsel