

15248 J. Roberts

PTII



DECISION

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

FILE: B-200263

DATE: October 21, 1980

MATTER OF: Old Dominion Systems, Inc.

DIGEST:

[Protest Alleging]

1. Alleged submission of below cost bid is not proper basis to challenge award of contract to responsible bidder.
2. Defense Acquisition Regulation § 2-402.2(e) which provides for rejection of bid if unreasonable as to price permits rejection of bid which is considered unreasonably high but not unreasonably low.
3. GAO does not review affirmative determination of responsibility absent circumstances not present here.

Old Dominion Systems, Inc., (ODS) protests the proposed award of a contract to Vanguard Technologies Corporation (Vanguard) under the Department of the Army invitation for bids No. DAAG54-80-B-0063, the second step of a two-step formally advertised procurement for software documentation. This procurement was restricted to small businesses. ODS, the second low bidder, alleges that Vanguard submitted a below cost bid which was substantially below the Government's cost estimate for this requirement, and that therefore the bid should be rejected as unreasonable. Furthermore, ODS suggests that Vanguard may lack the financial resources to successfully perform the contract at its low bid price and should be declared nonresponsible.

We have held that the submission of a below cost bid is not a proper basis upon which to challenge the validity of a contract award. Inter-Con Security Systems, Inc., B-189165, July 15, 1977, 77-1 CPD 434. In this regard,

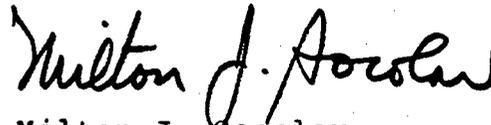
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ODS argues that Vanguard's low bid is unreasonable and therefore should be rejected pursuant to Defense Acquisition Regulation (DAR) § 2-404.2(e) which states that "[a]ny bid may be rejected if the contracting officer determines in writing that it is unreasonable as to price." However, we have previously interpreted this DAR provision as not providing any authority to reject an unreasonably low bid. This provision permits only the rejection of excessively high bids. North American Laboratories, 58 Comp. Gen. 724 (1979), 79-2 CPD 106.

Proper rejection of a bid as extremely low requires a determination that the bidder is nonresponsible or incapable of performance. See Futronics Industries, Inc., B-185896, March 10, 1976, 76-1 CPD 169. In this regard, ODS cites Vanguard's limited assets as a small business and its low bid in relation to the Government estimate in arguing that an Army determination that Vanguard is responsible would be incorrect. However, this Office does not review protests which question the procuring agency's affirmative determination of responsibility except in circumstances not present here. Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64.

Since it is clear from the protester's initial submission that the issues raised are not for consideration under our bid protest procedures, we will not obtain an agency report or conduct the requested bid protest conference. Kurz-Kasch, Inc.--Request for Reconsideration, B-192604, October 31, 1978, 78-2 CPD 311.

The protest is dismissed.



Milton J. Socolar
General Counsel