

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 2054860939⁴⁸

FILE: B-186525

DATE: June 2, 1976

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MATTER OF: Caltex Engineering Co.

DIGEST:

1. There is no legal basis to preclude or disturb contract award merely because low bidder may have submitted below-cost bid.
2. GAO does not review protests against affirmative determinations of responsibility except in cases of fraud or misapplication of definitive responsibility criteria set forth in solicitation.

The Caltex Engineering Co. protests any award to the low bidder on solicitation No. F116027609023, issued by Chanute Air Force Base for the maintenance of military family housing. The basis of the protest is that the low bid is considered so low as to be possibly detrimental to the Government in that contract performance may not conform with the specifications.

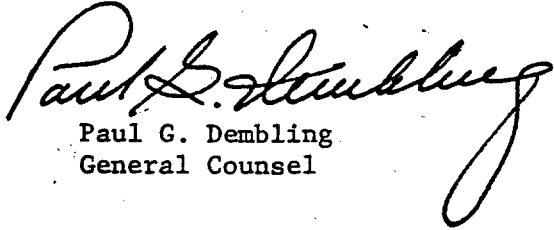
With regard to the allegation that the low bid is unreasonably low, we have repeatedly held that the mere fact that a bidder may have submitted a below-cost bid does not constitute a legal basis for precluding or disturbing a contract award. B-178928, July 17, 1973; 50 Comp. Gen. 788 (1971); The Baxter Corporation, B-185017, November 7, 1975, 75-2 CPD 286. We believe that to properly reject a bid as being unreasonably low would require a determination that the bidder is not responsible. B-175262, June 12, 1972.

To the extent that the protest may raise the issue of the inability of a bidder, who has submitted a below-cost bid, to perform a resultant contract, our Office has discontinued the practice of reviewing bid protests involving a contracting officer's affirmative determination of the responsibility of a contractor except in cases involving actions by procurement officials which are tantamount to fraud, or where the solicitation contains definitive responsibility criteria which allegedly have not been applied. Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64. Since the responsibility

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of the low bidder has not been challenged on either of these bases, we will not review this matter. However, we will continue to review protests against determinations of nonresponsibility to provide assurance against the arbitrary rejection of bids.

Accordingly, the protest is not for consideration.



Paul G. Dembling
General Counsel