

013851

DECISION



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

FILE: B-187832

DATE: December 17, 1976

MATTER OF: Composition Roofers Union Local 8

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.

Composition Roofers Union Local 8 protests an award made by the Department of the Army to the Dee-Cee Roofing Company for work at the Military Ocean Terminal at Bayonne, New Jersey. The protest is based on the allegation that the contractor cannot perform at the price bid and still comply within the framework of the Davis-Bacon Act and related laws. This, in essence, constitutes an allegation that the price bid is insufficient for contract completion.

With regard to the allegation that the low bidder's 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). We believe that to properly reject a bid as being unreasonably low would require a determination that the bidder is not responsible, which is not the case here. B-175262, June 12, 1972; The Baxter Corporation, B-185017, November 7, 1975, 75-2 CPD 286.

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

B-187832

responsibility criteria which allegedly have not been applied.
Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64.
Since the responsibility of the low bidder has not been challenged
on either of these bases, we will not review this matter.

Accordingly, the protest is denied.

Milton Fowler

Acting Comptroller General
of the United States