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DECISION



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

FILE: B-190411

DATE: November 8, 1977

MATTER OF: Kleen-Rite Corporation

DIGEST:

1. No legal basis exists to preclude contract award merely because low bidders may have submitted below-cost bids.
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 Kleen-Rite Corporation protests award to any bidder submitting a bid price lower than its own under invitation for bids No. N00140-77-B-6881, issued at the Newport Navy Base, Newport, Rhode Island. It is contended that these bids are below actual labor costs and that this fact would render impossible contract performance in accordance with the applicable specifications and the Department of Labor Wage Determination. It is also contended, for this reason, that the bidders in question should be found to be nonresponsible.

With regard to the allegation that the low bidders' bid prices are 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 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.

To properly reject a bid as being unreasonably low would require a determination that the bidder is not responsible. However, as regards 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

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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 of the low bidders has not been challenged on either of these bases, we will not review this matter.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States