

**DECISION**



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

C. Hammer  
BP-GG  
RAL  
RES  
548

7969

FILE: B-192844

DATE: October 10, 1978

MATTER OF: Fancy Industries, Inc.

**DISEST:**

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

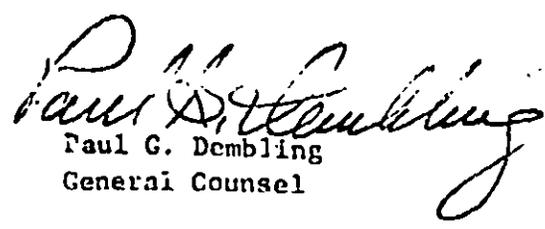
Fancy Industries, Inc. (Fancy), protests the award of a contract to Midwest Bag Company (Midwest) under invitation for bids No. DLA100-78-B-0803, issued by the Defense Logistics Agency, Defense Personnel Support Center, Philadelphia, Pennsylvania (DLA).

Fancy asserts that Midwest's bid is "unrealistically low" in that it does not provide for overhead and profit and should be considered nonresponsible.

With regard to the allegation that Midwest's bid is unrealistically 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. Edward E. Davis Contracting, Inc., B-190055, September 29, 1977, 77-2 CPD 245.

With regard to Midwest's responsibility, our Office does not review bid protests involving a contracting officer's affirmative determination of the responsibility of a contractor except for actions by procuring officials which are tantamount to fraud, or where the solicitation contains definitive responsibility criteria which allegedly have not been applied. Edward E. Davis Contracting, Inc., *supra*. Neither exception is present here.

In view of the above, the protest is dismissed.

  
Paul G. Dembling  
General Counsel