

DECISION



11652 Eaton Proc II
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-196104

DATE: October 15, 1979

MATTER OF: Northwestern State University of Louisiana

[Protest Alleging Awardee's Bid Was Below Cost]
DIGEST:

- BPC 1430
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1. When there is neither showing of fraud on part of procuring officials nor allegation that definitive responsibility criteria have not been met, GAO will not review affirmative determination of responsibility.
 2. Acceptance of below cost bid is not legally objectionable; rather, rejection of such bid requires finding that bidder is not responsible.
 3. When it is clear from initial submission that protest is without legal merit, GAO will decide matter without documented report from procuring agency.

Northwestern State University of Louisiana (Northwestern), in a letter addressed to the "Comptroller of the Army" and forwarded to our Office by a member of Congress, protests the Army's award of a contract to Central Texas College (Central Texas) under solicitation No. DAKF 24-79-B-0067.

Northwestern alleges that Central Texas's bid is too low and that performance at that price will result in a monetary loss. Northwestern also points out that it is the incumbent contractor, occupying 160 acres of land, formerly part of Fort Polk, which was deeded to it by the Army and the Department of Health, Education, and Welfare on condition that it develop a campus and provide complete educational services for the post. However, Northwestern asserts, it cannot compete against below-cost bidding.

Whether a bidder can perform at its offered price is a matter of responsibility. Our Office does

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not review affirmative determinations of responsibility unless there is either a showing of fraud or bad faith on the part of procuring officials or an allegation of failure to meet definitive responsibility criteria.

Moreover, we have often stated that a below cost bid, or "buying in," is not a valid basis on which to challenge an award. Although the Defense Acquisition Regulation (DAR) § 1-311 (1976) states that "buying in" is not a favored practice, it does not prohibit submission--or acceptance--of below cost bids. It merely cautions contracting officers to be sure that possible losses are not recouped during performance or "follow on" contracts. See American Drafting and Laminating Co., Inc., B-194105, March 7, 1979, 79-1 CPD 165 and cases cited therein; Mars Signal Light Company, B-193942, March 7, 1979, 79-1 CPD 164. Thus, rejection of a below cost bid requires a finding that the bidder is not responsible, i.e. not capable of performing the contract. Mainline Carpet Specialists, Inc., B-192534, May 8, 1979, 79-1 CPD 315.

The Army informally advises us that Central Texas, whose bid was about \$100,000 less than Northwestern's, has performed similar contracts satisfactorily at Fort Hood, Texas, and Fort Richardson, Alaska, and received a favorable recommendation on a preaward survey in connection with the Fort Polk procurement; the Army therefore awarded it the contract on September 6, 1979. Since the Army has found Central Texas to be a responsible bidder, and the circumstances in which we would review this determination are not present here, we have no legal objection to the award.

Generally, upon receipt of a bid protest, our Office requests a fully documented report from the procuring agency. See 4 C.F.R. 20.3(c) (1979). Where it is clear from the initial submission that the protest is without legal merit, we will decide the matter without benefit of such a report. Hughes Industries, B-195048, June 19, 1979, 79-1 CPD 441. This is such a case.

The protest is summarily denied.



For The Comptroller General
of the United States