

# DECISION



12295 TRANS  
THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-196970

DATE: December 14, 1979

MATTER OF: Ward Smith Transfer and Storage Company, Inc. *D 34 86*

## DIGEST:

1. No legal basis exists to preclude contract award merely because low bidder may have submitted below cost bid.
2. Whether bidder submitting below cost bid can perform contract in conformance with specifications is matter of bidder responsibility and not for consideration by our Office except in circumstances not present here.

Ward Smith Transfer and Storage Company, Inc. (Ward) protests the proposed award of a contract for moving services to Gordon Van and Storage Company *D. 34 87* (Gordon), the low bidder under invitation for bids (IFB) No. F25600-80-B0003, issued by the Department of the Air Force. Ward claims that Gordon's bid was "non-compensatory" and should be rejected as nonresponsive. For the reason stated below, the protest is denied.

Gordon bid a price of \$9.38 per hundred pounds while Ward bid \$10.35 per hundred pounds for the moving services described in the IFB. Ward contends that Gordon, which bid \$10.00 per hundred pounds in 1978, would have to reduce services to the Government in order to meet its bid price. This is tantamount to an assertion that Gordon submitted a below-cost bid. In support of this contention, Ward points out that the Consumer Price Index rose 17.3% between 1978 and 1979 in the transportation area while Gordon's 1979 bid for moving services was 16.6% lower than its 1978 bid.

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[Protest Against ~~the~~ Proposed Award]


This case is one in which it is clear from the protester's initial submission that the protest is without legal merit, and we therefore will decide the matter on the basis of this submission without requesting a report from the contracting agency. Building Maintenance Corporation, B-196081, November 27, 1979, 79-2 CPD \_\_\_\_.

The mere fact a bidder may have submitted a below cost bid does not constitute a legal basis for precluding or disturbing a contract award. Columbia Loose-leaf Corporation, B-193659, January 23, 1979, 79-1 CPD 45; Kleen-Rite Corporation, B-190411, November 8, 1977, 77-2 CPD 354. Moreover, the question of responsiveness is not involved in this case since there is no allegation that Gordon imposed a condition in its bid at variance with the substance of the IFB. See Uscher Business Forms, Inc., B-196513, November 6, 1979, 79-2 CPD \_\_\_\_.

In addition, the allegation respecting Gordon's ability to deliver the level of services required at the bid price concerns the bidder's responsibility. See National Organization Service, Inc.--Reconsideration, B-196267, November 20, 1979, 79-2 CPD \_\_\_\_.

This Office does not review protests against affirmative determinations of responsibility, unless either fraud is shown on the part of the procuring officials or 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. Neither exception is applicable here.

The protest is summarily denied.

  
For the Comptroller General  
of the United States