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DECISION



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

FILE: B-217048

DATE: November 26, 1984

MATTER OF: Edwards Trucking Co., Inc.

DIGEST:

1. Except in limited circumstances not applicable here, GAO will not review allegations that bid is below-cost bid and that awardee therefore will not meet minimum wage and fringe benefit requirements, since these involve a challenge to an affirmative determination of responsibility.
2. Whether a successful bidder will perform in accord with the Service Contract Act is a matter for the Secretary of Labor, and GAO will not review a protest on this basis.

Edwards Trucking Co., Inc. protests the award of a contract to Northern Virginia Van Lines of DOL Inc. by the Department of Labor pursuant to invitation for bids No. D/L 84-20. We dismiss the protest.

Edwards contends that the bid submitted by Northern Virginia Van Lines is "unconscionably low," and therefore questions whether the awardee is capable of performance and whether it will comply with minimum wage and fringe benefit requirements prescribed by the Secretary of Labor.

Neither the submission of a below-cost bid nor its acceptance by the government is illegal, and as a general rule, neither provides a basis on which to challenge an award. See Hydro-Test Products Inc., B-214009, Jan. 23, 1984, 84-1 CPD ¶ 104. Rather, the question of whether a bidder can satisfactorily perform at its bid price concerns the bidder's responsibility. Before awarding this contract, the contracting officer necessarily determined that Northern Virginia Van Lines was responsible. See

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B-217048

Federal Acquisition Regulation, § 9.103(b), 48 Fed. Reg. 42,102, 42,142 (1983) (to be codified at 48 C.F.R. § 9.103(b)). Our Office will not review an affirmative determination of responsibility absent a showing of possible fraud or bad faith on the part of contracting officials or that definitive responsibility criteria in the solicitation may not have been met. Richmond Gear, B-211589, May 9, 1983, 83-1 CPD ¶ 491. Neither exception applies here.

To the extent that Edwards is contending that the awardee may not comply with the minimum wage and fringe benefit requirements of the Service Contract Act of 1965, as amended, 41 U.S.C. §§ 351-358 (1982), we note that the administration of the Act is vested with the Secretary of Labor; for this reason, we will not consider a protest alleging that a contractor may not comply with it. See J&R Cleaning and General Maintenance, B-206280, Feb. 19, 1982, 82-1 CPD ¶ 147.

We deny Edwards' request for a conference since, in view of the above, one would serve no useful purpose. Zimmerman Plumbing and Heating Co., B-211879, June 24, 1983, 83-2 CPD ¶ 16.

The protest is dismissed.

Harry R. Van Cleve
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General Counsel