

DECISION



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

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FILE: B-218239

DATE: March 5, 1985

MATTER OF: Environmental Aseptic Services
Administration

AE 0038

DIGEST:

There is no legal basis to object to a below-cost bid. Whether a bidder can meet contract requirements in light of its low price is a matter of bidder responsibility, the affirmative determination of which is not reviewed by GAO except in circumstances not present in this case.

Environmental Aseptic Services Administration (EASA) protests award to another firm under invitation for bids (IFB) No. DAKF27-85-B-0037 issued by the Army.

We dismiss the protest.

EASA's complaint is that prices bid by the six lowest bidders are too low to support the work required under the contract. EASA contends that an award to any of these firms would allow a buy-in, which would restrict free and open competition.

There is no legal basis to object to an award on the basis of a below-cost bid. Aeroglide Corp., B-215484, July 2, 1984, 84-2 CPD ¶ 9. Whether a bidder will be able to meet contract requirements in light of its offered price is a matter of responsibility. Before award, an agency must make an affirmative determination that the bidder is responsible. Our Office does not review such a determination absent a showing of possible fraud or bad faith or that definitive responsibility criteria have not been met. Envirotronics, Inc., B-215622, July 3, 1984, 84-2 CPD ¶ 18. Neither exception has been alleged here.

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A "buy-in" is the submission of a below cost bid with the expectation of an increase in the contract amount through unnecessary or excessively priced change orders or of receiving follow-on contracts at artificially high prices. Such a bidding approach is not illegal. Contracting officers, however, are required to "take appropriate action to ensure buying-in losses are not recovered" through change orders or otherwise. See the Federal Acquisition Regulation, 48 C.F.R. § 3.501-2(a) (1984); Western Waste Management, B-216392, Sept. 24, 1984, 84-2 CPD ¶ 344.

The protest is dismissed.



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