

DECISION



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

FILE: B-220273 **DATE:** September 30, 1985
MATTER OF: Parker Shane Mfg.

DIGEST:

There is no legal basis to object to a below-cost offer. Moreover, any speculation that the offer may be mistaken does not provide a basis to protest the award.

Parker Shane Mfg. protests the award of a fixed-price contract to the Boeing Co. under request for proposals (RFP) No. F34601-85-R-05061 issued by the Department of the Air Force, Tinker Air Force Base, Oklahoma, for 67 refueling booms. Parker contends that Boeing's item price, 84.51 percent lower than Boeing's price on a prior contract for one refueling boom, is indicative of an attempt to eliminate small business competition by "predatory pricing" and buying-in.

We dismiss the protest.

We have considered previously a contention that an award to a below-cost or buy-in offeror would restrict free and open competition. Environmental Aseptic Services Administration, B-218239, Mar. 5, 1985, 85-1 C.P.D. ¶ 276. We indicated that an agency's acceptance of a buy-in or below-cost, fixed-price offer is not legally objectionable and does not provide a basis upon which a contract award may be challenged. Environmental Aseptic Services Administration, B-218239, supra. Whether an offeror's price is below its cost is a matter for the contracting officer to consider in determining whether the offeror is responsible. Alan Scott Industries, B-219096, June 20, 1985, 85-1 C.P.D. ¶ 706. Our Office, however, does not consider protests concerning affirmative determinations of responsibility absent a showing that the determination was made fraudulently or in bad faith or that definitive responsibility criteria in the solicitation were not met. A C.F.R. § 21.3(f)(5) (1985); Libby Corporation, B-218367.2, Apr. 10, 1985, 85-1 C.P.D. ¶ 412. Neither exception is alleged here.

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Parker, in stating that Boeing's price per refueling boom is more than 80 percent below Boeing's price on a prior contract for one refueling boom, may be alleging that Boeing's offer contains a mistake. However, our Office has consistently held that only the contracting parties (here, the Air Force and Boeing) are in a position to assert rights and bring forth all necessary evidence to resolve mistake questions. Libby Corporation, B-218367.2, supra. Therefore, any speculation by Parker that Boeing may have made a mistake does not provide a valid basis for protesting the award. Libby Corporation, B-218367.2, supra.



Robert M. Strong
 Deputy Associate General
 Counsel