



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: T.J. O'Brien Co., Inc.

File: B-223680

Date: August 11, 1986

---

### DIGEST

1. 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 involved here.
2. Protest that low bid should be rejected as unbalanced is dismissed where protester is not next in line for award if protest is sustained.

---

### DECISION

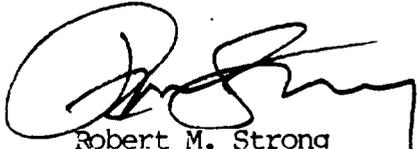
T.J. O'Brien Company (O'Brien) protests the proposed award of a contract by the Department of the Navy under invitation for bids No. N62477-86-B-5359 for maintenance of the energy monitoring control system at the David Taylor Naval Ship Research and Development Center in Bethesda, Maryland. O'Brien alleges that the low bidder's price is "completely out of line" and must be unreasonably low or unbalanced for the work to be performed.

We dismiss the protest without obtaining an agency report from the Navy because it is clear on its face that the protest either fails to state a valid basis of protest or otherwise is not for our consideration.  
4 C.F.R. § 21.3(f) (1986).

Initially, to the extent O'Brien asserts that the awardee submitted an unreasonably low or below-cost bid, there is no legal basis to object to an award on the basis of a below-cost bid. Command Systems, B-218093, Feb. 15, 1985, 85-1 C.P.D. ¶ 205. Whether the bidder will be able to meet the 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. Because that is a subjective determination based on business judgment, we will not review a challenge to such an affirmative determination unless there is a showing of possible fraud or bad faith on the part of the contracting officials or an allegation that a specific responsibility criterion set forth in the solicitation was not met. O'Brien has not indicated that either

exception is applicable here. Western Waste Management, B-216392, Sept. 24, 1984, 84-2 C.P.D ¶ 344.

In contrast to O'Brien's first argument that the low bidder's price was "too low" or below cost, O'Brien's contention that the low bid was unbalanced and, thus, nonresponsive is an issue our Office generally will review. O'Brien indicates, however, that of the four bids that were submitted, O'Brien's bid was fourth-in-line for the award of the contract. Where, as here, the protester would not be next in line for award of the contract in question if its protest were upheld, it is not an interested party under our Bid Protest Regulations for the purposes of protesting the responsiveness of the low bid, 4 C.F.R. §§ 21.0(a) and 21.1(a) (1986); See Comsel Corp., et. al, B-221170.3, et al, Jan. 31, 1986, 86-1 C.P.D. ¶ 115. Therefore, since O'Brien is not next in line for award of the contract and since O'Brien has not protested the bids of the second and third ranked bidders, we dismiss this ground of protest.



Robert M. Strong  
Deputy Associate General Counsel