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**DECISION**



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

FILE: B-190877

DATE: May 11, 1978

MATTER OF: Inflated Products Company, Inc.

**DIGEST:**

1. Affirmative determinations of responsibility are not reviewed except in cases alleging fraud or failure to apply definitive responsibility criteria.
2. Below-cost bids are discouraged but not prohibited by procurement regulations, so GAO will not object to award of contract on this basis. Other evidence of possible antitrust violations is for Attorney General.
3. The filing of a complaint concerning another bidder's alleged noncompliance with Equal Employment Opportunity regulations is not for consideration under GAO bid protest procedures.
4. When it is clear from initial submission that protest is without legal merit, decision will be rendered without requesting report from procuring agency.

Inflated Products Company, Inc. (Inflated) has protested award of a contract under solicitation No. DAAK01-77-B-5472 to any other firm on grounds that it is the low, responsive, responsible bidder.

The solicitation was for 136 inflatable shelters conforming to military specifications. It was issued by the Army Troop Support and Aviation Materiel Readiness Command (TSARCOM), St. Louis, Missouri, on June 20, 1977; bids were opened on April 21, 1978. Prior to opening, a protest by Inflated regarding TSARCOM's quality control procedures was denied by our Office. See Inflated Products Company, Inc., B-190877, March 21, 1978, 78-1 CPD 221.

Inflated now objects to award to any of three other bidders on grounds that they are not responsible. B.F. Goodrich, the protester alleges, may be violating anti-trust statutes by bidding a loss contract in an effort to drive all small businesses out of this product line. In addition, Inflated contends that B.F. Goodrich is not a responsible prospective contractor because that firm is behind schedule under a contract for the same items awarded months ago. Two other bidders, Cecile Industries, Inc. and Navaho Corporation, according to Inflated, lack experience, technical capability, adequate facilities, and financial resources, and therefore also should be declared nonresponsible.

As for B.F. Goodrich's allegedly below cost bid, Armed Services Procurement Regulation (ASPR) § 1-311 (1976 ed.) discourages but does not prohibit such bids. We would not legally object to award of a contract even if it were established that B.F. Goodrich had in fact "bought in." See IMBA, Incorporated, B-188364, B-187404, November 9, 1977, 77-2 CPD 356. Any further evidence of possible antitrust violations should be submitted to the contracting officer for possible forwarding to the Attorney General in accordance with ASPR § 1-111.2. See Kaufman-DeDell Printing, Inc., B-190377, November 1, 1977, 77-2 CPD 340.

Affirmative determinations of bidders' responsibility are made by contracting officers, and, as a matter of policy, our Office will not review such determinations except in cases alleging fraud or failure to apply definitive responsibility criteria. Since Inflated has not challenged the award on either of these bases, we will not review the matter. See Mule Battery Co., Inc., B-189945, December 20, 1977, 77-2 CPD 483.

Inflated also alleges that B.F. Goodrich has not been in compliance with "EEO regulations" and advises that "We intend to take this complaint directly to the Department of Labor." We believe this evidences Inflated's recognition that complaints of this nature are to be resolved through the Department of Defense and the Department of Labor under the provisions of ASPR Section XII, Part 8, rather than through our Office.

Because we believe it was clear from Inflated's initial submission that the protest was without

legal merit, this decision has been reached without requesting a report from the procuring activity pursuant to our Bid Protest Procedures, 4 C.F.R. 201.3(c) (1977 ed.). See Braswell Shipyards, Inc., B-191451, March 24, 1978, 78-1 CPD 233.

Accordingly, the protest is summarily denied.

*R. F. Kellu*  
Deputy Comptroller General  
of the United States