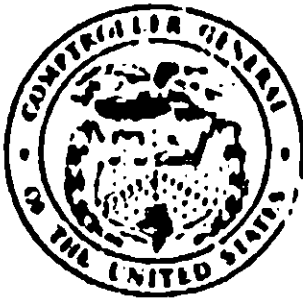


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DECISION



Legal
P. 11 2
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-191629

DATE: May 8, 1978

MATTER OF: Swedlow, Inc.

DIGEST:

1. There is no legal basis to preclude or disturb contract award merely because low bidder may have submitted below-cost bid.
2. GAO does not review protests of affirmative determination of responsibility except in cases of fraud or misapplication of definitive responsibility criteria set forth in solicitation.

Swedlow, Inc. (Swedlow) protests any award to the low bidder made by the Navy Ships Parts Control Center, Mechanicsburg, Pennsylvania under invitation for bids (IFB) N00104-78-B-0281. The bases of the protest are that: (1) the low bid is less than the base cost of the stretched acrylic required by the specifications; (2) a coating is required which is available only from three sources and the low bidder is not one of the sources; and (3) the low bidder has not received any prior awards for the bid item. In essence, Swedlow alleges that the low bidder's price is insufficient for contract completion and that the company may not understand the IFB specifications.

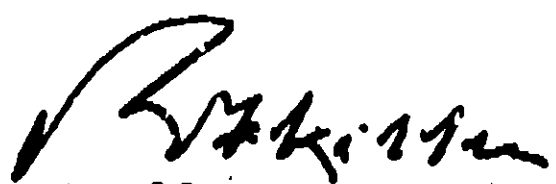
With regard to the allegation that the low bidder's bid is unreasonably low, we have repeatedly held that the mere fact that a bidder may have submitted a below-cost bid does not constitute a legal basis for precluding or disturbing a contract award. B-178928, July 17, 1973; 50 Comp. Gen. 788 (1971).

To the extent that the protest raises the issue of the inability of the low bidder to perform the

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resultant contract, our Office does not review bid protests involving a contracting officer's affirmative determination of the responsibility of a contractor except for actions by procuring officials which are tantamount to fraud, or where the solicitation contains definitive responsibility criteria which allegedly have not been applied. Since the responsibility of the low bidder has not been challenged on either of these bases, we will not review the matter. River Cities Industrial Uniform Service, B-190483, November 15, 1977, 77-2 CPD 374.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States