

DECISION



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

50902

FILE: B-184259

DATE: July 15, 1975

MATTER OF: Worldwide Services, Inc.

97382

DIGEST:

Protest that bid price of low bidder was below actual cost of performing desired services will not be considered, since practice of reviewing protests against contracting officer's affirmative responsibility determination has been discontinued, except for actions by procurement officials which are tantamount to fraud or where solicitation contains definitive responsibility criteria which allegedly have not been applied.

Worldwide Services, Inc., protests the award of a contract to Integrity Management International, Inc., under invitation for bids No. N00128-75-B-0134, issued by the Department of the Navy, Great Lakes, Illinois, for mess attendant and food handling services.

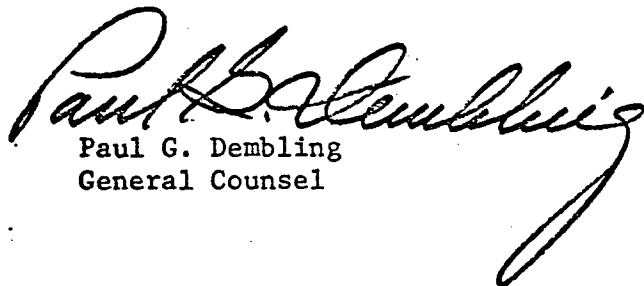
Worldwide protests the award to Integrity because it believes Integrity submitted a bid price lower than the actual costs that would be incurred in performing the work. Consequently, it is believed that, since it is unlikely that Integrity can perform the work with the substantial losses that will be incurred, the Government will be buying only a future default rather than the services desired.

The question of whether a bidder can perform at its bid price is one of responsibility. Nelson Electric Division of Sola Basic Industries, B-180393, April 10, 1974. Our Office has discontinued the practice of reviewing bid protests involving a contracting officer's affirmative determination of responsibility of a contractor, since the determination is largely within the discretion of the procurement officials who must bear any difficulties experienced by reason of a contractor's nonresponsibility. If the contracting officer finds the contractor responsible, we do not believe the finding should be disturbed except for actions by procurement officials which are tantamount to fraud or when the solicitation contains definitive responsibility criteria which allegedly have not been applied. United Hatters,

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Cap and Millinery Workers International Union, 53 Comp. Gen. 931 (1974); Central Metal Products, Inc., 54 Comp. Gen. 66 (1974); and Myers Drum Company, B-183526, April 18, 1975. We will, however, continue to consider protests against determinations of nonresponsibility to provide assurance against the arbitrary rejection of bids.

Since fraud has not been alleged or demonstrated, nor has the failure to apply definitive responsibility criteria been alleged, we must decline to consider the protest upon its merits. Exotech Systems, Inc., 54 Comp. Gen. 421 (1974).


Paul G. Dembling
General Counsel