

# DECISION



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

60158

FILE: B-185104

DATE: November 14, 1975

MATTER OF: Parsons Custom Products, Inc.

97740

## DIGEST:

1. There is no legal principle on which an award may be disturbed merely because a bidder may have submitted below cost bid.
2. GAO does not review protests against affirmative determinations of responsibility by contracting officials except in cases of fraud or misapplication of definitive responsibility criteria set out in solicitation.

Parsons Custom Products, Inc. (Parsons), has protested against the award made under solicitation No. DAAA09-76-C-2015 by the United States Army Armament Command, Rock Island, Illinois.

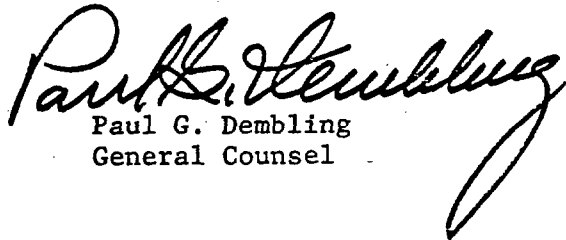
Forty-five prospective contractors were solicited and six proposals received. Proposals for 681 each Shop Equipment, Contact Maintenance Sets, Truck Mounted, were opened on September 29, 1975. On October 2, 1975, award was made to Southwest Truck Body Co. (Southwest) at a unit price of \$9,162 each.

The gravamen of Parsons' protest is that of its offered unit price of \$14,585, its calculated materials costs alone were \$9,275, or only \$113 more per unit than the unit price offered by Southwest. Further, Parsons alleges that the bulk of materials were GSA purchased parts so that no one contractor could receive pricing favoritism. Parsons contends that the contract cannot be completed at the award price and performance will therefore result in additional costs to the Government.

With respect to the allegation that Southwest's bid is unreasonably low, we have repeatedly held that we are aware of no legal principle on the basis of which an award may be precluded or disturbed merely because the low bidder submitted a below-cost bid. B-177567, April 3, 1973; B-175262, June 12, 1972; see 50 Comp. Gen. 788 (1971). We believe that to properly reject a bid as being unreasonably low would require a determination that the bidder is not responsible, B-175262, supra, which is not the case here.

To the extent Parsons' protest may relate to Southwest's responsibility, this Office does not review protests against affirmative determinations of responsibility, unless either fraud is alleged on the part of procuring officials or where the solicitation contains definitive responsibility criteria which allegedly have not been applied. See Central Metal Products, Inc., 54 Comp. Gen. 66 (1974). Affirmative determinations are based in large measure on subjective judgments which are largely within the discretion of procuring officials who must suffer any difficulties experienced by reason of a contractor's inability to perform. However, we will continue to consider protests against determinations of nonresponsibility to provide assurance against the arbitrary rejection of bids.

Accordingly, we must decline to consider the merits of the case.

  
Paul G. Dembling  
General Counsel