

DECISION

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

FILE: B-185017

DATE: November 7, 1975

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MATTER OF: The Baxter Corporation

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 against affirmative determinations of responsibility except in cases of fraud or misapplication of definitive responsibility criteria set forth in solicitation.

The Baxter Corporation protests award of a contract to another firm, the low bidder, for item Nos. 1-24 under solicitation No. CHN-FT-75-116, issued by Region 5 of the Federal Supply Service, General Services Administration. The basis of the protest is that the low bidder, the Sealed Air Corporation, bid below its true costs for various items solely to keep the protester from receiving any of this business.

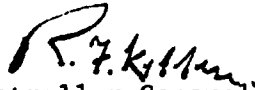
With regard to the allegation that the Sealed Air Corporation's bid is unreasonably low, we have repeatedly held that the mere fact that a bidder may have submitted a below-cost bid does not constitute a legal basis for precluding or disturbing a contract award. B-178928, July 17, 1973; 50 Comp. Gen. 788 (1971). We believe that to properly reject a bid as being unreasonably low would require a determination that the bidder is not responsible, which is not the case here. B-175262, June 12, 1972.

To the extent that the protest may raise the issue of the inability of a bidder, who has submitted a below-cost bid, to perform a resultant contract, our Office has discontinued the practice of reviewing bid protests involving a contracting officer's affirmative determination of the responsibility of a contractor except in cases involving actions by procurement officials which are tantamount to fraud, or where the solicitation contains definitive responsibility

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criteria which allegedly have not been applied. Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64. Since the responsibility of the Sealed Air Corporation has not been challenged on either of these bases, we will not review this matter. However, we will continue to review protests against determinations of nonresponsibility to provide assurance against the arbitrary rejection of bids.

Accordingly, the protest is denied.


Acting Comptroller General
of the United States