

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

FILE: B-187152

DATE: August 31, 1976

MATTER OF: SIMCO Electronics

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98098**DIGEST:**

1. Protest, alleging that since awardee would not be able to pay workers wage scale required by Walsh-Healey and/or Service Contract Act without losing money on contract procuring activity could not be assured of satisfactory performance, will not be considered by GAO since (1) duty of administering and enforcing two acts is that of Department of Labor, (2) award may not be disturbed merely because bidder submitted below-cost bid, and (3) GAO no longer reviews affirmative determinations of responsibility, with exceptions not applicable here..
2. Allegation that an investigation of awardee would reveal that it is guilty of certain improper practices is not for consideration by GAO, since to extent alleged wrongdoings are of criminal nature they are properly for referral to Department of Justice, and to extent they relate to responsibility GAO no longer reviews affirmative determinations of responsibility, with exceptions not applicable here.

By letter of August 6, 1976, with enclosures, SIMCO Electronics (SIMCO) protested against the award of a contract to Viking Laboratories (Viking) under solicitation N00228-76-B-4390, issued by the Naval Supply Center, Oakland, California.

SIMCO's primary complaint is that the successful low bidder, Viking, cannot meet the requirements of the Walsh-Healey Public Contracts Act as set forth in the solicitation. SIMCO states that the solicitation requires Viking to supply qualified journeymen electronics technicians who must, according to the wage determination in the contract, be paid a certain wage scale and that should Viking pay this scale it would lose at least \$0.21 per hour on the contract. SIMCO alleges that under these conditions, it would seem doubtful that the Navy could be assured of satisfactory performance.

SIMCO also alleges that an investigation would reveal that Viking is guilty of (1) giving gifts in excess of IRS guidelines, (2) predatory pricing, (3) obtaining a Small Business Administration participation loan under questionable circumstances, and (4) direct or indirect use of said loan funds to finance these practices.

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Regarding Viking's allegation that SIMCO cannot meet the requirements of the Walsh-Healey Act, it appears that the Service Contract Act is applicable to this contract since in its letter of July 23, 1976, to the procuring activity, SIMCO states that the minimum wage scale was set out in the Registrar of Wage Determinations under the Service Contract Act. In any event, the responsibility for the administration and enforcement of both of these acts rests with the Department of Labor, not GAO. See 19 Comp. Gen. 785 (1940); International Brotherhood of Teamsters (Local 814), B-181068, August 13, 1974, 74-2 CPD 93.

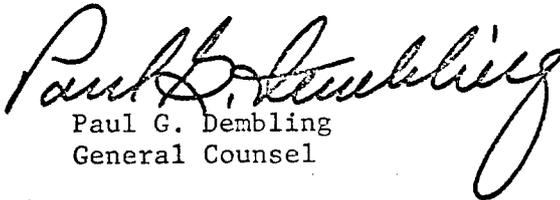
Concerning the fact that Viking might lose money on this contract, we have repeatedly held that we are aware of no legal principle on the basis of which an award may be precluded or disturbed merely because the low bidder or offeror submitted a below-cost bid or offer. Parsons Custom Products, Inc., B-185104, November 14, 1975, 75-2 CPD 311, and cases cited therein. We believe that to properly reject a bid or offer as being unreasonably low would require a determination that the bidder or offeror is not responsible. Such a determination was not made in the present case.

Regarding the question of Viking's responsibility, which SIMCO also appears to be questioning, our Office has discontinued its practice of reviewing bid protests involving a contracting officer's affirmative determination of responsibility of a prospective contractor except for actions by procurement officials which are tantamount to fraud or where the solicitation contains definitive criteria of responsibility which allegedly have not been applied. La Crosse Garment Manufacturing Company, B-185462, December 17, 1975, 75-2 CPD 399.

Concerning the remaining allegations, while they are too broad to categorize, to the extent they are of a criminal nature, they are properly for referral to the Department of Justice for whatever action it deems appropriate. See Arsco, Inc., B-132740, January 28, 1976, 76-1 CPD 54, and Tyco, B-185213, March 9, 1976, 76-1 CPD 166. To the extent they may relate to bidder responsibility, as noted above, they are not for our consideration.

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For the above reasons, we must decline to consider SIMCO's protest on its merits.


Paul G. Dembling
General Counsel