

**DECISION**



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

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FILE: B-193001

DATE: October 30, 1978

MATTER OF: Stancil-Hoffman Corporation

**DIGEST:**

Allegation that contractor will not satisfactorily perform contract because it allegedly submitted a below-cost bid constitutes protest against agency's affirmative determination of responsibility and is not for review by GAO absent circumstances not present here.

Stancil-Hoffman Corporation (Stancil-Hoffman) protests award of contract No. F04606-78-C-115 by McClellan Air Force Base, California, to Video Research Corporation (Video) for 20 channel voice recorder/ reproducer systems.

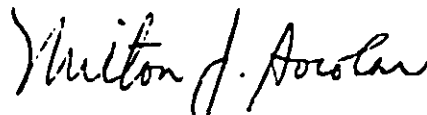
Stancil-Hoffman contends that Video's bid constitutes a "buy-in" and that such a bid is prohibited by Defense Acquisition Regulation (DAR) § 1-311 (1976 ed.) which states that the Department of Defense does not favor "buying-in." Stancil-Hoffman also asserts that Video will not be able to supply the systems as required in the specifications at the contract price.

Although DAR § 1-311 discourages "buying-in," the practice is not illegal and does not preclude the Government's acceptance of a below-cost bid. See Allied Technology, Inc., B-185866, July 12, 1976, 76-2 CPD 34. Thus, the fact that a low bidder may incur a loss at its bid price does not justify rejecting an otherwise acceptable bid. See Inter-Con Security Systems, Inc., B-189165, June 15, 1977, 77-1 CPD 434. However, the regulation does caution contracting officers to assure that amounts excluded

in the buying-in contract are not recovered through change orders or follow-on contracts. Stancil-Hoffman indicates that a copy of its protest has been filed with the contracting activity. Accordingly, that activity is on notice of the alleged buy-in and under the regulation is responsible for preventing recoupment of Video's possible buy-in losses. See A.R.F. Products, Inc., B-190166, B-190195, November 1, 1977, 77-2 CPD 339.

The allegation that Video will not satisfactorily perform a contract because it has "bought in" or submitted a below-cost bid constitutes a protest against the Air Force's affirmative determination of Video's responsibility. Our Office no longer reviews protests against affirmative determinations of responsibility unless either fraud is shown on the part of the procuring officials or the solicitation contains definitive responsibility criteria which allegedly have not been applied. See Consolidated Elevator Company, B-190929, March 3, 1978, 78-1 CPD 166, and cases cited therein.

Absent such circumstances, the protest is dismissed.

*for*   
Paul G. Dembling  
General Counsel