

13656 PL-II

**DECISION**



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

FILE: B-198565

DATE: May 5, 1980

MATTER OF: American Electronic Laboratories, Inc. *CNG01937*

**DIGEST:**

Neither possibility of buy-in nor excessively low offer is basis for rejection of offer. Rejection of offer alleged to be too low requires determination of nonresponsibility. GAO does not review affirmative responsibility determinations, absent circumstances not present here.

American Electronic Laboratories, Inc. (AEL) protests the award or proposed award of a contract *AGC00823* by Warner Robins Air Logistics Center to American Nucleonics Corporation, Inc. (ANC) under solicitation No. F09603-80-R-3273. The solicitation called for developing and testing a new antenna. *CNG01938*

AEL contends that ANC's low offer will not cover the cost of the work to be performed. AEL questions whether ANC is capable of meeting the contract requirements, suggesting that ANC's lower price indicates that company intends to provide something less than the product specified.

We are dismissing the protest.

The submission of a below-cost bid is not a proper basis upon which to challenge the validity of a contract award. Inter-Con Security Systems, Inc., B-189165, June 15, 1977, 77-1 CPD 434. Proper rejection of an offer as extremely low requires a determination that the offeror is nonresponsible, that is, that the offeror cannot or does not intend to perform in accordance with contract requirements.

[Protest Against Contract  
Award Involving Low Cost]

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Futronics Industries, Inc., B-185896, March 10, 1976, 76-1 CPD 169. Our Office does not review protests of affirmative determinations of responsibility, which would necessarily be involved here as a prerequisite to award, 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. Neither exception is applicable in this case.

While a below-cost bid may also suggest the possibility of a buy-in (an attempt to obtain an award by knowingly offering a price less than anticipated costs with the expectation either to increase the contract price during performance or to receive future contracts at high enough prices to recover the losses on the original contract), Defense Acquisition Regulation § 1-311 (1976 ed.) does not preclude the acceptance of a below-cost bid. The regulation mainly cautions the contracting officer to assure that amounts excluded in the "buying in" contract are not recouped through change orders or follow-on contracts. Allied Technology, Inc., B-185866, July 12, 1976, 76-2 CPD 34. If ANC's low offer is accepted, ANC will be required to perform the contract in strict compliance with its terms. Moorehead Electric Co., Inc., B-192075, August 9, 1978, 78-2 CPD 109.

*Harry R. Van Cleave*  
for Milton J. Socolar  
General Counsel