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DECISION

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

FILE: B-200858

DATE: October 27, 1980

MATTER OF: Urban Enterprises *by us*

DIGEST:

There is no legal basis to preclude or disturb contract award merely because bidder submits below-cost bid. Question of whether bidder can perform at that price is matter of bidder responsibility, an affirmative determination of which GAO does not consider except in circumstances not present here.

(Urban Enterprises (UE) protests the award of a contract by the Department of the Interior, National Park Service, to Quality Management and Associates (Quality) under solicitation No. 9000-80-19. UE, the second low bidder, alleges that Quality's bid price is unreasonably low and, therefore, Quality will either suffer a loss as a result of the award or will be defaulted because of poor performance.)

We have repeatedly held that a bidder's submission of a below-cost bid does not itself constitute a legal basis for precluding or disturbing a contract award. Columbia Loose-Leaf Corporation, B-193659, January 23, 1979, 79-1 CPD 45; Swedlow, Inc., B-191629, May 8, 1978, 78-1 CPD 345.

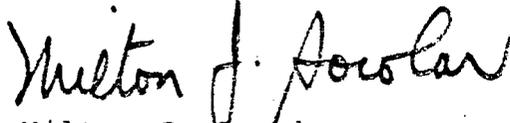
(An unreasonably low bid may be rejected if the contracting officer decides that the bidder will not be able to perform at that low price and therefore is not a responsible bidder. However, that is a subjective determination within the discretion of the contracting officer, and this Office no longer reviews protests of affirmative determinations of responsibility unless either fraud is shown on the part of the procuring officials or the

[Contract Award Protest]

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solicitation contains definitive responsibility criteria which allegedly have not been applied. Eastern Brokers, Inc. and Jan Pro Corporation, B-193774, January 31, 1979, 79-1 CPD 75. (In the present case, neither allegation is made. Consequently, we will not review the contracting officer's determination that Quality is a responsible bidder.)

The protest is dismissed.


Milton J. Socolar
General Counsel