

# DECISION



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

11/2/85  
PZ-IT  
31100

FILE: B-218487.2

DATE: April 30, 1985

MATTER OF: Total Maintenance, Inc.

## DIGEST:

1. Protest alleging that low bidder submitted below-cost bid is dismissed. Award to a bidder offering a below-cost bid is not legally objectionable and under 4 C.F.R. § 21.3(f)(5) GAO does not review affirmative determinations of responsibility except in circumstances that were not alleged.
2. Where protest against contract award to low bidder is dismissed, protester's allegations regarding second low bidder are academic and need not be considered.

Total Maintenance, Inc. protests award of a contract to either Northern Virginia Service Corporation or Reliable Janitorial Services under solicitation No. F29650-84-B0096, issued by Kirtland Air Force Base for custodial services. We dismiss the protest.

The protester first asserts that the bid submitted by Northern Virginia Service, the incumbent contractor and apparent low bidder, is less than the amount being paid Northern Virginia Service under the current contract. The protester maintains that Northern Virginia Service is not performing satisfactorily under its current contract and therefore could not perform satisfactorily under the lower bid it submitted in response to the challenged solicitation. The protester also contends that Northern Virginia Service is likely to seek subsequent contract modifications to compensate for its initial below-cost bid.

There is no legal basis on which to object to a contract award solely because the awardee submitted a below-cost bid. Educational Technology & Services, Inc., B-211231, Apr. 22, 1983, 83-1 CPD ¶ 449. In this connection, the contracting officer is required to take

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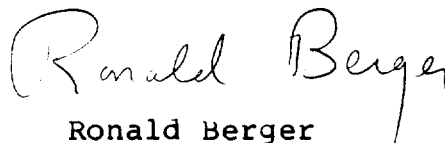
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appropriate action to ensure that losses due to below-cost bidding are not recovered. Federal Acquisition Regulation § 3.501-2(a), 48 C.F.R. § 3.501-2(a).

Further, whether a bidder will be able to meet the contract requirements in light of its offered price is a matter of the bidder's responsibility. Before award, the contracting agency must make an affirmative determination that the prospective awardee is responsible. Under our Bid Protest Regulations, 4 C.F.R. § 21.3(f)(5) (1985), we do not review such determinations unless the protester alleges fraud or bad faith on the part of the contracting officials or contends that definitive responsibility criteria in the solicitation were not met. Neither exception is alleged in this case.

Since we are dismissing the protester's challenge to award of the contract to the low bidder, Northern Virginia Service, other allegations the protester raises regarding Reliable, the second low bidder, are academic and need not be considered. See National Service Co., B-214915.3, Dec. 27, 1984, 84-2 CPD ¶ 706.

The protest is dismissed.



Ronald Berger  
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General Counsel