

DECISION

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

Doughton, Briette
31845

FILE:

B-219608

DATE: August 1, 1985**MATTER OF:**

K & P Incorporated

DIGEST:

1. Protester has no legal basis to object to the submission or acceptance of a competitor's below-cost bid. Ability to perform the contract at the bid price is a matter of responsibility, and GAO does not review affirmative determinations of responsibility except in circumstances not present here.
2. When a buy-in is suspected, the contracting officer must take appropriate action to ensure that potential losses are not covered through change orders or otherwise.

K & P Incorporated protests the award of a contract for janitorial services to any other bidder under invitation for bids (IFB) No. N62470-84-B-5627, issued by the Navy Public Works Center, Norfolk, Virginia.

We dismiss the protest.

K & P contends that the Navy should reject the 12 lowest bids submitted on July 11, 1985, as below cost because the bid prices cannot support payment of minimum wages and taxes for the employees needed to perform the contract's required manhours of work. K & P argues that the bidders will be unable to perform the contract at the bid prices and implies that award to any of them would allow a buy-in.

A protester has no legal basis to object to the submission or acceptance of a competitor's below-cost bid. Ambulancias de Emergencias, Inc., B-216936, Nov. 26, 1984, 84-2 CPD ¶ 562. The low bidder's ability to perform the contract at the bid price is a matter of responsibility for the agency to determine before contract award. This Office does not review affirmative determinations of responsibility absent a showing of possible fraud or bad faith by government officials or that definitive responsibility


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criteria have not been met. Environmental Aseptic Services Administration, B-218239, Mar. 5, 1985, 85-1 CPD ¶ 276. Neither exception is alleged here.

A buy-in is a submission of a below-cost bid, with the bidder expecting to increase the contract amount through unnecessary or excessively priced change orders or to receive follow-on contracts at artificially high prices. Although this bidding approach is not illegal, applicable regulations require the contracting officer to "take appropriate action to ensure buying-in losses are not recovered" through change orders or otherwise. See Federal Acquisition Regulation, 48 C.F.R. § 3.501-2(a) (1984); Environmental Aseptic Services Administration, B-218239, supra, 85-1 CPD ¶ 276.

We deny K & P's request for a conference because it would serve no useful purpose here. Edwards Trucking Co., Inc., B-217048, Nov. 26, 1984, 84-2 CPD ¶ 574. Since we dismiss the protest, we need not consider K & P's claim for bid preparation and protest costs.

The protest is dismissed.


Ronald Berger
Deputy Associate
General Counsel