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Comptroller General  
of the United States

1013710

Washington, D.C. 20548

## Decision

**Matter of:** W.M. Schlosser Company Incorporated

**File:** B-254968

**Date:** October 1, 1993

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Michael J. Cohen, Esq., W.M. Schlosser Company, Inc., for the protester.

Mary G. Curcio, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. General Accounting Office will not consider a protest that a lower-priced bid was mistaken and should not have been accepted, since it is solely the responsibility of the contracting parties to assert rights and bring forth the necessary evidence to resolve mistake questions.

2. Protest that agency should not have accepted protester's bid because it is too low, is dismissed since there is no legal basis on which to object to the submission or acceptance of a below cost bid.

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### DECISION

W.M. Schlosser Company, Inc. protests the award of a contract to Riley Corporation under invitation for bids (IFB) No. DACA65-93-B-0051, issued by the U.S. Army Corps of Engineers to replace boilers and repair concrete floors. Schlosser asserts that Riley's bid is so low that it must be rejected as a mistaken bid and that an award to Riley would result in an unconscionable contract.

We dismiss the protest.

The IFB required bidders to submit bid prices for two items--to replace boilers and to repair concrete floors--and a total bid for both items. Riley submitted the low total bid of \$1,200,000 comprised of \$1,156,200 for boiler replacement and \$43,800 for floor repair. Schlosser submitted the second low total bid of \$1,444,000 comprised of \$864,000 for boiler replacement and \$580,000 for floor repair. The Government estimate was \$1,268,200 for the total job including \$910,000 for boiler replacement and \$358,200 for floor repair.

Schlosser asserts that Riley's bid must be rejected because its price for concrete floor repair is so far below the government estimate that it must be mistaken. Schlosser, however, does not have standing to claim an error in Riley's bid. Rather, it is the responsibility of the contracting parties--the government and the low bidder--to assert rights and bring forth the necessary evidence to resolve mistake questions. Johnny F. Smith Truck & Drayline Serv., Inc., B-236984, Jan. 2, 1990, 90-1 CPD ¶ 4. Accordingly, we will not consider Schlosser's protest on this issue.

Schlosser also argues that Riley's bid must be rejected because an award to Riley would result in an unconscionable contract which would expose the government to a claim for reformation.

The record before us does not indicate that an award to Riley would result in an unconscionable contract. While Riley's bid for floor repair is substantially below the government estimate, Riley's bid for the boiler replacement is much greater than the government estimate and its total bid is only \$68,200, or 5.3 percent, lower than the government estimate. In any case, our Office has recognized that a bidder, for various reasons in its business judgment, may decide to submit a below-cost bid, and there is no basis to object to the submission or acceptance of a below-cost bid. Diemaster Tool, Inc., B-238877, Apr. 5, 1990, 90-1 CPD ¶ 375.

The protest is dismissed.



John Van Schaik  
Acting Assistant General Counsel