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DECISION



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

FILE: B-190483

DATE: November 15, 1977

MATTER OF: River Cities Industrial Uniform Service

DIGEST:

1. Protest questioning small business status of concern will not be considered as authority to determine size status is vested exclusively in SBA.
2. No legal basis exists to preclude or disturb contract award merely because low bidder may have submitted below-cost bid.
3. GAO does not review protests against affirmative determinations of responsibility except in cases of fraud or misapplication of definitive responsibility criteria set forth in solicitation.

The River Cities Industrial Uniform Service protests any award to the American Linen Service under Barksdale Air Force Base solicitation No. F16602-B0029 (a procurement set aside for small businesses) on the bases that the low bidder was erroneously found to be a small business by the Small Business Administration (SBA) and that the bid price of the low bidder constituted a "buying in" which will negate the possibility of proper contract performance as the contract cannot be performed profitably at that price.

Pursuant to 15 U.S.C. § 637(b)(6) (1970), the authority to determine the size status of a business concern is exclusively vested in the SBA and is not subject to our review. Joe Silva, B-188149, January 25, 1977, 77-1 CPD 56. Therefore, any information bearing on American Linen Service's size status should be referred to SBA for consideration.

With regard to the allegation that the low bidder's bid is unreasonably low, we have repeatedly held that the mere fact that a bidder may have submitted a below-cost bid does not constitute a legal basis for precluding or disturbing a contract award. Composition Roofers Union Local 8, B-187832, December 17, 1976, 76-2 CPD 507.

B-190483

As regards the issue of the inability of a bidder, who has submitted a below-cost bid, to perform a resultant contract, our Office has discontinued the practice of reviewing bid protests involving a contracting officer's affirmative determination of the responsibility of a contractor except in cases involving actions by procurement officials which are tantamount to fraud, or where the solicitation contains definitive responsibility criteria which allegedly have not been applied. Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64. Since the responsibility of the low bidder has not been challenged on either of these bases, we will not review the matter.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States