

DOCUMENT RESUME

04721 - [B0105015]

[Protest to Contract Award under Resolicitation]. B-189625.
January 6, 1978. 3 pp.

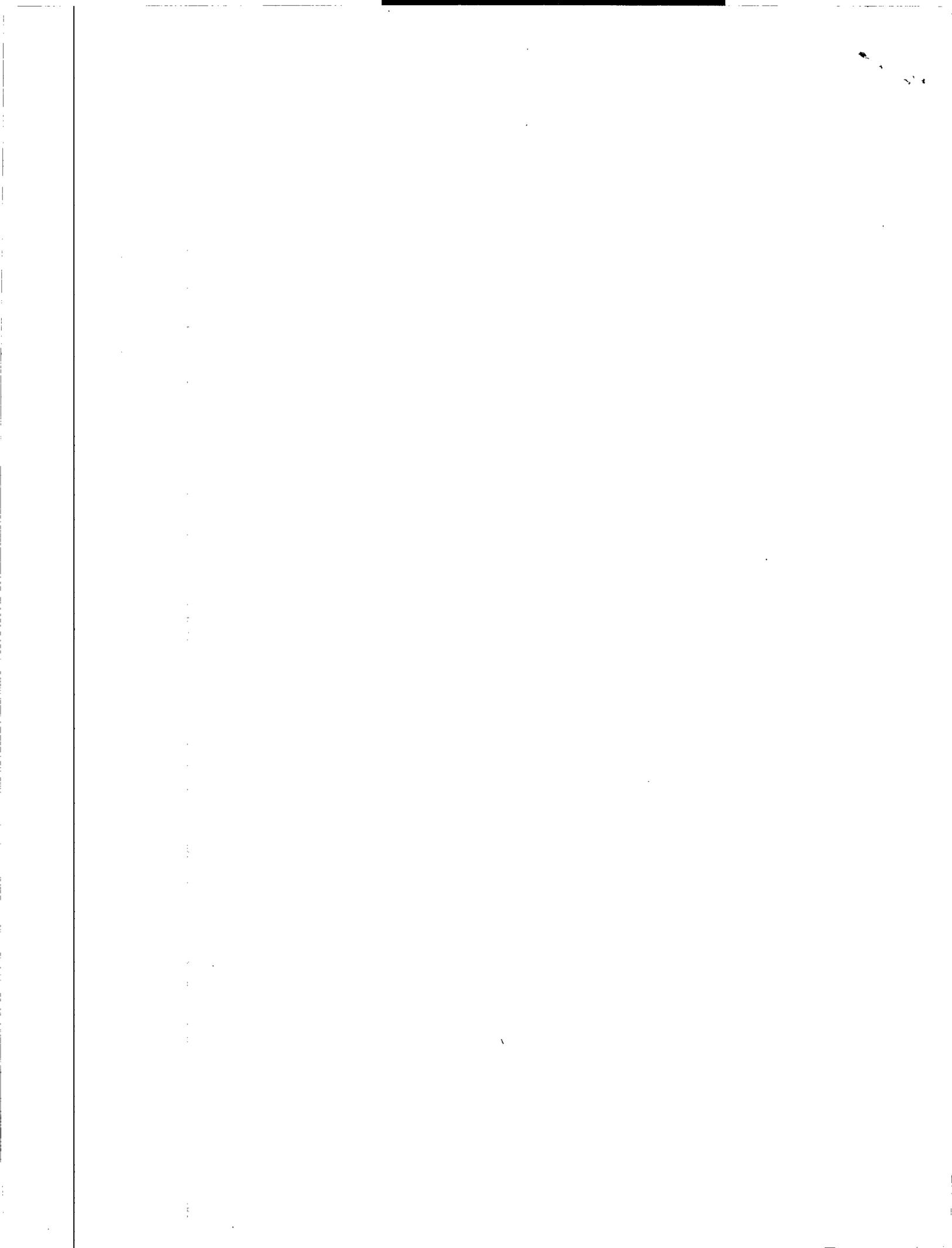
Decision re: Clark Bros. Contractors; by Paul G. Dembling (for
Elmer E. Staats, Comptroller General).

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law I.
Budget Function: General Government: Other General Government
(806).

Organization Concerned: Prairie Land & Timber Co.; Forest
Service.

Authority: B-181607 (1975). B-186441 (1976). B-186485 (1976).
B-186492 (1976). 50 Comp. Gen. 177.

A company protested a contract award after the solicitation was cancelled and readvertised, contending that its original bid was not unreasonably high and that there was adequate funding available for the project that was not considered. Cancellation of solicitation where the only responsive bid was 13.67% higher than the Government estimate was not an abuse of discretion, and an agency memorandum setting reasonable price ranges did not bind the agency to accept bids in that range. (HTW)



PARKER
P.L.I.

DECISION



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

04721

FILE: B-189625

DATE: January 6, 1978

MATTER OF: Clark Brothers Contractors

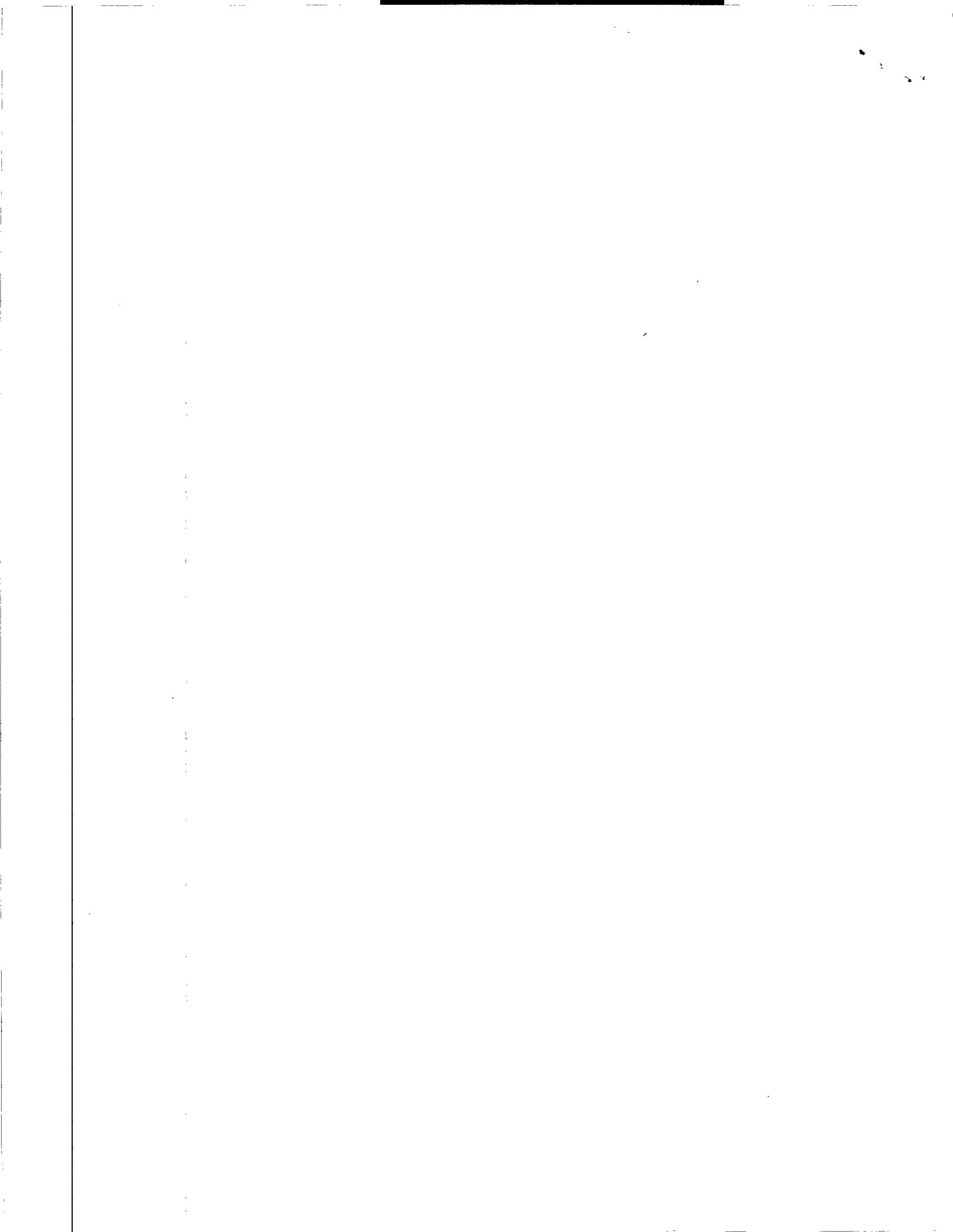
DIGEST:

1. Cancellation of solicitation by contracting officer where only responsive bid was 13.67 percent higher than Government estimate was not abuse of discretion.
2. Internal agency memorandum setting reasonable price ranges for acceptable bids does not bind agency to accept bids in that range or create rights in bidders.

Clark Brothers Contractors (Clark Brothers) protests award of a contract to Prairie Land & Timber Company (Prairie Land) for a road construction and reconstruction project located at the Horse Creek Administrative Research Project in the Nez Perce National Forest, Idaho County, Idaho.

The Forest Service, United States Department of Agriculture, issued invitation for bids (IFB, No. R1-5-77-31 on May 9, 1977. The IFB noted that the project was set aside for small businesses and that the estimated price range for the project was \$500,000 to \$2.5 million. Two companies submitted bids, Clark Brothers and Prairie Land, but Prairie Land's low bid of \$1,722,065 was rejected as nonresponsive because it failed to acknowledge an amendment to the IFB. Consequently, Clark Brothers' bid of \$1,865,077.50 was left as the only responsive bid.

On June 22, 1977, the contracting officer and other representatives of the Forest Service met to evaluate Clark Brothers' bid. The Forest Service's original estimate of \$1,512,408 was reevaluated and raised to \$1,650,176, which included certain items if the project was readvertised.



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On July 7, 1977, the contracting officer informed Clark Brothers that its bid had been rejected because it was unreasonable in that it was substantially in excess of the engineers' revised estimate of \$1,640,816 (13.67 percent in excess) and also because it was in excess of the funds available for the project.

On July 8, 1977, the project was readvertised (this time without a small business set-aside) and Prairie Land was awarded the contract with a low bid of \$1,633,632.70.

Clark Brothers protests the award on two grounds. It contends that its original bid of \$1,865,077.50 should not have been rejected as unreasonably high as it was only 13.67 percent higher than the engineers' estimate. In support of this contention it points out that a December 3, 1976, memorandum, referred to in another internal Forest Service memorandum, stated that the Forest Service had determined long before the IFB was announced that any bid within 15 percent of the engineers' estimate would be considered reasonable. It argues that the Forest Service is bound by its original determination of reasonableness, even though the 15-percent determination was not known by any of the bidders until after the fact and it was strictly for internal guidance. The Forest Service contends that the 15-percent determination applied only to the original estimate and not to the revised one.

The second contention made by Clark Brothers is that there was adequate funding available from other sources that was not considered by the Forest Service when it rejected Clark Brothers' bid.

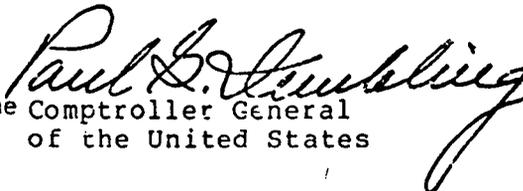
It has long been the general rule that contracting officers have broad powers of discretion in deciding whether an invitation should be canceled, and our Office will not interfere with such a decision unless it is unreasonable. Support Contractors, Inc., E-181607, March 18, 1975, 75-1 CPD 160; 50 Comp. Gen. 177 (1970). Although Clark Brothers contends that a bid of 13.67 percent over the revised Government estimate was not unreasonable, we have held that it was not an abuse of discretion for a contracting officer to cancel a solicitation where the lowest responsive bid was only 7.2 percent higher than the Government estimate. See Building Maintenance Specialists, Inc., B-186441, September 10, 1976, 76-2 CPD 233.

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We do not think that the memorandum which originally set the limit of a reasonable bid at 15 percent over the Government estimate prevents the Forest Service from rejecting a bid that is within that range and thus such rejection does not constitute an abuse of discretion. In Kirschner Research Institute, Humanics Associates, and Onyx, B-186489, B-186492, September 27, 1976, 76-2 CPD 289, we said that an agency "handbook" requirement that at least 25 percent of the members of proposal evaluation panels be from outside the sponsoring program activity was not binding on the agency because it was intended for internal guidance and did not create or define a substantive right of offerors. The same reasoning would apply to the 15-percent determination contained in the December 3, 1976, memorandum.

In view of the above, we cannot say that the contracting officer's rejection of Clark Brothers' bid, because it was unreasonably high, was an abuse of discretion. Therefore, we need not reach the issue of whether there was adequate funding available for the project because its resolution would not affect the outcome of the protest.

Accordingly, the protest is denied.


For the Comptroller General
of the United States