

# DECISION



11221  
THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

*[Protest of Navy Cancellation of IFB]*

FILE: B-194435

DATE: August 23, 1979

MATTER OF: Espey Manufacturing and  
Electronics Corporation--  
Reconsideration

## DIGEST:

1. Prior decision (1) that agency properly rejected all bids and canceled IFB on basis of unreasonable prices and (2) that agency's partial reliance on erroneous information in deciding to cancel is of no consequence where subsequently developed information supports determination, is affirmed upon reconsideration since protester has not shown that prior decision was based on errors of fact or law.
2. Protester has burden of substantiating case. GAO's bid protest function does not entail either investigation of protester's speculative allegations for purpose of establishing validity, or requesting agency to investigate and report thereon.

Espey Manufacturing and Electronics Corporation (Espey) requests reconsideration of our decision in Espey Manufacturing and Electronics Corporation, B-194435, July 9, 1979, where we found Espey's protest, against the Navy's cancellation of an invitation for bids (IFB), lacked merit, since: (1) after rejecting the low bid as nonresponsive, the Navy properly determined that Espey's second low bid price was unreasonable; and (2) the Navy's partial reliance on erroneous information in deciding to cancel was of no consequence since subsequently developed information supported the determination.

In requesting reversal of our decision, Espey now seeks: (1) clarification of our standard of review applicable to agency cancellation determinations based on price unreasonableness; (2) our assistance in compelling the Navy to develop and produce specific factual information

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beyond that furnished in the Navy's report on Espey's protest; and (3) our consideration of factors which it believes were not considered in our prior decision.

In our prior decision we stated our standard of review as follows:

"A determination that a bid price is not reasonable is a matter of administrative discretion which our Office will not question unless it is unreasonable or there is a showing of bad faith or fraud. See G.S.E. Dynamics, Inc., B-189329, February 13, 1978; Support Contractors, Inc. B-181607, March 18, 1975, 75-1 CPD 160."

We pointed out that under this standard "a contracting officer's determination regarding price reasonableness can be based solely on a comparison of the bids received with the bid of a nonresponsive bidder."

In the instant case, the contracting officer's determination was based principally on a comparison of Espey's low responsive bid and another bidder's lower nonresponsive bid. The lower nonresponsive bid was extended on a unit price basis to compensate for increased quantities which were not priced due to nonreceipt of an IFB amendment. Under our standard, we found the determination to be reasonable and within the agency's discretion. The record showed the difference between Espey's bid and the "extended" lower nonresponsive bid to be \$56,651. Espey now asserts that the correct figure is \$50,000. Even if Espey is correct, its bid is still 20 percent higher than the lower unresponsive bid. In our prior decision, we noted that a 13 percent difference has been found to be a sufficient basis for the rejection of all bids because of unreasonable prices.

Espey contends that we should have considered: (1) "the reasonable additional costs of complying with changes on over 50% of the drawings," (2) "added welding and X-Ray requirements," and (3) "the historical increase of costs of materials and labor over the several years span between procurements." In our view, these factors principally relate to the accuracy of the Government estimate. Since the record shows that the contracting

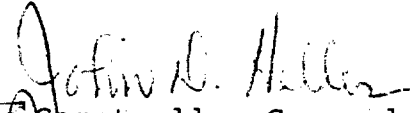
officer relied primarily upon the disparity in the bids and not upon the Government estimate in arriving at his determination that the prices were unreasonable, we believe that these factors are irrelevant in the context of this protest.

Therefore, the above is not support for reversal of the prior decision.

In our prior decision, we found Espey's request that the Navy document its failure to mail the amendment to the lower nonresponsive bidder to be irrelevant since the record failed to support Espey's allegation that the Navy intentionally did not mail the amendment. Espey now seeks similar documentation concerning whether the nonresponsive bidder filed a protest with the Navy; whether the nonresponsive bidder actually received the missing amendment; and whether the nonresponsive bidder notified the Navy that it had not received the amendment.

Under our Bid Protest Procedures the protester has the burden of substantiating its case. Kurz-Kasch, Inc., B-192604, September 8, 1978, 78-2 CPD 181. Since we do not conduct investigations as part of our bid protest function for the purpose of establishing the validity of speculative allegations, Mission Economic Development Association, B-182686, August 2, 1976, 76-2 CPD 105, we see no reason here why the Navy should be requested to investigate and report on these allegations for the purpose of establishing their validity.

Accordingly, since Espey has not shown any errors of fact or law, our decision of July 9, 1979, is affirmed.

  
For the Comptroller General  
of the United States