

**DECISION**



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

14007 Philipp  
Pro

FILE: B-197060

DATE: June 12, 1980

MATTER OF: Philipp Brothers, Division of Engelhard  
Minerals & Chemicals Corporation

**DIGEST:**

Protest against GSA's rejection of all bids for sale of tungsten ores and concentrates as being too low is denied where IFB reserved to GSA right to reject any and all bids and statute mandates GSA to avoid market disruption and protect Government against avoidable losses. GSA reasoned that award in face of declining market would disrupt market and higher prices could be obtained at later offering when there was upturn in market. GSA's action was business judgment by contracting officials which will not be reviewed by GAO.

By letter of December 5, 1979, Philipp Brothers, Division of Engelhard Minerals & Chemicals Corporation, <sup>Id. 10/10/79</sup> protested ~~the~~ rejection of its bid on tungsten ores and concentrates, offered for sale under General Services Administration (GSA) invitation for bids (IFB) ORES-255. All bids were rejected.

We find no merit to the protest.

Tungsten ores and concentrates are offered for sale on a continuing basis on the second Thursday of each month under IFB-ORES-253 and on the fourth Tuesday of each month under IFB-ORES-255. The monthly bid opening which generated this protest was held on Tuesday, November 27, 1979, and offered 450,000 pounds of "W" ("W" content means tungsten contained in the ores and concentrates) under category "A," which is reserved for domestic use, and 150,000 pounds under category "B," which is reserved for export. Under the terms of the IFB, if for any reason one category is not fully awarded in any month, the Government reserves the right to award the remaining quantity to bidders in the other category. Philipp Brothers' bid was for 30,260 short ton units of tungsten ores and concentrates (STU-WO3) or approximately

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447,900 pounds of "W" under category "B" at unit prices ranging from \$120.598 to \$122.298 per short ton unit (STU). Philipp Brothers' bid was for a type of tungsten ore called scheelite. The other type of tungsten ore usually offered for sale is wolframite. Another firm, Norore Corporation, submitted a bid for item 601, which was 2,090.268 STU-WO3 or 33,153 pounds "W," for domestic use at a unit price of \$120.379 per STU.

The usual procedure followed by GSA in the evaluation of bids is to compare the bid prices with the latest world market prices. The world market price is obtained from two sources--by telex from the London Metals Bulletin (LMB) and from a weekly publication, Metals Weekly (MW). Of these two sources, the price quotation from LMB is given greater weight since it is the price in effect on the day of bid opening, whereas the MW price quotation reflects prices paid several days prior to the date of publication. Also, according to GSA, a complete market pricing survey is made by the Market and Technical Services Division of the Office of Stockpile Disposal 1 or 2 days prior to each sale.

On November 27, 1979, the day of bid opening, the LMB prices ranged from \$120.20 to \$125.19 per STU. The MW published price ranged from \$124.50 to \$126.50 per STU. The initial review by the Minerals and Ores Branch resulted in a recommendation that award be made at bid prices of \$120.379 and above. Had this recommendation been acted upon, Philipp Brothers would probably have received an award for the total amount of its bid since Norore did not bid on the total quantity under category "A." However, this recommendation was reviewed by the Assistant Commissioner for Stockpile Disposal acting in his capacity as contracting officer and he recommended that no awards be made since, in his opinion, the bid prices were too low. On November 30, 1979, the bidders were notified that their bids had been rejected.

It is Philipp Brothers' contention that since its bid prices were within the range of the LMB price quotations, i.e., they were at or above the then current

world market, it should have received an award for the total amount upon which it bid. A further contention by Philipp Brothers is that GSA's action disrupted the market since the November tungsten market was declining and GSA did not allow the tungsten market to find its own level.

Section 6(b)(2) of the Strategic and Critical Materials Stock Piling Act, P.L. 96-41, 50 U.S.C. § 98e (1976), mandates that GSA, in its acquisition or disposal of strategic or critical materials such as tungsten, avoid disruption of the market and protect the Government against avoidable loss. It was GSA's judgment that the acceptance of the bids in question in the face of a declining market would have violated this legislative mandate. According to GSA, it was its best judgment, based on market research and market experience, that the decline in the market at the time of bid opening was a short term, seasonal phenomenon and market prices would stabilize within a relatively short time and GSA could make nondisruptive sales at higher prices, thus maximizing Federal revenue. GSA further states that; in view of the fact that sales by GSA are an important factor in determining world market prices, if GSA had accepted the bids in question in the face of a declining market, GSA would have contributed to the further lowering of the world market price, thus, disrupting the market.

An additional reason considered by GSA for the rejection of the bids was the evidence available to GSA at bid opening that the particular type of tungsten ore offered for sale, scheelite, commanded a premium of as much as \$8 per STU above the high price quoted in LMB, while the price of wolframite was falling (wolframite prices are the basis for all of the published market quotes). GSA states that prior to bid opening, its marketing office noted in its prebid market survey that the price of scheelite was not falling with the market and this information reinforced the contracting officer's (the Assistant Commissioner for Stockpile Disposal) decision to reject the bids. However, according to GSA, premiums for scheelite over wolframite come and go in the market, and scheelite sometimes sells for less than wolframite. Because of this variability, GSA normally does not take the relative prices of scheelite and wolframite into consideration in the evaluation of bids and the relative

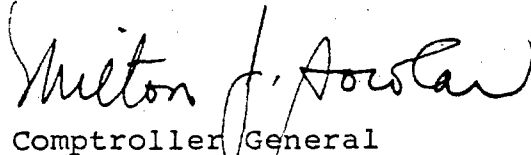
prices are never determinative of award decisions. However, in the present case, GSA was of the opinion that the existence of the high premium for scheelite could not be ignored.

GSA argues that it was concerned that an award would have exacerbated the declining wolframite market and that because the decline was only seasonal, a higher price for the tungsten ores could be obtained at a later offering. GSA also argues that the market for the ore offered for sale (scheelite) was not falling, but actually commanded a premium price; thus, the bid prices were too low. GSA viewed the bid prices as being too low, and the decision to reject all bids appears to have been made only after a study of the market and pricing trends and, therefore, represented the best judgment of the awarding officials. It is the position of our Office that the determination whether a price is reasonable, and therefore acceptable, is basically a business judgment by contracting officials requiring the exercise of broad discretion and, absent a showing of clear abuse of discretion, will not be disturbed by our Office. Sabin Metal Corporation, B-189759, December 16, 1977, 77-2 CPD 471.

Notwithstanding Philipp Brothers' argument, that award should have been made to it, we have no basis to conclude that GSA's rejection of the bids was an abuse of discretion. Philipp Brothers contends that prior awards were made at prices near or slightly above, and some even slightly below, the low LMB price prevailing at the time and, therefore, since its bid prices were above the low LMB price prevailing at the time of bid opening, it (Philipp Brothers) should have received the award. However, it has long been recognized that, in connection with the awarding of public contracts, no bidder acquires an absolute right to an award of public business. 52 Comp. Gen. 883 (1973). Therefore, we must agree with GSA's contention that its rejection of Philipp Brothers' bid was an exercise of administrative discretion since an invitation for bids does not impart an obligation to accept any of the bids received and all bids may be rejected where it is determined to be in the Government's interest to do so. 37 Comp. Gen. 760 (1958); Marine Power & Equipment Co., Inc.,

B-189693, January 17, 1978, 78-1 CPD 36. Also, see paragraph 3 of the portion of the IFB entitled "General Terms and Conditions for the Sale of Strategic and Critical Materials," which reserves to the Government the right to reject any and all bids.

For the foregoing reasons, we find no legal objections to the action taken by GSA.

  
Acting Comptroller General  
of the United States