

*Siegel*

*16088*

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

*Protest of Bid Rejection As Not Representing a Fair Return To the Government*

FILE: B-200361

DATE: February 11, 1981

MATTER OF: Theatrical Electronics Corp.

**DIGEST:**

Contracting officer's determination that high responsive bids of protester for movie projectors did not represent a fair return to the Government will not be disturbed, since contracting officer did not clearly abuse her discretion in determining prices unreasonable.

Theatrical Electronics Corp. protests the rejection of its bids on the sale of various surplus movie projectors under sales invitation 41-0269 issued by the Defense Property Disposal Region, Ogden, Utah.

Various movie projectors were offered for sale as items 22 through 30 of the solicitation. The high bids for these items ranged from \$3,025.00 to \$3,333.33. The high bidder on items 26 through 30, International Cinema Equipment Company, was determined to be nonresponsive because that firm failed to sign its required bid deposit check. Theatrical's bids of \$2,580 for item 26, \$2,760 for item 27, \$2,820 for item 28, \$2,690 for item 29 and \$2,775 for item 30 were the highest responsive bids received for these items. Theatrical's bids for these items were rejected as not representing a fair return to the Government. International's high bids on items 24 and 25 were also determined nonresponsive and the next high bids were likewise rejected as too low. The agency rejected bids and canceled items 24-30 of the solicitation. However, an award was made to another firm at \$2,652 on item 22 after the high bid of \$3,051 for that item was rejected as nonresponsive. Item 23 was awarded to the highest bidder at \$3,333.33.

~~015294~~

114305

Theatrical contends that its bids represent a fair return to the Government and should not have been rejected. As support for its position, the protester notes that the difference between the nonresponsive high bid on item 22 and the award price was greater than the difference between its rejected bid prices on items 26 through 30 and the nonresponsive high bids on those items. Theatrical also claims that its bids represent a higher percentage of the acquisition costs to the agency than the percentage of acquisition costs the agency received for the two items (Nos. 22 and 23) the contracting officer did award and objects to the use of International Cinema's non-responsive bids as guides for determining what is a reasonable return.

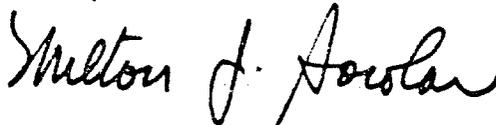
Paragraph 3 of Standard Form 114C which was incorporated in the solicitation states that "[t]he Government reserves the right to reject any or all bids \* \* \*." This right is properly exercised in a sale when it is in the Government's interest to do so. 40 U.S.C. § 484(e)(2)(c) (1976). The statutory authority vests the contracting officer with broad discretion and absent a showing of clear abuse of that discretion such actions will not be disturbed by this Office. Marine Power & Equipment Co., Inc., B-189693, January 17, 1978, 78-1 CPD 36.

Here, the contracting officer determined that since there existed a difference of \$2,837.40 between the responsive bids for these items (Theatrical's bids for items 26-30 and the other bids on items 24 and 25) and the nonresponsive bids for the same items, these bids did not represent a fair return. Although the protester argues that fair return should be gauged on percentage of purchase price, such a determination does not necessarily or even often rest on whether the price offered is a certain percentage of the acquisition cost. Current market conditions at time of bid opening are most significant. In this instance, the contracting officer used the nonresponsive bid of International Cinema as a measure of those conditions. Although we have repeatedly held that a determination of price reasonableness can be based solely on a comparison of bids received with a bid which is nonresponsive because of matters unrelated to its price, 49 Comp. Gen. 649, 656 (1970); Espey Manufacturing and Electronics Corporation, B-194435, July 9, 1979, 79-2 CPD 19; Schottle of America, Inc. B-190546, March 21, 1978, 78-1 CPD 220; Colonial Ford Truck Sales, Inc., B-179926, February 19, 1974, 74-1 CPD 30; B-178213, October 29, 1973, we do not think it

is a good practice to base such a determination only on a comparison with a nonresponsive bid because it is difficult to tell whether the nonresponsive bidder seriously wished to have its bid accepted. However, in this instance since it appears that the contracting officer had no other standard on which to base her judgment of market conditions we do not believe she acted unreasonably.

Moreover, the contracting officer explains that the award on item 22 was an error. We, of course, do not believe the contracting officer should be required to award items 26 through 30 because she mistakenly made an award on item 22. See Yank Waste Co., Inc., B-180418, April 11, 1974, 74-1 CPD 190.

The protest is denied.



For the Comptroller General  
of the United States

# ROUTING SLIP

TAN: 015244

DATE: 2/12/81

<b>1st Catalog</b>  D 2.13.81	<b>Index</b>  ESL 2/13/81
<b>Initial Q.C.</b>  duped min 2/13/81	<b>Abstract</b>  ESL 2/13/81
<b>2nd Catalog</b>  ESL 2/13/81	<b>Final Q.C.</b>