

**DECISION**



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

FILE: B-189996

DATE: August 17, 1978

MATTER OF:

Nordam, Division of R. H. Siegfried, Inc.

**DIGEST:**

1. Procuring activity's use of contract price for 1972 procurement of identical items of equipment as basis for comparison with bid of protester is proper to determine unreasonableness of bid price since such a determination may be based on past procurement history. No question raised as to activity's failure to consider entire range of bids in 1972 procurement because even protester furnished subsequent calculations using 1972 contract price.
2. While GAO recognizes inexact nature of Government estimates and price comparisons, protester's cost estimates using rough 12-percent inflation rate are unacceptable where more precise analysis using Department of Labor's wholesale price index is available.
3. Protester's bid for each semitrailer exceeded Government's price estimate by approximately 9 percent. In view of fact that GAO has upheld rejection of bids and readvertisement where lowest eligible bid exceeded Government estimate by as little as 7.2 percent, decision to cancel protested portion of procurement was reasonable.
4. Possible result of recompetition, the fact that it is very unlikely Government will receive lower bids on recompetition, has no bearing on propriety of original cancellation due to price unreasonableness.

Nordam, Division of R. H. Siegfried, Inc. (Nordam), protests the partial cancellation of invitation for bids (IFB) No. DAHCO7-76-B-0079, issued by the United States Army Electronics Materiel Readiness Activity, Vint Hill Farms Station, Warrenton, Virginia. The entire solicitation called for electrical shelters to be mounted on low-bed semitrailers. It also provided for a split award of the electrical shelters and the semitrailers. In the event the shelters and semitrailers were not awarded to the same bidder, the shelter contractor was responsible for mounting the shelters on the semitrailers. The Army made an award of the shelter portion of the IFB on June 30, 1977.

The low bid on the semitrailer portion of the IFB was \$42,517 for a first article and \$24,000 each for 24 semitrailers to be produced subsequent to approval of the first article. Prior to award, the low bidder discovered certain errors in its bid and requested correction to \$53,633 for the first article and \$35,116 each for the other semitrailers. The Army denied this request and we upheld the denial in deciding a protest filed with us by the low bidder. See Gichner Mobile Systems, B-189996, January 30, 1978, 78-1 CPD 73. Our decision did provide, however, that the semitrailer low bidder could withdraw its bid. On February 9, 1978, the low bidder notified the Army in writing of the withdrawal.

The next low bidder was Nordam with a bid of \$52,654 for the first article semitrailer and \$40,263 for the other 24 semitrailers. After a comparison of Nordam's bid with the contract price for a 1972 procurement of identical semitrailers, the Army determined that Nordam's bid price was excessive. The contracting officer indicated that using a 12-percent yearly inflation rate subsequent to the completion of the prior procurement, the production price for each semitrailer should be no more than \$30,551.44. On February 22, 1978, Nordam received notification that the semitrailer portion had been canceled and that all requirements under it would be readvertised.

The Army issued the resolicitation for the semitrailers on July 21, 1978. Bid opening on this resolicitation is presently set for August 22, 1978.

After receiving the notification of cancellation, Nordam immediately filed a telegraphic protest, supplemented by a letter dated March 9, 1978, detailing the basis of Nordam's protest to the Army. On March 13, 1978, Nordam received a letter dated March 10, 1978, from the contracting officer reaffirming the decision to cancel. By a letter dated March 21, 1978, and received by our Office on March 22, 1978, Nordam protested the cancellation.

In the March 21, 1978, protest letter, Nordam stated that its principal objection was that the Army's determination of price unreasonableness was not based upon a current, relevant, reasonable comparison. Nordam contended that if bids submitted under a 6-year-old solicitation were relevant to determine reasonable prices for the canceled portion of the IFB, the entire range of bids submitted in response to the prior solicitation should be considered in determining a "base 'reasonable' price" to which inflation and other factors would be added. Furthermore, in Nordam's opinion, the age of the compared solicitation, together with the fact that the bidder whose price had been compared to Nordam bid only on the shelter portion of the protested IFB, suggests that the only proper method of arriving at a reasonable price would be to consider the range of the valid, responsive bids actually received on the compared solicitation.

A determination that a bid price is not reasonable is a matter of administrative discretion which we will not question unless it is unreasonable or there is a showing of bad faith or fraud. Support Contractors, Inc., B-181607, March 18, 1975, 75-1 CPD 160. Also, a determination of the reasonableness of a bid price may be based on past procurement history as well as other relevant factors such as current market conditions. See Schottel of America, Inc., B-190546, March 21, 1978, 78-1 CPD 220. In Schottel of America, supra, we indicated that the Corps of Engineers' reliance on a 1969 estimate and the method of calculation under it to determine the Government estimate for a 1977 procurement for similar items were not unreasonable.

Here, there was no Government estimate. Nevertheless, we see no inherent unreasonableness in the Army's use of a 1972 procurement for identical equipment as the basis for a price comparison. With regard to the use of the successful bidder's bid on the 1972 solicitation, we point out that

the protester has the burden of affirmatively proving that its data and calculations are correct and those of the procuring activity are incorrect. See The Raymond Corporation; Air Force--requests for reconsideration, B-188277, September 16, 1977, 77-2 CPD 197. The protester has provided no evidence as to what the appropriate base figure should be for purposes of applying the required inflation factors. Therefore, we see no reason to question the Army's use of the low bidder's price, \$21,745.91, on the 1972 procurement as the base figure, particularly since Nordam has furnished subsequent calculations using that figure.

The contracting officer, in initially determining Nordam's bid to be unreasonable, applied a 12-percent annual inflation rate to the 1972 low bid beginning in 1975, the date of the last delivery under the 1972 contract. Nordam argues that this method of calculation is based on the unreasonable and unrealistic theory that no inflation took place between 1972 and 1975. Nordam contends that if an inflationary rate is to be applied, this rate should be applied beginning in 1973. Using the 12-percent inflation rate chosen by the contracting officer, Nordam makes the following calculations:

<u>1972</u>	<u>1973</u>	<u>1974</u>	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>
\$21,746	\$24,355	\$27,278	\$30,551	\$34,218	\$38,334	\$42,993

While apparently conceding the matter, the Army emphasizes that Nordam is ignoring the in-depth analysis which it made using the Department of Labor's actual Wholesale Price Index percentages. The Army states that its initial analysis using a 12-percent inflation rate merely revealed the need for a more in-depth investigation. The Wholesale Price Index percentages provide a much more accurate way to calculate the effect of inflation on the cost of the semitrailers since the percentage of inflation varies for each particular year.

Using the above-described percentages, the Army calculated the estimated 1977 cost of the semitrailers to be \$35,434 for a first article and \$34,845 for the production of each of the 24 trailers called for under the IFB. The particular inflation rates that the Army used for each year after 1972 were: 1973 - 13 percent;

1974 - 18 percent; 1975 - 9 percent; 1976 - 5 percent; and, 1977 - 5 percent.

Nordam, however, contends that the Army's in-depth analysis involved an apparent misapplication of the information obtained from the Department of Labor. In this regard, Nordam alleges that the Army's calculations were based on wholesale price index averages. In Nordam's view these averages were not indicative of price movements within a particular producer category since the average is based on everything in that category from vegetables to fertilizer.

Nordam urges that in order to properly use the Department of Labor figures, the item in question (semitrailers) should be referenced to an applicable code number. In this case the code number would be 10-7, fabricated structural metal products. An application of the index under this code, would, according to Nordam, reveal the following as to the cost of each of the 24 semitrailers:

Year	Index	% Differential	Price extended by Inflation
1972	122.4	- - -	\$21,746
1973	127.4	4.08	22,633
1974	161.2	26.53	28,638
1975	189.0	17.25	33,578
1976	193.8	2.54	34,431
1977	206.7	6.66	36,724
June 1978	226.0	9.34	40,154

In light of the above figures, Nordam computes the average percentage for the years 1972-1977 as 11.4 percent. In Nordam's opinion, this validates the 12-percent figure initially used to approximate the annual inflation rate. These price index percentages, according to Nordam, also establish that a resolicitation in the latter half of 1978 for the semitrailers called for under the canceled portion of the IFB should not produce a price below Nordam's present bid of \$40,263.

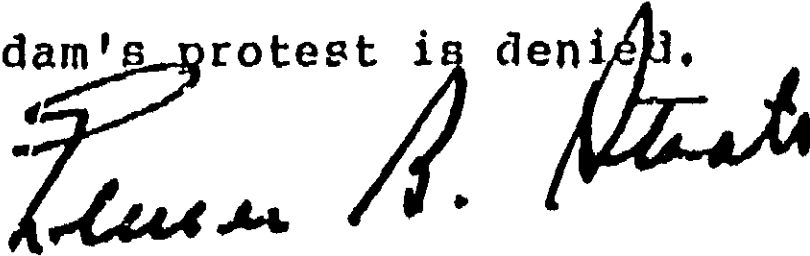
From the record, we believe that at the time the Army evaluated Nordam's bid (February 1978), a reasonable acceptable bid for each semitrailer would have been somewhere between \$35,116 (original low bid as attempted to be corrected) and \$36,724 (Nordam's estimated price based on the wholesale price index). In reviewing the contracting activity's exercise of its broad discretion in this area, we recognize the rather inexact nature of the Government's estimates of price comparisons. See W. G. Construction Company, B-188837, August 9, 1977, 77-2 CPD 100. However, we cannot accept Nordam's projected cost of \$38,334 based on a 12-percent annual inflation rate where a more precise method of analysis is available and results in a significantly lower cost figure. The difference between the estimated unit cost using a 12-percent inflation figure and the estimated unit cost using the wholesale price index is \$1,610 per semitrailer. The total estimated cost difference for the 24 semitrailers is \$38,640.

We have upheld the rejection of bids and readvertisement where the lowest eligible bid exceeded the Government estimate by as little as 7.2 percent. See Building Maintenance Specialists, Inc., B-186441, September 10, 1976, 76-2 CPD 233. Nordam's bid of \$40,263 exceeds its wholesale price index figure of \$36,724 by \$3,539 per semitrailer. This is approximately a 9-percent difference. In terms of an overall dollar difference for the 24 semitrailers, this amounts to \$84,936. Consequently, we believe that while the Army's estimates were somewhat lower than they should have been, the decision to cancel because of Nordam's high bid price overall had a reasonable basis in fact.

With regard to cost increases since cancellation, Nordam has submitted to us recent quotations from its suppliers. Nordam states that the cost of the major material items for the semitrailers has increased slightly over 9 percent for the 10-month period since August 1977. In addition, Nordam alleges that a further cost increase of approximately 6 percent for steel is to be anticipated. In view of the length of time the Army has taken to resolicit, Nordam contends that it is very unlikely that the Government will receive any lower bids in the resolicitation.

In response to a similar allegation we have held that the possible results of a recompetition have no bearing on the propriety of the cancellation of a solicitation. See W. G. Construction Company, supra.

Accordingly, Nordam's protest is denied.

A handwritten signature in cursive script, appearing to read "Thomas B. Stewart".

Comptroller General  
of the United States