

DOCUMENT RESUME

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[Protest against Rejection of All Bids as Too High]. B-188837.  
August 9, 1977. 5 pp.

Decision re: W. G. Construction Corp.; by Robert F. Keller,  
Deputy 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: Department of the Army: Corps of  
Engineers.

Authority: A.S.P.R. 18-306.1. A.S.P.R. 2-404.1(a). A.S.P.R.  
2-404.1(b)(vi). 39 Comp. Gen. 396. 36 Comp. Gen. 364.  
B-186441 (1976). B-181057 (1975). B-186411 (1976). b-181607  
(1975). B-181057 (1974).

The protester objected to the cancellation of an invitation for bids, contending that their low bid was responsive to the invitation and that the total price spread among the four bids indicated that the bids more accurately reflected the cost of the project than the Government estimate. Because of the comprehensive review of the estimate and the comparison with the breakdown of the low bid by the agency following bid opening, it cannot be concluded that the rejection of all bids as unreasonable was an abuse of discretion or without compelling reason. (Author/SC)

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**DECISION**



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

FILE: B-188837

DATE: August 9, 1977

MATTER OF: W. G. Construction Corporation

**DIGEST:**

1. Fact that four bids submitted were within close range and substantially higher than Government estimate does not alone establish that estimate was unreasonable or bid prices reasonable, but puts agency on notice of possible error in estimate which should be carefully reviewed. Because of subsequent comprehensive review of estimate and comparison with breakdown of low bid by agency, it cannot be concluded that rejection of all bids as unreasonable was abuse of discretion or without compelling reason. Reliance by low bidder on internal agency regulation concerning Government estimates is unfounded.
2. Low bidder under solicitation where all bids were rejected as unreasonably high argues that bids under resolicitation will be even higher and that award under initial IFB would, therefore, be at lowest possible price. However, upon rejection, bids are no longer material for any purpose, including comparison with subsequent bids.

Invitation for bids (IFB) No. DACW65-77-B-0006 was issued by the United States Army Corps of Engineers (Corps) for construction of an Administration-Visitors Center building and three maintenance buildings at Gaithright Lake, Virginia. Four bids were received and opened. The bids ranged from a low of \$756,500, submitted by W. G. Construction Corporation (W.G.), to a high of \$782,000. The Government estimate for the project was \$559,900, without profit.

Because of the considerable difference between the Government estimate and the bids received, the estimate was reviewed by the original estimator, and then by the Chief of the Corps Norfolk District (District) Estimating Section. The estimate was also reviewed for "scope of work versus cost" by Corps staff personnel. The contracting officer was consulted, determined that the Government estimate was reasonable, and rejected all bids pursuant to Armed Services Procurement Regulation (ASPR) § 2-404.1(a) and (b)(vi)

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(1976 ed.). ASPR § 2-404.1(a) provides that after bids have been opened award must be made to the lowest responsive, responsible bidder unless there is a "compelling reason" to reject all bids and readvertise. Under ASPR § 2-404.1(b)(vi), an IFB may be canceled if the prices on all otherwise acceptable bids are unreasonable.

W. G. protested the cancellation of the IFB to the contracting officer on the basis that W. G.'s low bid was responsive to the IFB, and that the total price spread of \$25,500, or 3.3 percent, between the four bids indicated that the bids more accurately reflected the cost of the project than the Government estimate. W. G. filed a similar protest in our Office.

W. G.'s protest to the Corps was denied after further review of the matter by the District Engineer. Subsequently, and in connection with the protest before our Office, W. G. supplied a breakdown of its bid to the District for review. A similar breakdown of the Government estimate was made available to W. G. The Government estimate was compared by District personnel to the W. G. data and was again found to be reasonable for the project. The District position was affirmed following a similar review by estimators in the Corps North Atlantic Division and the Office of the Chief of Engineers, Washington, D. C.

In view of ASPR § 2-404.1(a) and (b)(vi), the principal issue before our Office is whether the contracting officer's determination that W. G.'s price was unreasonable, and that cancellation of the IFB pursuant to the cited regulations was proper, should be disturbed. Contracting officers have broad powers of discretion in deciding whether a solicitation should be canceled, and our Office will not interfere with such determination absent a lack of reasonableness. Hercules Demolition Corporation, B-186411, August 18, 1976, 76-2 CPD 173; Support Contractors, Inc., B-181607, March 18, 1975, 75-1 CPD 160; 39 Comp. Gen. 396 (1959).

W. G. contends that the contracting officer abused his discretion in canceling the IFB. In addition to the alleged Government estimate error, W. G. contends that, for various reasons, bids under a resolicitation will not be lower than those already received, and award under the initial solicitation would, therefore, be at the lowest possible price. W. G. further alleges that Corps regulations

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provide that the Government estimate for a civil works project may be "marked up" as much as 25 percent "to reflect profit and other costs not reflected in the government estimate but nevertheless recognized as allowed in contractors' bids," and that since the present estimate so modified is only \$56,500, or 7-1/2 percent below W. G.'s bid, the bid was not unreasonable. W. G. adds that the Government estimate, which "is not a final and authoritative cost estimate," may be subject to an error of plus or minus 10 percent which, when considered in combination with the 25-percent markup, would bring the estimate up to W. G.'s bid.

Concerning W. G.'s contention that the four bids submitted which were substantially higher than the Government estimate established that the estimate was erroneous, we have held in a similar case that such a fact alone is insufficient evidence to establish the reasonableness of the bidders' prices and the unreasonableness of the Government estimate. C. J. Coakley Company, Inc., B-181057, July 23, 1974, 74-2 CPD 51. To rule otherwise would permit a Government estimate to be negated any time a bidder's price is not in line with the estimate, merely by evolving a possible hypothesis which might explain the higher bid. However, when such circumstances do occur the contracting agency should be on notice of a possible error in its estimate and should, as was done here, carefully review the estimate.

In regard to W. G.'s comparison of the bid prices received and the possible result of a recompetition, we have held that upon their rejection, the original bids are no longer material or effective for any purpose whatsoever. C. J. Coakley Company, Inc., supra; 36 Comp. Gen. 364 (1956).

Concerning the actual difference between W. G.'s bid and the Government estimate, the pertinent regulation is Engineer Regulation (ER) 1180-1-1, section 1-372(h), which provides in part:

"(1) \* \* \* If the low responsive bid exceeds the Government estimate by more than 25 percent, and the District Engineer considers that the bid is reasonable and should be accepted, he will forward the matter, with his recommendations, for consideration by the Division Engineer.

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"(2) Recommendations for the acceptance of such bids will be based on a determination, after appropriate review, that the Government estimate is too low and should be corrected. (See ASPR 18-306.1). \* \* \*"

ASPR § 18-306.1 (1976 ed.) provides in part:

"Where negotiations disclose errors of fact or judgment in the Government estimate, the Government estimate will be revised to correct such error \* \* \*."

Contrary to W. G.'s belief, the ER does not provide that a Government estimate is automatically "marked up" by 25 percent when compared to a bid. It merely establishes a procedure for review of a Government estimate when an apparently reasonable bid exceeds the estimate by more than 25 percent. Moreover, and notwithstanding that the ER may in fact reflect the recognition that an estimate may not take into account all allowable costs (such as profit in the present case), even a bid that exceeds an estimate by less than 25 percent is not necessarily or automatically reasonable. Rather, and as noted above, it is for the contracting officer, with knowledge of that type of factor as well as the inexact nature of a Government estimate, to exercise discretion in determining whether a bid exceeding an estimate by any amount should be considered acceptable for award; an unreasonable bid may not be accepted under any circumstances. In this connection, 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.

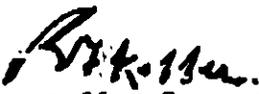
We recognize that the Government estimate was made exclusive of profit and assume that the Corps considered that matter in the course of reviewing W. G.'s bid. In any case, W. G.'s bid breakdown indicates that its bid included a profit figure. When that figure is added to the Government estimate, the "adjusted" estimate is still well over 25 percent lower than W. G.'s bid.

In view of the difference between the Government estimate and the bids received, and the subsequent comprehensive review of the estimate and comparison with W. G.'s bid breakdown, we are unable

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to conclude that the contracting officer's determination that the bid prices were excessive and should be rejected was an abuse of his broad discretion or without cogent and compelling reason. C. J. Coakley Company, Inc., supra.

The protest is denied.

  
Deputy Comptroller General  
of the United States