

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

1/188 PL-1

FILE: B-194293

DATE: August 21, 1979

MATTER OF: Ideker, Inc.--Reconsideration DLG01655

DIGEST: [Protest Involving Unsubstantiated Evidence]

Decision is affirmed where complaining party fails to provide evidence not previously considered and has not demonstrated legal or factual error in prior decision.

Ideker, Inc. (Ideker), has requested reconsideration of our decision in Ideker, Inc., B-194293, May 25, 1979, 79-1 CPD 379, in which we denied Ideker's complaint against the award of a contract to another bidder by the Missouri State Highway Commission (Commission). The contract, for highway related construction, was partially funded by the Federal Highway Administration (FHA). For the reasons stated below, we affirm our prior decision.

The solicitation listed numerous individual items by description and estimated quantity. Bidders were to show a unit price and extended total price for each item. The solicitation also incorporated the Missouri Standard Specifications which provide that the unit price will govern in the event of a discrepancy between the unit price and the extended total. Bid evaluation was performed by using a computer to multiply each bidder's unit prices by the quantities for each item and adding these calculated totals to arrive at what we termed an "evaluated total bid" to distinguish it from each bidder's own summation of its bid.

There were two bidders: Ideker and the J.A. Tobin Construction Co., Inc. (Tobin). Ideker's bid and evaluated total bid were both \$4,134,034.69. Tobin's bid appeared as follows:

~~00821~~

<u>Item</u>	<u>Description</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Total Price</u>
201-10.00	Clearing	11.5	2600	29900
		*	*	*
202-20.10	Removal of Improvements	1	711000	71100
		*	*	*
Total for Project				3545897.26
[Evaluated total bid]				[\$4,185,797.27]"

The difference between Tobin's bid and its evaluated total bid is the result of the discrepancy between Tobin's unit price for the removal of improvements, \$711,000, and its extended total, \$71,100. Ideker was considered the apparent low bidder on the basis of its lower evaluated total bid. The Commission's estimate for the removal of improvements was \$60,000; Ideker's unit price for this item was in line with Tobin's extended total. The Commission's estimate for the entire job was \$3,661,456.21.

The Commission determined that Tobin had made an obvious error in stating its unit price for the removal of improvements and permitted the correction of Tobin's unit price for this item to \$71,100. Upon retabulation, Tobin's evaluated total bid was determined to be \$3,545,897.27, displacing Ideker as the low bidder. The contract, with the concurrence of the FHA, was awarded to Tobin on March 2, 1979.

In its protest to our Office, Ideker contended that the correction of Tobin's bid was improper because Tobin's intended bid was not ascertainable from the bid itself. Ideker also argued that the Commission violated its own rules and the terms of the solicitation by not considering Tobin's unit price for this item to be controlling.

We found no pertinent Missouri case law or administrative interpretations of the applicable sections of the Missouri Standard Specifications and therefore

reviewed Ideker's complaint under the terms of the FHA grant requirements and the basic principles of competitive bidding. We concluded that the correction of Tobin's bid was proper under a line of decisions issued by our Office concerning Federal procurements in which we permitted the correction of a price difference between unit and extended prices to reflect whichever of the two prices was the only reasonable interpretation substantially ascertainable from the bid, even though the result was contrary to a provision specifying which price governed in the event of a disparity. We stated that the basis for determining whether one of the disparate prices is reasonable may include reference to the Government estimates and other bids, as well as logic and experience.

Ideker argues that our decision was incorrect because: (1) there is nothing in the record to refute the possibility that Tobin actually intended to bid \$711,000 for the contested item in order to pull out its overhead and profit at an early stage in performance of the contract; (2) that our decision ignored the absence of profit and overhead in the Commission's estimate; (3) that we ignored the substantial price disparity between the two bids that resulted when Tobin's bid was corrected, whereas the bids are very close if Tobin's bid is not corrected; and (4) that if Ideker's bid had been slightly higher, then Tobin would have been the low bidder and could have argued that its correct bid was \$711,000. Ideker contends that Tobin therefore was afforded "two bites at the apple."

Ideker's assertions reflect its own interpretation of the record without adding any evidence not previously considered by our Office. In this connection, we note particularly that the cost estimates prepared by state highway commissions are used as the basis for the preliminary allocation of FHA funds to projects and should incorporate all of the estimated contract costs to the state, including contractors' overhead and profit. See 23 C.F.R. § 630.204 (1978). The FHA has advised us that these estimates usually are derived from the prices, which include overhead and profit, obtained under prior contracts for similar work. Ideker has offered no evidence in support of its allegation that the Commission's estimate did not include these items. Similarly, we find no support in the record for Ideker's speculative assertion of unbalanced bidding by Tobin.

Finally, we do not agree with Ideker's last two objections. The procedures for the correction of bids are consistent with the Federal statutes requiring advertising for bids and the award of contracts to the lowest responsive, responsible bidder. Other bidders are not prejudiced by the application of these procedures since correction is only permitted upon a convincing showing of what the bid would have been at bid opening but for the mistake, although the range of permissible evidence in support of correction varies according to the nature of the error and whether the correction would result in bidder displacement. Compare our first decision here with Sunland Refining Corporation, B-191272, August 30, 1978, 78-2 CPD 154, or U.S. Royal Maintenance, B-193470, January 15, 1979, 79-1 CPD 21. Where these procedures are strictly applied, as we believe they were here, the integrity of the competitive bidding system is not prejudiced. See Technology Incorporated, B-185829, May 10, 1976, 76-1 CPD 305. In this connection, contrary to Ideker's assertion, the disparity between the bids both before and after correction was not ignored. Further, we do not think it is meaningful to speculate as to the result if Ideker's bid had been "slightly higher."

Ideker has provided no evidence of an improper application of the bid correction procedures by the Commission or of either factual or legal error in our prior decision. The decision is affirmed.

R.T.K.H.
Deputy Comptroller General
of the United States