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Comptroller General  
of the United States  
Washington, D.C. 20548

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## Decision

**Matter of:** L. White Construction Company/Ansley-Sheppard-Burgess Company

**File:** B-245916

**Date:** February 3, 1992

Thomas E. Abernathy, IV, Esq., Smith, Currie & Hancock, for the protester.

Craig R. Schmauder, Esq., Department of the Army, for the agency.

Richard P. Burkard, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Agency rejection of low bid as unreasonably priced is proper where bid exceeds government estimate by a significant amount and protester provides no evidence that agency's determination was unreasonable.

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### DECISION

L. White Construction Company/Ansley-Sheppard-Burgess Company protests the rejection of its bid under invitation for bids (IFB) No. DACA21-91-B-0041, issued by the Army Corps of Engineers for construction of an equipment shop at Hunter Army Airfield, Georgia.

We deny the protest.

The IFB, which was issued on July 31, 1991, was set aside for small and disadvantaged businesses under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1988). The IFB stated that the low bidder for purposes of award is the firm offering the low aggregate amount for the base bid item plus additive bid items providing the most features of the work within the funds determined to be available before bids are opened.

The agency received two bids, including White/Ansley's low base bid of \$3,055,000, in response to the IFB. The Army determined at bid opening it had \$2,652,918 available for the project. On September 19, the agency rejected White/Ansley's bid as nonresponsive, stating that the firm failed to submit prices for all of the solicitation line items, and because one of the firms in the joint venture did

not appear on the approved list of 8(a) firms. On September 26, White/Ansley attempted to modify its bid by reducing its base price to \$3,015,000.

On September 30, White/Ansley protested to our Office arguing that its failure to submit prices for all the line items did not provide a basis for rejection of its bid. In its agency report, the Army advised our Office that it now agrees with the protester that the firm's bid was responsive and should not have been rejected based on its failure to submit prices for all line items. In addition, the agency now states that it considers the protester an eligible 8(a) small business.

Nevertheless, the agency states that it is unable to award the contract to White/Ansley at its bid price because the contracting officer determined the price to be unreasonable and above the \$2,652,918 that it has available for the project. In this regard, the agency states that the protester's bid exceeds the government's estimate for the base work items of \$2,623,332 by more than 15 percent.

Before awarding any contract, the contracting officer must determine that the price at which the contract would be awarded is reasonable. Federal Acquisition Regulation (FAR) § 14.407-2; Adrian Supply Co., B-240871; B-240872, Dec. 21, 1990, 90-2 CPD 515. A determination of price reasonableness is within the discretion of the contracting agency and will not be disturbed unless the determination is unreasonable or the record shows that it is the result of fraud or bad faith on the part of the contracting officials. G. Marine Diesel Corp., B-238703; B-238704, May 31, 1990, 90-1 CPD ¶ 515. A determination that the price is unreasonable may be based on a comparison of the bid price with the government estimate. Hawkins Builders, Inc., B-237680, Feb. 5, 1990, 90-1 CPD ¶ 154. In this regard, we have found an agency cancellation to be justified based on a determination that the low bid, which exceeded the government estimate by less than 10 percent, was unreasonably priced. See Building Maintenance Specialists, Inc., B-186441, Sept. 10, 1976, 76-2 CPD ¶ 233.

Since the low bid received here exceeded the government estimate by more than 15 percent, and the protester does not argue nor is there anything in the record which indicates that the agency's determination was unreasonable or that the agency acted in bad faith, we have no basis upon which to object to the agency's decision to reject the protester's bid.


The protester argues that the agency should have considered the modification of its low bid in determining whether its price was reasonable. While bidders are permitted to modify "an otherwise acceptable bid" by making its terms more

favorable to the government, FAR § 14.304-1(e), a bid determined to be unreasonably high, as here, cannot be said to be "otherwise acceptable." Reservation Indus., Inc., 61 Comp. Gen. 211 (1982), 82-1 CPD ¶ 54. Consequently, White/Ansley was not entitled to reduce its price after bid opening. Id.

Moreover, the record shows that the protester's bid--even with the attempted modification--exceeded the funds available for the project. Under these circumstances, a contracting agency has a right to reject the bid irrespective of disputes concerning the validity of the government estimate or the reasonableness of the low, responsive bid price. Kato/Intermountain Electric, A Joint Venture, B-245925; B-245807, Jan. 30, 1992, 92-1 CPD ¶ \_\_\_\_.

Finally, the protester requests that we review and "clean up" the procurement process. Protests are required to include a detailed statement of the legal and factual grounds of protest, and protesters have an obligation to present their own cases. Bid Protest Regulations, 4 C.F.R. § 21.1(c)(4) (1991); CH2M Hill Southeast, Inc., B-244707; B-244707.2, Oct. 31, 1991, 91-2 CPD ¶ 413. We do not conduct investigations as part of our bid protest function. Hi Chem Diagnostics, B-238838, May 22, 1990, 90-1 CPD ¶ 493. We therefore will not consider the matter any further.

The protest is denied.

  
James F. Hinchman  
General Counsel