



Comptroller General  
of the United States

Washington, D.C. 20548

146738  
J. Melody

## Decision

**Matter of:** Imperial Maintenance, Inc.

**File:** B-247371; B-247372

**Date:** May 22, 1992

Theodore M. Bailey, Esq., for the protester.  
Stephen T. Orsino, Esq., and Paul M. Fisher, Esq.,  
Department of the Navy, for the agency.  
John M. Melody, Esq., and David Ashen, Esq., Office of the  
General Counsel, GAO, participated in the preparation of the  
decision.

### DIGEST

1. A required bid guarantee in the form of an irrevocable letter of credit is unacceptable, and renders the bid non-responsive, where by its terms it expires prior to the end of the bid acceptance period; a bid guarantee must remain available to the government for the entire bid acceptance period plus such time as is reasonably necessary for the government to exercise its rights if the bidder fails to furnish the required performance and payment bond.
2. Where proposed awardee's bid prices are within 3.5 percent and 8.8 percent of government estimates and are lower than all other bids received except the protester's nonresponsive bid, there is no basis for objecting to agency's determination that prices were reasonable.

### DECISION

Imperial Maintenance, Inc. protests the rejection of its bids as nonresponsive due to the absence of acceptable bid guarantees, under invitation for bids (IFB) Nos. N62467-91-B-9131 and N62467-91-B-9134, for construction of tennis courts and a fitness track at the Naval Air Station in Kingsville, Texas.

We deny the protests.

Both IFBs required that bidders submit bid guarantees in the amount of 20 percent of the bid price and indicated that the minimum bid acceptance period was 60 days. Bid opening initially was set for December 16, 1991, but opening later was extended to December 20. Imperial submitted irrevocable letters of credit (LOC) to satisfy the guarantee requirements. The LOCs were dated December 16, and stated

that they would "remain in effect for sixty (60) days." Since bid opening had been extended 4 days to December 20, and Imperial did not obtain and submit updated LOCs, the 60-day period of the LOCs' enforceability covered only 56 days of the required 60-day bid acceptance periods. The Navy rejected the bids (which were low) as nonresponsive on the basis that they were not effective for the entire bid acceptance period.

Imperial argues that the discrepancies should be viewed as clerical errors or mistakes and waived as minor informalities.

Rejection of the bids was proper. A primary purpose of a bid guarantee is to protect the government in the event the awardee does not furnish required performance and payment bonds; therefore, a bid guarantee, including one in the form of an irrevocable LOC, must remain available to the government for the entire bid acceptance period plus such time as is reasonably necessary for the government to exercise its rights if the bidder fails to furnish the required bonds. Kruckenberq Serv. Co., B-232337, Oct. 18, 1988, 88-2 CPD ¶ 366; A.W. Erwin and Son Contractors, B-190170, Dec. 21, 1977, 77-2 CPD ¶ 491. Here, the minimum bid acceptance period was 60 days, and up to 15 days after award was afforded for the successful bidder to furnish the required performance and payment bonds. Thus, a bid guarantee that was effective for only 56 days could not provide the protection sought by the government unless award were made in 56 days less the 15-day period for furnishing the performance and payment bonds and the additional time required for the agency to exercise its rights under the bid guarantee. Accordingly, Imperial's submission of a bid guarantee that protected the government for only 56 days effectively reduced Imperial's bid acceptance period to something considerably less than the required 60 days. See Control Central Corp., B-214466.2; B-214466.3, July 9, 1984, 84-2 CPD ¶ 28. A bid providing a lesser bid acceptance period than that specified in the solicitation is nonresponsive, and the deviation cannot be corrected or waived since a bidder offering a shorter acceptance period is not exposed to market place risks and fluctuations for as long as its competitors are and may thereby gain an unfair advantage over bidders that offered the specified period. See, e.g., International Med. Indus., Inc., B-208235, Oct. 29, 1982, 82-2 CPD ¶ 386. Imperial's bids therefore were properly rejected as nonresponsive.

Imperial argues in the alternative that, even if its bids were properly rejected, the Navy should cancel the IFBs because the next low bids were unreasonably high--they were approximately 10 percent (IFB-9131) and 30 percent (IFB-9134) higher than Imperial's bids.

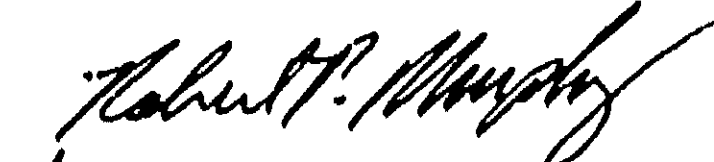
A determination concerning price reasonableness is a matter of agency discretion which we will not question absent a showing that the determination was unreasonable or made in bad faith. United States Elevator Corp., B-241772, Mar. 5, 1991, 91-1 CPD ¶ 245. An agency properly may base a determination of price reasonableness on comparisons with government estimates, past procurement history, current market conditions, or any other relevant factors, including any revealed by the competition received. FAR §§ 14.407-2 and 15.805-2; Bristol Machining & Fabrication, Inc., B-244490, Oct. 7, 1991, 91-2 CPD ¶ 315.

Imperial does not allege that agency officials acted in bad faith, and the record supports the Navy's price reasonableness determinations. The Navy based its determinations on government estimates and the competition received. In this regard, after Imperial filed its protest, the Navy reexamined its estimates for these requirements and, according to an affidavit from the Resident Officer in Charge of Construction (OIC), determined that they had been understated due to a failure to accurately use the standard government overhead rate. Adjustments raised the estimates to \$112,691 (from \$104,000) and \$82,750 (from \$78,700), respectively, thereby reducing the percentages by which the next low bids exceed the estimates to 3.5 percent and 8.8 percent. These differences are not per se unreasonable, see Valley Constr. Co., Inc., B-243811, Aug. 7, 1991, 91-2 CPD ¶ 138 (differences of 16-22 percent above estimate did not render price unreasonable), and the Navy determined that they were not excessive. Further, while Imperial's bids were lower than the revised estimates (by 6.5 percent and 15.9 percent), the other five bids received for each requirement all exceeded the estimate (by 3.5 to 28.7 percent and 8.8 to 62.8 percent). Again, the Navy considered this to be a valid indication that the next low bids were within an acceptable price range.

We find no basis for disagreeing with the agency. Imperial generally questions the adjustments to the estimates, but has furnished no argument or evidence showing that the adjustments were not warranted as explained in the OIC's affidavit. Nor has Imperial shown any reason why the other bids received are not a valid indication of reasonableness in this case. The fact that the protester's bids may be significantly lower than the next low bids does not by

itself demonstrate price unreasonableness, Id.; Taylor  
Assoc., B-216110, June 3, 1985, 85-1 CPD ¶ 625 (awardee's  
price, 40 percent higher than protester's, properly was  
determined reasonable).

The protests are denied.

  
for James F. Hinchman  
General Counsel