

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

B-177042

JAN 23 1973

Associated General Contractors
of America, Inc.
Michigan Chapter
2323 North Larch
Lansing, Michigan 48905

Attention: Mr. Wesley G. Jeltens
Manager

Gentlemen:

Reference is made to your letter of September 19, 1972, enclosing a letter dated September 18, 1972, from the Caspian Construction Company (Caspian) which questions the bidding procedures used in connection with Project No. 06-1-00895 for the proposed construction of the Marquette Convention Center-Ice Arena, Marquette, Michigan, a project partially financed by the U.S. Department of Commerce, Economic Development Administration (EDA).

We are advised that the original solicitation for this project requested a base bid and bids on sixteen deductive alternates. Bids were opened as scheduled on June 12, 1972. Caspian submitted the low bid of \$2,020,000, which was some \$94,000 less than the second low bid price. However, Caspian's bid price less the deductive alternates was still far in excess of the amount budgeted for this project, \$1,122,300. According to Caspian, the City of Marquette then asked Caspian for suggested alternates to reduce the cost and allow the project to be built. Apparently Caspian did offer certain revisions which would have reduced the cost by \$97,534. However, EDA's policy in case of an overrun of this nature is set out in its publication, "Requirements for Approved Projects," wherein it is stated:

"If the low bid exceeds the cost estimate less deductive alternates, the Grantee/Borrower will:

- A. Furnish the additional funds required; or
- B. Have the Architect/Engineer redesign the project, within the approved scope, to reduce costs to, or below the approved amount and readvertise."

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Also, in the same publication, Section 16 of Form ED-116, Information for Bidders, it is stated:

"Method of Award - Lowest Qualified Bidder

If at the time this contract is to be awarded, the lowest base bid submitted by a responsible bidder does not exceed the amount of funds then estimated by the owner as available to finance the contract, the contract will be awarded on the base bid only. If such bid exceeds such amount, the owner may reject all bids, or may award the contract on the base bid combined with such deductible alternates applied in numerical order in which they are listed in the Form of Bid, as produces a net amount which is within the available funds."

EDA states that its policy on negotiating with a bidder in the event of an overrun, such as we have in the present case, is set forth in Section 4.08A of EDA Directive No. 65 dated July 27, 1971. This section was modified on June 2, 1972, to read:

"If the lowest responsive base bid received exceeds the amount of funds then estimated by the Grantee/Borrower as available to finance the contract, the Grantee/Borrower may in no event negotiate with the low bidder or other bidders on changes in plans and specifications in order to reduce the cost to come within the funds available."

In this connection, EDA states that there was an overrun in the present case and the Grantee/Borrower chose not to supply the funds necessary to finance the overrun. The Grantee/Borrower chose instead to readvertise a redesigned project, eliminating thirteen of the sixteen deductible alternates, and incorporating some of the revisions suggested by Caspian in its discussions with the Grantee/Borrower mentioned above.

In your letter of December 22, 1972, you question whether the Grantee/Borrower did, in fact, redesign the project, and we have since been advised that the Grantee/Borrower did do so. However, we are further advised that since the low bid under the second solicitation also exceeded the amount budgeted for the project, the Grantee/Borrower is presently in the process of again redesigning the project,

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and there will be another readvertisement for bids on the project, at which time Caspian will be given another opportunity to bid.

EDA states that it did not participate in the discussions between Caspian and the Grantee/Borrower and, consequently, does not know whether Caspian was merely requested to supply suggestions on how to cut costs or whether Caspian was requested to submit a revised bid. But in any event, EDA states that it would not have approved of negotiations with the low bidder as a prelude to awarding a contract at a lower price had it known what was happening.

Caspian, in its letter of September 18, points out that a contractor who had not submitted a bid under the first solicitation, submitted a bid under the second solicitation. EDA advises us that it has no restriction, nor does it know of any local restrictions, against a qualified bidder bidding on a project on which it did not bid under a previous solicitation. This Office is also unaware of any such restrictions.

In view of the above, we find no legal objection to the action taken by the Grantee/Borrower, such action being in accordance with EDA procedures.

Very truly yours,

PAUL G. DEMBLING
For the Comptroller General
of the United States