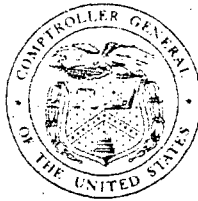


Proc II

DECISION



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

10,017

FILE: B-191043

DATE: May 1, 1979

MATTER OF: Fortec Constructors, Inc.

CNG 00502

DIGEST:

1. While GAO will ascertain whether bidder has supplied evidence to demonstrate compliance with definitive responsibility criteria contained in solicitation, once it has been determined that such evidence has been furnished, GAO will not further consider objections regarding quality of that experience, which is matter for subjective judgment of contracting officer.
2. Low bidder's statement that it is not a "specialist" is not controlling of bidder's specialist status for purpose of determining responsibility where agency reasonably determines bidder is a specialist and statement is not made in context of whether firm is responsible bidder.
3. Where IFB clearly calls for continuous dewatering, rather than intermittent dewatering, but Government indicates intermittent dewatering is adequate to perform work, GAO must conclude IFB overstates agency's actual needs. However, since all offerors bid on common basis, protester is not prejudiced thereby.
4. Where protester's unreasonably high bid under initial IFB does not indicate erroneous basis for bidding, agency cannot inform bidder of "errors" to avoid under resolicitation.

~~005147~~

[PROTESTER ALLEGED BID REJECTION WAS IMPROPER]

Fortec Constructors, Inc. (Fortec) protests the award of a contract to any bidder other than itself under invitation for bids No. GS-04B17008, issued by the General Services Administration (GSA), Region 4, Atlanta, Georgia.

BACKGROUND

On November 14, 1977, GSA first issued the invitation for bids (IFB) for the construction of foundations for an addition to the United States Court House in Miami, Florida. The only bid received by December 12, 1977, the date set for bid opening, was submitted by Fortec.

Fortec's price was \$793,000, which exceeded the Government estimate of \$687,527 by \$106,473 or approximately 15.3 percent. GSA concluded that Fortec's bid price was unreasonably high and on December 28, 1977, notified Fortec that its bid was rejected, that the IFB was canceled and that the procurement would be readvertised.

Shortly thereafter, on January 6, 1978, Fortec protested to our Office, alleging that GSA's rejection of its bid and cancellation of the IFB were improper and that award should be made to it.

Meanwhile, in an effort to resolve the dispute and convince GSA of the reasonableness of its bid and the unreasonableness of the Government's estimate, Fortec submitted its bid calculations to GSA for review. GSA's comparison of the Government estimate with Fortec calculations indicated that the principal area of cost disparity, so far as pertinent here, was in the "dewatering" aspect of the bid. Fortec had estimated dewatering at \$167,000, while the Government's estimate was \$48,662. After consultation with its estimator, Ronald Wickham, who was an employee of

Frank J. Rooney, Inc., the construction manager for the project, GSA concluded that its dewatering estimate was not unreasonably low, and that Fortec's estimate was unreasonably high. Fortec was advised of the area of discrepancy and the rejection of its bid was affirmed.

GSA, on February 7, 1978, reissued the IFB, with bid opening set for February 28, 1978. The second IFB, which is the subject of this protest, did not materially differ from the first.

On February 24, 1978, Fortec filed suit in the United States District Court for the Southern District of Florida (Fortec Constructors v. J. Solomon, Administrator, Civil Action 78-812). Fortec contended that its bid price was reasonable and asked the court to order GSA to rescind the cancellation and award a contract to it under the initial solicitation. Bids under the second solicitation were opened on February 28, 1978, as scheduled; however, the court enjoined GSA from awarding a contract thereunder, pending resolution of the issue. We did not decide Fortec's protest to our Office in accordance with our policy not to decide protests where the matter involved is before a court of competent jurisdiction. See 4 C.F.R. § 20.10 (1978).

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GSA received three bids under the resolicitation. Bartlett Construction, Inc. (Bartlett), at \$712,896, submitted the low bid. Fortec's bid of \$742,000 was second.

At a hearing before the court on March 3, 1978, GSA and Fortec agreed that the essential issue in dispute was whether the Government's estimate for dewatering was reasonable, and testimony and evidence were limited to that issue.

Mr. Wickham, the Government estimator, testified that GSA's estimate was based on experience gained from similar projects, particularly one located only a block away from the court house. His recollection was that only one pump, plus a standby, was sufficient for dewatering. John Bartlett, president of Bartlett,

the low bidder on the second solicitation, and formerly the local franchisee for Complete Wellpoint and Equipment Service (Complete), a dewatering equipment firm, supported Mr. Wickham's testimony.

In contrast, Charles Luther, an estimator for Complete, whose dewatering subcontract estimate was incorporated into Fortec's bid, testified that Complete's estimate was based on the belief that three pumps had been required on the similar project. However, in estimating the cost of dewatering for the second round of bids, Mr. Luther was able to redesign the dewatering system, thereby considerably reducing the amount of the estimate.

In addition, Fortec argued that the Government estimate was wrong in that it was based on an erroneous interpretation of the IFB. The Government estimate was grounded on the premise that the IFB dewatering requirement could be met by the contractor by renting dewatering equipment from a qualified dewatering firm and hiring experienced dewatering operators from the union hall. On the other hand, Fortec maintained that under this interpretation the dewatering would not be performed by a "specialist," as required by the IFB, unless the contractor itself was a specialist. Fortec had proposed to subcontract all the dewatering work to Complete, a specialist.

In the course of the trial, testimony on behalf of the Government pointed out, and the court ultimately found, that the "common practice" in the construction industry with regard to dewatering is for the contractor to consult with a dewatering firm (such as Complete) which advises the contractor as to the design of a dewatering system which will adequately dewater the site and to rent from the firm the necessary equipment. The contractor then would hire qualified dewatering operators from the union hall to operate the system. Fortec, on the other hand, planned to subcontract to Complete all the dewatering work. Complete, it seems, or any other dewatering specialist, would then hire dewatering operators from the same source. However, the court found when the entire dewatering

work is subcontracted to the dewatering company, the cost to the contractor is higher to compensate the dewatering firm for its increased risk. Complete took this risk factor into consideration when preparing its estimate for Fortec.

As noted above, Fortec's position was that the specifications required that the dewatering be performed by a "specialist." Fortec maintained that when the bidder itself did not meet the specialist criteria, its merely renting dewatering equipment from a dewatering firm which furnished advice on a dewatering system and hiring union operators did not meet the IFB specialist requirement.

On March 13, 1978, the court issued final judgment in favor of the Government. The court held as follows:

"The Court finds that, taking into account the discretion accorded to agency officials in determining the meaning and applicability of technical provisions contained in the contract, the agency's interpretation of the specialist requirement was a reasonable one. The plaintiff has failed to show that the defendant's determination that Fortec's bid was unreasonable as to price was without rational basis. Therefore, it is ORDERED AND ADJUDGED that plaintiffs' application for injunctive relief is DENIED and judgment shall be entered in favor of the defendant."

ISSUES

There are two principal grounds for Fortec's protest. First, Fortec contends that Bartlett is not a responsible bidder as defined by the dewatering specialist criteria listed in the IFB. Second, Fortec alleges that if Bartlett is determined to be responsible, then the IFB contains latent ambiguities which prejudice the integrity of the competitive bidding system. In addition, Fortec maintains that Bartlett's

bid is nonresponsive, and that GSA improperly failed to inform it of "errors" in the make-up of its bid responding to the initial IFB, and thereby "willfully stacked" the rebidding against Fortec. While Fortec initially requested that award be made to it, because the construction involved is substantially completed, Fortec now contends it is entitled to bid preparation costs.

RESPONSIBILITY OF BARTLETT

Fortec's contention that Bartlett is not responsible is based on Fortec's belief that Bartlett is not a specialist with at least five years experience in the field of dewatering. The solicitation required the bidder to employ a specialist that has had at least five years of experience in the field of dewatering, if the bidder itself did not meet the specialist criteria set forth in the specifications.

The pertinent IFB provisions, which were the same in the first IFB, are as follows:

"1.1 Dewatering consists of furnishing all labor, materials and plants necessary to lower and control the ground water levels and hydrostatic pressures to permit all excavation and construction under this contract to be performed in the dry. The control of all surface water shall be considered as part of the work under this item.

"1.2 Dewatering work also includes all mobilization, supply, installation, operation, maintenance, supervision, and final dismantling and removal from the site of the dewatering equipment.

"1.3 Employ a Specialist who has had at least five years of experience in the field of dewatering. Refer to Section, SPECIAL CONDITIONS for Specialist requirements."

The term "Specialist" is defined in the IFB as follows:

"2.8 The term 'Specialist' as used in the specification shall mean an individual or firm of established reputation (or, if newly organized, whose personnel have previously established a reputation in the same field), which is regularly engaged in, and which maintains a regular force of workmen skilled in either (as applicable) manufacturing or fabricating items required by the contract, installing items required by the contract, or otherwise performing work required by the contract. Where the contract specification requires installation by a specialist, that term shall also be deemed to mean either the manufacturer of the item, an individual or firm licensed by the manufacturer, or an individual or firm who will perform the work under the manufacturer's direct supervision."

In support of its contention, Fortec relies on the testimony of John Bartlett given in the course of the litigation on behalf of the Government. Fortec alleges that Mr. Bartlett testified that Bartlett did not qualify as a dewatering specialist, and that it planned to perform the dewatering with rented equipment and its own personnel.

As a general rule, this Office does not review affirmative responsibility determinations unless fraud is shown on the part of the procuring officials or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Sillco, Inc., B-188026, April 29, 1977, 77-1 CPD 296; Central Metal Products, 54 Comp. Gen. 66 (1974), 74-2 CPD 64; Yardney Electric Co., 54 Comp. Gen. 509 (1974), 74-2 CPD 376. In the latter situation, "meeting such definitive criteria of responsibility, either precisely or through equivalent experience, etc., is actually a prerequisite to an affirmative determination of responsibility." See Data Test Corporation, 54 Comp. Gen. 499 (1974), 74-2 CPD 365. Since the specialist experience provision is such a criterion, the matter

is appropriate for our consideration. Our review, however, is limited essentially to ascertaining that evidence of the specified experience has been submitted. We will not, absent allegations of fraud, further review the sufficiency or relative quality of that experience since this is a matter reserved to the subjective judgment of the contracting officer. Continental Service Company, B-187700, January 25, 1977, 77-1 CPD 53.

In this case, the agency was on notice as a result of the testimony in the court action that Bartlett would perform the dewatering itself rather than by subcontract. Thus, the agency states, it solicited information from Bartlett on whether it met the specialist requirements (i.e., whether Bartlett is a firm of established reputation, which is regularly engaged in, and which maintains a regular force of workmen skilled in dewatering work) and also whether Bartlett had the five years of dewatering experience.

In response, Bartlett submitted summaries of the dewatering experience of John Bartlett, its president, and Thomas Crompton, vice-president of the firm.

The record indicates that from 1954 to 1957, Mr. Bartlett was chief estimator for C.F. Wheeler Builders, Inc., where he was involved in two dewatering projects. His work "was limited to planning the method of dewatering, laying out the systems, renting the equipment and managing its transportation * * *." In addition, on one of the jobs, he "made daily visits to the project and during the time of the dewatering operations, particularly in the initial states * * * was on the jobsite virtually full time." From 1957 to 1967, Mr. Bartlett indicated he was employed as chief estimator for M.R. Harrison Constructor Corporation and as project manager. In this capacity, Mr. Bartlett participated in four projects where he was responsible for reviewing "the plans, specifications, borings, etc. and prepare cost estimates for the types of dewatering systems * * * [he] determined necessary to the individual cases." He also was responsible for making adjustments to the original system design to accommodate problems

during performance. Moreover, as president of Bartlett, Mr. Bartlett completed eight jobs involving dewatering since 1967. He also was former owner and manager of Complete (the firm that Fortec planned to use as dewatering subcontractor).

In addition, Mr. Bartlett advised GSA:

"* * * I might also point out what we intend in the performance of the work involved in the project in question to employ the services of an established dewatering company, in all probability Complete * * * which happens to be the operation which I sold back to the Franchisor. It is not our intention to contract with them or anyone for the total leasing, installation, operation and removal of the dewatering system. You must recognize that the same expertise, advice and supervision is offered by Complete or their competitors whether or not they are employed on a contract basis or we merely lease the equipment from them. I am sure you recognize that once the system is designed, installed and found to be functioning properly, myself, Complete * * * or anyone else operates the system on the identical basis in that we call the local Union Hall for Operating Engineers. The Operating Engineers furnished to us by the Union Halls are fully capable of operating the equipment, making necessary minor adjustments, or in the event of failure of an operating pump they are qualified and instructed in the procedures of switching from the failed pump to the standby pump. It has always been my practice to have the Operating Engineer on duty in the event of failure of any piece of equipment or failure to maintain the desired water level to call me immediately no matter what time of day. If it is deemed necessary we will include in this call list a designated employee of [Complete] * * *. This service is offered to any lessee of well-point equipment at an hourly rate."

With regard to Mr. Crompton, the record shows that he was involved in dewatering operations for approximately 15 years.

GSA states that its contracting officer verified Bartlett's representations and determined that Bartlett has the technical skills, can obtain the necessary equipment, is regularly engaged in dewatering work, has personnel skilled in dewatering work, has had more than five years experience in dewatering, and is therefore eligible for award.

In rebuttal, Fortec points to the testimony of Mr. Bartlett that "* * * I am technically not a specialist, * * *" and challenges GSA's responsibility determination in light of Mr. Bartlett's testimony.

However, we think Fortec's reliance on the trial testimony is misplaced. The testimony taken as a whole clearly indicates that what Mr. Bartlett meant was that he personally was not a pump operator employed by a firm exclusively engaged in dewatering. He did not mean the firm was not responsible.

In this connection, the transcript of the testimony reads:

BY FORTEC:

"Q. * * * Now what I'm asking you, Mr. Bartlett, to get your special qualifications, would the ordinary general contractor fit the definition of a specialist?"

BY MR. BARTLETT:

"A. He has at his disposal exactly the same specialists I have. When I lease the equipment from Complete * * * we have at our disposal a specialist * * *."

"Q. You do not give any particular significance to the words 'which maintains

a regular force of workmen skilled' in performing--

"A. Yes, certainly. Complete * * * has their own employees, their experts. And when you call the union hall they send out an operating engineer, a specialist. That's the reason he carries a card, he is a specialist.

"Q. And that would fit your reading of the words 'maintains a regular force of workmen'?

"A. Absolutely.

"Q. You go down to the work hall and you hire them and you feel that you have met the specifications?

"A. That is right.

"Q. By the way, have you discussed this with anybody at GSA?

"A. What, what we have been discussing in the last five minutes? The answer is no.

"Q. No, no. I didn't ask you that. It is the language that we were just talking about.

"A. I have not discussed that with anyone.

"Q. In any event, you would have no particular reason, because you do have a background?

"A. I happen to have a background, but the way you read it, I am technically not a specialist because I am not employed full time by someone or other in the dewatering business. I only happen to use somebody who is.

"Q. And if this is a correct definition, you would not be a specialist?

"A. That is right. I wouldn't be a specialist either way you interpret the specifications." (Emphasis added.)

At the outset, we point out that Mr. Bartlett was not addressing the firm's responsibility. Bartlett was not a bidder on the solicitation under litigation and thus its responsibility was not an issue. Mr. Bartlett was merely responding to Fortec's interpretation of the specialist provision, which was at issue. Moreover, Fortec's point in examining Bartlett was not to determine whether the firm was responsible, but to try to prove the specialist criteria could not be satisfied by a general contractor if it simply rented dewatering equipment rather than subcontracted with a dewatering firm. Mr. Bartlett's position, in responding to Fortec and Fortec's interpretation of the specialist criteria, was simply that he was not an operating engineer (pump operator) and therefore was not a specialist.

We think Mr. Bartlett's view of what constitutes a specialist is too narrow. The IFB permits the dewatering specialist to be either an individual or a firm. While "firm" is further defined by the IFB, "individual" is not. Thus, paragraphs 1.3 and 2.8, quoted above, can be satisfied by the employment of an individual specialist with five years of experience in the field of dewatering. In this case, GSA, in accordance with that interpretation, has examined data furnished by Bartlett and has found that the firm employs individuals who meet the experience requirement. As indicated above, our review in these cases is limited to verifying compliance with the objective standards established by the IFB, in this case, that the specialist have five years of experience. The particular value and relevance of that experience, however, is essentially a matter for the contracting officer's subjective judgment. Continental Service Company, supra. Thus, GSA's conclusion that Bartlett

satisfies the specialist requirement is not, on the present record, subject to legal objection.

In reaching this conclusion, we have considered Fortec's assertion that GSA's position has been inconsistent in that GSA was advancing other interpretations of the specialist requirement in the court litigation. While there appears to be some merit to that contention, we find it irrelevant here since GSA asserts that its earlier interpretations were in error and we believe its current position is both reasonable and consistent with the IFB.

Finally, Fortec directs us to Stauffer Construction Company, Inc., B-190707, June 19, 1978, 78-1 CPD 445, and particularly the report filed therein by GSA. In that case (which was not decided on the issue of responsibility), GSA determined that Stauffer did not meet the advertised specialist requirements which were similar to those used in this solicitation. Fortec maintains the agency's interpretation of the specialist provision in Stauffer is at odds with its interpretation here.

In this respect, Fortec points out that GSA's report stated:

"Stauffer did not submit to GSA * * * evidence that Stauffer is regularly engaged in performing contractual plaster work; Stauffer did not submit evidence demonstrating that it has an established reputation for performing that type of work; and the information that it employs an individual, Mr. Smallwood, who allegedly was experienced in such work, was insufficient to show that Stauffer 'maintains a regular force of workmen skilled in installing ornamental plaster.'"

Fortec contends that in Stauffer, GSA held strictly to the requirement that the work be performed by a firm with an established specialist reputation,

regularly engaged in and maintaining a regular force of workmen skilled in the specialty. Fortec alleges that the specialist provisions were relaxed in this case in that Bartlett's experience is as a general contractor, rather than as a specialist.

Fortec's reliance on GSA's Stauffer position is misplaced. In Stauffer the issue was the propriety of GSA's rejection of Stauffer's bid as nonresponsive to a subcontractor listing requirement. GSA found the bid to be nonresponsive because Stauffer failed to identify a subcontractor for the performance of certain work, instead claiming that it would perform the work with its own "specialist" employee. GSA, after reviewing data submitted by Stauffer, including data concerning its alleged specialist employee, found that Stauffer did not qualify as a specialist firm, and therefore had to subcontract to have the work performed by a specialist as required by the IFB. (We held that the bid was responsive, and that Stauffer's status as a specialist was a matter of bidder responsibility.) Here, of course, GSA's review of the Bartlett data resulted in a determination that Bartlett met the specialist requirement. In short, in Stauffer it was GSA's judgment that the bidder did not satisfy the specialist criteria, while here GSA's judgment is that Bartlett's two employees enable it to meet that criteria. We perceive no legally objectionable inconsistency.

ALLEGED SOLICITATION DEFECTS

Fortec maintains the IFB contains a latent defect concerning the agency's reading of the specifications for pump operations. The IFB's Special Conditions provides as follows:

"4.2 Prior to any excavation below the ground water level, place the system into operation to lower the water levels as required and then operate it continuously 24 hours a day, 7 days a week until all drains, sewers and structures have been satisfactorily constructed including placement of fill materials and dewatering is no longer required."

* * * * *

"7.2 Dewatering work to be included in the lump sum base bid shall include the following:

* * * * *

"7.2.2 Continuous operation until the scheduled completion date of the work covered under this contract or until final acceptance by the Contracting Officer, whichever occurs later."

Fortec alleges that its bid includes an amount for the cost of "continuous operation" of the pumps "24 hours a day, 7 days a week" for as long as dewatering is required under the terms of the IFB. Fortec states that the Government estimate does not provide for continuous dewatering, since Mr. Bartlett and the Government's estimator Wickham testified in the litigation that only "intermittent" dewatering would be required.

Mr. Wickham's testimony indicates that an amount for continuous operation of the pumps "until the scheduled completion date * * * or final acceptance * * *, whichever occurs later" was not included in the Government estimate. The Government estimate, however, did allow for pump operation 24 hours a day for ten five-day weeks and three weekends. The record shows that Mr. Wickham did not include additional time in the estimate because he believed that additional dewatering would be unnecessary for adequate site dewatering. The record also shows that Bartlett planned to let the site "flood over the weekend" and that it did not plan to run the pump 24 hours a day, seven days a week, so long as water did not interfere with the construction in progress, although an amount for continuous dewatering was included in Bartlett's bid.

We believe that the IFB clearly and unambiguously advised bidders that dewatering operations would be required "24 hours a day, 7 days a week" until the later of completion of work or final acceptance by

the contracting officer. In its report to our Office, the agency does not take a contrary position. Thus, we think it was reasonable for Fortec to include in its bid an amount for continuous dewatering.

In view of the court testimony, it appears that the contracting agency overstated its minimum needs. We recognize that the determination of the needs of the Government, the methods for accommodating such needs, and the responsibility for drafting proper specifications reflective of such needs are primarily the responsibility of the contracting agency. See Jarrell-Ash Division of the Fisher Scientific Company, B-185582, January 12, 1977, 77-1 CPD 19; Maremont Corporation, 55 Comp. Gen. 1362 (1976), 76-2 CPD 181. However, in meeting its responsibility, the agency should determine its needs based upon its actual experience, engineering analysis, logic or similar rational bases. See Keystone Diesel Engine Company, Inc., B-187338, February 23, 1977, 77-1 CPD 128.

In this case, we believe that GSA was in error in requiring bidders to provide for continuous dewatering when some amount less than round-the-clock dewatering 7 days a week in the judgment of both of its own witnesses would be sufficient. In effect, the view of the Government estimator was that continuous dewatering, such as called for in the IFB, would not serve a useful purpose.

As a general rule, in circumstances where the Government has overstated its requirements, we will recommend that the solicitation be canceled and that the Government's actual needs be set forth in a resolicitation. See 44 Comp. Gen. 529 (1959). However, as Fortec recognizes, that action would not be appropriate here since construction is substantially complete.

Moreover, while the Government's solicitation requirements were in excess of the Government's actual needs, both Bartlett and Fortec were furnished the same IFB and thus both had the opportunity to submit a bid on a common basis. While Fortec suggests that Bartlett may have been "privy to the [agency's] thought as distinguished from its word," there is nothing in

the record from which we may conclude that Bartlett was aware that the contractor might not be called upon to comply strictly with IFB terms.

In view of this, it does not appear that the protester was prejudiced by the solicitation defect.

RESPONSIVENESS OF BARTLETT'S BID

Fortec's claim that Bartlett's bid is nonresponsive rests principally on Mr. Bartlett's testimony that the firm planned to furnish "intermittent" rather than continuous dewatering. Fortec alleges that Bartlett's plans for intermittent dewatering along with the Government's trial testimony to the effect that only intermittent dewatering was included in the Government estimate shows an "extraordinary alliance" between the agency and Bartlett and has "produced a written record which raises questions about the responsiveness of Bartlett's bid * * *."

Fortec maintains that Bartlett's offer with respect to dewatering is limited to the reading of the specifications "agreed upon" between itself and GSA, and since the specifications "require" more than Bartlett has offered, its bid must be nonresponsive.

It has been the consistent position of our Office that the responsiveness of a bid (i.e., the bidder's intention to comply with the IFB specifications) must be determined from the face of the bid itself at the time of bid opening. United McGill Corporation and Lieb-Jackson, Inc., B-190418, February 10, 1978, 78-1 CPD 119. Our primary concern is whether the bid, as submitted, would form a binding contract if accepted. See Manheim Pattern Works, B-186837, July 30, 1976, 76-2 CPD 103. The acceptance of a bid on the basis of independent knowledge outside the bid itself would not operate to create a valid and binding contract. See Parker-Hannifin Corporation, B-186385, August 3, 1976, 76-2 CPD 120. Similarly, the rejection of a bid as nonresponsive on the basis of information outside the bid documents would be improper. Bartlett's bid was unqualified, and was therefore responsive.

FORTEC'S BID ERROR

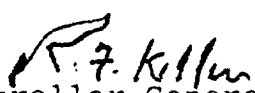
Fortec's final contention is that GSA improperly failed to inform Fortec of "errors" contained in Fortec's bid under the first solicitation. Fortec alleges that GSA discovered errors in its first bid and, drawing upon our mistake-in-bid cases, maintains that GSA had a duty to inform it of the errors so that they would not be repeated under the second IFB.

GSA reviewed Fortec's original bid in the course of reviewing the validity of its estimate. The "errors" to which Fortec is apparently referring concern the specialist requirement and the subject of intermittent dewatering. With regard to the specialist requirement, Fortec claims it was "over-bidding" the dewatering costs because it believed a "subcontractor specialist was needed." However, Fortec also states that it "reasonably read the specifications as requiring the employment of a subcontractor specialist, if the general contractor (bidder) itself did not meet the specialist criteria set forth in the specifications."

The fact that Fortec's bid included a subcontractor quotation on the dewatering would not have suggested to GSA that Fortec was "misinterpreting" the contract as to the portion of the work to be subcontracted. In construction, prime contractors customarily subcontract much of the work. In fact, Fortec was correct, as noted above, in reading the specification to require the use of a specialist where the general contractor could not meet the specialist criteria. Thus, it appeared to GSA, the agency states, that Fortec intended to subcontract all of the dewatering work to a firm specializing in dewatering which was consistent with the IFB, since, as previously discussed, the specialist requirement could be satisfied either by the bidder itself (if it had the requisite qualifications) or through an arrangement with a qualified subcontractor (as Fortec apparently proposed to do). Here, it does not appear that anything in Fortec's original bid alerted GSA to an error regarding the specialist requirement on Fortec's part.

The requirement for continuous dewatering, while exceeding GSA's needs, was stated clearly in the IFB. and we find nothing in Fortec's original bid that would highlight to GSA that the specifications exceeded valid agency requirements or that Fortec's bid had an "error" in this respect. The estimate for dewatering furnished by Fortec to GSA after bid opening consisted of a single worksheet. The face of the worksheet showed a price of \$167,345 which apparently had been quoted to Fortec by Complete. Various calculations and shorthand notations were entered on the back of the worksheet. However, GSA points out, and we agree, that "the meaning and import of all the notations was not fully developed until the trial on the merits." Prior to the hearing, it seems that GSA was aware only that Fortec's dewatering price was more than three times the Government estimate, and Fortec was advised of the disparity in that portion of its bid.

For the foregoing reasons, the protest is denied. Consequently, there is no basis for finding Fortec entitled to bid preparation costs, and its claim will not be considered further. Pacific West Constructors, B-190387, January 24, 1978, 78-1 CPD 63.


Deputy Comptroller General
of the United States