

*Letter  
Proc I*

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**DECISION**

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

FILE: B-194550, B-194550.2      DATE: November 7, 1979

MATTER OF: Ureco Construction Inc. *DLG03294*  
and American Timber Co. *DLG03295*

DIGEST: *[Protest Against Cancellation of Solicitation]*

1. In reviewing contracting agency's exercise of broad discretion whether to cancel solicitation, GAO recognizes inexact nature of Government estimates. Under circumstances, GAO believes that agency's downward revision of estimate after bid opening was reasonable and justified conclusion.
2. GAO concludes that protesters have failed to prove agency's revised estimate is inaccurate. GAO further notes that lowest eligible bid would still be 22 percent higher even if revised estimate were changed in accordance with protesters' contentions.
3. GAO cannot disregard fact that low bid was 13.3 percent higher than agency's original estimate. GAO has upheld rejection of bids where lowest eligible bid exceeded Government estimate by as little as 7.2 percent.
4. Possible results of recompetition have no bearing on propriety of cancellation of solicitation.

Ureco Construction Inc. (Ureco) and American Timber Co. (American) protest the cancellation of solicitation No. R1-14-79-1 issued by the United States Department of Agriculture, Forest Service (Forest Service). The solicitation was for the construction of roads for the removal of trees in the Davis Mountain area, Kootenai National Forest,

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Lincoln County, Montana. American had been the successful bidder on the David Mountain Timber sale, having elected not to perform the road work itself.

The Forest Service opened bids on the protested solicitation on December 18, 1978, and received the following bids:

SK Construction Inc. (SK)	\$620,535.14
Ureco	716,324.50
Big Sky Contractors	864,514.50

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*DL603298*

Because SK's bid was significantly below Ureco's, the Forest Service asked for a verification. On December 29, 1978, SK stated that it would claim a mistake in bid. By letter of January 23, 1979, SK requested that the Forest Service either allow its bid to be corrected by \$68,000 or permit the company to withdraw it. After analyzing the bid worksheets, the Forest Service initially concluded that because of the lowness of certain items compared to the original Government estimate SK had made a mistake in bid. However, the agency concluded that SK had not furnished any evidence of its intended bid. Subsequently, the agency permitted SK to withdraw its bid.

At the time of bid opening, the Forest Service's estimate for the contract work was \$638,916.74. In connection with its analysis of SK's mistake in bid allegation, the Forest Service examined the item in its estimate involved in the alleged mistake. From this examination, the agency found errors in estimating the cost for "Crushed Aggregate Base/Surface." Consequently, the agency reduced the cost of this item from \$367,256 to \$257,775.

Because the Forest Service believed that other errors in the overall estimate also existed, it analyzed all other estimate cost items. The Forest Service states that both price and cost methods of analysis were used. In addition, it obtained current tabulations of road construction bids in adjacent forests. The agency then decided to adjust

the value of all clearing and grubbing items, all excavation items, and all mobilization items. As a result, the Forest Service made a net decrease of \$90,568.74 in the original estimate, making the total revised estimate \$548,348. Because the then low bid of Ureco was 31 percent higher than the revised estimate, the Forest Service canceled the solicitation.

Ureco objects to a revision of the cost estimate made nearly 2 months after bid opening. Ureco alleges that prospective bidders were aware of the Forest Service's estimate, the timber sale bidders first and later the road construction bidders. According to Ureco, a post-bid-opening revision of the estimate has a substantially disruptive effect on both timber purchasers and road construction contractors. In Ureco's opinion, a revision 2 months after bid opening and 6 months after the timber sale makes an already speculative enterprise more uncertain and risky.

American also objects to revision of the estimate after bid opening on the road construction. American points out that no changes were made in the actual physical quantities required for construction after the timber sale bid opening. Thus, American claims that no better quantity estimate existed than that made public at the timber sale. Accordingly, American believes that any bidder for the road construction who did not base his bid on the timber sale estimate would be operating irresponsibly.

Ureco also contends that the revised estimate for crushed aggregate base contains no projected costs for the "drilling and shooting" necessary to produce the items. In support of this contention, Ureco has submitted statements from its proposed subcontractor that in order to produce the item from the quarry designated in the solicitation, it is necessary to drill and blast the bedrock underlying the wet dirt and surface gravel. Therefore, Ureco asserts that \$2.17/cu. yd. must be added to the Forest Service's revised estimate for this item.

The Forest Service states that the estimate it made public at the timber sale opening was one for \$579,692. The agency agrees that the actual physical quantities needed for the road construction were never changed after the timber sale bid opening. The \$579,692 cost figure was increased to \$638,916 at the time of bid opening for the road work because of the effects of inflation. In view of the foregoing, the Forest Service notes that if Ureco did rely on the \$579,692, it is clear that by bidding \$716,324.50 the company increased its bid nearly 24 percent over that estimate.

The Forest Service also disputes Ureco's contention that the revised estimate contains no projected costs for drilling and shooting. The agency states that a sum of \$21,933.05 or \$.569/cu. yd. for "pit development" was included in the revised estimate. This sum, in turn, includes estimated costs for a wagon drill, operator, laborers, powderman, and powder. The agency declares that the total sum was devoted to drilling and shooting.

Under section 1-2.404-1(b)(5) of the Federal Procurement Regulations (1964 ed. amend. 121), an IFB may be canceled if the prices on all otherwise acceptable bids are determined by the contracting officer to be unreasonable. Contracting officers have broad powers of discretion in deciding whether a solicitation should be canceled and our Office will not interfere with this determination absent a lack of reasonableness. See Support Contractors, Inc., B-181607, March 18, 1975, 75-1 CPD 160, and the cases cited therein. The determination may be based upon comparison with a Government estimate, past procurement history, current market conditions, or other relevant factors, including any which may have been disclosed by the bidding. See G. S. E. Dynamics, Inc., B-189329, February 13, 1978, 78-2 CPD 127. Westinghouse Electric Corporation, 54 Comp. Gen. 699, 702 (1975), 75-1 CPD 112.

In reviewing the contracting agency's exercise of its broad discretion in this area, we have also recognized the inexact nature of Government estimates.

See Schottel of America, Inc., B-190546, March 21, 1978, 78-1 CPD 220. Here, we note that the Forest Service actually attempted to cure certain areas of inexactness in its estimate brought to light by SK's alleged error in bid. The record reveals that the original estimate was derived through the use of a Regional Cost Guide, a compilation of previous bids for similar work in Montana and Northern Idaho. While initial review showed the estimate was prepared pursuant to the Guide's instructions, the Forest Service upon further review found that the Guide listed only a basic crushing cost and not the various elements comprising that cost. Consequently, we believe that the Forest Service acted reasonably in revising its estimate so that all cost elements related to crushing could be fully identified. Cf. J.S. Mathers, Inc., B-191323, September 25, 1978, 78-2 CPD 225.

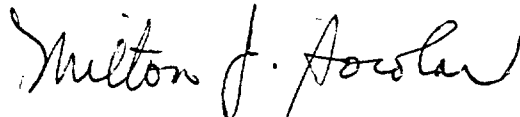
We recognize that Ureco also challenges the accuracy of the revised estimate. However, the protester has the burden of affirmatively proving that its data and calculations are correct and those of the procuring activity are incorrect. See The Raymond Corporation; Air Force - requests for reconsideration, B-188277, September 16, 1977, 77-2 CPD 197. We do not think that Ureco has provided sufficient evidence as to what the appropriate cost figure should be for the revised estimate. In this regard, we note that the Forest Service concedes that \$21,933.05 for the drilling and shooting involved may be somewhat low. Nevertheless, we think the agency correctly argues that even using many of the assumptions made by Ureco's proposed subcontractor as to how the drilling and shooting should be performed, the resultant cost for crushed aggregate base should be no more than \$7.69/cu. yd. The Forest Service emphasizes that Ureco's bid would still be \$129,416 or 22 percent higher.

Furthermore, we cannot ignore the fact that Ureco's bid was 13.3 percent higher than the Forest Service's prebid-opening estimate of \$638,916.74. We have upheld the rejection of bids where the lowest eligible bid exceeded the Government estimate by as little as

7.2 percent. Building Maintenance Specialists, Inc., B-186441, September 10, 1976, 76-2 CPD 233. While Ureco acknowledges our prior decisions to this effect, it urges that because of the uncertainties inherent in heavy road construction, a substantially greater variation between the submitted bids and the Government estimate should be justified. We disagree. To make such a distinction would permit Government estimates to be invalidated whenever a bidder's price was not in line with the estimate merely by evolving a possible hypothesis which might explain the higher bid. See Support Contractors, Inc., supra.

Finally, Ureco contends that cancellation is improper because the cost to the Government will increase. In response to similar allegations, we have held that the possible results of a recompetition have no bearing on the propriety of the cancellation of a solicitation. See Nordam, Division of R. H. Siegfried, Inc., B-189996, August 17, 1978, 78-2 CPD 126.

The protests are denied.



For The Comptroller General  
of the United States