



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

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Attention: Herman M. Braude, Esq.

Gentlemen:

Reference is made to your letter of January 19, 1973, and prior correspondence, protesting on behalf of Stauffer Construction Company, Inc., against the rejection of its bid under invitation for bids No. DACA31-72-B-0108, the second step of a two-step procurement.

The United States Army Engineer District, Baltimore, Maryland, as the first step of the procurement, issued on November 23, 1971, Request for Technical Proposals (RFTP), Serial No. DACA31-72-R-0001, for the design and construction of Bachelor Officers' Quarters (BOQ) at Aberdeen Proving Ground, Maryland, Fort Belvoir, and Fort Lee, Virginia. Separate technical proposals were invited for each of the three projects and those bidders who had submitted acceptable technical proposals for any or all of the three projects would be entitled to submit a bid price under the second-step invitation for bids. Prospective bidders were advised on page TP-6 of the RFTP as follows:

8. COST LIMITATIONS:

a. The available amount for construction of these projects is as follows:

(1) Fort Lee 300 Man BOQ	\$3,634,078
(2) Fort Belvoir 300 Man BOQ	\$3,337,758
(3) Aberdeen Proving Ground 150 Man BOQ	\$1,894,821

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The amount available for construction includes cost of BOQ structures, all utility and site work but exclusive of the contractor's design. There is a statutory limitation of \$10,890 per man at Aberdeen Proving Ground and \$11,000 per man at Fort Lee and Fort Belvoir inside the 5-foot line, exclusive of design costs, special foundation conditions, etc. This limitation does not apply to utilities or site work beyond the 5-foot line.

b. Step 2 of this procurement entitled, "Invitation for Bids" will contain a price schedule similar to the following: \* \* \*

(2) Schedule B - Fort Belvoir: Three Hundred (300) BOQ Units

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
1	BOQ structure to 5 feet beyond building line	\$ _____
2	Design Cost, Utilities and all site work not included in Item 1 above	\$ _____
	TOTAL	\$ _____

Acceptable technical proposals for the Fort Belvoir BOQ were received from eight offerors, including Stauffer. On April 27, 1972, invitation for bids No. DACA31-72-B-0074 was issued to bidders who had submitted acceptable technical proposals under the first step of the procurement. Bidders were to submit bid prices for Schedule A - Fort Lee, Schedule B - Fort Belvoir, and Schedule C - Aberdeen Proving Ground. Each of the three schedules called for separate prices for Item 1, "BOQ Structure with Utilities 5 feet beyond building line," Item 2, "Design Cost, Outside Utilities and all site work not included in Item 1 above," and a total price for both items.

Bids under IFB - 0074 were opened on May 24, 1972. However, it was necessary to cancel the Schedule B (Fort Belvoir BOQ) portion of the invitation and all bidders were so notified. On June 5, 1972, the 300 Man BOQ at Fort Belvoir was readvertised under invitation for bids No. DACA31-72-B-0108 and copies of the invitation were mailed to all bidders who had submitted acceptable technical proposals.

The only bid received in response to IFB - 0108 was submitted by Stauffer with a total price of \$3,719,910. Stauffer's bid price for Item 1, BOQ structure and utilities to a line five feet beyond the building, was \$3,300,000, or equal to the \$11,000 per man statutory limitation. The price for Item 2, design costs, outside utilities and all site work not included in Item 1 was \$419,910.

In his initial report, the contracting officer states that since the \$11,000 cost limitation must cover not only the contract price but also the cost of certain Government-furnished equipment (about \$11 per unit), 5 percent supervision and inspection costs, and 2 percent allowance for contingencies, it became clear that Stauffer's bid price of \$11,000 per man would actually result in a unit cost of \$791.80 above the \$11,000 per man statutory cost limitation established for the project in accordance with section 706 of the Military Construction Authorization Act of 1972, Public Law 92-145, October 27, 1971, 85 Stat. 394 (1971). It was the opinion of the contracting officer that Stauffer's bid could not, therefore, be considered for award unless and until a waiver of the statutory limit could be obtained from the Secretary of Defense or his designee. On June 27, 1972, the Baltimore District Office requested a waiver of the statutory limit. By 2nd indorsement dated July 12, 1972, the Office of the Chief of Engineers informed the Baltimore District Office that the request for authority to exceed the statutory limit by \$792 per man could not be justified and that the project should be redesigned and obtained by conventional formal advertising. By letter dated July 28, 1972, Stauffer was advised that its bid had been rejected since it exceeded the statutory unit cost limitation and its protest to our Office followed.

You question the legal correctness of the Army's interpretation of the statutory unit (man) cost limitation. You contend that the Government costs for contingencies, supervision and inspection, and Government-furnished equipment are legally not includable within the statutory cost limitation of \$11,000 per man and that, therefore, no waiver by the Secretary or his designee is required. It is your position that these costs are to be considered in determining compliance with the statutory authorization for the project which, in this case, is the \$10,750,000 authorization for Fort Belvoir specified in section 101 of the Military Construction Authorization Act of 1972. In this connection, it is noted that House Armed Services Committee Report No. 92-13, 92nd Congress - 1st session, on the Military Construction Authorization Fiscal Year 1972, indicates on page 5260 thereof that the \$10,750,000 appropriation authorization was to

cover three projects at Fort Belvoir, namely, a new topographic research and development laboratory, quarters for 300 Bachelor Officers, and modification and rehabilitation of the electrical distribution system.

The Corps of Engineers, on the other hand, maintains that it has been the long-established administrative practice to view the statutory per man price limitation as a limitation on the cost of a complete facility to 5 feet beyond the building, including the value of collateral equipment purchased from construction funds, an allowance for contingencies and the cost of supervision, inspection, and administration. See paragraph 5a of Corps of Engineers Regulation No. 415-345-10, April 1, 1972. Attention is also drawn to Army Regulation No. 415-17, entitled, "Empirical Cost Estimates for Military Construction and Cost Adjustment Factors." Paragraph 3b thereof indicates that cost estimates reflected in the regulation include allowances of 5 percent for contingencies and 5.8 percent for supervision and administration. Table 2, thereof, "Empirical Cost Estimates - Military Construction,"--lists a congressional limitation of \$11,000 per man for Bachelor Officer Quarters (BOQ).

There is no question that the Corps' position reflects a long-standing administrative interpretation of the statutory unit price limitation. See 46 Comp. Gen. 298 (1966); e. g., B-153613, May 6, 1964. And, as such, it is entitled to great weight in interpreting the statutory unit price limitation. Moreover, we have reviewed the legislative history of the cost limitation and we have found nothing that would indicate a congressional intent at variance with the Corps' administrative practice. Indeed, the evidence available supports the Corps' position.

In the absence of a waiver, section 706 of the Military Construction Authorization Act of 1972 limits the unit cost to \$11,000 per man where, as here, the area construction index is 100. It is significant, and we believe decisive, that the area construction cost index referred to in section 706 is promulgated by the Office of the Deputy Assistant Secretary of Defense (Installations and Housing) and that the index includes factors for normal construction contingencies and for overhead, supervision and inspection costs. For example, Explanatory Note 1 on page ii of the "Fiscal Year 1972 Military Construction Cost Review Guide" states that the unit costs for the repetitive-type permanent facilities identified in section 1 are estimates based on an area price adjustment factor of 1.00 and are applicable to the structure to the 5-foot line only. Section 1, Item 4, reflects the \$11,000 per man limitation for BOQ's and the unit cost column contains the following introductory statement indicative of the elements of the

estimate; "Contract Cost Plus 5% Contingency and 6% SIOH / Supervision, Inspection, and Overhead/," The same approach is reflected in the fiscal 1973 and 74 Guides. Accordingly, we find no basis to adopt Stauffer's interpretation of the Military Construction Authorization Act. We do agree that bidders should have been given specific advice concerning the application of the statutory unit price limitation and we are by letter of today (copy enclosed) drawing this matter to the attention of the Secretary of the Army for appropriate corrective action.

Whether or not the statutory unit price limitation should have been waived in this case is a matter within the discretion of the contracting agency. In the absence of a waiver, rejection of Stauffer's bid was required. 48 Comp. Gen. 34, 38 (1968).

For the foregoing reasons, the protest is denied.

Sincerely yours,

Paul G. Dawbling

Acting Comptroller General  
of the United States

Enclosure