
SITE VISIT CAN BE AN UNREASONABLE REQUIREMENT WHEN...

What is Reasonable?

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DEFINITION OF REASONABLENESS

The Site Visit clause states that offerors are “urged and expected to inspect the site where services are to be performed and to satisfy themselves regarding all general and local conditions that may affect the cost of contract performance, **to the extent that the information is reasonably obtainable...**” (FAR 52.237-1). Reasonableness is often defined by what a prudent offeror (or bidder/contractor) would do under the circumstances. Determining which information is reasonably obtainable typically depends on the facts and site conditions at an individual site. Being fact-driven, the definition of *reasonably obtainable* has left some gray area which is open to interpretation. One interpretation, based on a particular fact pattern, was rendered in *Packard Construction Corp.*, 94-1 BCA ¶26,577.

APPEAL OF PACKARD CONSTRUCTION

In *Packard*, the contractor was to provide materials and labor to cover exposed interior roof trusses and ceiling joists in a large amphitheater, in accordance with the Government’s design. The work involved fabrication of tubular steel frames, which rested upon steel supports welded to existing trusses and beams. The frames were to be covered with cloth and would serve to conceal stage lighting and other items mounted on and above the trusses and beams.

Packard Construction Corp., the successful bidder, did not visit the site before bidding. The Board ultimately concluded that a site visit would not have necessarily discovered the concealed obstructions to the planned work. The work area was 25 feet above the floor and a thorough survey would have taken two days, and required scaffolding and permission and coordination with engineering staff and other users of the building. Even if someone had crawled in an around the beams with a flashlight, not all of the existing conditions would have been visible.

The fabrication subcontractor verified drawing dimensions at the site, and found that the frames would fit, except for spaces in two bays containing conduit (which were shown on the drawings), and made adjustments to account for the conduit. During verification, the fabricator found many obstructions which would conflict with the frames. The obstructions had not been noted on the drawings, and the Board found that they could not have been reasonably discovered by a prudent bidder.

The Government agreed to remove the obstructions before installation began, but removed only some of them. Only 60 of 95 frames ended up fitting into the spaces as designed. The Government observed the condition, but refused to remove the obstructions or direct the contractor how to proceed. The contractor was told “to get you tail over there and get to work,” and was continually threatened with default and liquidated damages if it did not solve the problem

promptly. The frames were cut and remanufactured at the site to fit around the obstructions and the work was completed on time by using overtime work.

On appeal, the Government argued that the contractor was not entitled to equitable adjustment because of its failure to make a site visit, as required by the contract. The Board disagreed, however, finding it unreasonable to expect a bidder (contractor) to expend the extra time and effort this job would have required to discover the concealed obstruction.

CONCLUSION

When site visits fall into the gray area like in *Packard*, an experienced consultant can help you make the best decisions possible for your situation. The experts at Excell have been doing it for years. Give us a call!

In the end, you will be glad you made the call; by the way, it's a FREE CALL.

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