

DECISION

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

50994

FILE: B-183643

DATE: August 8, 1975

MATTER OF: White Abstract Company

97289

DIGEST:

Contractor's price of \$100 per ownership for furnishing preliminary certificates of title limited its payment to that amount for the preparation of a certificate on a 2,025 acre tract for which there were 74 abstracts of title containing 3,700 entries. Relief will be granted where bidder's mistake is so great that it would be unconscionable to limit compensation to the amount of the contract and where contracting officer should have been on notice of the error in the contractor's bid.

White Abstract Company (White), has requested reformation of its contract No. DACW41-73-D-0020, which was for the furnishing of tract ownership data and title evidence for real property ownerships located within the Long Branch Project Area, Macon County, Missouri. The procurement of these services was undertaken for the purpose of facilitating the acquisition of property or easements needed for the development of the Long Branch Project. This solicitation was for all of the remaining ownerships within the project area, which were estimated to be 74.

Invitation for bids (IFB) No. DACW41-73-0041 called for bids on three schedules. Schedule I required unit and total price on approximately 74 Tract Ownership Data on properties located in Macon County, Missouri, to be acquired in connection with the Long Branch Lake. Schedule I also required title evidence as specified in Schedule II and/or III for Long Branch Lake.

Schedule II called for the delivery of preliminary certificates of title for an estimated 74 ownerships as ordered by the contracting officer. White's bid of \$100 per ownership was to apply to title evidence ordered for each tract in contiguous ownership without reference to size or the number of abstract parts or chains of title involved and was to include all charges, including attorney's fees for abstracting and title work, as well as \$1,000 of title insurance. Further subparts of Schedule II provided for bids for increases in price for title insurance in excess of \$1,000 on an increasing sliding scale. Schedule III, an alternative to Schedule II, called for the delivery of policies of title insurance, including endorsements showing title in the United States and including liability per ownership on a sliding scale similar to the scale set forth in Schedule II.

Two bids were received in response to the IFB and were opened at the scheduled time. A. Verne Baker Abstract Company bid only on Schedule I, Tract Ownership Data. White Abstract Company bid on all three schedules in the amount of \$370 (\$5 per ownership) for Schedule I, Tract Ownership Data and Title Evidence; \$11,476.25 for Schedule II, Certificates of Title; or \$12,483 for Schedule III, Title Insurance. The contract was awarded to White Abstract Company for Schedules I and II.

On October 31, 1973 a preliminary certificate of title for a tract known as the "East Fork Ranch" was ordered. By letter dated November 29, 1973, White Abstracting Company informed the Kansas City District, Corps of Engineers, that as of that date it had completed abstracting 42 tracts of approximately 2,000 total acres and consisting of approximately 65 abstract parts or chains of title and that these 42 tracts were approximately two-thirds of the total number of tracts to be acquired for the Long Branch Project. White Abstract Company further stated that the title work for the East Fork Ranch would require the examination of more abstract parts than the combined figure for the 42 tracts previously completed and that the size of the East Fork Ranch was approximately equal to the combined acreage of the 42 tracts previously completed. The addition of this one tract therefore in effect doubled the amount of work to be done under the contract.

Under the terms of its contract, White was obligated to provide one certificate of title for each "contiguous area of land in identical ownership." White's price of \$100 per ownership for providing preliminary certificates of title limited payment to it to that amount for providing the certificate for the East Fork Ranch, a 2,025-acre ownership for which evidence of title consisted of 74 abstracts consisting of 3,700 entries. White contends that the gross disparity between its bid price and the amount of work to be performed resulted from a mutual mistake. In this regard, the contracting officer has stated:

"The mistake in bid which White Abstract Company alleges is that the inclusion of the East Fork Ranch in the contract was completely unanticipated, that the magnitude of the work required for this one ownership was unknown and that, as a result, no allowance whatsoever was made for this ownership in the Contractor's bid. The Contractor further alleges that the mistake was mutual in that the Government did not contemplate the inclusion of the East Fork Ranch property in the contract prior to award, and that the Government did not realize the magnitude of the work required in connection with the East Fork Ranch property at any time prior to notification by the Contractor. In addition, the bidding documents did not disclose the fact that the East Fork Ranch was included in the contract, the acreage of any ownership included in the contract, or estimates of the amount of work required by the contract for any ownership.

"While it would have been possible for the Contractor to determine which property was included in the contract and to estimate the work required for each ownership, I have no doubt that the Contractor had no actual knowledge that the East Fork Ranch property would be included, or the magnitude of the work required for that ownership. I also have no doubt that the Contractor did, in fact, fail to include in its bid any allowance for work of the magnitude required for the East Fork Ranch property.

"I had no actual knowledge at the time of procurement of the location of the East Fork Ranch within the project area or of its disproportionately large size suggesting separate procurement from the other ownerships involved, although I should have known of these facts because they were contained in planning documents for the project. Had I actually known these facts, I would undoubtedly have arranged for a separate procurement.

"On the basis of the above, I am of the opinion that the Contractor's mistake in bid has been established and that the mistake was mutual between the Contractor and the Government."

Although it is clear that a mistake was made in the preparation of White's bid, we are not convinced that the mistake was a mutual mistake involving the Government. It does not appear from the facts that White relied on any false representations (innocent or otherwise) by the Government in preparing its bid. Had White made an investigation of the site prior to preparing its bid, it is likely that White would have discovered that the large East Fork Ranch was included in the Long Branch Project. However, we do not believe that the contractor's negligence in failing to make this preliminary investigation precludes the granting of relief. B-178795, September 26, 1973.

We have held that relief may be granted if it would be unconscionable to require the contractor to perform the contract at the bid price. B-178795, supra; B-177574, January 3, 1973; B-150382, February 20, 1963; B-170691, January 28, 1971. Unconscionability is grounded on the theory that where a bidder's mistake

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"is so great that it could be said the Government was obviously getting something for nothing" relief should be allowed. See B-177432, December 21, 1972. In the present case we believe that the Government would receive "something for nothing" unless White is granted relief for the disparity between its bid price and the amount of work involved regarding the East Fork Ranch. White has already completed the work required for the East Fork Ranch and the Government has received the benefit therefrom. White has estimated the value of its additional work at \$5,550, which the Corps of Engineers agrees is fair and reasonable, and the Corps concurs in the recommendation that White be granted relief by increasing the amount of the contract by \$5,550.

In view of the above we offer no objection to granting relief in the amount of \$5,550 to White to compensate it for the work done regarding the East Fork Ranch as recommended by the Office of the Chief of Engineers. The amount of \$100 by which the claim is reduced represents the amount already paid to White under Schedule II of the original contract.


Deputy Comptroller General
of the United States