

DECISION



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

11257 PL-11

FILE: B-192789

DATE: August 29, 1979

MATTER OF: Second Growth, Inc., Marmot Construction Works, Ltd. and Hoedads, Inc., a Joint Venture

DLG 026521

DLG 2653

CNG 02294

DIGEST:

[Claim for Bid Preparation Costs

Bidder on Forest Service project is not entitled to bid preparation costs where agency canceled solicitation and performed work in-house since bid greatly exceeded Government estimate.

Second Growth, Inc., Marmot Construction Works, Ltd., and Hoedads, Inc., a joint venture, (Second Growth), claims bid preparation costs in the amount of \$7,000 because the Government estimate of the work to be performed under ^{the} solicitation R6-17-78-28 was faulty, which resulted in its cancellation.

The solicitation was issued on June 19, 1978, for flood rehabilitation work in three areas of ^{a national forest} the Wenatchee National Forest. The Government estimate for the solicited work was \$152,843. The only bid received was from ^{the parties} Second Growth, at \$970,203.65 for the three areas, subject to acceptance of only two areas, not to exceed an award of \$610,000.

Since the bid was considerably above the Government estimate for the work, both the agency and Second Growth ^{parties} reexamined the estimate and bid respectively. The Forest Service reports that it conducted a time study of trenching (a large part of the rehabilitation work consists of digging trenches by hand) with the result that it recalculated the Government estimate as \$268,335. Second Growth's recalculated price was lowered to \$913,206. No mention was made of a dollar limitation as in the original bid. Since the parties were still far apart and Second Growth's final price again greatly exceeded

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the Government estimate Second Growth's bid was rejected and the IFB canceled. The Forest Service has performed the rehabilitation work itself.

Second Growth claims that the Forest Service's initial cost estimate was grossly wrong. Further, the protester argues that the Forest Service used Second Growth's know-how and its estimating techniques not only to develop its second estimate but also to perform the work itself. In this connection, Second Growth has provided an explanation of how the Government changed the scope of work and the manner of performance after it was informed of the work plan developed by Second Growth. From this the protester concludes that it is entitled to bid preparation costs.

The agency replies that its estimate was a reasonable approximation of the project's cost and that after developing a second estimate it permitted Second Growth to submit a revised price. The Forest Service notes that it completed the project at a cost of \$157,297. Although the agency states that its project was reduced in scope from that contemplated by the solicitation, it argues that its cost when adjusted to the scope contemplated would be considerably less than Second Growth's *protester's* second bid. (It does admit however, that the actual costs are difficult to determine, since cost records were maintained by crew job assignments and not by individual tasks which relate to the bid schedule of works.)

As a general rule, bid preparation costs can be recovered where the Government has acted arbitrarily or capriciously with respect to a claimant's bid or proposal. Pacific West Constructors, B-190387, January 24, 1978, 78-1 CPD 63. Specific grounds for recovery under this general standard include: where there has been subjective bad faith on the part of the procuring officials; where there is no reasonable basis for an administrative decision; where the procuring officials have exceeded their statutory or regulatory discretion; or where there has been a violation of pertinent statutes or regulations. Keco Industries, Inc. v. United States, 492 F.2d 1200 (Ct. Cl. 1974).

G. Heller
Here there is no indication that the Government's two estimates were arrived at unreasonably. Although it may be that the Government's first estimate was not as accurate as it could have been, the agency appears to have made a reasonable effort to correct the deficiencies by developing a second estimate. In these circumstances, where both parties seem to agree that it was difficult to accurately estimate the cost of performing this project, we cannot say that the agency acted unreasonably. Further, since Second Growth submitted the only bid, and that greatly exceeded the estimated cost of the contemplated work, the agency had a compelling reason to reject the bid and cancel the invitation. Coil Company, Inc., B-193185, March 16, 1979, 79-1 CPD 185. The determination to cancel had a reasonable basis in fact at the time of cancellation. PM Contractors, Inc., B-192495, January 8, 1979, 79-1 CPD 8.

As for Second Growth's argument that the Forest Service used its expertise in performing the work, it does not appear that any information which the Government may have received from conversations with Second Growth was in any way restricted or proprietary.

In short, Second Growth has not been able to show that the Forest Service made other than a good faith attempt to estimate the cost of the project. Therefore since Second Growth's bid, which was the only bid received, exceeded that estimate the Forest Service had a compelling reason to cancel the solicitation and did not act in an arbitrary or capricious manner so as to entitle Second Growth to bid preparation costs.

The claim is denied.

John D. Heller
For the Comptroller General
of the United States