

W1100-~
PH1



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Cellular Product Service, Inc.

File: B-222614

Date: July 3, 1986

DIGEST

Bidder may not recover costs of preparing its offer and of pursuing protest where solicitation was properly canceled due to lack of funds. Lost profits may not be recovered in any event.

DECISION

Cellular Product Service, Inc. (Cellular), protests the cancellation of solicitation number 6-SI-60-01850 by the Department of the Interior, Bureau of Reclamation. It requests that it be awarded a contract under the solicitation, or, alternatively, that it be reimbursed its costs of preparing its offer, the cost of pursuing this protest, and the profits it anticipated receiving from this contract and from other work on which it did not bid in expectation of receiving this award.

We dismiss the protest and the claims.

By letter of May 2, 1986, the Bureau of Reclamation advised Cellular, in part:

"As the preliminary examination of bids . . . indicates that you will be the successful bidder, we are enclosing, in duplicate, performance bond and payment bond [forms].

"These forms are being forwarded for execution by you and your surety in anticipation of award of contract. However, this letter is not to be considered an award of contract nor a commitment that an award will be made

.

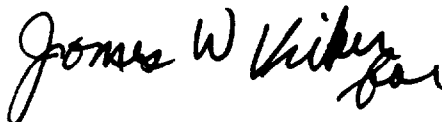
"In the event that award of contract is not made, these forms will be returned to you for disposition."

After receipt of this letter, Cellular obtained performance and payment bonds. Subsequently, the protester was notified by the Bureau of Reclamation that the solicitation was canceled due to lack of funds and no award was to be made.

Cellular essentially is protesting the cancellation of the solicitation for lack of funds after it had gone to the expense of competing, including obtaining the bonds requested by the agency. Contracting agencies have broad discretion in determining when it is appropriate to cancel a solicitation. Cadre Technical, Inc.; Hubbard Associates of Florida, Inc., B-221430, B-221430.2, Mar. 14, 1986, 86-1 C.P.D. ¶ 256. In fact, an agency has an unquestioned legal right to cancel solicitations because of lack of funds since the management of an agency's funds generally depends on the agency's judgment concerning which projects and activities shall receive increased or reduced funding. Somers Construction Co., Inc.--Reconsideration, B-193929, July 24, 1979, 79-2 C.P.D. ¶ 54. It is not our role to question the unavailability of funds. Genco Tool and Engineering Co., 61 Comp. Gen. 281 (1982), 82-1 C.P.D. ¶ 175. Because the agency here determined that there was not sufficient funding--which the protester does not dispute--it properly canceled the solicitation.

Our regulations provide for the recovery of costs only where a protest is found to have merit. 4 C.F.R. § 21.6(d) (1986). The expenses the protester incurred in preparing its offer are typical costs of doing business and competing for government contracts. See United Industries Inc., B-212996.2, Aug. 1, 1984, 84-2 C.P.D. ¶ 139. While the agency's letter may have prompted the protester to obtain performance and payment bonds, there is no evidence that the agency acted arbitrarily or capriciously. See Keco Industries, Inc. v. United States, 492 F. 2d 1200, 1203 (Ct. Cl. 1974). Cellular made these expenditures, before being awarded a contract, at its own risk. Because the solicitation was properly canceled, there is no legal basis for recovery of either the cost of preparing its offer or of pursuing its protest. With regard to Cellular's claim for loss of profits, we have recognized the general rule that anticipated profits may not be recovered even in the presence of wrongful action. Smoke Busters, B-219458, Nov. 1, 1985, 85-2 C.P.D. ¶ 501.

The protest is dismissed.



Robert M. Strong
Deputy Associate General Counsel