

DOCUMENT RESUME

02342 - [24832292]

[Claim for Bid Preparation Costs]. B-187659. May 5, 1977. 5 pp.

Decision re: Bromfield Corp.; by Paul G. Dembling (for Elmer B. Staats, Comptroller General).

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law I.

Budget Function: General Government: Other General Government (806).

Organization Concerned: Coast Guard.

Authority: Keco Industries, Inc. v. United States, 492 F.2d 1200

(Ct. Cl. 1974). The McCarty Corp. v. United States, 499 F.2d

633, 637 (Ct. Cl. 1974). 54 Comp. Gen. 1021. B-185544

(1977). B-187489 (1977).

An unsuccessful low bidder claimed bid preparation costs. Where the bids are not evaluated in accordance with the invitation's bid evaluation method resulting in an award to other than the low bidder, the award by the contracting officer must be considered to be arbitrary and capricious, entitling the low bidder-claimant to bid preparation costs. (Author/SC)

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**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20543

*Kozlakowski  
P.L.T.*

FILE: B-187659

DATE: May 5, 1977

MATTER OF: Bromfield Corporation

**DIGEST:**

1. Where bids are not evaluated in accordance with invitation's bid evaluation method resulting in award to other than low bidder, award by contracting officer must be considered to be arbitrary and capricious entitling low bidder-claimant to bid preparation costs.
2. Bidder-claimant is requested to submit necessary documentation to procuring activity to substantiate quantum of claim for bid preparation costs. If agreement cannot be reached, matter should be returned to this Office for further consideration.

Bromfield Corporation (Bromfield) claims bid preparation costs in the amount of \$2,989.32, relative to a bid submitted in response to invitation for bids No. DOT-CG1-8923 issued by the United States Coast Guard. The invitation covered dockside repairs to the Coast Guard Cutter CHASE.

On October 5, 1976, four bids were received and opened. The abstract of bids reflected the following totals:

Bethlehem Steel Corp.	\$94,388
Munro Drydock, Inc.	60,960
Bromfield Corporation	50,135
General Ship and Engine Works, Inc. (General)	46,200

Based on the above, the contracting Officer awarded the contract to General. Bromfield contends that the contract was awarded to a higher bidder than itself. In this regard, a breakout of the two bids in question reflects:

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	<u>Bromfield</u>	<u>General</u>
All items	\$50,135	46,200
All items except 6(a)	41,935	43,150
All items except 6(b)	40,635	40,800
All items except 6(a) and (b)	32,435	37,750

As can be seen, Bromfield is the low bidder except when the bids are evaluated on the basis of an aggregate of all items. The contract was awarded to General at \$37,750 for all items except 6(a) and 6(b). Shortly after award, the contract was modified to include item 6.

The solicitation contained the following provision concerning bid evaluation:

"Bid Evaluation and Award: Bids will be evaluated and award will be made to one responsive responsible bidder whose price is the lowest. The Government reserves the right to award only these items required. The Government reserves the right to award additional items at the unit prices quoted in the bid after work is in progress."

The contracting officer, in a letter responding to Bromfield's protest to the agency, states:

"The award made to General Ship and Engine Works, Inc. was based on the assumption that the contract contained language such as, 'Bids will be evaluated and award will be made to one responsive responsible bidder whose aggregate price is the lowest.' This language is found on contracts of this type in the First CG District, and assuming that language was present in the instant contract the award was made to the bidder who submitted the lowest aggregate bid.

"In reviewing the award after receipt of your protest, I continued to construe the requirement of the solicitation as allowing for evaluation on the basis of the lowest aggregate bid.

"A further review of the solicitation and consultation with legal counsel convinces me that the solicitation should have included the word 'aggregate' if the evaluating was to have been made on this total amount bid.

"A correct reading of the solicitation shows Bromfield as the low bidder."

Further, the Comptroller of the Coast Guard has admitted that the bids were not evaluated in accordance with the invitation's bid evaluation method due to "administrative error."

In Keco Industries, Inc. v. United States, 492 F.2d 1200 (Ct. Cl. 1974), the Court of Claims outlined the standards for recovery of bid preparation expenses. The ultimate standard is whether the procurement agency's actions were arbitrary and capricious toward the bidder-claimant. The McCarty Corporation v. United States, 499 F.2d 633, 637 (1974); Keco Industries, Inc. v. United States, 482 F.2d 1233, 1240 (Ct. Cl. 1970). See Excavation Construction, Inc. v. United States, 494 F.2d 1289, 1290 (Ct. Cl. 1974); Continental Business Enterprises, Inc. v. United States, 452 F.2d 1016, 1021 (Ct. Cl. 1972); T&H Company, 54 Comp. Gen. 1021 (1975), 75-1 CPD 345; William F. Wilke, Inc., B-185544, March 18, 1977, 56 Comp. Gen. \_\_\_\_; Amram Nowak Associates, Inc., B-187489, March 29, 1977, 56 Comp. Gen. \_\_\_\_.

The "administrative error" occurred in totaling items 6(a) and 6(b) when evaluating the bids contrary to the plain language of work item 6 which reads in its entirety, as follows:

"6. ITEM # 6 INTERMEDIATE SHAFT REPAIRS:

"Contractor shall MIKE and RECORD the diameters of the forward journal and determine as closely as possible the amount of machining and grinding necessary to restore the after journal to a concentric usable journal and the resultant diameter to be expected. As a result of this inspection. PART (a) or (b) below will be accomplished:

"a). Contractor to perform the minimum amount of machining and grinding necessary to provide a polished journal surface. MIKE and RECORD the finished journal diameters at both ends and at the center in the presence of Coast Guard Personnel.

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"In conjunction with TECH PUB 1131 SECTION S-42, Sub-SECTION 2, PAGE 2-13, 2-14 and observation and measurements of a new split BABBITT lined bearing furnished by the vessel, the Contractor shall remove the BABBITT from the new bearing, prepare the shell halves and RE-BABBITT the bearing as necessary to bore for .016" running clearance on the refurbished journal. The bearing is 12" long - the shaft journal is 13 1/2" long. The maximum BABBITT thickness allowance is .125" on radius. The crown thickness of the loaded and unloaded halves of the bearing shall be measured and the dimensions stamped on the ends as described on PAGE 8-5 of the TECH PUB.  
BABBITT material to be NAVYTIN to MIL-QQ-T-390 GR. 2.

FOR THE SUM OF \$ \_\_\_\_\_

"b). The intent of this ITEM is to chrome build the journal and to grind to the original design diameter of 17.984" - 17.983". The Contractor shall prepare the journal as specified by the facility selected to chrome build-up the area and after completion, shall grind the journal to the original design dimensions specified above.

"In addition, assemble a new split bearing furnished by the vessel, remove any minor nicks or discrepancies as a result of long term storage, MIKE inside diameters and measure the bearing crown thickness as specified in Sub-SECTION 8, PAGE 8-5 of the REFERENCE TECH PUB #1131 in the presence of Coast Guard Personnel. The maximum chrome build-up allowable is .030" on the radius.

FOR THE SUM OF \$ \_\_\_\_\_"

(Double underlining supplied.)

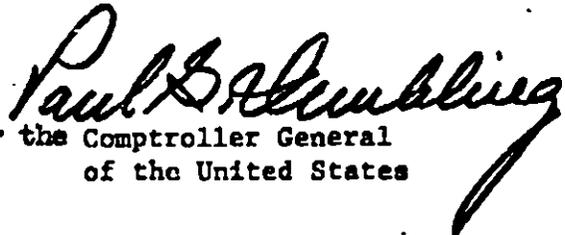
A reading of the work item clearly indicates that either part (a) or (b) will be accomplished. In addition to the clear alternative language, it is difficult to reasonably comprehend why the work encompassed by items 6(a) and 6(b) would be performed on the same journal. Simply stated, item 6(a) requires machining and grinding the journal to a smaller diameter to provide a polished surface, whereas, alternatively, item 6(b) entails chrome building the journal to the original diameter. We note here that, despite several opportunities to deny this, the Coast Guard has failed to do so.

Accordingly, we must conclude that the Coast Guard's contracting officer did not have a reasonable basis for totaling items 6(a) and 6(b) because of the clear language and purpose of item 6 of the invitation. As noted previously, Bromfield is the low bidder to whom award was required under the invitation pursuant to any other method of evaluation and the contracting officer's actions must be considered arbitrary and capricious. Accordingly, Bromfield is entitled to bid preparation costs. See Amram Nowak Associates, supra.

On the question of compensation, it should be noted that Bromfield was invited by our Office to submit adequate documentation to substantiate the quantum of its claim. To date, Bromfield has not complied and has only furnished a statement that 174 hours were expended to prepare the bid. Bromfield then applies a "Navy Rate" of \$17.18 per hour to arrive at the \$2,909.32 figure. This rate is explained by Bromfield as follows:

"As for the determination of hourly charge, you will understand that for some 30 years in doing business with both the Navy and the Coast Guard the government Auditor's so-called Navy Rate has determined the dollar value of time input, thus allowing for all the overhead costs related to the labor input. The Navy Rate is applied broadly to production people and office people, engaged, for example, in preparing reports."

We therefore request that Bromfield submit the necessary documentation to the Coast Guard in the hope that an agreement can be reached on the quantum issue. See William F. Wilke, Inc., supra; Amram Nowak Associates, supra. Inasmuch as Bromfield's entitlement is limited to out-of-pocket costs in preparing a bid, we do not believe the application of an across-the-board "Navy Rate" to apply equally to differing personnel levels is proper. Further, the 174-manhour figure is unacceptable without verification. In the event that agreement on quantum is not reached, the matter should be returned here for further consideration.

  
For the Comptroller General  
of the United States