

DECISION



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

60456

FILE: B-182976

DATE: January 30, 1976

MATTER OF: Design Engineering Company

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DIGEST:

Claim for damages in connection with submission of unsolicited proposal, where offeror anticipated acceptance of proposal which was ultimately returned, is denied, notwithstanding that Air Force delayed in furnishing written reply to offeror, since facts and circumstances indicate that unsolicited proposal was fairly and honestly considered.

This decision concerns a request by Design Engineering Company (DEC) for reimbursement for damages in the amount of \$100,000 in connection with an alleged misappropriation of an unsolicited proposal for reducing engineering problems in the R2800 type engine by the Department of the Air Force, United States Air Logistics Center, Kelly Air Force Base, Texas, formerly designated as the San Antonio Air Material Area (Air Force).

On January 9, 1974, DEC, a Florida based concern with several years experience in the overhaul and maintenance of aircraft engines and component parts, submitted an unsolicited proposal to the Air Force concerning reduction of engineering problems on R2800 type aircraft engines. By letter dated February 19, 1974, DEC was informed by the Air Force that it was very interested in DEC's proposal concerning elimination of R2800 reduction gear and torquemeter assemblies failures; however, in this same letter DEC was also informed that an evaluation of this unsolicited proposal on its merits would require submission of technical data. Subsequently, by letter dated February 27, 1974, technical data, including drawings in support of its proposal, was submitted to the Air Force by DEC.

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By letter dated April 8, 1974, the Air Force responded to the DEC submission as follows:

"1. We have evaluated your proposal and find it suitable for Air Force adoption.

"2. Before we can adopt your proposal and disclose the technical details of this proposal to our engine overhaul contractor, Gary Aircraft Co., we need to know what your cost estimate is for this proposal."

Thereafter, on April 19, 1974, DEC submitted additional information, including an identification of elements and a detailed analysis of proposed costs and savings in connection with its proposed alterations to the R2800, to the Air Force.

After receiving no immediate response to either its letter of April 19, 1974, or to a letter of inquiry dated May 9, 1974 (in which DEC specifically inquired whether its proposal was still being considered by the Air Force) DEC, by telegram dated June 13, 1974, requested of the Air Force both a reply and advice concerning the acceptability of DEC's previously submitted proposal and cost factors. Thereafter, on October 28, 1974, DEC received a letter from the Air Force dated October 11, 1974, stating, in part, as follows:

"Prior to the submission of your proposal, the Air Force took action to attempt to correct the causes for high gear failure rates. Changes to our work specification were implemented and after reviewing the results we find that significant improvement has been experienced in our failure rates.

"Since organic efforts have produced significant decline in failure rates, it is not deemed practical to give further consideration to your proposal at this time.

"We are hereby returning your proposal. In the meantime, the contents of your proposal will not be utilized by the Air Force."

In a series of letters to our Office both DEC and the Air Force have provided information concerning the circumstances surrounding DEC's unsolicited proposal. In addition, both parties, at the request of this Office, have submitted a series of replies to comments made by the other party in connection with this dispute.

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The gravamen of DEC's claim for damages in the amount of \$100,000 is that the Air Force, through its actions and inactions in connection with DEC's unsolicited proposal, caused the latter to unnecessarily incur costs. Specifically, DEC asserts that from the period of April 8, 1974, to October 28, 1974, it continued to pursue its proposal and incur costs based upon the assumption that it would be accepted by the Air Force. DEC states that during this time period no written communication was forthcoming from the Air Force to indicate that the Air Force was no longer interested in the DEC proposal. DEC contends that under the circumstances it was not proper for the Air Force to have ignored the letters and telegrams sent by DEC during that time period. Additionally, DEC contends that if, as claimed, the Air Force had resolved technical problems in the R2800 type engine prior to the time DEC had submitted its proposal the Air Force would not have expressed a desire to learn DEC's corrective techniques.

DEC also contends that the Air Force's letter of October 11, 1974 (cited above), contains statements without fact and which appear to be an attempt to circumvent the DEC proposal so as to prevent its acceptability. Specifically, DEC takes exception to the Air Force's statement that action had been taken prior to the DEC proposal submission to correct the cause for high gear failure rates. Further, DEC also argues that the Air Force has, in fact, made use of the DEC proposal, by stating:

"Implementation of our proposal has taken place. September 24, 1974 Commerce Business Daily * * * advertised for regrinding of pinions in accordance with Service Bulletin 1505 Rev. B * * *. Item five of this document provides for a regional dimension exactly as shown in our proposal. * * * As a matter of record, this is the first time the Air Force has requested that type of rework. The dimension utilized in our proposal can only be obtained by regrinding in accordance with Service Bulletin 1505."

In response, the Air Force states that an extensive investigation for the cause of the high number of R2800 engine reduction gear failures was commenced prior to the time DEC presented its unsolicited proposal. The Air Force states that its investigation into this matter commenced in February 1973 and culminated in corrective action being initiated prior to November 1973. The Air Force further points out that this corrective action was reflected in the revision of a specific overhaul manual in 1973

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and was incorporated into an overhaul contract in February 1974. This investigation and corrective action, the Air Force asserts, resulted in the "* * * significant decline in failure rates * * *" mentioned by the Air Force in its letter of October 11, 1974.

The Air Force next asserts that DEC's contention that implementation of the DEC proposal had taken place as evidenced by the solicitation appearing in the Commerce Business Daily on September 24, 1974, is incorrect. The Air Force points out that the September 24, 1974, solicitation (concerned with the regrinding of pinions) reflects one of the changes initiated by the Air Force in 1973 and does not represent "* * * the first time the Air Force has requested that type of rework."

In its response to the DEC allegations, the Air Force also indicates as follows the bases for its consideration of and subsequent rejection of the unsolicited DEC proposal:

"* * * there are two aspects of Design Engineering Company's proposal which are not reflected in the * * * corrective action. These aspects cover correction of warped fixed gear supports and selection of specific pinion classes to be mated with compatible main drive gears. It is these two features which were considered to be engineering improvements of some merit. However, allocation of funds for implementation of this modification was not considered feasible in view of a sharp decline in flying hour programs for the R2800 engine and also the improvement in failure rates experienced as a result of the [corrective] changes * * *."

The Air Force, in its response to the allegation that it did not take timely action with respect to the unsolicited proposal by DEC, states that withholding a response from DEC until October 1974 was due to the necessity for a complete analysis of all engineering aspects of the DEC proposal as well as the alleged substantial savings involved. The Air Force further states that as a result of this analysis the DEC proposal was rejected for the following reasons:

"(a) the CY 1973 in-house efforts concerning the 'regrinding of the pinion'; (b) the low probability of implementing the two aspects of the proposal that are considered to have merit; and (c) a much reduced savings because the CY 1973

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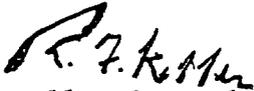
failure rate was the highest in R2800 history. The CY 1973 engineering efforts/changes will greatly reduce that failure rate base. The foregoing decisions also culminated in the Oct 1974 canceling of the RFP for regrinding the pinions as it was found that the rework cost would be greater than 75% of the cost of the new pinions. As a result, newly manufactured pinions are now being procured."

The claim for damages now being made by DEC, as we understand it, concerns costs incurred in anticipation of acceptance by the Air Force of DEC's unsolicited proposal pertaining to the R2800 type engine. It is also recognized that the Air Force, through both its actions and inactions, did not discourage DEC's efforts in this regard. Nevertheless, under the circumstances of this case we are aware of no legal basis upon which a claim for damages made by DEC in connection with its unsolicited proposal may be allowed. The statements made by the Air Force with respect to consideration of DEC's proposal and the reasons for its rejection indicate that DEC's proposal was fairly and honestly considered.

The statements and documents submitted to this Office by the Air Force indicate that the Government derived no benefit from DEC's unsolicited proposal and that the performance of a service on behalf of the Government was not undertaken by DEC. Consequently, no legal basis exists for payment of monies to DEC on either a quantum meruit (the reasonable value of work and labor) or quantum valebat (the reasonable value of goods sold and delivered) basis. Defense Mapping Agency, B-183915, June 25, 1975; Dictamatic Corporation, B-181038, May 16, 1974, 74-1 CPD 260; B-166439, May 2, 1969.

Accordingly, DEC's claim for damages is denied.

However, we question whether the Air Force's delay in answering DEC's letters of April 19, 1974, and May 9, 1974, is consistent with the policy of the Department of Defense of encouraging the submission of unsolicited proposals.


Deputy Comptroller General
of the United States