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DECISION



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

FILE: B-194843

DATE: October 17, 1979

MATTER OF: Aero-Marine Surveys, Inc.

DIGEST:

Protester is not entitled to be reimbursed for costs incurred in preparation of its quotation and in anticipation of contract performance since RFQ specifically states that Government is not liable for cost of quotation's preparation or submission and record does not indicate that agency acted in arbitrary or capricious manner in regard to protester's quotation.

*DLG 03082
01-03-10*
Aero-Marine Surveys, Inc. (Aero-Marine), initially protested the award of a contract to Aerial Surveys International, Inc. (Aerial Surveys), under request for quotations (RFQ) No. DMA800-79-Q0009 issued by the Defense Mapping Agency (DMA). However, due to the progress already made on the contract, Aero-Marine now only seeks reimbursement for the costs it incurred in the preparation of its quotation and in preparing to perform the contract.

The RFQ solicited quotations for color aerial photography and support flights over the Little and Grand Bahama Banks during the period of April through December 1979. Aero-Marine quoted the lowest price. Due to a delay in obtaining the flight clearance that Aero-Marine needed from the Bahamian Government, DMA determined the firm to be nonresponsible and awarded the contract to Aerial Surveys which already had proper clearance. Aero-Marine, however, argues that it should not have been found nonresponsible because the solicitation specifically states that DMA had already obtained the necessary flight clearance.

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[Protest Involving Request
for Bid Preparation Costs]

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It claims that the difficulties that developed during this procurement were due entirely to DMA's ineptitude and as a result it should be compensated for its costs. But for the reasons indicated below, we conclude that Aero-Marine is not entitled to be reimbursed for any of its costs.

The work to be performed under the contract is a portion of a total project involving other contractors, a leased surface vessel, and Government-owned aircraft with a goal of establishing "Photobathymetric Calibration Lines" in the Bahamas to be used to test material and equipment intended for underwater applications. When DMA began to consider what contractor could perform the necessary aerial photography and support flights, it believed that Aerial Surveys, which had worked for DMA previously, was the only suitably equipped firm that could meet the requirement for a 45-minute response time over the target area. Initially, then, DMA contemplated awarding a contract to Aerial Surveys on a sole-source basis and thus issued a copy of the RFQ to that company alone. However, the solicitation was also synopsized in the March 16, 1979, edition of the Commerce Business Daily, and DMA received requests from four additional firms, including Aero-Marine, for copies of the RFQ. Both Aero-Marine and Aerial Surveys submitted quotations and both firms were found to be responsive and responsible. Since Aero-Marine quoted the lower price, the contracting officer decided that award should be made to that firm. He informed both firms of this decision and requested the necessary flight clearance from the Bahamian Government. In anticipation of a quick approval of this request, and in view of the need to begin flights shortly, the contracting officer asked the president of Aero-Marine to sign the contractor's part of the proposed contract, which he did on April 27, 1979. The contracting officer, however, decided that he could not sign on behalf of the Government, completing the contract award, until the Bahamian Government granted flight clearance for the project.

The record indicates that on April 21, 1979, the American Embassy in Nassau had informed DMA that until an alleged United States violation of Bahamian air

clearance procedure--unrelated to DMA's project--was resolved, the Bahamian Government would not grant the requested clearance. The contracting officer states that initially he believed that this problem would be resolved in sufficient time to permit award and performance in a timely manner, and apparently this is why he took steps to have Aero-Marine sign the contractor's part of the proposed contract a week later. However, when the Bahamian Government had still not granted its permission as of May 9, 1979, the contracting officer determined that since it was "operationally imperative that the flights begin immediately," award was made on that date to Aerial Surveys as the only firm then capable of performing the contract "in a sufficiently timely manner so as not to jeopardize the entire project." According to DMA, Aerial Surveys had already been granted the necessary clearance under a previous contract, and the Bahamian Government regarded this clearance as still valid. In addition, DMA states that because the technical project manager assumed that Aerial Surveys would be awarded a sole-source contract, when he requested flight clearance for the other aircraft expected to participate in the project, he also requested clearance for Aerial Surveys. This clearance was granted on January 12, 1979, more than 2 months before the RFQ was synopsized in the Commerce Business Daily. Aero-Marine was finally granted clearance on May 22, 1979, but DMA still allowed Aerial Surveys to continue to perform even though only 2 weeks had passed since that firm had been awarded the contract.

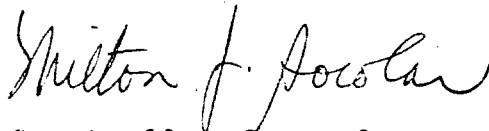
Aero-Marine criticizes DMA's methods of dealing with the flight clearance problem stressing that, since it was DMA's duty to obtain the necessary clearance, Aero-Marine should not be found nonresponsible solely because of the Agency's failure in this matter. Aero-Marine states, therefore, that since it spent considerable time, money, and effort in preparation of its offer, as well as committed aircraft and crew time in anticipation of the award, it should be compensated for its costs.

The RFQ specifically states that it is a request for information, that a quotation is not considered an

offer, and that the RFQ does not commit the Government to pay any costs incurred in the preparation or submission of a quotation. Nor do we find that DMA's conduct here amounted to arbitrary or capricious action so as to be analogous to the situation which justifies reimbursement of a protester's bid or proposal preparation costs. See, e.g., Amram Nowak Associates, Inc., 56 Comp. Gen. 448 (1977), 77-1 CPD 219.

Moreover, we do not believe that Aero-Marine was misled into believing that clearance had been obtained. Although the solicitation states that DMA had already obtained the necessary flight clearance, the provision was put in the solicitation by DMA on the basis that a sole-source procurement with Aerial Surveys would prevail. DMA reports that in fact the "message traffic concerning clearance in all cases identifies the owner/operator of the aircraft and specifies the type of aircraft to be employed, information would not be known prior to selection of a contractor." Aero-Marine does not contend that it was unaware of these clearance requirements.

Therefore Aero-Marine's claim may not be allowed.



For the Comptroller General
of the United States