

DECISION



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

FILE: B-183428

DATE: August 6, 1976

MATTER OF: Vought Systems Division, LTV Aerospace Corporation

DIGEST:

Claim for services furnished to agency under oral understanding between agency officials and claimant may be allowed, in amount verified as reasonable by GAO audit, on quantum meruit basis where it is administratively determined that contractor furnished services beneficial to Government.

The Department of the Navy has referred to our Office a claim in the amount of \$2,589,039 against the Naval Air Systems Command (NAVAIR), Vought Systems Division, LTV Aerospace Corporation (Vought), of Dallas, Texas, for post-delivery support for A-7 aircraft during the period May 1, 1968, through June 30, 1970.

From the contracting officer's letter accompanying the claim and from the files and documents enclosed therewith, and a letter and documentation from the claimant, the essential facts appear to be as follows:

During the currency of a production contract for a particular Navy airplane model the contractor is expected to provide a wide variety of support services which are required for the fulfillment of the Navy's mission. The obligation to provide these support services terminates with the delivery of the last production unit (apart from defect corrections within contract warranty provisions) unless there is contractual coverage for an extension of these services. Any further support efforts required by the Navy after the delivery of the last production unit are referred to as "Out of Production/Out of Warranty Support" ("OOP/OOWS"), which includes such activities as fleet support, response to customer correspondence, accident investigation, preparation of various engineering change proposals, attendance at conferences, and trainer support.

Prior to 1970, these post-delivery support efforts were supplied by the manufacturers of naval aircraft without direct contracts for the services. The practice was for the manufacturer to provide the services on older models already delivered under earlier contracts and for compensation to be paid under new contracts as either increased overhead charges or as direct engineering production support costs not directly related to the particular aircraft being purchased. In 1969 and 1970 NAVAIR decided to fund these services directly and to contract for them either as a distinct line item in the production contract or under a separate support contract.


Vought has been producing A-7 aircraft for the Navy, consisting of Models A-7A, A-7B, A-7D and A-7E, for many years. The last aircraft of the A-7A series was delivered in April of 1968 and the last of the A-7B series was delivered in May of 1969. Vought's claim for \$2,589,039 is based on uncompensated OOP/OOWS services performed in support of those aircraft. The contracting officer states that none of Vought's A-7A OOP/OOWS costs for the period May 1, 1968 through June 30, 1970 and A-7B OOP/OOWS costs for the period May 1, 1969 through June 30, 1970, were included in any contract price negotiation.

Reimbursement of the costs for the A-7A and A-7B OOP/OOWS effort for these periods was first proposed by Vought as part of its FY67-69 proposal for the production and delivery of A-7E aircraft under contract N00019-68-C-0075. Although NAVAIR had advised Vought that the support effort would be established as a separate line item requirement under that contract, the final contract as executed by the parties on February 20, 1969, contained neither the line item nor any element of cost for such effort because the work involved could not be clearly defined and sufficient funding for it was not then available. Vought notified NAVAIR on several occasions that it intended to terminate all further A-7A and A-7B OOP/OOWS effort unless contractual coverage was forthcoming; however, Vought was prevailed upon to continue the support efforts by assurance from the Project Office that coverage would be provided. The Project Office finally requested the contracting officer to negotiate a price with Vought for the support effort covering the aforementioned uncompensated period. Negotiations began on January 29, 1971, and on April 6, 1971, Vought and the NAVAIR A-7 Project Office agreed upon the price of \$2,589,039 for the uncompensated

services. It is reported that the negotiations and agreement followed standard procurement procedures, including audit and business clearances. Payment has not been made, however, because the Navy is not aware of any authority for making such payment. The Department of the Navy recommends payment to Vought of \$2,589,039 for the following reasons: that the claim is meritorious; that the services rendered were received by and of benefit to the Government; and that the sum is reasonable and has not been paid.

Even in the absence of a formal written agreement, the courts and our Office have recognized that in appropriate circumstances payment may be made for services rendered on a quantum meruit basis (the reasonable value of work or labor). 40 Comp. Gen. 447, 451 (1961). Before a right to payment on such basis may be recognized, it must be shown that the Government has received a benefit, and that the unauthorized action has been expressly or implicitly ratified by authorized contracting officials of the Government. B-166439, May 2, 1969. In the present case, there is no doubt that the Government received the benefit of the post-delivery support effort provided by Vought and that the unauthorized action has been expressly ratified by NAVAIR's Assistant Commander for Contracts. Our audit of this claim, however, indicates that \$46,877 of the claimed amount was paid to Vought under the basic A-7B production contract, but that the claim otherwise appears to be reasonable.

Accordingly, the claim may be paid in the amount of \$2,542,162.


Deputy Comptroller General
of the United States