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DECISION



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

FILE: B-210032.2 **DATE:** March 26, 1984

MATTER OF: Power Systems--Claim for Costs

DIGEST:

1. Claim for bid preparation costs is allowed since the record establishes that the agency's affirmative determination of responsibility of the awardee was arbitrary and capricious and the protester had a substantial chance for award.
2. No legal basis exists that allows an unsuccessful bidder to recover anticipated profits or similar monetary damages.

Power Systems (Power) seeks reimbursement for bid preparation costs and other damages it incurred in connection with invitation for bids (IFB) No. N62472-82-B-1663 issued by the Naval Facilities Engineering Command (Navy). This procurement was also the subject of our decision in Power Systems, B-210032, August 23, 1983, 83-2 CPD 232.

We allow the claim for bid preparation costs, but we deny the claim for other damages.

In our prior decision, we sustained Power's protest on the basis that the awardee, Williams & Lane, Inc. (W&L), had not submitted evidence from which the Navy could reasonably conclude that W&L had satisfied the definitive responsibility criteria of the solicitation's experience clause. We held that while the language of the solicitation required a bidder to demonstrate operational experience on a power-plant component identical to that described in its bid, W&L had only cited operational experience on a 20-cylinder engine while offering a 16-cylinder engine, and that the Navy could not have reasonably made an affirmative determination of responsibility in favor of W&L.

Bid preparation costs are recoverable where the government acts arbitrarily and capriciously with respect to a proposal and the offeror had a substantial chance of

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receiving the award except for the agency's improper action. Metric Systems Corporation; Command, Control and Communications Corporation, B-210218; B-210218.2, September 30, 1983, 83-2 CPD 394.

Here, the Navy arbitrarily concluded that W&L had satisfied the definitive responsibility criteria of the solicitation's experience clause and made an affirmative determination of responsibility of W&L where W&L had cited operational experience on a 20-cylinder engine while offering a 16-cylinder engine. Power contends, as the second low bidder with a bid price only \$8,906 higher than W&L's on bids in excess of \$3,500,000, that its bid price would have been substantially lower had it known that it could cite experience on a different engine than that which it offered, e.g., by offering a less costly 16-cylinder engine, as opposed to a 20-cylinder engine, while citing experience on a 20-cylinder engine. We find this contention persuasive and, thus, believe that it is fair to say that Power had a substantial chance for award. We, therefore, conclude that Power should be entitled to receive its bid preparation costs since the agency's improper action precluded it from being considered for the award.

Power should submit documentation to the Navy substantiating its \$18,125.88 bid preparation claim to permit the agency to verify the amount to which Power is entitled. If Power and the Navy cannot agree on the quantum, the matter should be returned to this Office for resolution. Hub Testing Laboratories--Claim for Costs, B-199368.3, June 18, 1982, 82-1 CPD 602. We stress that the costs are limited only to those expenses incurred in the preparation of the bid itself. T&H Company, 54 Comp. Gen. 1021 (1975), 75-1 CPD 345.

Power also requests \$1,452,275 for overhead costs and general and administrative expenses, including anticipated profits. However, there is no legal basis that would permit recovery of anticipated profits or similar monetary damages if a protester was wrongfully denied a contract. Houston Fearless 76, B-209576, April 15, 1983, 83-1 CPD 412.

We allow the claim for bid preparation costs, but we deny the claim for other costs.

for Milton J. Fowler
Comptroller General
of the United States