



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-226165

February 18, 1987

Morrison-Knudsen Company, Inc.
Post Office Box 7808
Boise, Idaho 83729

Attention: John E. Schone
Assistant General Counsel

Gentlemen:

This is in response to your letter dated January 21, 1987, in which you request that our Office reimburse you for \$18,125.88 in bid preparation costs which are due to you from the Navy based on our decision, Power Systems--Claim for Costs, B-210032.2, Mar. 26, 1984, 84-1 C.P.D. ¶ 344.

As we have advised Congressman Tim Valentine, who inquired on your behalf, the Competition in Contracting Act of 1984 (CICA) specifically authorizes the General Accounting Office (GAO) to allow bid and proposal preparation costs in conjunction with GAO's authority to issue bid protest decisions. In pre-CICA cases such as yours, GAO has awarded bid and proposal preparation costs since 1975 under the same rationale as the Claims Court. The allowance of such costs arises from the government's implied responsibility to fairly and honestly consider a bid or proposal submitted in response to a solicitation. Where the procuring activity's conduct is arbitrary or capricious, thereby resulting in the bid or proposal not receiving the requisite fair and honest consideration, we awarded bid or proposal preparation costs where the bidder or offeror otherwise would have had a substantial chance of receiving an award. We awarded your company bid preparation costs on this basis.

To the best of our knowledge, NAVFAC is the only contracting activity which, either before or after CICA, has declined to pay bid or proposal preparation costs based on an alleged lack of authority to do so. As you are aware, NAVFAC also declined to pay bid preparation costs, as recommended by our

Office, in Vulcan Engineering Co., B-214595, Oct. 12, 1984, 84-2 C.P.D. ¶ 403, another case which was decided before the applicable date of CICA. In that case, NAVFAC has asserted that the protester was not an interested party, and lacked a substantial chance for award, as additional bases for declining to follow our Office's decision.

Vulcan has filed suit in the United States Claims Court for bid preparation costs, and for attorney's fees and interest. This case is docketed as Vulcan Engineering Company v. United States, Cl. Ct. No. 381-86C, and a motion hearing is scheduled for March 1987, with a decision anticipated some time next summer. Our Office had advised the Department of Justice that in our view Vulcan is entitled to bid preparation costs in an amount that is substantiated and determined to be reasonable. However, it is our understanding from Justice that it plans to defend NAVFAC on the basis that Vulcan is not an interested party, and thus is without standing, and that Vulcan lacked any substantial chance of receiving an award.

You indicate that you believe our Office has funds available for the payment of claims of this type. Our Office does not have the authority to pay amounts which are owed by other federal agencies, nor do we have funds available for this purpose. However, your company has as a possible recourse the filing of a similar complaint in Claims Court, alleging entitlement to bid preparation costs based upon the decision of our Office. Alternately, you could elect to await the outcome of the Vulcan litigation, and in the event that the result is wholly or partially favorable, you may then be in a better position to convince NAVFAC that NAVFAC is legally authorized and required to pay a claim for proposal preparation costs pursuant to our Office's decision.

Sincerely yours,

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel