

DOCUMENT RESUME

C3637 - [A2653854]

[Rejection of Claim for Proposal Preparation Costs]. B-186932.
September 22, 1977. 3 pp.

Decision re: Sigma Data Computing Corp.; by Robert F. Keller,
Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law II.
Budget Function: General Government: Other General Government
(806).

Organization Concerned: Daconics, Inc.; Federal Trade
Commission.

Authority: B-188387 (1977). 54 Comp. Gen. 1021. Continental
Business Enterprises, Inc., 196 Ct. Cl. 627, 639. Heyor
Products Co. v. United States, 135 Ct. Cl. 63 (1956). Keco
Industries, Inc. v. United States, 203 Ct. Cl. 566 (1974).

Reconsideration was requested of a decision rejecting a
claim for proposal preparation costs. The decision was affirmed
since the record failed to show that the claimant was in line
for the award or otherwise suffered damages from any Government
failure to fairly and honestly evaluate its proposal.
(Author/HTW)

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DECISION



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

FILE: B-186932

DATE: September 22, 1977

MATTER OF: Sigma Data Computing Corp.-Reconsideration

DIGEST:

Rejection of claim for proposal preparation costs is affirmed since record fails to show that claimant was in line for award or that claimant otherwise suffered damages occasioned by any Government breach of its duty to fairly and honestly evaluate its proposal.

Sigma Data Computing Corporation requests reconsideration of that portion of our decision in Sigma Data Computing Corp. et al., 56 Comp. Gen. ____ (1977), 77-2 CPD 59, which rejected its claim for proposal preparation costs in regard to the award of a contract to Daconics, Inc. by the Federal Trade Commission (FTC), regarding RFP 3-73, for a word processing and telecommunications system. Although we sustained, in part, the protests filed in that case, we found that the record did not show that Sigma "was in line for award or that it was denied award because of the agency's [FTC's] gross negligence or willful action."

In seeking reconsideration, counsel for Sigma asserts that fairness dictates that the Government should reimburse Sigma for the expenses incurred in preparing its proposal. The protester contends that our conclusion that Sigma was not in line for award was "apparently based on a finding that * * * [it] could not have delivered any of the system capabilities early" and thereby could not earn proposal evaluation credits for early delivery. In this connection, counsel asserts that Sigma could have bid four months early delivery for the word processing requirement which would have reduced its evaluated price by \$80,000, placing it \$7,000 below Daconics' evaluated offer. In addition, counsel argues that Sigma was denied a fair chance to obtain the contract because of the agency's failure to clarify its requirements and conduct another round of negotiations.

B-186932

As indicated in our prior decision, Daconics was awarded early delivery evaluation credit, although it proposed to deliver word processing and data collection capability, separately. Sigma Data contended that its personnel were advised during negotiations that early delivery credits would be given only if all system capabilities were delivered simultaneously.

Contrary to counsel's suggestion, we made no finding that Sigma was or was not capable of offering early word processing capability. A finding that Sigma was improperly misled to exclude early delivery of word processing would at most result in additional grounds to support the conclusion we did reach, i.e. that the FTC erred in not clarifying its requirements and reopening negotiations.

The Government's solicitation to prospective offerors, inviting them to submit a bid or proposal, imports an obligation to fairly and honestly evaluate those offers which are received. As we stated in Morgan Business Associates, B-188387, May 16, 1977, 77-1 CPD 344, cited in our prior decision, "the courts and this Office have allowed recovery of bid or proposal preparation costs only where the Government's action was 'so arbitrary or capricious as to preclude a particular bidder from an award to which it was otherwise entitled.'" At most, we view such claims as payable only as compensation for losses suffered as a direct and proximate result of the Government's breach, making it incumbent upon a claimant to show that its loss was occasioned by those acts or omissions of which it complains. Cf. Continental Business Enterprises, Inc., 196 Ct. Cl. 627, 639 (1971). We recognize that costs might be allowed in other circumstances, e.g., on proof that a selection was made before a solicitation was issued and the agency intended to reject arbitrarily any bid or offer solicited and received. Heyer Products Co. v. United States, 135 Ct. Cl. 63 (1956). However, the essential nexus between the breach and the injury is not demonstrated simply because an offeror can show that he would have been accorded a second opportunity to receive an award, had negotiations been reopened to correct a deficiency which should have become apparent during the course of the procurement. See, also, Keco Industries, Inc. v. United States, 192 Ct. Cl. 773 (1970); Keco Industries, Inc. v. United States, 203 Ct. Cl. 566 (1974); T & H Company, 54 Comp. Gen. 1021 (1975), 75-1 CPD 345.

B-186932

Inasmuch as the record is devoid of any other evidence regarding the FTC's treatment of Sigma's proposal which would establish that Sigma is entitled to recover proposal preparation costs, our prior decision is affirmed.

Deputy


Comptroller General
of the United States