

DOCUMENT RESUME

02991 - [A2013091]

[Claim for Proposal Preparation Costs]. B-187347. July 14, 1977.
4 pp.

Decision re: Condur Aerospace Corp.; by Paul G. Dembling (for
Elmer B. Staats, Comptroller General).

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law II.

Budget Function: National Defense: Department of Defense -
Procurement & Contracts (058).

Organization Concerned: Department of the Army: Redstone
Arsenal, AL.

Authority: B-186481 (1976). B-184403 (1975). B-187489 (1977).
The McCarty Corp. v. United States, 499 F.2d 633, 637 (Ct.
Cl. 1974). Keco Industries, Inc. v. United States, 482 F.2d
1233, 1240 (Ct. Cl. 1970). Heyer Products Co., Inc. v.
United States, 140 F. Supp. 409 (Ct. Cl. 1956).

Corporation claimed proposal preparation costs. The
request was denied since the claim did not result from arbitrary
or capricious Government action. (Author/SC)

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20540

FILE: B-187347

DATE: July 14, 1977

MATTER OF: Condur Aerospace Corporation--Claim
for Proposal Preparation Costs

DIGEST:

1. Offeror's request for proposal preparation costs, based on allegation that solicitation was misleading is denied where offeror's interpretation of solicitation was not required by solicitation's terms, and, therefore, was not the result of arbitrary or capricious Government action.
2. Offeror's request for proposal preparation costs, based on contention that agency's negotiators misled offeror during discussions, is denied because negotiators' statements were made after submission of proposal and record does not indicate that such statements resulted in offeror's incurring additional proposal preparation costs.

Condur Aerospace Corporation (Condur) claims proposal preparation costs for its proposal submitted in response to a request for proposals (RFP) for Manned Aircraft Tow Target (MATT) services issued by the U.S. Army, Redstone Arsenal, Alabama. In March, 1977, our Office denied Condur's protest concerning this procurement. Condur Aerospace Corporation, B-187347, March 9, 1977, 77-1 CPD 174. Since we have resolved Condur's protest on the merits, Condur's claim for proposal preparation costs may properly be considered. See DWC Leasing Company, B-186481, November 12, 1976, 76-2 CPD 404.

The solicitation was issued April 30, 1976, for MATT services in support of air defense weapons training at Fort Bliss, Texas. The contract was awarded to Flight Systems, Incorporated (FSI), who proposed to

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use Canadair T-33 surplus military aircraft holding a Special Airworthiness Certificate, FAA Form 8130-7, issued in the Experimental classification. After contract award, Condur filed a protest contending that FSI was "nonresponsive" to the following terms of the RFP's Attachment "A," Scope of Work:

"3. MATT OPERATIONS:

3.1 The contractor shall:

"3.1.1 Comply with all Federal Aviation Administration (FAA) and local civilian and military aircraft operating and safety SOPs, [standard operating procedures] rules, and regulations for Manned Aircraft Tow Target operations to include obtaining necessary FAA MATT certifications.

* * * * *

"7. To conduct satisfactory MATT flights including flights required for demonstration and satisfactory presentations, the contractor shall:

* * * * *

"7.2 Determine in conjunction with FAA and obtain, as required by FAA regulations, operational waivers, air worthiness, and safety certificates for the aircraft as modified for MATT operation.

"7.3 Operate and maintain FAA certified MATT in compliance with all FAA flight regulations. Only FAA certified MATT shall be operated by the contractor in support of this contract."

Condur argued that the solicitation required the successful offeror to use Federal Aviation Administration (FAA) certified aircraft and that the aircraft proposed by the awardee were not, and could not become, appropriately certified. We held that the solicitation may be reasonably read in the light of applicable law as requiring no certification. We stated that:

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"* * * it is reasonable to interpret this reference to FAA certification in conjunction with the references in sections 3.1.1 and 7.2, see Lite Industries, B-184403, November 28, 1975, 75-2 CPD 363, as requiring certification to the extent legally necessary to accomplish job assignments."

Condur contends that it was misled by the solicitation, as well as by misleading questions regarding FAA certification posed by the Army's negotiators during discussions. Condur maintains that these factors made submission of a competitive proposal and, therefore, consistent evaluation, impossible, and entitle it to recover its proposal preparation costs. We do not agree.

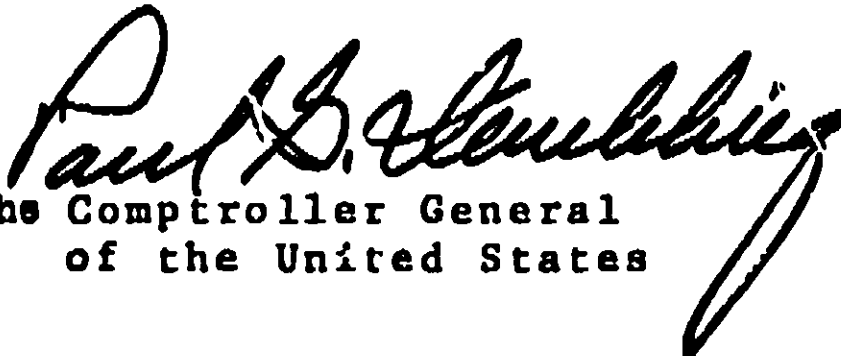
The courts and our Office have allowed recovery of bid or proposal preparation costs where the Government acted arbitrarily or capriciously with respect to a claimant's bid or proposal. Amram Nowak Associates, Inc., 56 Comp. Gen. (1977), B-187489, March 29, 1977, 77-1 CPD 219. The McCarty Corporation v. United States, 499 F.2d 633, 637 (Ct. Cl. 1974); Keco Industries, Inc. v. United States, 482 F.2d 1233, 1240 (Ct. Cl. 1970). The underlying rationale of these cases is that every bidder (or offeror) has the right to have his bid honestly considered by the Government and if that obligation is breached, and a bidder is therefore put to needless expense in preparing his bid, he is entitled to recovery of his expenses. The McCarty Corporation v. United States, *supra*; Weyer Products Company, Inc. v. United States, 140 F. Supp. 409 (Ct. Cl. 1956).

In the instant case, Condur's proposal was found technically acceptable and was considered for award. As to Condur's contention that meaningful competition was impossible because the solicitation contained misleading references to FAA certification, we held, in resolving Condur's protest, that, although the solicitation was not as lucid as it might have been, it was not fatally defective and did not mandate qualification to the level of FAA certification which Condur claims to have assumed. If Condur proposed to provide more than the solicitation required, it was not the result of arbitrary or capricious Government action.

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Furthermore, since Condur's initial proposal was submitted prior to the discussions at which misleading questions were posed and since Condur had already proposed FAA certificated aircraft, there is no basis for concluding that additional preparation costs were incurred as a result of any action taken by the Army's negotiators.

Consequently, Condur's request for proposal preparation costs is denied.


For the Comptroller General
of the United States