

# The Power of Persuasion

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The Dellew Corporation filed a postaward bid protest challenging the U.S. Army's award of a Hawaii barracks contract to Tech System, Inc., and, based on the Court's comments during the hearing, the Army decided to take corrective action. The Army then moved to dismiss Dellew's suit as moot. After dismissal, Dellew sought attorneys' fees under the Equal Access to Justice Act.

Under EAJA, five conditions must be met for a party to recover its fees and costs: (1) the fee application must be submitted within 30 days of final judgement, (2) the corporation must be valued below \$7,000,000 and employ fewer than 500 employees, (3) applicant must be a "prevailing party," (4) the Government's position must not have been "substantially justified," and (5) there can exist no special circumstances making an award unjust.

Both parties agreed the Dellew satisfied the first two conditions. The Court also concluded that Dellew was a prevailing party because it prevailed on some of the issues and achieved some benefits it sought in the litigation. The Court specifically stated that it had made "numerous substantive comments during oral argument regarding the merits of the case and how it intended to rule—comments that effected a sufficient judicial imprimatur to materially alter the relationship between Dewey and the Army." The Court also concluded that no special circumstances would render a fee and cost award to Dewey unjust.

The Government, however, claimed Dellew failed to satisfy the fourth condition, stating the Army's position was substantially justified because Tech System, Inc. was not required to cap its rate. The Court however disagreed, stating that although the solicitation does not explicitly state that it is the offeror's obligation to cap its own rate, "it makes no sense for anyone other than the offeror to cap its own rate given the significance that rate will have on its potential profit under the contract."

Having concluded that Dellew satisfied all five factors under EAJA, the Court awarded the company attorneys' fees and costs totaling \$449,456.76.

Read Judge Sweeney's full decision [here](#).