



Decision

Matter of: International Program Group, Inc.--Costs

File: B-400278.4; B-400308.4

Date: June 22, 2009

Leonard Holzworth for the protester.

Major Matthew J. Kent and Theresa M. Young, Esq., United States Marine Corps, for the agency.

Eric M. Ransom, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Claim for costs is denied where protester fails to adequately document its claim to show that the hourly rates upon which costs are calculated reflect its employee's actual rate of compensation plus reasonable overhead and fringe benefits, that the costs claimed were actually incurred, or that the costs claimed were properly attributable to the filing and pursuit of the protests.

2. Claim related to recovery of proposal preparation costs is denied where decision sustaining the protest did not include recommendation that protester recover its proposal preparation costs.

DECISION

International Program Group, Inc. (IPG) of Desert Center, California, requests that our Office determine the amount that it should recover for the costs of filing and pursuing its protests in International Program Group, Inc., B-400278, B-400308, Sept. 19, 2008, 2008 CPD ¶ 172.

We deny the claim for costs.

We sustained IPG's protests challenging the decision by the United States Marine Corps (USMC) to award a contract to a service-disabled veteran-owned small business concern (SDVOSBC) on a sole-source basis, and to set aside another solicitation for competition restricted to SDVOSBC firms, without first considering whether two or more qualified Historically Underutilized Business Zone (HUBZone) small businesses were available to compete for the requirement. Our Office

recommended that IPG be reimbursed for the costs of filing and pursuing its protests with regard to both protested contract actions. In our decision, we stated that, consistent with our Bid Protest Regulations, 4 C.F.R. § 21.8(f)(1) (2009), the protester should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days of receiving this decision.

On November 18, 2008, the final day of the 60-day period for submitting its claim for costs to the USMC, IPG submitted a 2-page claim for \$42,556. The first page of the claim consisted of costs attributed to “legal work” performed in pursuit of the protest by IPG’s “California Certified Legal Assistant . . . [s]enior level \$80.00 per hour.” Claim for Costs at 1. The “legal work” was broken down into an hourly total per filing in the protest, multiplied by the hourly rate. For example, the first line item of the claim was “[s]ubmission to the GAO of Protest B-400278, June 16, 2008. Preparation 40 hours x \$80.00 = \$3,200.00.” *Id.* The legal work portion of the claim totaled \$32,160 for 402 hours, including 42 hours for preparation of a response to the USMC’s motion to dismiss, 120 hours for preparation of the protester’s comments, 48 hours for review of the Small Business Administration’s (SBA) 12-page response to the protest, and 64 hours for review of the USMC’s 2-page comments on the SBA response. *Id.* IPG provided no further support for the claimed 402 hours of legal work. The second page of the claim did not assert any connection to the pursuit of the protest, but rather set forth costs attributed to preparing to compete for the protested requirements, specifically the “loss of usage of IPG RapidGate badges,” valued at \$10,396.¹ *Id.* at 2. This portion of the claim was supported by receipts for RapidGate expenses.

The USMC promptly reviewed the claim and responded to IPG that the claim was not properly certified and contained insufficient evidence to demonstrate that the legal costs claimed for IPG’s legal assistant reflected actual wages, exclusive of profit, paid to that legal assistant. The USMC requested that IPG support its claim with customary business records such as “time cards, invoices, receipts, pay stubs or billing logs.” USMC email to IPG, Nov. 18, 2008. IPG responded by providing the USMC with a certified copy of the claim for costs, as well as a print-out from IPG’s payroll system, which purportedly covered “200 hours of work on contracts, proposals, [and] legal issues that IPG deals with in the course of its business.” IPG email to USMC, Nov. 18, 2008. The USMC concluded that the payroll record for IPG’s legal assistant did not satisfy its request, and reiterated the need for records such as time cards, invoices, receipts, pay stubs, or billing logs. IPG failed to provide any further support for its claim.

¹ RapidGate Badges are identification badges that provide the badge-holder streamlined access to secure installations, and were required for performance of the requirements related to IPG’s protest.

On January 14, 2009, the USMC largely rejected IPG's claim for "legal work" for failure to provide sufficient documentation that the claimed hours were worked in pursuit of the protest or were reasonable for the work performed, or that the claimed costs were actually incurred and represented wages paid to IPG's legal assistant, exclusive of profit. The USMC also rejected IPG's claim for the costs of preparing to compete for the protested requirements on the basis that our Office did not recommend that it reimburse IPG for the costs of preparing proposals. IPG then requested that our Office resolve its claim for costs, essentially repeating its request for \$42,556 without providing further support for that amount.

A recommendation from our Office that an agency reimburse a protester the costs of preparing its proposal, or filing and pursuing its protest, is not a blank check. A protester seeking to recover the costs of pursuing a protest must submit sufficient evidence to support its claim. John Peeples--Costs, B-233167.2, Aug. 5, 1991, 91-2 CPD ¶ 125 at 3. At a minimum, claims for reimbursement must identify and support the amounts claimed for each individual expense (including cost data to support the calculation of claimed hourly rates for employees), the purpose for which that expense was incurred, and how the expense relates to the protest filed at our Office. Maintenance and Repair--Costs, B-251223.4, June 24, 1994, 94-1 CPD ¶ 381; Diverco, Inc.--Costs, B-240639.5, May 21, 1992, 92-1 CPD ¶ 460. Further, the award of costs is intended to relieve protesters with valid claims of the burden of vindicating the public interest which Congress seeks to promote; it is not intended as a reward to prevailing protesters or as a penalty imposed upon the government. Thus, a protester may not recover profit on its own employees' time in filing and pursuing its protest. Diverco, Inc.--Costs, *supra*. Although we recognize that the requirement for documentation may sometimes entail certain practical difficulties, we do not consider it unreasonable to require a protester to document in some detail the amount and purposes of its employees' claimed efforts and to establish that the claimed hourly rates reflect the employees' actual rates of compensation plus reasonable overhead and fringe benefits. W.S. Spotswood & Sons, Inc.--Costs, B-236713.3, July 19, 1990, 90-2 CPD ¶ 50 at 3.

It is our obligation to ensure that any protester seeking to recover its costs meets these minimum standards. Here, we have reviewed the record and agree with the USMC that IPG has failed to provide sufficient support for its claim. With regard to the claimed costs of legal work performed by IPG's legal assistant, IPG has failed to substantiate that \$80 per hour represents its legal assistant's actual rate of compensation, exclusive of profit, that the costs claimed were actually incurred, or that the costs claimed were properly attributable to the pursuit of IPG's protests.²

² Although we do not specifically address the issue of excessive hours because, as explained below, we determine that all of IPG's claimed costs for legal work are unsupported, we agree with the USMC that a substantial portion of the claimed hours worked are excessive and could not be considered reimbursable. For

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First, in support of its claim that \$80 per hour was the actual rate paid to its legal assistant and was actually incurred, IPG supplied a payroll system print-out stating only that the legal assistant's wages were \$16,083.23 in "QTR 2." The supplied print-out did not set forth an hourly rate or record of hours worked and, in fact, does not so much as clearly designate the year or period to which "QTR 2" refers. The only information that relates the supplied payroll information to the \$80 hourly rate claimed by IPG is IPG's assertion that the payroll record "covered 200 hours of work on contracts, proposals, [and] legal issues." IPG email to USMC, Nov. 18, 2008. This bare assertion is insufficient to establish that \$80 per hour was the actual wage paid to IPG's legal assistant.

Next, we note that the "QTR 2" payroll record supplied by IPG indicates that IPG paid its legal assistant \$16,083.23 in wages, far less than the \$32,160 it claims that it incurred in legal costs of pursuing its protest. IPG explains this disparity with the statement that "[s]ince July 2008, [IPG's legal assistant] has not received a payroll as well as most of IPG's staff . . . due to loss of business . . ." *Id.* However, as IPG's legal assistant's work on the protest after July 2008 is not supported by the supplied payroll record or by any other customary business records, such as timecards or billing logs, to show that wages are actually owed, these amounts similarly cannot be reimbursed.

Finally, the evidence supplied is also insufficient to establish that the \$16,083.23 in wages detailed by the payroll record was incurred in pursuit of the protest. IPG has asserted that the payroll record "covered 200 hours of work on contracts, proposals, [and] legal issues," but has not provided our Office with any evidence, such as timecards or billing records, to demonstrate the specific dates on which portions of the \$16,083.23 were incurred and for what purpose, that might allow us to establish what specific amounts were incurred in support of the protests. Where, as here, a protester has aggregated allowable and unallowable costs, such that we cannot tell from the record before us what portion is unallowable, the entire amount must be disallowed even though some portion of the claim may be properly payable. TRESP Assocs., Inc.-Costs, B-258322.8, Nov. 3, 1998, 98-2 CPD ¶ 108 at 4.

With regard to IPG's claim for \$10,396 related to preparation for competing for the protested requirements, we agree with the USMC that these costs are not reimbursable. Even though our Office ultimately agreed with IPG that the USMC was incorrect to make an SDVOSBC sole-source award and to set aside another solicitation for competition restricted to SDVOSBC firms, without considering whether two or more qualified HUBZone firms were prepared to compete for the

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example, IPG's claim of 64 hours of legal work for review of the USMC's 2-page comments on the SBA's response to the protest is excessive on its face, and casts significant doubt on IPG's claimed hours as a whole.

requirement, IPG was not eligible to compete for the protested solicitations as issued, and we did not recommend that IPG be reimbursed the costs of preparing proposals for the protested requirements.

In sum, IPG has failed to provide sufficient evidence to warrant a recommendation for reimbursement for any part of its \$32,160 claim for legal costs, or for any costs incurred in anticipation of preparing proposals. Accordingly, the claim for costs is denied.

Daniel I. Gordon
Acting General Counsel