



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: JAFIT Enterprises, Inc.--Claim for Costs

File: B-266326.2; B-266327.2

Date: March 31, 1997

Quin B. Johnson for the protester.

Thomas T. Basil, Esq., Department of the Navy, for the agency.

Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest costs incurred in connection with agency-level protests are not recoverable.
2. Hours charged by an employee and consultant of a prevailing protester as part of its claim for pursuing its protest are excessive where they are not remotely related to the complexity of the protest; under such circumstances, the General Accounting Office will determine the reasonable hours that a prudent protester should expend in pursuing the protest.
3. Interest on a claim for protest costs awarded by the General Accounting Office is not recoverable.
4. A protester is not entitled to reimbursement of its costs of pursuing its cost claim before the General Accounting Office where the contracting agency's handling of the claim was reasonable and expeditious.

DECISION

JAFIT Enterprises, Inc. requests that we determine the amount it is entitled to recover from the Department of the Navy for its costs of filing and pursuing its protests in JAFIT Enters., Inc., B-266326; B-266327, Feb. 5, 1996, 96-1 CPD ¶ 39.

We determine that JAFIT is entitled to recover \$3,537.82 out of its total claim of \$34,513.46.

On September 27, 1995, JAFIT protested to our Office the Navy's noncompetitive award of purchase orders to Goodwill Industries which the Navy claimed were authorized under the Javits-Wagner-O'Day Act, 41 U.S.C. §§ 46-48c (1994), as implemented by Federal Acquisition Regulation (FAR) § 6.302-5(b) and subpart 8.7.

We sustained the protests because this authority to make noncompetitive acquisitions only applies to awards to qualified nonprofit agencies for the blind or disabled providing goods or services on the procurement list established and maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled, and Goodwill was not on this list for providing the services in question.

Following our decision sustaining the protests, which found JAFIT entitled to recover its costs of filing and pursuing the protests, JAFIT filed its claim for costs with the Navy. JAFIT's claim included time sheets covering the period from August 27 through December 15, 1995, for JAFIT's owner/chief executive officer (CEO) and a consultant hired by JAFIT, as well as information to support the hourly rate charged by each individual. JAFIT's CEO charged a total of 47 hours to these protests at a rate of \$52.93 for a total cost of \$2,487.71. The consultant, the father of JAFIT's CEO, charged JAFIT a total of 396 hours at a rate of \$80 totaling \$31,680. The consultant also charged JAFIT \$345.75 for 6,915 copies at \$0.05 per page. JAFIT's total protest cost claim is \$34,513.46.

The Navy investigated the hourly rates of the CEO and the consultant and accepted them as reasonable. However, the agency determined that the hours charged by both the CEO and the consultant, as well as the number of copies charged by the consultant, were excessive. The parties were unable to resolve their differences, and JAFIT filed its claim here.

A protester seeking to recover the costs of pursuing its protest must submit sufficient evidence to support its monetary claim. The amount claimed may be recovered to the extent that the claim is adequately documented and is shown to be reasonable; a claim is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in pursuit of the protest. Data Based Decisions, Inc.--Claim for Costs, 69 Comp. Gen. 122 (1989), 89-2 CPD ¶ 538; E&R, Inc.--Claim for Costs, B-255868.2, May 30, 1996, 96-1 CPD ¶ 264. Here, although the claim is documented and the charged rates are reasonable, the number of charged hours and copies are grossly excessive or otherwise not allowable.

Specifically, although a successful protester is entitled to recover its costs of pursuing a protest at the General Accounting Office (GAO), the costs it incurred which are attributable to an agency-level protest prior to protesting to our Office are not recoverable. Armour of Am., Inc.--Claim for Costs, 71 Comp. Gen. 293 (1992), 92-1 CPD ¶ 257; Techniarts Eng'g--Claim for Costs, 69 Comp. Gen. 679 (1990), 90-2 CPD ¶ 152. Here, JAFIT initially protested to the Navy, which denied the protests by letter dated September 18, 1995. Thus, costs incurred by JAFIT on or prior to September 18 were attributable to its agency-level protests, and we therefore deduct 13 hours from the total hours charged by JAFIT's CEO and 128 hours from the total hours charged by JAFIT's consultant, which JAFIT's records show were incurred during the period of its agency-level protests.

The remaining 302 hours charged by JAFIT's CEO (34 hours) and consultant (268 hours) we consider to be grossly excessive, considering the nature and events of these protests. While we do not accept the agency's suggestion that only hours spent researching and preparing the initial protest letter are allowable,¹ see Price Waterhouse--Claim for Costs, B-254492.3, July 20, 1993, 95-2 CPD ¶ 38, the more than 7 man-weeks of time expended in pursuing this relatively simple and straight-forward protest far exceeds what a prudent person with some knowledge of the federal procurement system should have reasonably required to identify and research the applicable law and regulations.²

Specifically, when the Navy advised JAFIT of the awards, it identified the regulation under which the agency purported to have authority to make the awards on a noncompetitive basis. That notice was the impetus for JAFIT's agency-level protests. JAFIT's correspondence to the Navy seeking resolution of its agency-level protest shows that JAFIT was aware at that time that the purported authority for making noncompetitive awards was not applicable because the Committee had not listed these services on the applicable procurement list. Thus, very little research beyond what JAFIT had already done for its agency-level protests should have been necessary. Moreover, although the Navy filed a report on the protests to which JAFIT responded, the Navy's report provided no legal rationale for its actions; thus, aside from reviewing the report to determine that the agency had not offered any legal support for its actions, the preparation of the protester's comments should not have required further research to support its protests. Finally, although JAFIT's protest addressed the agency's improper application of FAR § 6.302-5, it primarily focused upon issues related to administration of JAFIT's then incumbent contract; such issues of contract administration were not for consideration by our Office. 4 C.F.R. § 21.3(m)(1) (1995).

Although the record lacks information about the specific work performed by JAFIT's CEO and consultant for each hour charged, thus making analysis of the allowability of each hour impossible, we believe that a prudent person would not have required more than a fraction of 302 hours charged. In such cases, we will reduce the number of hours to reflect a reasonable work effort, given the nature of the particular protest. Armour of Am.--Claim for Costs, *supra*. Based on the above discussion, given the nature of the issues and the necessity of responding to the various dismissal requests and report filed by the agency, we consider, under these

¹For example, the protester was entitled to the reasonable costs of reviewing and responding to the various unsuccessful requests by the agency that the protests be dismissed as untimely, and of reviewing and responding to the agency report.

²JAFIT states that it employed the consultant because of his knowledge of the federal procurement system.

circumstances, 45 hours to be a reasonable estimate of the work effort that should have been employed here. This is 15 percent of the hours charged. The corresponding cost at the charged hourly rates of the two individuals is \$3,485.95.

The 6,915 copies charged to this claim are also grossly excessive. Our review shows that much of the documents duplicated were irrelevant to the protest issues or were unnecessarily duplicative of documents already reproduced. Of the total \$345.75 charged, we determine, consistent with the reduction in hours charged, that 15 percent, or \$51.87, is reasonable.

JAFIT also requests the payment of interest on its protest costs under FAR § 33.208. This provision provides for payment of interest on a contractor's claim in a dispute or appeal under the Contract Disputes Act of 1978 (CDA), 41 U.S.C. §§ 601-613 (1994). A claim for protest costs is not subject to the CDA, which therefore does not authorize payment of interest on a protester's claim for protest costs. Thus, JAFIT is not entitled to recover interest on its claim for protest costs because the payment of interest on such claims is not authorized by any statute. John Peeples--Claim for Costs, 70 Comp. Gen. 661 (1991), 91-2 CPD ¶ 125; Maintenance and Repair--Claim for Costs, B-251223.4, June 24, 1994, 94-1 CPD ¶ 381.

Additionally, JAFIT requests reimbursement of its costs incurred in pursuing this claim before our Office. Our applicable Bid Protest Regulations, 4 C.F.R. § 21.6(f)(2) (1995), provided that we may declare a protester entitled to the costs of pursuing its claim before our Office. This provision was intended to encourage the agency's expeditious and reasonable consideration of a protester's claim for costs. E&R, Inc.--Claim for Costs, *supra*. Here, the Navy tendered a reasonable settlement offer (in excess of the amount awarded here) to JAFIT within 6 months of the submission of JAFIT's claim to the agency. Under the circumstances, there is no basis to award JAFIT its costs of pursuing the claim at our Office.

In conclusion, we find that JAFIT is entitled to be reimbursed \$3,537.82 for its costs of filing and pursuing the protest.

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