

C. Melody



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: Interface Flooring Systems, Inc.--Claim  
for Attorneys' Fees  
File: B-225439.5  
Date: July 29, 1987

## DIGEST

1. Where protest involving challenges on distinct grounds to two specifications in request for proposal calling for award by line item of separate indefinite quantity contracts is denied in part and sustained in part, protester is entitled to recover protest costs only for the issue on which it prevailed, as well as its defense of contracting agency's general timeliness challenge to the protest, since the issues raised in the protest in effect constituted two separate protests. Protester is not entitled to recover its protest costs for the issue on which the protest was denied, nor for another issue concerning a third distinct line item which protester withdrew as a basis for protest after the contracting agency decided not to carry out the action the protester had challenged.
2. Provision in Equal Access to Justice Act limiting attorneys' fees to \$75/hour does not apply to recovery of attorneys' fees under Competition in Contracting Act, which requires only that the fees recovered be reasonable. To be reasonable, attorneys' fees must reflect the attorneys' customary hourly rates and must be in line with prevailing rates for similar services.

## DECISION

Interface Flooring Systems, Inc. requests that our Office direct the General Services Administration (GSA) to reimburse Interface in full for its attorneys' fees incurred in connection with its protest challenging as defective certain specifications in request for proposals (RFP) No. FCNH-F8-1887-N-7-22-86, issued by GSA for various types of floor coverings. We denied the protest in part, rejecting Interface's challenge to the specification for vinyl hard-back carpet tiles, and sustained it in part, finding that the specification for antimicrobial carpet tile was

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ambiguous and vague, as Interface maintained. We also found that Interface was entitled to recover the costs of filing and pursuing the protest, since by successfully challenging the specification for antimicrobial carpet, Interface helped enhance competition under the RFP. Interface Flooring Systems, Inc., B-225439, Mar. 4, 1987, 87-1 CPD ¶ 247.

GSA has agreed to reimburse Interface only for that portion of its attorneys' fees relating to the issue on which Interface's protest was successful, the specification for antimicrobial carpet tile. As discussed in detail below, we find that Interface is entitled to recover only those costs relating to its defense of the timeliness argument raised by GSA in the protest and its challenge to the specification for antimicrobial carpet, the only substantive issue on which it prevailed.

The RFP challenged by Interface called for award by line item of separate indefinite quantity Federal Supply Schedule (FSS) contracts for various types of floor coverings, including carpet, carpet tiles and carpet cushions. Interface's protest to our Office followed GSA's denial of its agency-level protest which challenged the specifications for two items under the RFP, vinyl hardback carpet tile and antimicrobial carpet tile. In addition, Interface objected to an anticipated amendment by GSA of a third specification, for fusion bonded carpet tile. GSA maintained that the protest in its entirety was untimely and that in any event Interface's objections to the specifications for the vinyl hardback and antimicrobial carpet tiles were without merit. With regard to the specification for fusion bonded carpet tile, GSA stated that it would not be amended as Interface had anticipated; as a result, Interface subsequently withdrew the issue from the protest.

We rejected GSA's timeliness argument, denied the protest with regard to the specification for vinyl hardback carpet tile, and sustained it with regard to the specification for antimicrobial carpet tile. As noted above, we also found that Interface was entitled to recover its protest costs. Although we did not so specify in our original decision, we now find that because of the nature of the RFP and the issues raised, Interface's recovery should be limited to the costs of pursuing its challenge to the antimicrobial carpet tile specification and its defense of GSA's timeliness argument.

The RFP called for award of individual FSS contracts for each line item listed in the RFP. Interface's protest involved specifications for two unrelated line items--vinyl hardback carpet tile and antimicrobial carpet tile--and the grounds for challenging the specifications were equally

distinct. In contrast to protests which raise several grounds of objection to the same award, here the items and issues involved were entirely severable and distinct from each other, so as to constitute in effect two different protests. As a result, we believe it is appropriate to allow Interface to recover costs only on its successful challenge to the antimicrobial carpet tile specification, and not for its unrelated and unsuccessful challenge to the vinyl hardback carpet tile specification.

Our authority to award protest costs derives from the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3554(c)(1) (Supp. III 1985), which authorizes us to declare a protester entitled to such costs where we determine that a "solicitation for a contract," "proposed award," or "award of a contract" does not comply with a statute or regulation. In our view, limiting Interface's recovery of costs to the issue on which it prevailed is consistent with our statutory authority, since it allows Interface to recover costs only for those portions of the solicitation which we found defective, and not for those which we saw no basis to challenge. See Gateway Cable Co., B-223157 et al.; Sept. 22, 1986, 65 Comp. Gen. \_\_\_\_\_, 86-2 CPD ¶ 333, aff'd on reconsideration, B-223157.2, Nov. 5, 1986, 86-2 CPD ¶ 518. Similarly, Interface may recover the costs of responding to GSA's timeliness argument since it was a general challenge to the protest on which Interface prevailed.

We also find that Interface is not entitled to recover the costs related to the third issue raised in its initial protest and later withdrawn, regarding the specification for fusion bonded carpet tiles. As noted above, our authority to allow the recovery of costs is predicated on a finding that a solicitation, proposed award, or award does not comply with a statute or regulation. Since our decision on the protest did not reach Interface's challenge to the alleged proposed amendment to the fusion bonded carpet tile specification, there is no basis for awarding costs incurred in connection with that issue. See Bru Construction Co., B-221383.2, May 27, 1986, 86-1 CPD ¶ 487.

In support of its claim for attorneys' fees, Interface originally submitted an affidavit from its principal attorney attesting to the amount of attorneys' fees billed Interface, along with copies of invoices showing the total hours spent by month on the protest. GSA maintained that Interface should be required to submit a more detailed statement of its attorneys' hours. In response, Interface provided detailed daily billing records showing the time spent and the nature of the work by individual attorneys and paralegals. In order to recover the protest costs as

specified here, Interface's attorneys are responsible for allocating and certifying to GSA the time charged among the issues in the protest. In addition, some of the fees charged are for use of the Westlaw system and paralegal time; GSA maintains that Interface's recovery should be limited to the amount actually paid by the attorneys, rather than the amount billed, for the paralegal and Westlaw services. Provided that Interface's attorneys certify the amounts billed for those services, and in the absence of a showing that the amounts billed are unreasonable, we see no basis to limit Interface's recovery as GSA suggests.

GSA also challenged the hourly rates charged by Interface's attorneys (\$165/partner, \$90/associate), arguing that the recovery should be limited to the \$75 hourly rate specified in the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d)(2)(A) (Supp. III 1985). Our authority under CICA, 31 U.S.C. § 3554(c)(1), to award protest costs provides only that protesters may recover "reasonable attorneys' fees"; unlike the EAJA, CICA does not specify an hourly rate for calculating those fees, and we see no basis for extending the dollar limit in the EAJA to recoveries of attorneys' fees under CICA. Accord Amdahl Corp., GSBICA No. 7965 (7859-P), July 12, 1985, 85-3 BCA ¶ 18,283. Here, we believe that the hourly rates charged by Interface's attorneys are in line with rates prevailing in the Washington, D.C. area for similar services. See NCR Comten, Inc., GSBICA No. 8229, Feb. 10, 1986, 86-2 BCA ¶ 18,822. Based on the attorneys' certification that the fees charged reflect their customary hourly rate, Interface is entitled to compensation at those rates.

*for*   
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