

Pietrovito



**Comptroller General  
of the United States**

**Washington, D.C. 20548**

**Decision**

**Matter of:** W.S. Spotswood & Sons, Inc.--Claim for Costs

**File:** B-236713.3

**Date:** July 19, 1990

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W.S. Spotswood, for the protester.  
Louise E. Hansen, Esq., Defense Logistics Agency, for the agency.  
Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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**DIGEST**

Where a claimant, seeking the recovery of its proposal preparation and protest costs, fails to adequately document its claim to show that the hourly rates, upon which its claim is based, reflects the employee's actual rate of compensation plus reasonable overhead and fringe benefits, the claim for costs is denied.

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**DECISION**

W.S. Spotswood & Sons, Inc. requests that our Office determine the amount which it is entitled to recover from the Defense Logistics Agency (DLA) for its proposal preparation costs under request for quotations (RFQ) No. DLA700-89-T-0133, and for the costs of filing and pursuing its protest in W.S. Spotswood & Sons, Inc., B-236713.2, Nov. 16, 1989, 89-2 CPD ¶ 469.

In our prior decision, we sustained Spotswood's protest because DLA awarded a purchase order to a large business concern in a small business-small purchase set-aside. Since performance under the purchase order was completed, we did not recommend corrective action but awarded Spotswood its costs of proposal preparation and of pursuing the protest.

Shortly after our decision was issued, Spotswood submitted its claim to DLA for \$2,475. This amount represents 16.5 hours of employee time at \$150 per hour. No further explanation or documentation was submitted to the agency in support of the claim. DLA requested that Spotswood provide evidence, describing the work performed, the amount of time

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spent on each task, and support for the \$150 hourly rate. DLA also determined that \$1,275 of Spotswood's claim was not reimbursable in any case because those claimed hours related to Spotswood's agency-level protest and its protest to the Small Business Administration. See Princeton Gamma-Tech, Inc.--Claim for Costs, 68 Comp. Gen. 400 (1989), 89-1 CPD ¶ 401.

Spotswood subsequently submitted to DLA a revised claim of \$1,586.25 and provided a breakdown of the services performed, the amount of time spent on each task, and the relevant hourly rate for each task performed. Specifically, Spotswood claimed reimbursement for 10 hours at \$150 per hour, 2.75 hours at \$15 per hour, and 4.5 hours at \$10 per hour. In support of its \$150 hourly rate, Spotswood informed DLA that the agency had accepted Spotswood's \$150 hourly rate in settling a different protest cost claim in 1987.<sup>1/</sup> DLA, in addition to questioning 3 hours of claimed time, again requested that Spotswood provide support for the hourly rates claimed. Spotswood then asked our Office to resolve its claim pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.6(e) (1990).

DLA contends that Spotswood's entire claim should be disallowed because Spotswood failed to properly document its claim, in particular its claimed hourly rates. See Patio Pools of Sierra Vista, Inc.--Claim for Costs, 68 Comp. Gen. 383 (1989), 89-1 CPD ¶ 374. Spotswood replies that DLA should accept its claimed hourly rate since DLA had settled an earlier, unrelated claim for protest costs at an hourly rate of \$150.

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<sup>1/</sup> Spotswood, which identifies itself as a manufacturer's representative, represented the ARO Corporation in a 1987 protest, which we sustained and awarded the protester its costs of filing and pursuing the protest. See ARO Corp., B-227055, Aug. 17, 1987, 87-2 CPD ¶ 165. Apparently, DLA accepted without question Spotswood's claim for costs, which was based upon a \$150 per hour rate. In this case, the proposal submitted to DLA and the protest here were filed on its own behalf.

A protester seeking to recover the costs of pursuing its protest and preparing its proposal must submit sufficient evidence to support its monetary claim. Data Based Decisions, Inc.--Claim for Costs, 69 Comp. Gen. 75 (1989), 89-2 CPD ¶ 538. 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. See Hydro Research Science, Inc.--Claim for Costs, 68 Comp. Gen. 506 (1989), 89-1 CPD ¶ 572.

Here, the documentation submitted by Spotswood adequately shows the type and amount of work performed by its employees but does not demonstrate how the hourly rates were calculated or that the claimed rates reflect the employees' actual rates of compensation plus reasonable overhead and fringe benefits. The fact that DLA accepted without question Spotswood's \$150 hourly rate in connection with its claim for costs in an unrelated protest is not probative of the reasonableness of its hourly rates here. In the earlier protest, Spotswood's claimed hourly rate represented Spotswood's "market rate" to represent its client in the protest while the hourly rate claimed here is for reimbursement of Spotswood's own direct labor. See note 1, infra.

In this regard, the earlier rate presumably included profit as an element of the hourly rate. A protester may not recover profit on its own employees' time in filing and pursuing its protest or preparing its proposal. See Rocky Mountain Trading Co.--System Division, GSBICA No. 8943-C, July 26, 1989, 89-3 RCA ¶ 22,110. The award of costs is intended to relieve protesters, with valid claims, of the burden of vindicating the public interests which Congress seeks to promote; it is not intended as a reward to prevailing protesters or as a penalty imposed upon the government. See Computer Lines, GSBICA No. 8334-C, Oct. 9, 1986, 86-2 BCA ¶ 19,403. Accordingly, Spotswood's rates must be based on its employees' actual rates of compensation plus reasonable overhead and fringe benefits.

In the absence of evidence showing how the hourly rates claimed for each of Spotswood's employees were calculated and how the rates relate to the employees' salaries plus reasonable overhead and fringe benefits, but not profit, Spotswood's protest and proposal preparation costs cannot be recovered.<sup>2/</sup> See Patio Pools of Sierra Vista, Inc.--Claim for Costs, 68 Comp. Gen 383, supra.

The claim is denied.

  
for James F. Hinchman  
General Counsel

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<sup>2/</sup> In this regard, we informed Spotswood that it was the protester's responsibility to submit sufficient evidence to establish how the claimed costs and hourly rates were calculated. Spotswood informed us that, in light of the relatively small amount of its claim, it would not be worth the effort necessary to collect its award of costs if it had to establish the reasonableness of its hourly rates.