

Timmerman



Comptroller General  
of the United States  
Washington, D.C. 20548

# Decision

**Matter of:** Wylie Mechanical  
**File:** B-228695.5  
**Date:** December 18, 1990

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Jack Wylie for the protester.  
Laurie Stiteler, Esq., Department of the Air Force, for the agency.  
Barbara R. Timmerman, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Where a claimant, seeking the recovery of its proposal preparation and protest costs, fails to adequately document its claim to show that the hourly rate, 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.
2. Protester awarded the costs of pursuing its protest is not entitled to be reimbursed costs associated with communicating to Congressmen seeking assistance in the protest.

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## DECISION

Wylie Mechanical requests that the General Accounting Office determine the amount it is entitled to recover from the Department of the Air Force for proposal preparation costs under request for proposals (RFP) No. F41650-87-R-0013 and for the costs of filing and pursuing its protest in Wylie Mechanical, B-228695.4, Aug. 4, 1989, 89-2 CPD ¶ 107 and Wylie Mechanical, B-228695, Oct. 27, 1987, 87-2 CPD ¶ 407.

In our initial decision, we denied in part and dismissed in part Wylie's protest against an award under the RFP. One of the protest contentions raised by Wylie was that the prices in its initial offer were improperly disclosed to the awardee before best and final offers had been submitted. We denied the protest on that issue since there was no evidence supporting the protester's contention.

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A subsequent Air Force investigation revealed that price information concerning Wylie's initial offer had been released to the awardee. We consequently reversed our prior decision and sustained the protest on that ground. Since performance of the base term of 8 months and two 1-month options was completed, the agency stated that it would not exercise any further options and would recompile the requirement. We agreed with the agency's proposed course of action and awarded the protester its costs of preparing its proposal and pursuing the protest.

Wylie submitted its claim to the Air Force for \$54,211, consisting of approximately \$9,500 in direct non-labor costs and \$45,000 in labor costs for Mr. Wylie, the president, and stated that the amount was not negotiable. As documentation of its claim, Wylie submitted a computer printout itemizing the events that support the claim amount.

The Air Force repeatedly requested that Wylie provide documentation to support the claim, in response to which Wylie certified its costs and provided invoices and statements to support the direct costs. However, the only documentation provided for Mr. Wylie's time was essentially the same information as provided on the printout; that is, the date, followed by a brief description of what was done, and a lump sum charge. There was no support for Wylie's claimed \$75 hourly rate. The Defense Contract Audit Agency (DCAA) was requested to audit the claim, primarily to substantiate Mr. Wylie's claimed rate and time. However, Wylie declined to allow the audit. The Air Force finally informed Wylie that the agency's final determination of the claim was \$12,495, which included \$9,495 in out-of-pocket expenses plus \$3,000 for Mr. Wylie's time.

Wylie then asked our Office to resolve its claim. See 4 C.F.R. § 21.6(e) (1990). Wylie now claims \$58,149.87, which consists of \$9,324.87 in direct out-of-pocket costs (consulting fees, legal fees, postage, etc.) and \$48,825 in labor costs consisting of 651 hours of time at \$75 per hour for Mr. Wylie, the president.

The Air Force contends that only Wylie's out-of-pocket expenses should be allowed because Wylie's claim for the president's time is unsubstantiated. The Air Force states that Wylie refused to furnish information concerning the president's salary, or to provide evidence such as a W-2 form or an income tax return that would substantiate the claim. Wylie replies that the Air Force should accept its claimed hourly rate of \$75 for its president since the agency accepted that rate in the firm's initial proposal on the RFP.

A protester seeking to recover the cost of pursuing its protest must submit sufficient evidence to support its monetary claim. Ultraviolet Purification Sys., Inc.--Claim for Bid Protest Costs, B-226941.3, Apr. 13, 1989, 89-1 CPD ¶ 376. Our Office will not consider claims for costs awarded by us, where, as here, an uncooperative protester fails to document its claim to the contracting agency. Patio Pools of Sierra Vista, Inc.--Claim for Costs, 68 Comp. Gen. 383 (1989), 89-1 CPD ¶ 374.

The documentation submitted to us by Wylie adequately shows the type and amount of work performed by the firm's president,<sup>1/</sup> but does not show that the claimed \$75 per hour rate reflects his actual rate of compensation. Wylie asserts this hourly rate is an element of its 1987 fixed-price proposal on this RFP.<sup>2/</sup> However, this rate is apparently Wylie's "market rate" to perform the work associated with the contract,<sup>3/</sup> and does not necessarily reflect Wylie's out-of-pocket costs. For instance, the rate submitted in the fixed-price proposal presumably included profit as an element of the hourly rate. However, the protester is only authorized reimbursement of its direct labor costs, and may not recover profit on its own employees' time in filing and pursuing its protest or preparing its proposal. W.S. Spotswood & Sons, Inc.--Claim for Costs, B-236713.3, July 19, 1990, 69 Comp. Gen. \_\_\_\_\_, 90-2 CPD ¶ 50. This is so because the award of protest costs pursuant to the Competition in Contracting Act is not intended as a reward of additional profit to protesters or to penalize agencies, but rather is intended to relieve protesters, with valid claims, of the burden of vindicating the public interests which Congress seeks to promote.<sup>4/</sup> Id.

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<sup>1/</sup> As discussed below, some of the time spent communicating with Congressmen and the President of the United States is not reasonably related to the protest.

<sup>2/</sup> Wylie does not explain where in its fixed-price proposal on the RFP it specified the president's hourly rate; the RFP had no line item for his time.

<sup>3/</sup> The record shows that Wylie informed DCAA auditors over the telephone that the \$75 per hour rate was based on a rate it believed to be less than what a lawyer or consultant would charge.

<sup>4/</sup> We note that the General Services Administration Board of Contract Appeals (GSBCA) has reached the same result. See Rocky Mountain Trading Co., Sys. Division, GSBCA No. 8943-C, July 26, 1989, 89-3 BCA ¶ 22,110; Computer Lines, GSBCA No. 8334-C, Oct. 9, 1986, 86-2 BCA ¶ 19,403.

The record indicates that even though DCAA informed Wylie of the type of documentation that would be necessary to substantiate its claim for the president's time, the company refused to document its claim to the agency with respect to the president's salary or to allow the DCAA's audit. Wylie has provided no further documentation showing that \$75 represents the president's actual hourly rate of compensation, e.g., corporate records, W-2 forms or tax records. See Ultraviolet Purification Sys., Inc.--Determination of Bid Protest Costs, B-226941.5, June 26, 1990, 90-1 CPD ¶ 110. Under the circumstances, Wylie's claimed costs of \$48,825 for the president's time cannot be recovered. W.S. Spotswood and Sons, Inc.--Claim for Costs, 69 Comp. Gen., supra.

With respect to Wylie's out-of-pocket expenses, the firm has provided appropriate documentation. However, we note that some of the expenses claimed for postage, copying, and telephone charges are for communicating with members of Congress and the President of the United States. Such costs are not reimbursable since these activities are not reasonably related to the pursuit of the protest. Ultraviolet Purification Sys., Inc.--Claim for Bid Protest Costs, B-226941.3, supra. Our review of the record shows that \$19.45 of Wylie's \$163.37 claim for postage, \$3.12 of its \$474.06 claim for telephone charges, and \$31.54 of its \$441.38 claim for copying involves communication with members of Congress and the President, and these costs are disallowed.

In conclusion, we find that Wylie is entitled to recover \$9,270.76 in costs incurred in filing and pursuing its protest, and in the preparation of its proposal.

  
for Comptroller General  
of the United States