



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

524294

Decision

Matter of: Test Systems Associates, Inc.--Claim for Costs

File: B-244007.7

Date: May 3, 1993

Albert J. Bauer for the protester.
Joseph M. Goldstein, Esq., Robert O. D'Ambrosio, Esq., and Mark E. Frazier, Esq., Department of the Air Force, for the agency.
Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester forfeited its right to recover the costs of filing and pursuing its protest at the General Accounting Office where the protester failed to file its claim with the contracting agency detailing and certifying the time expended and costs incurred in connection with the protest within 60 days after receipt of the decision sustaining its protest.

DECISION

Test Systems Associates, Inc. (TSAI) requests that we determine the amount that it is entitled to recover from the Department of the Air Force for the costs of filing and pursuing its protest in Test Sys. Assocs., Inc., 71 Comp. Gen. 33 (1991), 91-2 CPD ¶ 367. In that decision, we sustained TSAI's protest of the proposed award of a follow-on contract on a sole-source basis to the incumbent, Access Research Corporation, under request for proposals (RFP) No. F41608-91-R-44874, issued by the Air Force for independent validation and verification of hardware and software for the EF/F/FB-111 Avionics Intermediate Shop Replacement System.¹

¹Our decision in Test Sys. Assocs., Inc., B-244007.4; B-244007.5, May 1, 1992, 92-1 CPD ¶ 408, sets forth in detail the background of this matter.

We deny the claim.

We issued our decision sustaining TSAI's protest on October 24, 1991, and found that the agency should reimburse TSAI for its costs of filing and pursuing its protest. In a brief, 1-page letter to the contracting officer dated December 11, TSAI requested that it be reimbursed \$28,554.² On December 16, the Air Force requested TSAI to substantiate that amount "with a complete, current, and accurate accounting of [TSAI's] costs claimed. . . ." TSAI responded by stating that the claim was based on direct labor hours expended by TSAI's employees, plus overhead and general and administrative (G&A) costs, but without providing further details or explanation of the claimed costs or supporting documentation. Finding that response inadequate, in a letter dated January 9, 1992, the contracting officer informed TSAI that it had provided insufficient information in support of its claim, and again requested that TSAI submit additional information to substantiate the claimed amount. The record shows that several oral and written communications ensued between the parties related to TSAI's claim, essentially consisting of further requests by the agency for supporting documentation. Stating that the parties could not reach agreement on the amount of the costs it should be reimbursed, TSAI filed this request in our Office on December 21, 1992.

Our Regulations provide that when we find an agency should reimburse a protester for its costs of filing and pursuing its protest:

"[t]he protester shall file its claim for costs, detailing and certifying the time expended and costs incurred, with the contracting agency within 60 days after receipt of the decision on the protest or the declaration of entitlement to costs. Failure to file the claim within such time shall result in forfeiture of the protester's right to recover its costs . . ." 4 C.F.R. § 21.6(f) (1) (1993).³

²TSAI's request stated in its entirety:

"In accordance with the [General Accounting Office's] recommendation on the referenced protest by TSAI and 4 C.F.R. § 21.6(d) (1) (1991), we hereby submit our claim of \$28,554.00."

³This provision was promulgated on January 31, 1991, and became effective April 1, 1991. See 56 Fed. Reg. 3759 (1991). Since TSAI filed its protest on June 18, 1991, the

We mailed our decision sustaining TSAI's protest on the date of its issuance, October 24, 1991, so that TSAI presumably received that decision no later than October 31 (within 1 calendar week after mailing), Young-Robinson Assocs., Inc.--Recon., B-242229.2, May 21, 1991, 91-1 CPD ¶ 494. TSAI was thus required to file its claim with the contracting agency "detailing and certifying" the time expended and costs incurred in connection with its protest within 60 days from October 31, 1991, or by January 30, 1992. The record shows that as of that date, however, TSAI had submitted what could only be viewed as blanket statements, insufficient to support its claim.

TSAI's claim, as first submitted on December 11, 1991, simply lumped together all the claimed expenses, without even a summary explanation of their origin; provided no detailed breakdown as to individual amounts claimed or their purpose; and contained no description of how the amounts claimed related to the protest. Rather than submitting a complete, detailed breakdown of the expenses incurred, as the agency subsequently requested, TSAI simply stated that the claim was based on direct labor hours expended by TSAI's employees, plus overhead and G&A.

Subsequently, in a letter dated February 7, 1992, TSAI identified for the first time three employees who allegedly worked on the protest. Attached to that letter was a 1-page document entitled "Claim Expenses," which contained four entries--"management," "senior engineer," "overhead," and "G&A"--under a "Cost Elements" column. TSAI listed a total number of hours, a "rate," and a total "amount" corresponding to each of the "management" and "senior engineer" entries; TSAI also included overhead and G&A for a total of \$28,554. Even that document, however, fails to specifically identify the tasks performed by each of the individuals involved, and fails to provide any explanation of how those tasks relate to the protest.

Claims for the reimbursement of expenses, at a minimum, must identify the amounts claimed for each individual expense, the purpose for which that expense was incurred, and how the expense relates to the protest. Diverco, Inc.--Claim for Costs, B-240639.5, May 21, 1992, 92-1 CPD ¶ 460. In our view, TSAI's initial submission, and its subsequent bare statement, without further explanations or supporting documentation, provided insufficient detail for the agency to adequately assess the reasonableness of the claimed costs.

provision applies to its claim. See Hadson Def. Sys., Inc.--Claim for Costs, B-227285.8, Mar. 13, 1991, 91-1 CPD ¶ 274.

Although the parties apparently continued to correspond, it was not until June 1992, 7 months after we issued our decision on the protest, that TSAI provided a more itemized breakdown of its costs upon which the agency could arguably begin to assess the reasonableness of TSAI's claim.⁴

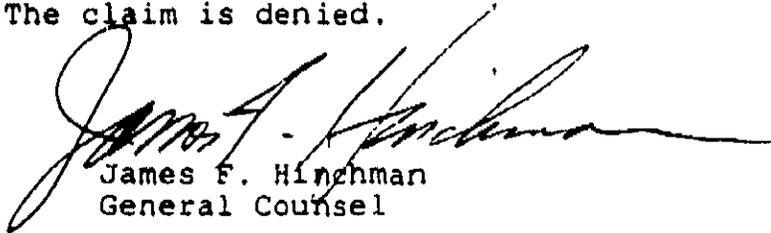
Consistent with the intent of our Bid Protest Regulations to have protest matters resolved efficiently and quickly, the 60-day time frame for filing claims with the contracting agency was specifically designed to avoid the piecemeal presentation of claims and to prevent the type of unwarranted delays that occurred here. That time frame affords protesters ample opportunity to submit adequately substantiated, certified claims that can then be resolved in a reasonable amount of time.

The Regulations are clear--a protester that fails to comply with the claim filing requirement "shall" forfeit its right to be reimbursed its costs. Not only did TSAI fail to initially file a claim "detailing and certifying" its costs with the contracting agency within the time frame established in our Regulations, but it failed to submit sufficient evidence to support its claim even after repeated requests for further documentation from the agency. Although our Office may consider an untimely claim for good cause, the protester does not allege, and there is absolutely no evidence to suggest, that TSAI could not have filed a documented, substantiated claim within the time frame established in our Regulations. Accordingly, since TSAI failed to file its claim with the contracting agency

⁴By letter dated June 1, 1992, TSAI submitted a 2-page document entitled "Monthly Breakdown of Manhours," briefly describing in chronological order various tasks and events related to its protest, personnel involved, and time expended on each task monthly for the period April 1991 through March 1992. TSAI also provided for the first time a certification and signed statement from each employee previously identified attesting to the accuracy of the time expended. To its original claim, under the heading "[f]ollowing effort not included in original invoice," TSAI added \$2,360, with no detailed explanation of the basis for that amount. The record shows that the Air Force questioned various entries on that submission as excessive or unrelated to the protest; the parties continued to correspond through September 22, 1992.

detailing and certifying the time expended and costs incurred in connection with the protest within 60 days after receipt of the decision sustaining its protest, we find that TSAI forfeited its right to recover its costs. See 4 C.F.R. § 21.6(f)(1).

The claim is denied.



James F. Hinchman
General Counsel