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Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Custom Production Mfg., Inc.--Reconsideration  
**File:** B-235431.8  
**Date:** July 21, 1995

Samuel E. Stern for the protester.  
Robert E. Sebold, Esq., Defense Logistics Agency, for the agency.  
Jacqueline Maeder, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

Request for reconsideration of claim for specific bid protest and proposal costs is denied where the protester submitted its claim to the agency 4-1/2 years after it was found entitled to such costs, thus failing to diligently pursue its claim, and where claim is based on cost documentation which could have been, but was not, submitted by the protester in the course of the original claim.

## DECISION

Custom Production Mfg., Inc. (CPM) requests that we reconsider our decision Custom Prod. Mfg., Inc.--Claim for Costs, B-235431.7, May 9, 1995, 95-1 CPD ¶ 236, in which we denied CPM's claim against the Defense Logistics Agency (DLA) for proposal preparation and bid protest costs which had been awarded to Survival Products<sup>1</sup> in Survival Prods., Inc., B-235431.3, Nov. 16, 1989, 89-2 CPD ¶ 464 and Van Ben Indus., Inc. et al.--Recon., B-235431.4 et al., Jan. 29, 1990, 90-1 CPD ¶ 118. We denied the claim because CPM failed to adequately document its costs.

We deny the reconsideration request.

Although costs were awarded by our Office in January of 1990, Survival Products did not submit a claim to DLA until April 22, 1994. DLA dismissed this claim on June 27, stating that, because Survival Products had submitted its claim 4-1/2 years after award of costs, the claim had not been filed within a reasonable time and therefore the

<sup>1</sup>CPM states that it is the successor-in-interest to Survival Products.

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company had forfeited its rights to such costs.<sup>2</sup> After DLA dismissed Survival Product's request for reconsideration, CPM filed its claim with our Office, arguing that the applicable regulation did not include a time limitation for submission of a claim. As noted above, our Office rejected CPM's claim because it presented insufficient documentation.

In its reconsideration request, filed on May 30, 1995, CPM argues that our decision should be modified because the protester was never advised by DLA that the claim was rejected "on any basis but timeliness." CPM contends that the lack of documentation to support its claim "was never an issue" and, presumably, because DLA did not provide guidelines regarding required documentation, CPM argues that it "felt the detail submitted to be sufficient." With its reconsideration request, CPM has submitted supporting documentation for its legal costs, along with CPM's attorney's certification that the attorneys' fees were billed at the customary hourly rates usually charged in pursuing a bid protest, and have been paid by Survival Products. All supporting documents are dated 1989 or 1990 except the certification which is dated May 25, 1995. With regard to other costs, CPM stated that it required an additional week to submit documentation in support of its other claimed costs, but has failed to provide any additional documentation. As to the 4-1/2 year delay in submitting its claim to DLA, CPM now states that it believed "all bills had to be paid prior to claiming the costs." Because of "the upheaval within this company as a result of going out of business," the bill for legal services was not entirely paid until April 1994.

CPM is mistaken in its view that the lack of documentation to support its claim was never an issue. In the agency response to CPM's request that our Office determine the amount the protester was entitled to recover, DLA set forth two reasons why the claim should be denied. DLA argued that the claim was untimely filed, but also asserted that even if

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<sup>2</sup>The Bid Protest Regulation in effect when the protester filed its protest and its reconsideration with our Office, and applicable in this instance, see Hadson Defense Sys., Inc.--Claim for Protest Costs, B-227285.8, Mar. 13, 1991, 91-1 CPD

¶ 274, provided that when we found an agency should reimburse a protester for its bid preparation costs or its costs of filing and pursuing a protest:

"the protester and the contracting agency shall attempt to reach agreement on the amount of the costs. If the protester and the contracting agency cannot reach agreement within a reasonable time, the General Accounting Office will determine the amount." 4 C.F.R. § 21.6(e) (1990).

the protester's claim for costs were timely, the claim did not provide "an adequate basis for payment because the claim is not adequately documented." The agency cited numerous cases that explained the type of documentation required by our Office to support a claim for costs. In its comments on the agency's response, the protester failed to address the adequacy of its documentation, simply reasserting that DLA never advised it of a time limitation for claim submission.

In previous decisions, our Office has apprised protesters that we would not consider claims for costs awarded by us where the protester fails to document its claim to the contracting agency. See Patio Pools of Sierra Vista, Inc.--Claim for Costs, 68 Comp. Gen. 383 (1989), 89-1 CPD ¶ 374; Ultraviolet Purification Sys., Inc.--Claim for Bid Protest Costs, B-226941.3, Apr. 13, 1989, 89-1 CPD ¶ 376. Here, CPM never responded to the agency's argument that the claim was not adequately documented and even now has submitted incomplete documentation along with 5 and 6-year old documentation which was available to the firm at the outset.

Moreover, it is our view that CPM had an obligation to file its claim with the agency in a reasonably prompt manner yet, except for a letter dated August 10, 1990, stating that it expected to file a claim "in the near future," CPM made no attempt to file its claim for more than 4 years. It is incumbent on the protester to diligently pursue its claim if it wishes to avail itself of a remedy from our Office; we view CPM's 4-1/2 year delay in submitting its claim to DLA as a failure to diligently pursue the matter. See Allied-Signal, Inc.--Recon., B-243555.2, July 3, 1991, 91-2 CPD ¶ 19. CPM's general explanation that the delay stemmed from its belief that a claim could not be filed until all bills were paid and bills could not be paid because the company was going out of business is unpersuasive and does not justify the extraordinary delay in filing. In the context of filing a protest, for example, such an explanation would not rise to the level required by the "good cause" exception to our timeliness requirements-- i.e., a compelling reason beyond the control of the protester preventing further pursuit of the claim. See Continental Maritime of San Diego, Inc.--Claim for Cost, 73 Comp. Gen. 53 (1993), 93-2 CPD ¶ 323 (rejecting an explanation that the press of business to make up for revenues lost as a result of an illegally awarded contract to another firm precluded a successful protester from timely pursuing its claim).

Finally, with regard to CPM's contention that the extant regulation included no time limitation for claim submission, we note that a 60-day deadline for filing a claim with the contracting agency was promulgated on January 31, 1991, and became effective April 1, 1991. See 56 Fed. Reg. 3759, 3764 (1991). This revision specified the time we regard as sufficient for filing adequately substantiated claims.

Nonetheless, even after the 1991 revision, when the protester knew, or should have known, that we consider 60 days to be a reasonable time for the submission of claims to the contracting agency, CPM failed to submit its claim for an additional 3 years.

Under the circumstances, we conclude that CPM has relinquished its entitlement to costs. The request for reconsideration is denied.

  
for Robert P. Murphy  
General Counsel

# ROUTING SLIP

Problem Form No. \_\_\_\_\_

- Form 48
- Form 115
- Form 103
- Issue Area
- Intent Code
- Budget Function
- Other

**TAN:** 064295

**DATE:** 8/8/95

Recommendations

<b>1st Catalog</b> NDK 8-8-95	<b>Index</b>
<b>Initial Q.C.</b> LB 8-8-95 dupd	<b>Abstract</b>
<b>2nd Catalog</b> hhl 8/11/95	<b>Final Q.C.</b>