



Decision

Matter of: Transportation Security Administration--Costs

File: B-400340.8

Date: May 20, 2010

Christian F.P. Jordan, Esq., Transportation Security Administration, for the agency. Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request that GAO recommend reimbursement of attorneys' fees at a rate higher than the statutory cap of \$150 per hour based on increase in cost of living is granted where claim filed with agency presents reasonable basis for adjustment, and agency does not object to request.

DECISION

The Transportation Security Administration (TSA), with the concurrence of General Dynamics One Source, requests that we recommend that General Dynamics be reimbursed attorneys' fees at a rate higher than the \$150 per hour statutory rate cap in connection with a bid protest in which General Dynamics prevailed.

We grant the request, as discussed below.

General Dynamics, a large business (along with a second protester, Unisys Corporation), protested the award of a contract to Computer Sciences Corporation under request for proposals (RFP) No. HSTS03-08-R-CIO903, issued by TSA for computer support services. We sustained the protests and, in addition to corrective action, recommended that the agency reimburse the protesters' costs associated with filing and pursuing their protests, including reasonable attorneys' fees. General Dynamics One Source, LLC; Unisys Corp., B-400340.5, B-400340.6, Jan. 20, 2010, 2010 CPD ¶ 45.

General Dynamics subsequently filed a claim for protest costs with the agency, which included a request for reimbursement of attorneys' fees at a rate higher than the statutory maximum rate of \$150 per hour. The agency advises our Office that the request is fully substantiated and explained, and that it has no objection. TSA Letter,

Apr. 21, 2010. TSA therefore requests that we recommend reimbursement at the higher rate.

Under the Competition in Contracting Act of 1984, as amended, where the Comptroller General recommends that a successful protester's costs, including reasonable attorneys' fees, be reimbursed, those fees are capped at \$150 per hour, except where the protester is a small business concern. However, this hourly rate may be increased where "the agency determines, based on the recommendation of the Comptroller General on a case by case basis, that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee." 31 U.S.C. § 3554(c)(2)(B) (2006).

We have found that the justification for an upward departure from the \$150 cap is self-evident if the claimant asserts that the cost of living has increased, as measured by the Department of Labor's (DOL) Consumer Price Index (CPI). Sodexo Mgmt., Inc.--Costs, B-289605.3, Aug. 6, 2003, 2003 CPD ¶ 136 at 37-43; see also Department of the Army; ITT Fed. Servs. Int'l Corp.--Costs, B-296783.4, B-296783.5, Apr. 26, 2006, 2006 CPD ¶ 72 at 2. EBSCO Publishing, Inc.--Costs, B-298918.4, May 7, 2007, 2007 CPD ¶ 90 at 2-3; Department of State--Costs, B-295352.5, Aug. 18, 2005, 2005 CPD ¶ 145 at 2; Department of the Army; ITT Fed. Servs. Int'l Corp.--Costs, supra, at 2-3. Thus, where such a claim is asserted, and the contracting agency does not object, we will grant a request for a recommendation in favor of a cost-of-living adjustment to the fee cap. Department of State--Costs, supra, at 2.

Here, General Dynamics has provided TSA a detailed explanation of its calculation of the enhanced attorney fee rate of \$210.77 to \$211.12 per hour (depending on the month of billing) using DOL's CPI--All Urban Consumers; if applied, the parties have agreed upon reimbursement in the amount of \$103,871.72. Use of DOL's CPI--All Urban Consumers for a specific area is consistent with our prior decisions. Since TSA does not object, we recommend reimbursement at the claimed higher rate. See Core Tech Int'l. Corp.--Costs, B-400047.3, June 2, 2009, 2009 CPD ¶ 59 at 2-3.

The request is granted.

Lynn H. Gibson
Acting General Counsel