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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Cascadian American Enterprises--Costs

File: B-412208.6

Date: July 5, 2016

Ryan P. Slaughter, Cascadian American Enterprises, for the protester.
Francis X. Eugenio, Esq., Department of the Army, for the agency.
Laura Eyester, Esq., and Cherie J. Owen, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protester's claim for reimbursement of its costs of preparing and filing its protest is denied where the claim is not adequately documented.

DECISION

Cascadian American Enterprises (CAE), of Puyallup, Washington, a small business, requests that our Office recommend the amount it should be reimbursed by the Department of the Army, Corps of Engineers, in connection with pursuing its successful protest in Cascadian American Enterprises, B-412208.3, B-412208.4, Feb. 5, 2016, 2016 CPD ¶ 29.

We deny the request.

On August 3, 2015, the Army issued request for proposals (RFP) No. W912DW-15-R-0030, as a small business set-aside, for removal of Scot's broom, brush, and other vegetation at Joint Base Lewis-McChord, Washington. The Army received proposals from six offerors, including CAE and the awardee. After reviewing the proposals and contacting the awardee and a second offeror with requests for further information, the agency concluded that CAE's proposal was technically unacceptable and issued an award to the only offeror deemed to be acceptable. On October 30, CAE filed a protest with this Office challenging the agency's determination that its proposal was unacceptable, and contending that the agency improperly failed to conduct discussions with it, and improperly failed to refer the matter to the Small Business Administration (SBA) for consideration under its certificate of competency (COC) procedures.

On February 5, 2016, our Office sustained CAE's protest finding that the agency engaged in discussions with the awardee but failed to provide the same opportunity to the protester, and the agency found the protester's proposal to be unacceptable with respect to relevant experience, a responsibility-type factor, but failed to refer the matter to the SBA for a COC review. Cascadian American Enterprises, supra at 6-8. As a result, our Office recommended, among other things, that the agency reimburse the protester its costs of filing and pursuing its protest and informed the protester that it must submit a certified claim, detailing the time expended and costs incurred, directly to the agency within 60 days of receipt of our decision. Id. at 8-9.

On March 8, CAE submitted to the Army a one page invoice in the amount of \$53,160. Agency Response to Cost Claim, Attach. 1, Invoice, at 2. This invoice contained three line items. The first two line items were: 234 hours for "Protest Sept. 30, 2015-Feb. 5, 2016," at a rate of \$150 per hour for a total of \$35,100, and 120 hours for "Response to Agency Report," at a rate of \$150 per hour for a total of \$18,000. Id. The third line item was for "Miscellaneous material costs [for \$60]." CAE also offered the agency a "[d]iscount [of \$21,523] for awarding to CAE and paying within 30 days." Id.

On March 17, the agency notified CAE that it believed the request for reimbursement was not adequately documented and the agency could not assess the reasonableness of the claimed costs. Agency Response to Cost Claim, Attach. 2, at 1. As a result, the agency requested an explanation for the hours expended on the protest, especially since CAE stated that it spent a total of 354 hours on the protest, which equates to "9 full work weeks." Id. at 2. In addition, the agency noted CAE's statement that it had used a rate of \$150 per hour for the time spent by CAE's owner on the protest because it is the statutory cap generally allowed for attorneys' fees.¹ Id. at 1. In the agency's response, it explained to CAE that a protester can only claim actual costs incurred and therefore, the agency needed "evidence of [the owner's] actual hourly rate of compensation or salary at CAE; [he] can do this by providing [his] tax returns or other official documentation." Id.

CAE responded on March 21 with a two page explanation that contained generalized statements to support the claimed 354 hours spent on the protest. Agency Response to Cost Claim, Attach. 3, CAE Response to Agency, March 21,

¹ With respect to claims for protest costs, the Competition in Contracting Act caps reimbursement of attorneys' fees at \$150 hour, except in instances where the protester is a small business and a higher fee is justified. 31 U.S.C. § 3554(c)(2)(B).

2016, at 2-3.² For example, CAE's response stated: "Nov 27-Dec 6: 108 hours. Processed agency report and responded to agency report." Id. at 2. CAE explained that 354 hours was "an approximate estimate only" but was "very conservative" since CAE's owner spent 40 hours a week working on the protest from the time of filing to the receipt of the decision. Id. In addition, CAE stated that because the company is a sole proprietorship, its owner does not pay himself an hourly wage and there is nothing in his taxes that would show an hourly wage. Id. Therefore, the "\$150 rate is suggested by the government and should be adhered to for the sake of argument." Id.

On March 29, the agency informed CAE that the claim was still deficient because it did not provide sufficient detail to support the time expended and did not include documentation evidencing actual costs incurred. Agency Response to Cost Claim, Attach. 4, Army Letter to CAE, March 29, 2016, at 1. On April 4, CAE responded with a slightly more detailed breakdown of the time expended on the protest. In its response, CAE also stated, with respect to the rate of reimbursement, that it had been in contact with a procurement lawyer who quoted an hourly rate of \$400, and therefore, CAE believed that its own rate of "\$150 seems quite reasonable." Id., Attach. 5, CAE Response to Agency, April 4, 2016, at 1.

After at least one more communication between the parties, the Army filed its final response to the cost claim with our Office on April 25. Agency Response to Cost Claim at 1-7. The Army argued that CAE had failed to provide adequate supporting documentation for its claim and that the claim contains unallowable, excessive, or duplicative costs. Id. at 5-7. CAE responded with a revised invoice reflecting 221 hours for "Protest Sept. 30, 2015-Feb. 5, 2016" and 100 hours for "Response to Agency Report," for a total of 321 hours, still at a rate of \$150 per hour. CAE Response, Invoice, at 1. CAE included some detail about the time expended on the protest, including "8 hours a day for 20 days" from October 27 through November 16 to "process" the supplemental protest. CAE Response, May 3, 2016, at 2-4. CAE's response maintained that "[f]or the sake of argument [it] elected to utilize the standard rate of \$150/hour." Id. at 1. The protester provided no additional supporting documentation for the time expended or costs incurred.

Our Regulations provide for reimbursement, in appropriate circumstances, of reasonable proposal preparation and protest pursuit costs. 4 C.F.R. § 21.8(d). A protester seeking to recover its protest costs must submit evidence sufficient to support its claim that those costs were incurred and are properly attributable to filing and pursuing the protest. Ryan P. Slaughter--Costs, B-411168.4, Dec. 14, 2015, 2015 CPD ¶ 391 at 3. At a minimum, claims for reimbursement must identify and

² The March 21 response was sent to our Office and therefore we considered it a request that our Office recommend that CAE be reimbursed its costs of filing and pursuing its protest.

support the amounts claimed for each individual expense (including cost data to support the calculation of claimed hourly rates), the purpose for which that expense was incurred, and how the expense relates to the protest before our Office. Ryan P. Slaughter--Costs, supra; International Program Group, Inc.--Costs, B-400278.4, B-400308.4, June 22, 2009, 2009 CPD ¶ 128 at 3. The burden is on the protester to submit sufficient evidence to support its claim; that burden is not met by general, inadequately-supported statements that particular costs have been incurred. Ryan P. Slaughter--Costs, supra; Aztec Dev. Co.--Costs, B-270275.2, Feb. 13, 1997, 97-1 CPD ¶ 73 at 2. Failure to file an adequately-supported claim in a timely manner will result in the loss of the protester's right to recover costs. Ryan P. Slaughter--Costs, supra at 1-2; Wind Gap Knitwear, Inc.--Costs, B-251411.2, B-251413.2, Aug. 30, 1995, 95-2 CPD ¶ 94 at 3 (claim that lacks detail is denied).

Although we do not doubt that the protester spent time preparing the protest and other pleadings, CAE has nonetheless failed to provide any documentation or detail sufficient to support the claimed 321 hours spent on the protest. Rather, CAE's owner asserts that he "did not take any notes about the time spent on which day doing what" and therefore provides mostly generalized statements that he spent, for example, 16 hours in conversations with the agency from September 30-October 2; and 8 hours a day for 20 days where he "[p]rocessed and contemplated" the award, engaged in conversations with the agency, and compiled the supplemental protest. CAE Response, May 3, 2016, at 1-5.

In addition, the claim does not provide any cost data to support the calculation of the rate of \$150 per hour for CAE's owner. Furthermore, repeated requests by the agency for the protester to provide a more detailed accounting of its efforts did not yield any further information.

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 claimed efforts, and to establish that the claimed hourly rates reflect actual rates of compensation. Ryan P. Slaughter--Costs, supra at 4; International Program Group, Inc.--Costs, supra. Given the complete lack of documentation, we cannot recommend that the Army reimburse the costs sought by CAE because the claim does not meet the established minimum standards. Ryan P. Slaughter--Costs, supra; Wind Gap Knitwear, Inc.--Claim for Costs, supra.

The request is denied.

Susan A. Poling
General Counsel