



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Gulf Gas Utilities Co.--Claim for Costs

File: B-242650.7

Date: February 13, 1997

Laurie M. Heasley for the protester.

Gregory H. Petkoff, Esq., and Monica Ceruti, Esq., Department of the Air Force, for the agency.

Wm. David Hasfurther, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Claim for costs of filing and pursuing a successful protest and reconsideration request, including attorneys' fees, is allowed for that portion of the claim for which the protester has provided sufficiently detailed documentation to support the claim.

DECISION

Gulf Gas Utilities Co. requests payment of \$47,864.95 in expenses incurred in pursuing its protest, and in replying to the agency's request for reconsideration of our decision on the protest, concerning a Randolph Air Force Base, Texas, sole source procurement for public utility service. We sustained the protest in Gulf Gas Utilities Co.; Krystal Gas Mktg. Co.; Commercial Energies, Inc., 70 Comp. Gen. 497 (1991), 91-1 CPD ¶ 482, recon. denied, B-242650.4, Oct. 28, 1991, 91-2 CPD ¶ 380. The amount claimed consists of \$12,519.64 in personnel costs, \$32,610.55 in overhead costs, and \$2,740.76 in miscellaneous costs (attorneys' fees, telephone calls, postage, and similar expenses). We determine that Gulf Gas is entitled to recover \$9,514.28.

The agency contends that reimbursement of only the \$2,338.60 in attorneys' fees actually paid by Gulf Gas should be allowed since a claimant cannot--or should not be able to--recover in-house expenses. The agency argues that in any event the claim, except for legal expenses, was not sufficiently detailed. It points out that Gulf Gas submitted only notes, handwritten entries on a daily reminder calendar diary, and various copies of receipts and invoices for expenses allegedly incurred as

a result of the protest. These, the agency argues, did not substantiate Gulf Gas's claimed expenses. The agency points out that Gulf Gas admits that it did not keep "precise track" of the costs incurred by its personnel on the protest.¹

We permit the recovery of in-house labor costs incurred in relation to a sustained protest where the in-house labor costs directly relate to the protest. The direct labor rate may be burdened by the indirect costs rate to arrive at the reimbursable amount. See Hydro Research Science, Inc.--Claim for Costs, 68 Comp. Gen. 506 (1989), 89-1 CPD ¶ 572. Reimbursement of costs is allowed where the protester has submitted sufficient documentary evidence to support them and where these costs, once sufficiently proven, are shown to be reasonable and necessary to or otherwise related to the actual protest. Commerce Land Title of San Antonio, Inc.--Claim for Costs, B-249969.2, Oct. 11, 1994, 94-2 CPD ¶ 131.

The internal corporate labor costs (corporate executive staff) claim consist of the hours of its president, vice president of Finance, and another vice president. Gulf Gas's summary of the president's and vice president of Finance's labor hours devoted to the protest is supported only by the assertion that its president spent 74.36 hours and its vice president of Finance 12 hours working on the protest. There is no documentation supporting the validity of these hours other than a calendar diary, which showed only that Gulf Gas's president spent 1 hour on the protest. Gulf Gas reports in its claim submissions that its president reviewed the filings provided by our Office and took other actions relevant to the protest, and that its vice president of Finance reviewed the Department of the Air Force's gas purchases from the proposed awardee and developed a spreadsheet for analyzing the cost of that gas. 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 protests. Diverco, Inc.--Claim for Costs, B-240639.5, May 21, 1992, 92-1 CPD ¶ 460. The statement of hours claimed and the assertion that it is correct with nothing more to

¹The agency also argues that since Gulf Gas did not file a claim for its costs with the agency until December 11, more than 60 days after the issuance of our decision, its request for costs is untimely and should be dismissed. The 60-day requirement in 4 C.F.R. § 21.6(e) (1996) became effective on April 1, 1991, and was inapplicable to protests filed, as here, before that date. Hadson Defense Sys.--Claim for Protest Costs, B-227285.8, Mar. 13, 1991, 91-1 CPD ¶ 274. The protester was required to--and did--file its claim in a reasonably prompt manner. Custom Prod. Mfg., Inc.--Recon., B-235431.8, July 21, 1995, 95-2 CPD ¶ 40.

establish that the hours of these two officers relate to the protest is insufficient evidence that this work actually occurred or that it was necessary and relevant to the protest. We allow the reimbursement of \$71.26 for the hour that was shown on the calendar diary to have been spent on the protest by Gulf Gas's president.

Gulf Gas requests reimbursement for 256.4 hours spent by its other vice president on the protest and reconsideration request. The calendar diary submitted by Gulf Gas does not show that 2 hours claimed for April 19 and 2 hours claimed for June 15, 1991, were incurred. For the remaining 252.4 hours, we believe that the calendar diary with its daily notations of the hours spent pursuing protest matters, which is consistent with periods prior and up to the date of filings of submissions by Gulf Gas to our Office, provides adequate support for reimbursement of these costs.

While the hours claimed represent a significant amount of time, this protest was pursued pro se, primarily by the vice president. In addition to the usual protest requirements, this protest also required the protester to review a detailed consultant report used to justify the agency's decision and to research the contractual and regulatory obligations of the proposed awardee and the agency. Under the circumstances, we think the claimed hours are reasonable. Accordingly, reimbursement for the vice president's hours (and the 1 hour for the president) may be made in the amount of \$7,175.68 based on the salaries of these officers. Regarding Gulf Gas's claim for reimbursement of its attorneys' fees, we agree with the agency that it would be proper to reimburse Gulf Gas its attorneys' fees of \$2,338.60. For other miscellaneous costs submitted by Gulf Gas, the lack of supporting documentation precludes payment of these additional amounts of \$402.16.

Accordingly, we conclude that Gulf Gas is entitled to recover a total of \$9,514.28 for the cost of pursuing its protest, including attorneys' fees, plus an appropriate amount for overhead. We make no finding regarding the 2.6 factor (260 percent) that Gulf Gas contends should be applied to its in-house costs because we understand that the reasonableness of the application of this factor was never considered by either the agency or the Defense Contract Audit Agency (DCAA), which audited the claimed costs for the agency.² The agency should determine the appropriate overhead factor to be applied to the costs that we have allowed, through DCAA assistance or otherwise, and pay the protester accordingly.

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²We have confirmed that DCAA did not resolve the overhead issue.