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Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Bay Tankers, Inc.--Claim for Bid Protest Costs

**File:** B-238162.4

**Date:** May 31, 1991

William A. Shook, Esq., Preston Gates Ellis & Rouvelas Meeds, for the protester.  
Tim P. Roark, Maritime Administration, for the agency.  
C. Douglas McArthur, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

Attorneys' fees claimed by prevailing protester are determined reasonable, and thus are allowable, where the hourly rates are within bounds of rates charged by similarly situated attorneys, and the hours claimed are properly documented and do not appear to be excessive.

## DECISION

Bay Tankers, Inc. requests that the General Accounting Office (GAO) determine the amount it is entitled to recover from the Maritime Administration for filing and pursuing its prior protest. We determine that Bay Tankers is entitled to recover total costs of \$19,002.40.

In Bay Tankers, Inc., 69 Comp. Gen. 403 (1990), 90-1 CPD ¶ 389, we sustained Bay Tankers' protest against the exclusion of its proposal from the competitive range under request for proposals (RFP) No. DTMA91-89-R-90016. The solicitation concerned ship management services for the ready reserve fleet. The protester contended that the agency improperly evaluated its technical proposal as unacceptable and in a manner inconsistent with the statement of work. We found that the agency had improperly excluded the proposal based on its relative technical ranking, without consideration of price, in violation of Federal Acquisition Regulation § 15.609(a) (FAC 84-16). We held that the protester was entitled to recover its costs of filing and pursuing the protest, including attorneys' fees.

The protester seeks \$19,667.80, including \$18,911.80 in attorneys fees--\$17,080.50 that the protester paid for attorneys' time in pursuing the protest and \$1,831.30 paid in out-of-pocket attorneys' expenses. In addition, the protester claims \$756.00, for the travel expenses of corporate officers who attended a conference at the GAO building in Washington, D.C. The agency has agreed to allow \$11,906.90 of the amount for filing and pursuing the protest and has offered the protester payment for this sum; the protester disagrees with the agency and has requested our Office to determine the amount of entitlement pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.6(e) (1991).

The protester claims that it incurred legal fees as follows: 17.1 hours of partner time at a rate of \$300.00 per hour, \$5,130.00; 1 hour of senior litigator time at \$225.00 per hour; 75.2 hours of senior associate time, beginning at \$135.00 per hour and increasing to \$150.00 per hour in 1990, for totals of \$2,092.50 (15.5 hours) in 1989 and \$8,955.00 (59.7 hours) in 1990, \$11,047.50 altogether;<sup>1/</sup> and 2.4 hours of junior associate time at \$95 per hour, \$228.00.

The agency argues first that hours billed after February 22, 1990, when the protester filed its comments on the agency report and our Office closed the record in the case, do not represent time spent in pursuit of the protest. Furthermore, the agency believes that our decision in Princeton Gamma-Tech, Inc.--Claim for Costs, 68 Comp. Gen. 400 (1989), 89-1 CPD ¶ 401, which allowed recovery at a rate of \$195.00 per hour for partners and \$95.00 per hour for associates, establishes that adjusted for inflation, a rate of \$220.00 per hour for partners and \$100.00 for associates is reasonable. The agency therefore determines the allowable costs as follows: 13.2 hours of partner and senior litigator time, \$2,904.00; 72.3 hours of associate time, \$7,230.00; and 2.4 hours at \$95.00, \$228.00, for a total of \$10,362.00, based on the agency's determination of reasonableness.

A protester seeking to recover its bid or proposal preparation costs or the cost of pursuing its protest must submit sufficient evidence to support its monetary claim. Malco Plastics, B-219886.3, Aug. 18, 1986, 86-2 CPD ¶ 193. The amount claimed may be recovered to the extent that the claim is adequately documented and is shown to be reasonable; a cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the pursuit of its protest. Patio Pools of Sierra Vista, Inc.--Claim for Costs, 68 Comp. Gen. 383 (1989), 89-1 CPD ¶ 374.

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<sup>1/</sup> The protester claims \$11,497.50 but its documentation only supports \$11,047.50 of this sum.

The protester has submitted evidence showing the rates which it paid and the hours for which it was billed; the agency does not contest this evidence, disputing only the reasonableness of the fees and the relation of the hours billed to the filing and pursuit of the protest.

Our acceptance of rates of \$195.00 per hour for partners and \$90.00 for associates in Princeton Gamma-Tech, Inc.--Claim for Costs, 68 Comp. Gen. at 402, 89-1 CPD ¶ 401 at 3, does not establish a ceiling for such rates. In Meridian Corp.--Claim for Bid Protest Costs, B-228468.3, Aug. 22, 1989, 89-2 CPD ¶ 165, we accepted a rate of \$130.00 per hour for senior associates as reasonable, and we believe that this finding supports a conclusion that a rate of \$150.00 per hour, billed approximately 2 years after the Meridian Corporation protest, is also reasonable. We therefore find the protester is entitled to recover an amount of \$10,612.50 for associate time up to the filing of protest comments.

In support of the rates paid for services of the senior partner, the protester has submitted a copy of a December 10, 1990, article from the Washington, D.C. Legal Times, showing a range of senior partner rates at local law firms, from \$165.00 per hour to \$400.00 in certain instances. Of 13 firms surveyed, eight charged rates of \$300.00 per hour or higher and four of the remaining five charged a top rate within \$15.00 of that figure; the lowest rate for a senior partner was \$250.00 per hour. The record here shows that the senior partner is a recognized authority on ocean shipping issues, a former counsel to the U.S. Senate Committee on Commerce and an advisor to the Carter and Reagan transition committees. The attorney for the protester has certified that the rates claimed are the normal and customary rates charged for such matters, and the agency does not challenge this assertion. We have no basis for concluding that the protester's decision to pay a rate of \$300.00 per hour was other than reasonable and prudent.

We find that the reasonable amount of fees incurred in filing and pursuing the protest, prior to submission of comments and closing of the record are as follows: senior partner, 12.7 hours at \$300.00, \$3,810.00; senior litigator, .5 hour at \$225.00, \$112.50; associates, 2.4 hours at \$95.00 per hour, \$228.00, 15.5 hours at \$135.00 per hour, \$2,092.50, 56.8 hours at \$150.00 per hour, \$8,520.00, total associate billing, \$10,840.50; total, \$14,763.00.

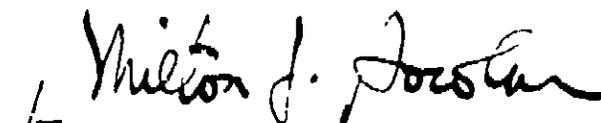
We find no basis for excluding charges arising after February 22, 1990, when the protester filed its comments; we have previously recognized that at least to some extent, the filing and pursuit of a protest includes the need for periodic status checks, analysis of the ultimate decision and some

explanation and consultation with the client. See Meridian Corp.--Claim for Bid Protest Costs, B-228468.3, supra, 89-2 CPD ¶ 165 at 3. We find that the protester is entitled to recover amounts paid for such time, as follows: 4.4 hours of senior partner time at \$300.00 per hour, \$1,320.00, .5 hour of senior litigator time at \$225.00 per hour, \$112.50, and 1.9 hours of associate time at \$150.00 per hour, \$285.00, a total of \$1,717.50, for a total in reasonable attorneys' fees incurred in filing and pursuing the protest of \$16,480.50. We find that an additional hour of senior associate time charged to the protester for withdrawing a supplemental protest and preparing a claim is not allowable. See Hydro Research Science, Inc.--Claim for Costs, 68 Comp. Gen. 506 (1989), 89-1 CPD ¶ 572.

The protester's attorney has also billed \$1,831.30 for out-of-pocket expenses related to the protest. The agency believes that \$58.40 of this amount, for a lunch meeting on December 19, is not reimbursable, and we agree. See Princeton Gamma-Tech, Inc.--Claim for Costs, 68 Comp. Gen. at 403, 89-1 CPD ¶ 401 at 4. We therefore find the protester entitled to reimbursement for an additional \$1,772.90, for a total of \$18,253.40 in attorneys' fees and expenses.

The protester has submitted a claim and documentation to show that its corporate officers expended \$756.00 in travel expenses to the protest conference in Washington, D.C. Except for a \$7.00 charge for food, we find these amounts reasonable and allowable, for an additional recovery of \$749.00.

In sum, we determine that the protester is entitled to recover \$19,002.40, consisting of \$18,253.40 that Bay Tankers paid in attorneys' fees and out-of-pocket expenses and \$749.00 that its officers spent in pursuing the protest.

  
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