



Comptroller General  
of the United States  
Washington, D.C. 20548

## Decision

**Matter of:** John Peeples--Claim for Costs  
**File:** B-233167.2  
**Date:** August 5, 1991

John Peeples for the protester,  
Vicki E. O'Keefe, Esq., Department of the Navy, for the  
agency.  
Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq.,  
Office of the General Counsel, GAO, participated in the  
preparation of the decision.

### DIGEST

1. Where a protester, seeking the recovery of his protest costs, fails to adequately document his claim to show that the hourly rates, upon which his claim is based, reflect the employee's actual rate of compensation plus reasonable overhead and fringe benefits, the claim for costs is denied.
2. Claim for bid preparation costs is disallowed where the protester was not awarded bid preparation costs in a General Accounting Office decision sustaining the protest and did not timely request reconsideration of the decision when he learned he would not receive award as conditionally recommended by the decision.

### DECISION

John Peeples requests that our Office determine the amount that he is entitled to recover from the Department of the Navy for his costs of filing and pursuing his protest in John Peeples, B-233167, Feb. 21, 1989, 89-1 CPD ¶ 178.

We deny Mr. Peeples' claim for costs.

In our prior decision, we sustained Mr. Peeples' protest of the award to W.A. Hunt Construction Co., Inc. under invitation for bids (IFB) No. N62467-88-B-4055 for the construction of a car garage, because we found improper the Navy's rejection of Mr. Peeples' bid as nonresponsive on the grounds that one of Mr. Peeples' sureties was a government employee. We recommended that the agency make award to Mr. Peeples, if otherwise appropriate, and found that the protester was entitled to the costs of filing and pursuing his protest.

Performance of Hunt Construction's contract was not suspended pending our decision in this matter, and the contract was nearly complete by the date of our decision. Accordingly, the Navy did not award a contract to Mr. Peeples.

Shortly after our decision was issued, Mr. Peeples submitted his claim to the Navy for \$16,000. This amount represents 160 hours of Mr. Peeples' time at \$100 per hour. No further explanation or documentation was submitted to the agency in support of the claim. The Navy requested that Mr. Peeples provide documentation supporting his claim, including wage rate and overhead information.

Mr. Peeples subsequently provided to the Navy a breakdown of the time spent pursuing the protest; this showed that Mr. Peeples had spent 200 hours pursuing the protest (including 32 hours for travel to Washington D.C. and Columbia, South Carolina) and that Mr. Peeples' claim was based upon a \$100 per hour rate, which Mr. Peeples states is the "going rate in this area."

The Navy again requested that Mr. Peeples provide wage rate and overhead information to support his claim. Mr. Peeples provided no further information and requested payment of \$20,303.77, which consists of the \$16,000 originally claimed with interest.

On May 14, 1991, Mr. Peeples requested that our Office resolve his claim pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.6(e) (1991). Specifically, Mr. Peeples requests reimbursement of \$16,000 plus interest of 18 percent per year for his protest costs and \$3,938.40 for his bid preparation costs.<sup>1/</sup>

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<sup>1/</sup> In his response to the agency's statements concerning Mr. Peeples' request that we determine the amount of costs to which the protester is entitled, Mr. Peeples, for the first time, has requested reimbursement of \$797.80 for his automobile mileage, lodging, and meals expenses. There is no indication that these costs were ever submitted to the agency for its review, even though his initial claim was filed with the agency in March of 1989, and we decline to review them de novo, where, as here, the protester's actions deprived the agency of a meaningful opportunity to review the claimed costs. See Patio Pools of Sierra Vista, Inc.--Claim for Costs, 68 Comp. Gen. 383 (1989), 89-1 CPD ¶ 374.

A protester seeking to recover the costs of pursuing a protest or preparing a proposal or bid must submit sufficient evidence to support the monetary claim. Data Based Decisions, Inc.--Claim for Costs, 69 Comp. Gen. 122 (1989), 89-2 CPD ¶ 538. 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 employees' claimed efforts and to establish that the claimed hourly rates reflect the employees' actual rates of compensation plus reasonable overhead and fringe benefits. W.S. Spotswood & Sons, Inc.--Claim for Costs, 69 Comp. Gen. 622 (1990), 90-2 CPD ¶ 50.

The documentation submitted to the Navy and to our Office does not demonstrate that Mr. Peeples' claimed hourly rate reflects actual rates of compensation plus reasonable overhead and fringe benefits.<sup>2/</sup> Rather, the record indicates that the hourly rate represents a "market rate," which presumably includes profit as an element of the rate.

A protester may not recover profit on its own employees' time in filing and pursuing protests or preparing bids or proposals, and therefore claimed rates must be based upon actual rates of compensation, plus reasonable overhead and fringe benefits, and not market rates. See W.S. Spotswood & Sons, Inc.--Claim for Costs, 69 Comp. Gen. 622, *supra*. Although Mr. Peeples has submitted evidence that \$100 per hour is his market rate, he has not provided any evidence to demonstrate that his claimed hourly rates are based upon actual rates of compensation plus overhead and fringe benefits and that these rates do not include profit.<sup>3/</sup> Thus, Mr. Peeples' claimed protest costs, based upon market rates, are denied. *Id.*

Mr. Peeples also requests reimbursement of \$3,938.40 for his costs of bid preparation, which Mr. Peeples calculated by multiplying his \$78,768 bid price by a "standard five percent bid preparation" factor. The agency objects to the reimbursement of these costs on the basis that we did not

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<sup>2/</sup> The record also does not demonstrate the reasonableness of the amount Mr. Peeples' claimed hours in pursuing the protest. We need not address this matter, because Peeples failed to show that his claimed hourly rates reflect actual rates of compensation plus reasonable overhead and fringe benefits, and his claim is denied on this basis.


<sup>3/</sup> For example, Mr. Peeples could have submitted a copy of his federal income tax return. See Ultraviolet Purification Sys., Inc.--Claim for Costs, B-226941.3, Apr. 13, 1989, 89-1 CPD ¶ 376.

award Mr. Peeples bid preparation costs in our decision and that Mr. Peeples failed to document that this amount reflects Mr. Peeples' actual out-of-pocket expenses.

We agree that Mr. Peeples' claim for bid preparation costs should not be allowed. We did not award the costs of bid preparation to Mr. Peeples in the prior decision, and his claim for these costs more than 2 years after the date of the decision and after the date when Mr. Peeples learned that he would not receive award in accordance with our recommendation is untimely. Data Based Decisions--Claim for Costs, 69 Comp. Gen. 122, supra. In any event, a protester is only entitled to recover his actual incurred and reasonable costs of bid or proposal preparation. Hydro Research Science, Inc.--Claim for Costs, 68 Comp. Gen. 497 (1989), 89-1 CPD ¶ 572. The use of a percentage factor to calculate a protester's bid or proposal preparation costs is not appropriate because the costs claimed do not reflect the actual expenses incurred by the protester in preparing the bid or proposal.

Finally, Mr. Peeples' claim for interest on his claim for protest costs is not reimbursable since payment of interest on such claims is not authorized by any statute. Ultraviolet Purification Systems, Inc.--Claim for Bid Protest Costs, B-226941.3, supra.

The claim for costs is denied.

  
for James F. Hinchman  
General Counsel