



Comptroller General
of the United States

Washington, D.C. 20548

G. Petrovito

Decision

Matter of: John Peeples--Reconsideration
File: B-233167.3
Date: December 9, 1991

John Peeples for the protester.
Guy R. Petrovito, Esq., and James A. Spangenberg, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Reconsideration request of denial of a claim for the costs for filing and pursuing the protest and other protest expenses is denied, where the claimant disagrees with the prior decision, which found that the claimed hourly rate was not based upon actual rates of compensation, but does not provide any information to show that the hourly rate was based upon actual costs or compensation.

DECISION

John Peeples requests reconsideration of our decision in John Peeples--Claim for Costs, B-233167.2, Aug. 5, 1991, 70 Comp. Gen. ____, 91-2 CPD ¶ 125, in which we denied Mr. Peeples's claim for protest costs.

We deny the request for reconsideration.

In John Peeples, B-233167, Feb. 21, 1989, 89-1 CPD ¶ 178, we sustained Mr. Peeples's protest of the award to W.A. Hunt Construction Co., Inc. under invitation for bids No. N62467-88-B-4055 issued by the Department of the Navy for the construction of a car garage. We recommended that the Navy make award to Mr. Peeples, if otherwise appropriate, and found that the protester was entitled to the costs of filing and pursuing the protest.

Shortly after our decision was issued, Mr. Peeples submitted his claim for costs to the Navy for \$16,000, which represented 160 hours of Mr. Peeples's time at \$100 per hour. Mr. Peeples and the agency were unable to agree on the amount to which he was entitled to recover, and 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 requested reimbursement of \$16,000

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plus interest of 18 percent per year for his protest costs and \$3,938.40 for his bid preparation costs. In addition, in response to the Navy's statements concerning Mr. Peeples's request that we determine the amount of costs to which he was entitled, Mr. Peeples requested reimbursement of \$797.80 for his automobile mileage, lodging, and meals expenses associated with the pursuit of the protest.

In John Peeples--Claim for Costs, B-233167.2, supra, we denied Mr. Peeples claim for his protest costs because Mr. Peeples had failed to establish that his claimed hourly rate of \$100 per hour was based upon actual rates of compensation, plus overhead and fringe benefits. We also denied Mr. Peeples's claim for reimbursement of his protest expenses (meals, travel, and lodging) because these costs had never been submitted to the agency for its review. We finally denied Mr. Peeples's claim for bid preparation costs because we had not awarded bid preparation costs to the protester in John Peeples, B-233167, supra, and his request for these costs, more than 2 years after the date of our initial decision, was untimely.

Upon reconsideration, Mr. Peeples argues that we erred in questioning his claimed hourly rate and claim for reimbursement of protest expenses. Mr. Peeples asserts that the Navy had not questioned these aspects of his claim, and that, in any event, his claimed hourly rate represents a wage rate that established the "value" of his time. Mr. Peeples also argues that we erred in finding that his claim for meals, travel and lodging expenses had never been submitted to the Navy for its review. Finally, Mr. Peeples complains that we erred in failing to determine the amount of bid preparation costs to which he is entitled and argues that the decision of the United States District Court for the District of South Carolina in Peeples v. Ball et al., C/A No. 2:89-0565-18J (Apr. 11, 1991), directed us to find the protester entitled to reimbursement of its bid preparation costs.¹

¹On March 8, 1989 (after our original decision sustaining its protest), the protester filed an action in the United States District Court for the District of South Carolina seeking declaratory and injunctive relief on the basis that the Navy had improperly awarded a contract to Hunt and that the agency had improperly failed to suspend performance of Hunt's contract pending our decision in the matter in accordance with the Competition in Contracting Act of 1984, 31 U.S.C. § 3553(d)(1) (1988). On April 11, 1991, the court granted summary judgment in favor of the government and dismissed the case.

To obtain reversal or modification of a decision, the requesting party must convincingly show that our prior decision contains either errors of fact or law or information not previously considered that warrants its reversal or modification. Gracon Corp.--Recon., B-236603.2, May 24, 1990, 90-1 CPD ¶ 496. Repetition of arguments previously made and disagreement with our decision does not satisfy this standard. See R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

Mr. Peeples complains that we should not have questioned his claimed hourly rate and protest expenses where the agency had not questioned these aspects of the protester's claim. We do not agree that our review of the record is restricted to matters specifically raised by the agency; rather, we will review the entire record to determine whether a particular claim should be allowed. See Omni Analysis--Claim for Bid Protest Costs, 69 Comp. Gen. 433 (1990), 90-1 CPD ¶ 436. In any event, contrary to Mr. Peeples's assertion, the Navy specifically questioned his claimed hourly rate, requesting that the protester establish that his claimed rate represented actual rates of compensation and not a "market rate." Also, the Navy had no opportunity to question Mr. Peeples's travel expenses, since he did not make this claim until after the agency responded to his claim to our Office.

Mr. Peeples continues to argue that his claimed hourly rate represents the actual "value" of his time. In this regard, Mr. Peeples again refers to a "certification of wage rate" that the protester submitted to us in support of his claim. This document states that during 1988 Mr. Peeples worked 2 hours per month at \$100 per hour for another contractor. As indicated in our prior decision, this document does not demonstrate that the claimed hourly rate reflects actual rates of compensation plus reasonable overhead and fringe benefits, but confirms that the claimed rate represents a market rate, including profit as an element of the rate.² While Mr. Peeples disagrees with our decision, he has failed to provide any further information to establish that his claimed hourly rate represents actual compensation, despite being repeatedly advised of his obligation to substantiate his claim.

Mr. Peeples also argues that we erred in finding that his claimed protest expenses (meals, travel, and lodging) had never been submitted to the agency. It is true that Mr. Peeples in documenting his claim for 160 hours of time indicated to the agency that he had made trips to Washington, D.C., and to Columbia, South Carolina. This

²As stated in our prior decision, Mr. Peeples referred to this rate as the "going rate in this area."

documentation, however, does not state that the protester incurred any expenses for travel, meals or lodging, nor did he request reimbursement from the agency for these expenses. Accordingly, we correctly found that the protester's claim for these expenses had never been submitted to the agency for its review, and should not be reimbursed as they were only claimed after the agency submitted a report on Mr. Peeples's claim.

Mr. Peeples also argues that the United States District Court for the District of South Carolina in Peeples v. Ball et al., supra, directed us to find the protester entitled to recovery of his bid preparation costs. The court did not find Mr. Peeples entitled to bid preparation costs or direct our payment of those costs.

The request for reconsideration is denied.

for Robert P. Murphy
James F. Hinchman
General Counsel