



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

## Decision

**Matter of:** Maintenance and Repair--Claim for Costs

**File:** B-251223.4

**Date:** June 24, 1994

G. Michael Van Alstine for the protester.  
Theresa M. Young, Esq., Department of the Navy, for the agency.  
Christine F. Davis, Esq., Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Claim for protest costs is denied where the protester did not submit sufficient documentation evidencing the amount or purposes of claimed employees' efforts in pursuit of the protest, did not establish that the claimed hourly rates reflected actual compensation plus reasonable overhead and fringe benefits, and did not segregate allowable from unallowable costs.

### DECISION

Maintenance and Repair requests that we determine the amount it is entitled to recover from the United States Marine Corps, for the costs of filing and pursuing its protest in Maintenance and Repair, B-251223, Mar. 19, 1993, 93-1 CPD ¶ 247.

In our prior decision, we found that while the Navy properly rejected Maintenance's bid as nonresponsive, it should also have rejected the awardee's bid as nonresponsive, since both bidders failed to submit adequate descriptive literature required to establish their products' compliance with the IFB requirements. Because we sustained Maintenance's protest as it related to the awardee's bid, we found that the protester was entitled to recover its costs of filing and pursuing the protest. 4 C.F.R. § 21.6(d) (1994). We advised the protester to submit its claim for such costs directly to the agency within 60 days of receipt of our decision. 4 C.F.R. § 21.6(e).

On April 17, Maintenance sent an invoice to the contracting agency claiming protest costs in the amount of \$3,540.75, and stated that the agency would be liable for interest on this amount (at a rate of 1.5 percent) if it failed to pay

the invoice within 30 days. Maintenance itemized three expenses to account for the total amount claimed: (i) \$3,514.80 for employee costs, representing 46.86 labor hours at \$75.00 per hour, (ii) \$8.00 for parking expenses, and (iii) \$17.95 for postage and facsimile expenses. Maintenance's undocumented invoice did not identify when these expenses were incurred, what services were involved, who performed the services, or what wages were paid.

On May 17, the agency requested documentation to support the charges claimed on Maintenance's invoice, such as parking facility receipts, postage and fax receipts, or attorney's invoices. On May 25, Maintenance provided postal receipts totaling \$9.39. No other documentation was furnished, although Maintenance did explain how it incurred the \$14.00 facsimile costs and why it could not furnish parking facility receipts, because metered parking had been used. Maintenance provided no information or documentation concerning its claimed employee costs, except to state that attorney consultations were free. Maintenance also enclosed a revised invoice, which billed the agency for the additional expenses incurred in responding to this matter (2 labor hours at \$75.00 per hour, plus \$2.29 in postage), and charged the agency interest for failing to pay the original invoice within 30 days.

On June 17, the agency again advised Maintenance that it had not substantiated the bulk of its claimed expenses and provided detailed guidance regarding the type of documentation needed to support the claim. For example, the agency stated that the protester should obtain an attorney's invoice for any paid legal services, or describe the services it performed on its own behalf to justify the 46.86 hours claimed. The agency also requested documentation evidencing the basis for the \$75.00-labor rate, which it stated could include reasonable overhead and fringe benefits. The Marine Corps informed Maintenance that it would accept any customary and usual business records supporting the claimed labor hour estimate and wage rate. Finally, the agency explained that the protester was only entitled to costs incurred "in pursuit of the protest," not the costs incurred "in pursuit of this claim," which would preclude payment of the additional labor and postage costs appearing on the May 25 revised invoice.

The protester did not respond to the agency until November 2, when it submitted another revised invoice. Again, Maintenance provided none of the documentation requested by the agency to support the 46.86-labor-hour estimate or the \$75.00-labor rate. Maintenance also disregarded the agency's advice that costs incurred after resolution of the protest are not allowable, and charged the

agency for additional postage and 8 more labor hours, i.e., the "man-hours spent in additional paper work: such as the [revised invoice]; Congressional inquiries, additional billings, etc."

On December 6, the agency sent the protester a check for \$31.24 as the amount it was entitled to recover. This amount represented the postage, facsimile, and parking expenses that the protester had demonstrably incurred in pursuit of the protest. The agency denied the remainder of Maintenance's claimed protest costs, because a "blanket statement requesting payment for 46.86 man-hours [at] \$75.00 [per hour] is inadequate to show costs incurred in pursuit of the protest," and because the protester "failed to submit sufficient evidence to support [its] claim even after repeated requests for further documentation."

Maintenance served the agency with another revised invoice on December 30, which requested payment of all charges not reflected in the \$31.24 check and included several new charges not appearing on the previous invoices, such as additional postage, parking, and labor hours. In particular, Maintenance established a new labor hour estimate--76.5 hours instead of the 46.86 hours originally claimed--billed at the still undocumented \$75.00 rate. Maintenance provided a cursory breakdown of the tasks encompassed by its new labor hour estimate, such as 6 labor hours for congressional inquiries and 45.5 labor hours "to draft (17 letters)."<sup>1</sup> Maintenance did not date any of the tasks, nor isolate those tasks performed in preparation of the protest. In addition, Maintenance, for the first time, requested mileage costs in the amount of \$102.33, for "20 trips to [post office], lawyer, senators, library, office depot." The total amount claimed on the December 30 invoice was \$5,859.69, approximately \$2,300.00 more than originally claimed.

On January 4, 1994, Maintenance requested that we determine the amount of protest costs to which it was entitled. Maintenance also submitted another undocumented invoice to the agency on January 17, which increased its claim to \$6,425.95, based upon the labor expended since it filed its claim with our Office.

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. Ultraviolet Purification Sys., Inc.--Claim for Costs, B-226941.3, Apr. 13, 1989, 89-1 CPD ¶ 376. The amount claimed may be recovered to the extent that it is adequately

---

<sup>1</sup>Maintenance filed only three pleadings during its protest.

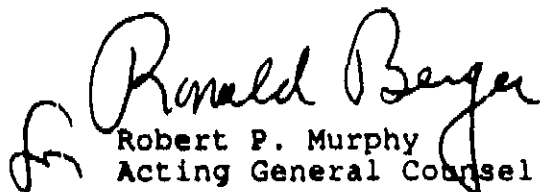
documented and shown to be reasonable. Patio Pools of Sierra Vista, Inc.--Claim for Costs, 68 Comp. Gen. 383 (1989), 89-1 CPD ¶ 374. Although we recognize that the requirement for documentation may sometimes entail certain difficulties, we do not consider it unreasonable to require a protester to document in some manner the amount and purposes of its employees' claimed efforts and establish that the claimed hourly rates reflect the employee's 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.

We find that, despite the Corps' repeated requests, Maintenance failed to submit sufficient evidence to support its monetary claims beyond the \$31.24 amount paid by the Corps. Specifically, Maintenance asserts that it is entitled to reimbursement, at the rate of \$75.00 per hour, for employees' time in pursuing the protest, but never identified which employee or employees were involved in pursuing the protest, the amount or purposes of the employees' claimed efforts, or how the \$75.00 per hour rate was calculated. Under the circumstances, Maintenance's claimed reimbursement for employee time is disallowed. W.S. Spotswood and Sons, Inc.--Claim for Costs, supra.

Another problem that undermines Maintenance's claim is the protester's failure to segregate the costs incurred in pursuing its protest from the costs incurred in pursuing its claim for costs or in contacting its congressional representatives, which are not allowable. Omni Analysis--Claim for Bid Protest Costs, 69 Comp. Gen. 433 (1990), 90-1 CPD ¶ 436. Despite the agency's advice that it was not entitled to costs incurred after the resolution of its protest, Maintenance lumped a variety of such costs into its claimed labor expenses and mileage expenses. To compound the problem, Maintenance, by stating, for example, that \$102.33 in mileage was claimed for "20 trips to (post office), lawyer, senators, library, office depot," provided no information that would permit us to estimate what fraction of the claimed costs is allowable and what fraction is not. Where a protester has aggregated allowable and unallowable costs into a single claim and we cannot determine from the record what portion of the claim is allowable and what portion of the claim is unallowable, the entire amount will be disallowed. See Stocker & Yale, Inc.--Claim for Costs, 72 Comp. Gen. 193 (1993), 93-1 CPD ¶ 387.

Finally, Maintenance is not entitled to reimbursement for interest on its claim for costs since the payment of interest on such claims is not authorized by any statute. See John Peoples--Claim for Costs, 70 Comp. Gen. 661 (1991), 91-2 CPD ¶ 125.

The claim for costs beyond the \$31.24 amount reimbursed by the Corps is denied.

  
Robert P. Murphy  
Acting General Counsel