



Decision

Matter of: Fritz Companies, Inc.--Claim for Costs
File: B-246736.7
Date: August 4, 1994

J. Michael Farrell, Esq., and James H. Roberts III, Esq., Manatt, Phelps, Phillips & Kantor, for the protester. Jonathan Silverstone, Esq., Agency for International Development, for the agency. Mary G. Curcio, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Attorneys' fees claimed by prevailing protester are allowable if they are adequately documented and reasonable. They may not be recovered, however, to the extent the hours incurred are excessive for the services performed or were incurred for research performed after the protester filed its comments on the agency report.
2. Attorneys' fees may not be recovered to the extent they were incurred for hours spent by a second attorney to review the protest file when no information or documents were required by General Accounting Office or for hours spent performing work which duplicates work performed by another attorney.
3. Attorneys' out-of-pocket expenses for document production--a per page fee charged for each document a secretary must type that is more than two pages in length--are disallowed since such costs should be included in the secretary's salary which is taken into consideration in the hourly rate the client is charged for attorney time.

DECISION

Fritz Companies, Inc. requests that our Office determine the amount it is entitled to recover from the Agency for International Development (AID) for its costs of filing and pursuing a protest in Fritz Cos., Inc., B-246736 et al., May 13, 1992, 92-1 CPD ¶ 443. As discussed below, we determine that Fritz is entitled to recover \$44,561.78 out of a total claim of \$67,899.28.

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In its protest, Fritz challenged the award of a contract to Daniel F. Young, Inc. under request for proposals (RFP) No. W-FA-91-011. We sustained the protest because we found that AID improperly awarded the contract to Young on the basis of initial proposals. We also found that by permitting Young to revise a provision of its subcontracting plan, AID engaged in discussions with Young and therefore was required to give the other competitive range offerors a similar opportunity to revise their proposals. We recommended that AID reopen the procurement, establish a competitive range, and hold discussions with the competitive range offerors. We also found that Fritz was entitled to recover the costs of filing and pursuing its protest. Fritz and AID have been unable to agree on the amount that Fritz is entitled to recover and Fritz now requests that our Office determine the amount of entitlement pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.6(f)(2) (1993).

Fritz requests reimbursement of \$67,899.28 for its costs of filing and pursuing its protest. This amount includes \$66,041.25 in attorneys' fees: \$40,062.50 for one partner working 160.25 hours at a rate of \$250 per hour (referred to in our decision as the first partner), \$25,918.75 for a second partner working 94.25 hours at a rate of \$275 per hour, and \$60 for a paralegal working 1 hour at a rate of \$60 per hour. The total claimed also includes \$1,858.03 for the out-of-pocket expenses of Fritz's attorneys. The hours claimed for the attorneys and the paralegal are documented by monthly billing statements which identify the services performed, the dates of performance, the time spent and the attorney or paralegal who performed the work. In addition, the law firm's managing partner has certified that the billing statements reflect services and hours performed on behalf of Fritz, that the hourly rates charged represent the standard hourly billing rates established by the firm and that the costs have been or will be billed to Fritz.

AID has made a variety of contentions concerning the sufficiency of the documentation supporting the claim, the reasonableness of the hourly rates charged by the attorneys, and the numbers of hours charged for what AID argues was a relatively simple matter decided on the written record. We have no basis to question the hourly rates charged by the protester's attorneys since the rates are within the bounds of rates charged by partners similarly situated. However,

as discussed below, we conclude that the claimed charges are not reasonably supported in many instances.

AID specifically contends that the time which Fritz's attorneys spent analyzing the GAO decision and explaining it to Fritz--8 hours for each of the two attorneys--is excessive. Fritz has not responded to this contention and we agree with AID. The decision was eight pages long; three of those pages comprised the facts and the remaining five pages discussed three issues. In our view, 16 hours at a cost of \$4,200 for reviewing and explaining this decision is excessive. Fritz may recover the costs of only 4 hours for each of the two attorneys. See Armour of Am., Inc.--Claim for Costs, 71 Comp. Gen. 293 (1992), 92-1 CPD ¶ 257 (where the hours spent by the protester's attorneys on researching and writing were excessive and we disallowed one-fourth of those hours).

AID also asserts that it should not be required to reimburse Fritz for the attorneys' fees for hours that were incurred in connection with an investigation by GAO auditors into the procurement at issue in the protest. We agree. Audits undertaken by GAO auditors are not part of GAO protest proceedings. Moreover, the investigation concerned allegations of a conflict of interest on the part of an AID contracting official, a matter which was not an issue in the protest proceedings. Thus, the costs incurred in connection with the investigation may not be recovered. See Diverco, Inc.--Claim for Costs, B-240639.5, May 21, 1992, 92-1 CPD ¶ 460. Accordingly, Fritz may not be reimbursed for 3.75 hours of partner time at \$275 per hour and 7 hours of

¹AID argues that it should not be required to reimburse the costs for Fritz's argument that the government did not properly evaluate its decision to enter into a no-cost contract and Fritz's allegation that a Young subcontractor violated a solicitation prohibition on representing foreign governments because these are issues which our Office did not sustain and which were independent of and not intertwined with the sustained issues. In our view, the issues raised by Fritz are not so distinct or severable as to constitute different protests. Rather, they were intertwined parts of Fritz's objection that AID improperly awarded the contract to Young. Under these circumstances, Fritz is entitled to recover the costs of the hours spent on these issues. Data Based Decision, Inc.--Claim for Costs, 69 Comp. Gen. 122 (1989), 89-2 CPD ¶ 538.

partner time at \$250 per hour which were incurred in connection with the investigation.²

We also conclude, based on our review of the record, that Fritz is not entitled to recover the cost of 2.5 hours of attorney time, at \$250 per hour, or 1 hour of a paralegal's time spent investigating the ownership of Pacific Cargoes, a subcontractor for Fritz. This research was conducted on April 8, after Fritz's comments on the protest were filed, and the protest record was closed. Accordingly, these services were not performed in pursuit of the protest. See Consolidated Bell, Inc., 70 Comp. Gen. 358 (1991), 91-1 CPD ¶ 325.

In addition, Fritz may not recover the cost of 61.25 hours set forth in the billing statements for the second partner. As we explain in detail below, the second partner spent numerous hours duplicating work that was performed by the first partner and numerous hours reviewing the protest file before the agency reports were due and when no information was required to be submitted to us. These hours were not reasonably spent in pursuit of the protest.³

Protester's are entitled to recover costs attributable to hours spent if they were reasonably necessary to the protest effort. Bay Tankers, Inc.--Claim for Bid Protest Costs, B-238162.4, May 31, 1991, 91-1 CPD ¶ 524. Protests filed by law firms generally are staffed with one partner and one or more associates. Associates generally are supervised by a partner and perform the day-to-day work on the protest, while the partner generally reviews the work of the associates. Here, however, the law firm retained by Fritz chose to staff the protest with two partners. Fritz' attorney explained this staffing decision by generally stating that in determining how to staff a legal project, the law firm considers not only the hourly billing rates of the attorneys involved in the project, but also the number

²Since the daily hours are not broken down by task, we have not allowed reimbursement for any block of time where there are charges associated with the investigation. See Omni Analysis--Claim for Bid Protest Costs, 69 Comp. Gen. 433 (1990), 90-1 CPD ¶ 436.

³The claim record shows that the first partner was primarily responsible for preparing and filing the initial and supplemental protests and the protest comments, for checking the status of the protests and generally for managing the protest. Consequently, we have considered the hours claimed by the first partner on these tasks as opposed to those spent by the second partner as reasonably spent in pursuit of the protest.

of hours it anticipates that each attorney, based on his or her experience, will require to accomplish certain aspects of the project. Concerning this protest, Fritz's attorney explained that the two partners that staffed the protest had the requisite experience in government contracts, agency procedures and the substantive freight forward issues involved in the protest.

We do not question the law firm's decision that representation in this protest required contributions by attorneys with expertise in the substantive areas. Nonetheless, the monthly billing statements show that the second partner spent numerous hours duplicating the work of the first partner and reviewing work performed by the first partner rather than on substantive work that might have required his particular expertise. The billing statement describes many of the second attorney's hours as "RW [review] PROTEST REGARDING USAID" or "RW USAID PROTEST," which is basically the identical description of the work done by the first partner. Thus, many hours spent in pursuit of the protest by the second partner were unnecessary or excessive, and, as discussed below, Fritz should not recover for the costs associated with those hours.

We first address the hours spent by the second partner reviewing the protest file. The initial protest was filed with our Office on January 6, 1992, and a supplemental protest was filed on January 16. Once the protests were filed, AID had 25 working days, or until February 12, for the first protest, and February 25 for the second protest, to file its protest reports. Bid Protest Regulations, 4 C.F.R. § 21.3(c) (1993). In fact, AID responded to both protests with a single report which Fritz received on February 18. The protester then had 10 working days to submit its comments on the report. 4 C.F.R. § 21.3(j). The protester submitted its comments on March 3 and because those comments raised new issues, we opened the comments as a third protest. The protester received the agency report on the third protest on April 1.

In each case, the billing statements include multiple hours which the second partner spent reviewing the protests after they were filed and before the agency reports were received and the comments were due and in the absence of any need for information from our Office. Thus, for example, after the first protest was filed on January 6, the second partner spent 1 hour each day on January 7, 8, and 9, reviewing the protest and 3 hours on January 10, reviewing the RFP "AND EFFECT ON AWARD." In total, the second partner spent 24.25 hours reviewing the protest file after the protests were filed and before the agency reports were received. Since comments were not due and no further information was

required or requested by our Office during the time the second partner spent reviewing the protest file, in the absence of an explanation from the attorney involved, we cannot conclude that it was reasonably necessary for the second partner to spend these hours in pursuit of the protest. Accordingly, Fritz⁴ may not recover the costs associated with these hours.

The billing statements also include hours incurred by the second partner after Fritz's comments were filed in response to the second agency report. The protester's comments on the second agency report were filed with our Office on April 7. Fritz should not recover its costs for 3.75 hours which the second partner spent on April 10, 23, and 30 to review the comments, on April 23 to review the protest record, and to engage in a telephone conference regarding the preparation of a response to AID. These hours were spent after the protester's comments were filed and there is no justification provided to demonstrate why they were reasonably and necessarily spent in pursuit of the protest. Accordingly, we find that they were not spent in pursuit of the protest; at the time the only role Fritz's attorney had was to wait for our decision and explain it to Fritz.

In addition, Fritz should not recover the costs of hours spent by the second partner on tasks which the first partner also performed. As explained, Fritz received the first agency report on February 18, and the second report on April 1. Although the first partner spent almost 30 hours to prepare and file comments in response to the first report and almost 15 hours to prepare and file comments on the second report, the record shows that the second partner spent 7 hours to prepare comments on the first report⁵ and 5.75 hours to prepare comments on the second report.⁵ Based on the billing statements and other submissions by

⁴Our Office does recognize that some review of the protest file may have been necessary during the course of the protest to inform the client or generally to stay knowledgeable about the protest. The first partner, who the record shows was primarily responsible for the protest, also spent over 50 hours reviewing the protest and we have allowed recovery for those hours. In addition, we have allowed recovery for 15 hours spent by the second partner on such tasks as conferring with the first partner, reviewing the amended protest, and reviewing the protective order issued in connection with the protest.

⁵Our conclusion that the second partner spent these hours preparing comments rather than reviewing comments prepared by the first partner is based on the notation "PP" in the billing statement which is defined as prepared.

Fritz, these 12.75 hours appear to duplicate hours that the first partner spent preparing report comments. In the absence of a justification for these hours, such as an explanation that the two partners worked on different substantive legal matters, we view these hours as unnecessary to the protest effort and Fritz may not recover these costs.

Similarly, Fritz should not recover the costs associated with 4 hours spent by the second partner preparing a response to a submission by an interested party since the first partner also performed this task. Nor should Fritz recover the costs of 1.5 hours which the second partner spent on April 14 to review the procedures regarding closing the file and further discovery proceedings since these hours also duplicate time the first partner spent on April 9 confirming that the protest file was closed.

Fritz should not be reimbursed payment for 1 hour that the second partner spent on February 3 in a conference, 1 hour on February 14 to review "USAID COMMENTS," and 2 hours on March 11 to check the status of the protest, take part in a conference with an unidentified person and take part in a conference with the first partner. The billing record does not identify with whom the conference took place on February 3 or the purpose of the conference and thus, we cannot conclude that the conference took place in pursuit of the protest. Regarding the AID "comments" reviewed on February 14, the protester received the agency's first report on February 18 and there is no record of any "comments" that the agency submitted to the protester. Regarding the 2 hours on March 11, again there is no indication with whom the first conference took place or the purpose of the conference, and there is no indication in the billing statement that the first partner with whom the second conference took place also was involved in a conference on that date.

Fritz also may not recover 11 hours spent on the protest by the second partner based on our view that these hours were excessive. While we recognize that every attorney can benefit from consultation with and review by another attorney, we do not believe it is reasonable for a partner to spend the same number of hours reviewing the work of a partner as he or she would spend reviewing the work of an associate. Thus, here, the first partner prepared the initial and supplemental protest and we do not believe it was reasonable for the second partner to spend 3 hours reviewing each of those submissions. See Armour of Am., Inc.--Claim for Costs, supra. Accordingly, the second partner may recover for reviewing each protest for 1 hour. Similarly, we will permit recovery for only one of the two hours that the second partner spent reviewing a motion to

produce documents prepared by the first partner. Finally, since the first partner reviewed the agency report, we will allow the second partner to recover for 3 hours rather than the claimed 9 hours for reviewing the report.

Also, based on the documentation submitted, Fritz may be reimbursed for its attorneys' out-of-pocket expenses for postage, reproduction, long-distance telephone charges, facsimile transmission costs, computer legal research, and secretarial overtime. The monthly billing statements support these charges. However, Fritz may not recover the costs of document production. Fritz's attorney explained to our Office that document production is essentially a per page fee that is charged to the client each time a secretary must type a document that is more than two pages in length. In our view, it is unusual for an attorney to separately charge for secretarial typing and, in the absence of an explicit agreement for the client to pay for such services, we do not believe that they are reasonable expenses to be paid by the government. The retainer Engagement Letter between Fritz and its attorneys provides that Fritz will be billed for costs such as travel, reproduction of documents, messenger service, and long distance telephone calls. It makes no reference to a per page typing fee. Our calculations show that for this protest the document production charges totaled \$927.50, and we disallow and subtract these costs from the \$1,858.03 total which Fritz has requested for out-of-pocket expenses.

In conclusion, we find Fritz is entitled to recover \$44,561.78. This consists of 146.75 hours of attorney time

billed at \$250 per hour, 25.25 hours of attorney time billed at \$275 per hour and \$930.53 in expenses.⁶

/s/ James F. Hinchman
for Comptroller General
of the United States

⁶AID also asserts that it should not be required to pay for the costs attributed to the hours spent by Fritz's attorney on an alleged breach by Young's counsel of the protective order issued in the case. We disagree. Our Bid Protest Regulations provide for the issuance of protective orders in protest proceedings to aid the protester and interested parties in bringing and defending a protest. Since the protective order was issued by this Office, we conclude that the costs related to applying to, administering and enforcing the order are reimbursable costs associated with the pursuit of the protest. See Diverco, Inc.--Claim for Costs, supra. Accordingly, we believe that Fritz should be reimbursed for the time its attorney spent on the protective order, including the time spent bringing alleged violations of it to our attention.