



Comptroller General
of the United States

Washington, D.C. 20548

154136

Decision

Matter of: McNeil Technologies, Inc.--Claim for Costs

File: B-254909.3

Date: April 20, 1995

James L. McNeil for the protester.
David R. Kohler, Esq., and John W. Klein, Esq., Small
Business Administration, for the agency.
Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Claim for costs of filing and pursuing a successful protest may only be recovered to the extent that costs are adequately documented and show not only that they were incurred, but the purposes for which they were incurred, and how the claimed costs relate to the protest.

DECISION

McNeil Technologies, Inc. requests that we determine the amount it is entitled to recover from the Small Business Administration (SBA) for the costs of filing and pursuing its protest in McNeil Technologies, Inc., B-254909, Jan. 25, 1994, 94-1 CPD ¶ 40.

We deny the claim.

BACKGROUND

On September 14, 1993, McNeil filed a protest in our Office challenging SBA's determination to accept into the 8(a) program a follow-on requirement to provide management support services for the Department of Health and Human Services's (HHS) State Legalization Impact Assistance Grant (SLIAG) program. McNeil, a small business and the incumbent then performing the required services, alleged that SBA unreasonably determined that the 8(a) award to another firm would have no adverse impact on McNeil.

We sustained the protest based on a finding that the SBA improperly failed to follow applicable regulations when it accepted the requirement into the 8(a) program. We recommended that consistent with its regulations, SBA properly determine whether including the requirement in the 8(a) program would have an adverse impact on McNeil.

We further recommended that if SBA concluded that acceptance of the requirement was inappropriate, the requirement not be retained in the 8(a) program and the contract that had been awarded to an 8(a) firm be terminated.¹ We also found that McNeil was entitled to the costs of filing and pursuing its protest. See 4 C.F.R. § 21.5(d)(1) (1995). We advised McNeil to file its claim "detailing and certifying" the time expended and costs incurred directly with the agency.

McNeil submitted its claim for costs to the agency by letter dated March 21, 1994.² Attached to that letter was a document entitled "SLIAG PROTEST HOURS AND COSTS," which contained monthly totals of the number of hours each of three McNeil employees spent pursuing the protest between July 1993 and March 1994, for a total of 965.25 hours; a total hourly rate that differed for each individual; subtotal costs calculated by multiplying the total number of hours spent by each of the three individuals by their corresponding hourly rate; and a total of \$64,836.38.

In another attachment entitled "SLIAG PROTEST CHRONOLOGY," McNeil listed in chronological order various events and activities that occurred between July 1993 and March 1994, ostensibly leading up to or related to the protest. For example, the six events listed for the month of July 1993, are described generally as follows:

- "07-07-93 McNeil speaks with SBA (Reynolds' substitute) about loss of contract, applicable FAR clauses, protest options, other resources/recourses.
- 07-08-93 McNeil calls SBA (Sawney), leaves voice mail.

¹By letter dated March 24, 1994, SBA informed our Office that a review of the matter in accordance with our recommendation revealed that acceptance of the requirement into the 8(a) program had an adverse impact on McNeil. HHS subsequently requested, however, that we modify our decision so as to delete the recommendation that the 8(a) contract that had been awarded be terminated because doing so would have been detrimental to the program. We agreed that terminating the contract was not appropriate, and modified our previous decision to delete the recommendation that HHS terminate the contract. Department of Health and Human Servs.--Modification of Remedy, B-254909.2, July 22, 1994, 94-2 CPD ¶ 40.

²McNeil initially submitted its claim to HHS. Given the particular circumstances in this case, however, SBA agreed to consider McNeil's claim. By letter dated April 13, HHS forwarded McNeil's claim to SBA.

07-09-93 McNeil gathers/copies SLIAG-related documents for SBA (Reynolds) and calls.
 07-10-93 McNeil researches SBA Regs/FAR/law for options.
 07-14-93 McNeil delivers SLIAG document package to SBA (Reynolds), reviewed package w/SBA (Reynolds).
 07-23-93 [HHS] offers 8(a) award to [another firm] for SLIAG work."

Similar entries appear for the months of August 1993 through March 1994. Except for total number of hours spent by its three employees during each month, however, McNeil did not identify what services were performed by which individuals; McNeil did not explain how its employees' efforts contributed to any of these events; and McNeil provided no explanation of how it had calculated the claimed hourly rates for its employees.

After reviewing the protester's initial correspondence, SBA concluded that McNeil had supplied insufficient details in support of the claim. Accordingly, on June 8, SBA requested that McNeil submit a more specific breakdown of the costs claimed. Rather than submitting a more detailed breakdown, however, by letter dated June 14, McNeil submitted to SBA copies of the same two documents described above that the firm had submitted earlier to HHS.

In a letter dated July 7, SBA informed McNeil that in the absence of more detailed and substantiated documentation, the agency was unable to consider the claim. SBA's letter provided detailed guidance regarding the type of documentation needed to support the claim. For example, SBA's letter stated that:

"The information presented by you does not enable [SBA] to make connections between the hours claimed for each individual and your chronology of protest-related events and activities. Thus, we have no way of determining what exactly the costs claimed constitute or whether they are reasonable. You have not, for instance, submitted a breakdown of the time spent on each protest-related task by each of the [three] named individuals. In addition, it appears that many of the events and activities that you list occurred prior to your 'pursuing the protest' at GAO, as required by regulation, and [those events and activities] are not specifically tied to the protest. Moreover, the 965.25 hours claimed in connection with the protest appear unreasonable for a protest of this nature.

"In order to further process your claim, this office requires that you submit a specific breakdown, hour-by-hour for each individual, of all costs that you claim in 'pursuing the protest' at GAO and any other specific or detailed information you deem relevant to support the claim."

In response, by letter dated July 29, McNeil submitted to SBA "revised cost data" in further support of its claim to include only items related to the protest in our Office. This submission essentially mirrors McNeil's previous submissions, except that McNeil deleted some of the entries from its chronological list of significant events, reducing the total number of hours claimed for its three employees from 965.25 to 849. McNeil also submitted for the first time two documents entitled "TIMESHEET HOURS FOR GAO PROTEST-RELATED ACTIVITIES," and "ESTIMATE OF TIME SPENT ON GAO PROTEST TASKS BY PARTICIPATING PERSONNEL," giving a further listing of hours its employees spent on activities grouped under these categories: (1) research, preparation and travel; (2) reviews and meetings; and (3) telephone contacts.

McNeil explained that during the period spanning the protest, McNeil accounted for time spent on protest-related issues activities only "in general," and not at the level of detail required by SBA to determine whether the costs claimed related to specific protest-related activities. McNeil went on to state that its time accounting system does not provide a "highly detailed record of exactly how much time" was spent on particular protest activities. In an effort to comply with SBA's request for more detailed information, McNeil asked its employees to review their time sheets and to "estimate how their time might reasonably [have been] allocated among the various protest activities" on any given day. The protester emphasized that "the result of that exercise is . . . simply a backward-looking estimate of how time may have been allocated among activities." (Emphasis in original.) The result of that "backward-looking" estimate is what McNeil submitted to SBA and to our Office to support its revised claim for \$57,914.35.³

³We arrived at this figure by multiplying the total number of hours claimed for each of the three McNeil employees by their corresponding hourly wage rates, and adding the products. The resulting total differs from that submitted by McNeil because, in calculating the total amount of costs claimed in both its initial and revised claim, it appears that McNeil derived an average hourly rate for its three

(continued...)

SBA found McNeil's revised claim inadequate. According to SBA, the agency continued to discuss the claim with McNeil during September and October 1994 and discussed in detail the deficiencies with the documentation McNeil had submitted. Although McNeil apparently indicated that it would submit additional information to SBA, the firm failed to do so. Instead, on November 25, McNeil requested that we determine the amount of protest costs to which it is entitled.

DISCUSSION

A protester seeking to recover 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 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 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. Here, we agree with SBA's conclusion that, despite the agency's repeated requests, McNeil failed to submit sufficient evidence to support its claim.

McNeil's claim is based entirely on reimbursement at the rates of \$94.52, \$78.99, and \$33.76 per hour for employees' time in pursuing the protest. The protester does not identify which employee or employees were involved in specific aspects of pursuing the protest; the purposes of the employees' claimed efforts; or what cost elements (e.g., direct/indirect costs, fringe benefits, overhead, etc.) are reflected in the different hourly rates calculated for each individual. Thus, there is no way to determine whether the claimed hourly rates reasonably reflect the costs related to the employees' time spent pursuing the protest; what tasks were performed by which employee; or whether the hours claimed are reasonable given the tasks performed.

³(...continued)

employees (\$67.17), and multiplied that figure by the total number of hours claimed (849 hours in its revised submission), for a total claim of \$57,027.33.

Other aspects of McNeil's claim are equally problematic. For instance, the firm listed events and activities in terms of actions by McNeil--i.e., the company--by date, rather than individual tasks performed by its employees. Even in its revised submission McNeil lumps together a total number of hours under various categories involving distinct activities (e.g., research, preparation, and travel)--each of which presumably generated different costs that should be segregated. Lumping all of its employees' efforts under one category makes it impossible to review the reasonableness of the costs associated with an individual's contributions to those activities or events. Significantly, since McNeil did not relate specific tasks to individuals, it is impossible to distinguish those activities and events which would reasonably require all three employees to perform simultaneously, and those tasks which, if performed by all three employees, would be considered unnecessary duplicate efforts.

Also troubling is that in its chronological listing of significant events and activities, McNeil includes a series of actions taken by SBA, HHS, and our Office, without identifying any corresponding action by McNeil. For example, McNeil claims costs incurred for the following: "GAO acknowledges filing of protest"; "SBA responds to [McNeil] letter . . ."; "[HHS] requests that GAO dismiss protest"; "GAO provides copy of memorandum to [HHS] asking for clarification of several issues"; "GAO faxes questions and agenda for teleconference"; and "GAO issues findings in favor of McNeil, sustains protest." While some of these actions arguably may have elicited a written response or caused the firm to take some other appropriate action related to the protest, and thus cause the firm to incur some allowable costs, McNeil does not explain how any of the tasks it listed as having been performed by other entities relate to the firm's pursuit of the protest in our Office.

McNeil's chronological listing also includes activities unrelated to the protest to our Office. For example, for the month of August 1993, McNeil claims costs for time expended in attempting to persuade SBA to not accept the requirement into the 8(a) program and in pursuing an agency-level protest. These costs are not recoverable. See Diverco, Inc.--Claim for Costs, B-240639.5, May 21, 1992, 92-1 CPD ¶ 460. Similarly, McNeil appears to claim costs of pursuing its claim at SBA. Our Bid Protest Regulations do not contemplate reimbursement of these costs. See Manekin Corp.--Claim for Costs, B-249040.2, Dec. 12, 1994, 94-2 CPD ¶ 237.

Further compounding the difficulties already described with McNeil's claim, SBA points out that McNeil claims employees' time for 26 days during September 1993 to January 1994, for

which no accompanying statement or corresponding justification is included on its chronological list of significant events or activities. In its revised submission, McNeil also claims costs for its employees' time for activities that were deleted from the original submission to SBA.

Claims for the reimbursement of expenses, at a minimum, must identify the amounts claimed for each individual expense, the purpose for which that expense was incurred, and how the expense relates to pursuit of the protest. Test Sys. Assocs., Inc.--Claim for Costs, 72 Comp. Gen. 169 (1993), 93-1 CPD ¶ 351. Although we recognize that the requirement for documentation may sometimes entail certain practical difficulties, the burden is on the protester to submit sufficient evidence to support its claim, and that burden is not met by unsupported statements that the costs have been incurred. Hydro Research Science, Inc.--Claim for Costs, 68 Comp. Gen. 506 (1989), 89-1 CPD ¶ 572. In our view, McNeil's claim for costs provides an insufficient basis to adequately assess the reasonableness of the claimed costs, or whether they related to the firm's pursuit of the protest. Accordingly, we conclude that McNeil may not recover any of the costs claimed.

The claim is denied.


Robert P. Murphy
General Counsel