



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Wind Gap Knitwear, Inc.—Claim for Costs

File: B-251411.2; B-251413.2

Date: August 30, 1995

Dennis J. Riley, Esq., and Jared H. Silberman, Esq., Riley & Artabane, for the protester.

Robert E. Sebold, Esq., Defense Logistics Agency, for the agency.

Wm. David Hasfurther, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Claim for costs is denied where the protester failed to file an adequately detailed claim with the agency within 60 working days after the protester received a copy of a decision awarding protest costs.

DECISION

Wind Gap Knitwear, Inc. requests that our Office determine the amount it is entitled to recover from the Defense Personnel Support Center, Defense Logistics Agency (DLA), for the costs of protesting that agency's failure to set aside requests for proposals (RFP) Nos. DLA100-92-R-0289 and DLA100-92-R-0292 exclusively for small business. We sustained Wind Gap's protests and found that Wind Gap was entitled to be reimbursed the costs of pursuing its protests. Wind Gap Knitwear, Inc., B-251411; B-251413, Mar. 31, 1993, 93-1 CPD ¶ 281.

We deny the claim.

Following the issuance of our decision, Wind Gap, by letter of May 28, 1993, filed a certified claim for \$24,141.21, which included the costs incurred by Wind Gap itself and the costs incurred by counsel for Wind Gap. Wind Gap's costs included the total costs incurred by three employees (identified by initials) working on the protest—these were computed on the basis of the number of hours spent by each employee on the protest multiplied by the hourly wage rate applicable to those hours; applicable fringe benefits, taxes, and overhead; and

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phone/facsimile/supplies/postage costs. Attorneys' costs included the total costs incurred by five individuals (identified by initials) per month based upon the hours worked multiplied by the hourly billing rate applicable to those individuals and mail/ facsimile/copier/telephone costs.

By letter of June 1, 1993, DLA informed Wind Gap's counsel that costs could be recovered only if adequately documented and shown to be reasonable. DLA enclosed a sample itemized list of expenses as a guide, and advised that Wind Gap should provide a "detailed description of the specific tasks and activities which were directly related to filing and pursuing the . . . protest." It was not until more than

9 months later, by letter of March 16, 1994, that either Wind Gap or its counsel replied to DLA's June 1 letter. In the March 16 letter, Wind Gap's counsel submitted additional information regarding the bases of its claim, while at the same time asserting that the original information submitted was sufficient and adequate for the purposes of paying Wind Gap's costs.

DLA dismissed Wind Gap's claim for costs by letter of March 31, 1994, on the grounds that Wind Gap had not timely pursued its claim. Wind Gap appealed this decision on the basis that it had tried without success during July and August of 1993 to contact the DLA attorney handling the claim and that in October 1993 an attorney for Wind Gap had been diagnosed with cancer and this had delayed Wind Gap's further pursuit of the claim. By letter of July 13, DLA affirmed its dismissal of the claim, stating, among other things, that the DLA attorney was available during July and August and had no recollection of any attempts of being contacted by Wind Gap. Wind Gap then appealed to our Office.

Our Bid Protest Regulations, 4 C.F.R. § 21.6(f)(1) (1995), provide that when we find that an agency should reimburse a protester for its appropriate costs:

"[t]he protester shall file its claim for costs, detailing and certifying the time expended and costs incurred, with the contracting agency within 60 days after receipt of the decision on the protest Failure to file the claim within such time shall result in forfeiture of the protester's right to recover its costs."

Consistent with the intent of our Regulations to have protest matters resolved efficiently and quickly, the 60-day time frame for filing claims with the contracting agency was specifically designed to avoid the piecemeal presentation of claims and to prevent unwarranted delays in resolving such claims. That time frame affords

protesters ample opportunity to submit adequately substantiated, certified claims. Test Sys. Assocs., Inc.—Claim for Costs, 72 Comp. Gen. 169 (1993), 93-1 CPD ¶ 351. Failure to initially file an adequately supported claim in a timely manner results in forfeiture of a protester's right to recover costs, irrespective of whether the parties may have continued to negotiate after the 60-day period expired. Id.

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 the protest. International Serv. Assocs., Inc.—Claim for Costs, B-253050.2, Feb. 7, 1994, 94-1 CPD ¶ 73; Diverco, Inc.—Claim for Costs, B-240639.5, May 21, 1992, 92-1 CPD ¶ 460; Energy Compression Research Corp.—Claim for Costs, B-243650.4, Apr. 18, 1995, 95-2 CPD ¶ _____. As discussed below, we find that Wind Gap failed to submit a sufficiently detailed claim within the 60-day period required by our Regulations.

The only cost information submitted by Wind Gap during the 60-day period after the issuance of our decision consisted of the number of hours worked by each employee/attorney on the protest, the months during which the attorneys and the other law firm personnel worked on the protest, and the applicable hourly rate for each individual, plus costs for facsimile, mailing and the like. The claim filed with DLA did not provide any information as to how these costs related to Wind Gap's protests; claims which do not identify the purpose for which an expense was incurred and how the expense relates to the protest are not adequate. Id. Accordingly, Wind Gap failed to submit a legally sufficient cost claim within the required time.

Wind Gap also contends that the 60-day time period should have been extended for it because its filing of supplemental information was delayed by its inability to contact the DLA attorney handling the claim and by illness of one of its attorneys. Wind Gap does not explain why it was necessary to contact DLA before filing supplemental information, and in view of DLA's letter of June 1, 1993, detailing exactly what further information was required of Wind Gap, we can ascertain no reason why Wind Gap could not have filed the information without discussing it first with the DLA attorney. We also do not think that the illness of one of Wind Gap's attorneys should have prevented Wind Gap from filing the supplemental information since the information could have been submitted by the second of the two attorneys serving as counsel. Accordingly, we conclude that neither of these

reasons was sufficient to permit Wind Gap to file the required supplemental information after the 60-day time period for the filing had expired.

The claim is denied.

/s/ Robert H. Hunter
for Robert P. Murphy
General Counsel