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Comptroller General
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United States Government Accountability Office
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Decision

Matter of: Vencore Services and Solutions, Inc.--Costs

File: B-412949.3

Date: December 12, 2016

J. Alex Ward, Esq., Ethan E. Marsh, Esq., and Charles L. Capito, Esq., Morrison & Foerster LLP, for the protester.

Kimberly L. Cohen, Esq., Melissa K. Erny, Esq., and Jodi L. Silcox, Esq., Department of Homeland Security, United States Customs and Border Protection, for the agency.

Stephanie B. Magnell, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request that GAO recommend reimbursement of attorneys' fees at a rate higher than the statutory cap of \$150 per hour based on increase in cost of living is granted where claim filed with agency presents reasonable basis for adjustment, and agency does not object to request.

DECISION

The Department of Homeland Security, United States Customs and Border Protection (CBP), with the concurrence of Vencore Services and Solutions, Inc. (Vencore), requests that we recommend that Vencore be reimbursed attorneys' fees at a rate higher than the \$150 per hour statutory rate cap in connection with a bid protest in which Vencore prevailed.

We grant the request, as discussed below.

Vencore, of Reston, Virginia, a large business, protested the issuance of a task order by CBP to ManTech Advanced Systems International, Inc., of Herndon, Virginia, under request for proposals (RFP) No. HSBP1015R0039, for business intelligence support services for U.S. border protection efforts. We sustained the protests and, in addition to corrective action, recommended that the agency reimburse the protesters' costs associated with filing and pursuing their protests, including reasonable attorneys' fees. Vencore Servs. & Sols., Inc., B-412949, B-412949.2, July 18, 2016, ___ CPD ¶ __.

Vencore subsequently filed a claim for protest costs with the agency, which included a request for reimbursement of attorneys' fees at a rate higher than the statutory maximum rate of \$150 per hour. Vencore Ltr. to CBP, Sept. 13, 2016, at 1-2. The agency advises our Office that the request is fully substantiated and explained, and that it has no objection. CBP Email, Oct. 5, 2016. The CBP therefore requests that we recommend reimbursement at the higher rate. Id.

Under the Competition in Contracting Act of 1984, as amended, where the Comptroller General recommends that a successful protester's costs, including reasonable attorneys' fees, be reimbursed, those fees are capped at \$150 per hour, except where the protester is a small business concern. However, this hourly rate may be increased where "the agency determines, based on the recommendation of the Comptroller General on a case by case basis, that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee." 31 U.S.C. § 3554(c)(2)(B).

We have found that the justification for an upward departure from the \$150 cap is self-evident if the claimant asserts that the cost of living has increased, as measured by the Department of Labor's (DOL) Consumer Price Index (CPI). Sodexho Mgmt., Inc.--Costs, B-289605.3, Aug. 6, 2003, 2003 CPD ¶ 136 at 37-43; see also Department of the Army; ITT Fed. Servs. Int'l Corp.--Costs, B-296783.4, B-296783.5, Apr. 26, 2006, 2006 CPD ¶ 72 at 2; EBSCO Publ'g, Inc.--Costs, B-298918.4, May 7, 2007, 2007 CPD ¶ 90 at 2-3; Department of State--Costs, B-295352.5, Aug. 18, 2005, 2005 CPD ¶ 145 at 2; Department of the Army; ITT Fed. Servs. Int'l Corp.--Costs, supra, at 2-3. Thus, where such a claim is asserted, and the contracting agency does not object, we will grant a request for a recommendation in favor of a cost-of-living adjustment to the fee cap. Department of State--Costs, supra, at 2.

Here, Vencore has provided the agency a detailed explanation of its calculation of the enhanced attorney fee rate of \$232.40 to \$235.42 per hour (depending on the month of billing) using DOL's U.S. City Average CPI, and the agency does not object to these rates. Vencore Ltr. to CBP, Sept. 13, 2016, at 1-2; CBP Email, Oct. 5, 2016. Use of DOL's U.S. City Average CPI is consistent with our prior decisions. Because CBP does not object, we recommend reimbursement at the claimed higher rates. See Core Tech Int'l Corp.--Costs, B-400047.3, June 2, 2009, 2009 CPD ¶ 59 at 2-3.

The request is granted.

Susan A. Poling
General Counsel