



Decision

Matter of: Rice Solutions, LLC--Costs

File: B-420475.2

Date: November 15, 2022

Derek Knoll for the protester.

Megan Nathan, Esq., Terrius Greene, Esq., Department of Health and Human Services, for the agency.

Emily R. O'Hara, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for recommendation of the amount of costs to be reimbursed, other than the portion of the request that the agency has agreed to pay, is denied where the record shows that the requester did not provide adequate information to support the request for costs.

DECISION

Rice Solutions, LLC, a small business of Plymouth, New Hampshire, requests that our Office recommend that the Department of Health and Human Services, Indian Health Service (IHS) reimburse it in the amount of \$27,596.95, for the costs of preparing its proposal and filing and pursuing its protest, which challenged request for proposals (RFP) No. 75H70622R00002, for certified registered nurse anesthetist services at the Great Plains Area, Pine Ridge Service Unit healthcare facility in South Dakota.

We deny the request in part, and dismiss in part.

BACKGROUND

On January 21, 2022, Rice Solutions filed its protest with our Office, challenging the agency's conduct of discussions with only one offeror. *Rice Sols., LLC*, B-420475, Apr. 25, 2022, 2022 CPD ¶ 102 at 3. On April 25, our Office issued a decision sustaining Rice Solutions's protest. *Id.* at 11. In our decision, we recommended Rice Solutions be reimbursed the reasonable costs of filing and pursuing its protest, and directed the protester to submit its certified claim for costs, detailing the time expended

and costs incurred, directly to the contracting agency within 60 days after the receipt of the decision. *Id.*

Rice Solutions submitted its first certified claim to IHS on April 26, 2022. Agency Response to Request for Costs (AR), Exh. 1, Cost Claim at 2. This claim sought reimbursement of \$13,696.45 for “filing and pursuing [the] protest,” but failed to provide any documentation in support of the firm’s claimed costs incurred from filing and pursuing its protest. *Id.* In response to the unsupported claim for reimbursement, the agency sent Rice Solutions a letter, requesting the firm provide, consistent with our recommendation, a claim reimbursement of costs that “[detailed] the time expended and the costs incurred” in filing and pursuing its protest. AR, Exh. 2, Agency Resp. to Cost Claim at 1.

On April 27, Rice Solutions submitted to the agency, a revised claim that included several invoices. In that revised claim, Rice Solutions now sought reimbursement in the amount of \$27,596.95. AR, Exh. 3, Revised Cost Claim at 1. In addition to the costs for filing and pursuing its protest, Rice Solutions’s revised claim also sought reimbursement for the firm’s proposal preparation costs. *Id.* at 2. When Rice Solutions did not receive a decision from IHS on the revised claim, the firm filed the instant request with our Office on July 21, 2022.

DISCUSSION

In filing this request, Rice Solutions initially asked that our Office recommend IHS reimburse the firm for the cost of preparing its proposal (\$13,900.50), as well as the costs of filing and pursuing its protest (\$13,696.45), for a total of \$27,596.95. Req. for Costs at 1. Rice Solutions, subsequently, withdrew its request that our Office recommend reimbursement of its proposal preparation costs. Req. for Costs Comments at 1. As such, we only address the remaining \$13,696.45 (\$27,596.95 - \$13,900.50) of the firm’s request for filing and pursuing its protest.

Rice Solutions seeks reimbursement for the Electronic Protest Docketing System (EPDS) filing fee, as well as the services provided by the following individuals: (1) its owner and chief operating officer (COO), Mr. D.R.; (2) its director of administrative services, Ms. B.C.; (3) a contract specialist, Mr. B.W.; and (4) a consultant, Mr. R.L.

Uncontested Costs

Of the requested costs for filing and pursuing Rice Solutions’s protest, the agency does not contest the costs of the protest filing fee¹ and the costs associated with the services provided by Mr. R.L., an outside consultant. Req. for Costs at 4. In its response to Rice Solutions’s request, the agency has acknowledged that Rice Solutions provided adequate information in the firm’s revised claim to support the reimbursement of costs

¹ Although the EPDS filing fee is \$350, the protester only seeks \$300 for “Protest Filing Fees.” Req. for Costs at 4.

for the protest filing fee (\$300.00) and the protest preparation services provided by the consultant, Mr. R.L. (\$3,281.45). Memorandum of Law (MOL) at 3-4. Thus, the agency has agreed to reimburse Rice Solutions \$3,581.45 (\$3,281.45 + \$300) for the costs of filing and pursuing its protest. *Id.* Therefore, this portion of Rice Solutions's request is dismissed. *Eastern Forestry & Tree Serv., Inc.--Costs*, B-411848.3, July 20, 2017, 2017 CPD ¶ 229 at 4, 7 (dismissing portion of request where there is no disagreement by the agency with regard to the reimbursement of certain protest costs).

Other Costs

Rice Solutions requests we recommend reimbursement of an additional \$10,115 in claimed costs associated with pursuing its protest. The requester contends that the firm should be reimbursed for the 29 hours allegedly performed by its COO, its director of administrative services, and a contract specialist employee, all at a rate of \$350 per hour. Req. for Costs at 4. The agency explains that it is unable to reimburse Rice Solutions for these protest costs because Rice Solutions's request lacks sufficient supporting documentation. MOL at 5. We agree.

A recommendation that an agency pay a protester's costs is intended to relieve protesters with valid complaints regarding a procurement of the burden of vindicating the public interest which Congress seeks to promote through the bid protest process; it is not intended as a reward to prevailing protesters or as a penalty imposed upon the government. *Waterfront Techs., Inc.--Costs*, B-401948.19, Mar. 19, 2012, 2012 CPD ¶ 115 at 4. Such recommendation from our Office that an agency reimburse a protester the costs of filing and pursuing its protest, is not a blank check. *International Program Grp., Inc.--Costs*, B-400278.4, B-400308.4, June 22, 2009, 2009 CPD ¶ 128 at 3. The requested amount may be recovered to the extent that the claim is adequately documented and is shown to be reasonable; a claim is reasonable, if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the pursuit of a protest. *Waterfront Techs., Inc.--Costs, supra.*

Although we have recognized that the requirement for adequate documentation of costs may sometimes entail certain practical difficulties, we do not consider it unreasonable to require a requester to document in some detail the amount and purposes of activities associated with the claimed effort and establish that the claimed hourly rates reflect the concerned individuals' actual rates of compensation. *Ervin & Assocs.--Costs*, B-278850.2, Aug. 1, 1999, 99-2 CPD ¶ 23 at 4. Ultimately, the burden is on the requester to submit sufficient evidence to support its claim; that burden is not met by general, inadequately-supported statements that particular costs have been incurred. *Premiums & Specialties, Inc.--Costs*, B-410247.2, June 5, 2015, 2015 CPD ¶ 175 at 3. At a minimum, claims for reimbursement must identify and support the amounts claimed for each individual expense (including cost data to support calculations of claimed hourly rates for employees), the purpose for which that expense was incurred, and how the expense relates to the protest before our Office. *AeroSage, LLC--Costs*, B-416381.6, Mar. 13, 2019, 2019 CPD ¶ 107 at 4. To substantiate an employee's actual rate of compensation, a requester must submit objective evidence of the rate,

such as corporate payroll records, W-2 forms, or tax records. *Galen Med. Assocs. Inc.--Costs*, B-288661.6, July 22, 2002, 2002 CPD ¶ 114 at 4. We cannot exempt any entity from the requirement that claims to be paid with taxpayer money be supported by adequate documentary proof. *Eastern Forestry & Tree Serv., Inc.--Costs*, *supra* at 6.

Chief Operating Officer

Rice Solutions requests \$6,300 for 18 hours of work completed by its COO, Mr. D.R., at an hourly rate of \$350 per hour. Req. for Costs at 4. Rice Solutions, however, does not provide any information evidencing that Rice Solutions actually pays Mr. D.R. this rate. Instead, the requester simply states that “payments for his services are reflected in quarterly or as required owner draws which are paid in lump sums,” and “[D.R.’s] fee for his services are consistent with current market rates.” AR, Exh. 7, Rice Solutions Pay Rate Evidence at 1.

As our decisions have found, a requester may not recover profit on its employee’s time in filing and pursuing protests, and therefore claimed rates must be based upon actual rates of compensation paid to employees, plus reasonable overhead and fringe benefits, and not market rates that include profit as an element. *Waterfront Techs., Inc.--Costs*, *supra* at 5. Here, the requester has stated Mr. D.R.’s \$350 per hour wage is based on market rates. Because we have consistently stated that market rates include profit, and profit is not considered part of an employee’s actual rate of compensation, we cannot find the rate of \$350 here to accurately reflect the rate of Mr. D.R.’s compensation. *Waterfront Techs., Inc.--Costs*, *supra* at 5; *SKJ & Assocs., Inc.--Costs*, B-291533.3, July 24, 2003, 2003 CPD ¶ 130 at 3. Further, Rice Solutions has provided no objective evidence to show Mr. D.R.’s actual rate of compensation, such as records of his quarterly and lump sum compensation payments. Where, as here, a requester fails to submit objective evidence to substantiate its employee’s actual rate of compensation, we cannot grant the request for costs. *Galen Med. Assocs. Inc.--Costs*, *supra* (finding that objective evidence of compensation rates may include corporate payroll records, W-2 forms, and tax records). Accordingly, without adequate documentation, we are unable to recommend reimbursement for the hours identified in Rice Solutions’s request for Mr. D.R.’s services.

Director of Administrative Services

Next, Rice Solutions seeks reimbursement of cost for duties performed by an employee identified as its director of administrative services. The requester seeks recovery of \$700 for the 2 hours of work performed by Ms. B.C. Req. for Costs at 4. In support of this request, Rice Solutions provided the timesheet that Ms. B.C. sent to Rice Solutions, indicating that she worked for 1.5 hours on January 19 “formatting and editing [the] protest” and 0.5 hours on January 21 for “final review of protest.” AR, Exh. 7, Rice Solutions Pay Rate Evidence at 3. In further support of this request, Rice Solutions submitted Ms. B.C.’s employment agreement, which indicated Ms. B.C.’s rate of compensation was \$350 per hour. *Id.* at 4.

In response to Rice Solutions's request for costs for these services, IHS challenges the purpose for which services were incurred and the employee's hourly rate. The agency argues that the timesheet only vaguely described the tasks performed and that the independent contractor agreement is not a credible source for determining Ms. B.C.'s rate of compensation. MOL at 5-6. The agency cites to our decision, *Eastern Forestry*, to support its position that the employment agreement lacks "indicia of corporate reliability."² MOL at 6 (citing *Eastern Forestry & Tree Serv., Inc.--Costs, supra*).

Here, the only document provided to support Ms. B.C.'s actual rate of compensation was an employment agreement from 2020. The agreement, which was purportedly signed by Ms. B.C. and Mr. D.R., the COO of Rice Solutions, on October 4, 2020, indicates that the agreement is ongoing for continuous periods as agreed by both parties. AR, Exh. 7, Rice Solutions Pay Rate Evidence at 4. The agreement identifies Ms. B.C. as an independent contractor who will receive a \$350 per hour compensation rate, contingent on the following provision: "Payment to CONTRACTOR is dependent upon receipt of successful protest." *Id.* The requester provides no other evidence, such as a pay statement or tax records, to show that Ms. B.C. was actually paid \$350 per hour for the work she performed, nor does Rice Solutions provide evidence to show that

² The agency expresses several concerns regarding the credibility of this claim. Specifically, IHS asserts:

As to the claimed hourly rate for these services, the contracting officer reasonably found the "Independent Contractor Agreement" dated October 4, 2020 submitted to support the claimed \$350 hourly rate for Ms. [B.C.] not credible because it includes few terms and conditions regarding the provided services, bears no corporate logo or legal seal, and is executed on a form with a revision date over a year after the date Ms. [B.C.] and Mr. [D.R.] allegedly signed it. Further, although purportedly executed more than a year prior to the filing of Rice Solutions' protest, the agreement explicitly conditions Ms. [B.C.'s] compensation "upon receipt of successful protest." Such irregular documentation is insufficient to prove the costs claimed.

MOL at 5-6 (internal citations omitted). The agency also argues:

Because Mr. [D.R.] owns both Rice Solutions and Collaborative Anesthesia Partners, there is also an open question regarding whether Ms. [B.C.] is actually an independent contractor of Rice Solutions or just an employee of Collaborative Anesthesia Partners providing services to both of Mr. Rice's companies similar to the services claimed for Mr. [B.W] . . . In any event, given the noted irregularities, the contracting officer's skepticism of the "Independent Contractor Agreement" is reasonable.

Id. at 6 n.6 (omitting citations to external references that suggest Ms. B.C. is an employee of Collaborative Anesthesia Partners).

the \$350 rate is a customary rate for administrative personnel to perform the purely administrative services of “formatting and editing” and reviewing protests. Without more information, we cannot find this rate of compensation reasonable, *i.e.* - that which would be incurred by a prudent person in the pursuit of its protest. See *Waterfront Techs., Inc.--Costs, supra*.

Our Office takes seriously--and is “vigilant” in fulfilling--our responsibility to evaluate the reasonableness of a successful protester’s request for reimbursement of costs. See *Public Commc’ns Servs., Inc.--Costs*, B-400058.4, June 25, 2009, 2009 CPD ¶ 131 at 7 (reviewing request for reimbursement of attorneys’ fees). As discussed, a requester may only recover the cost of filing and pursuing its protest if that claim is adequately documented and is shown to be reasonable. *Waterfront Techs., Inc.--Costs, supra*. A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the pursuit of its protest. *Patio Pools of Sierra Vista, Inc.--Costs*, B-228187.4, B-288188.3, Apr. 12, 1989, 89-1 CPD ¶ 374 at 3.

In other instances where our Office has contemplated the reasonableness of rates of compensation, we have considered several factors in deciding whether the hourly rates were reasonable.³ For example, in instances where a small business requests reimbursement of attorneys’ fees, which are not subject to a statutory cap and have no other statutory or regulatory limitations, we have looked to factors such as: whether that fee is a customary fee charged for similar work in the community where the employee is located; the experience, reputation, and ability of the employee; the specialized nature of the tasks performed; and the complexity of the specific issues involved. *Public Commc’ns Servs., Inc.--Costs, supra* at 9.

According to the requester, Ms. B.C. was paid \$350 an hour to format, edit, and perform a final review of the protest document. AR, Exh. 7, Rice Solutions Pay Rate Evidence at 3. This contracted employee performed these services after Mr. R.L., an outside

³ Some fee limitations are set by statute. For instance, the Competition in Contracting Act of 1984 (CICA) limits the recovery of attorneys’ fees by firms that are not small businesses. 31 U.S.C. § 3554(c)(2)(B); *Worldwide Language Res., Inc.--Costs*, B-418767.4, Feb. 28, 2022, 2022 CPD ¶ 71 at 2 (finding rates of compensation over the statutory cap of \$150 per hour for attorneys’ fees to be reasonable where requester shows the cost of living has increased). The recovery of consultant fees is also limited by CICA. 31 U.S.C. § 3554(c)(2)(A); *Department of the Army; ITT Fed. Servs. Int’l Corp.--Costs*, B-296783.4, B-296783.5, Apr. 26, 2006, 2006 CPD ¶ 72 at 3-5, (finding a consultant’s rate of compensation of \$360 per hour unreasonable where the hourly rate exceeded the highest rate of pay for a federal employee, GS-15, step 10). When there are no statutory limitations placed upon reimbursement of costs, however, we review fees to determine whether they are “reasonable.” See, *e.g.*, *Main Bldg. Maint., Inc.--Costs*, B-260945.6, Dec. 15, 1997, 97-2 CPD ¶ 163 at 9-10 (finding the rates of compensation of the requester’s employees, ranging from \$30 to \$40 per hour, to be consistent with what a reasonable person would employ in pursuit of the protest).

consultant, had already drafted the protest. *Id.* at 6. Rice Solutions provides no response in its comments to justify the reasonableness of Ms. B.C.'s compensation rate. The limited documentation provided by the requester claims that Ms. B.C. was paid \$350 per hour to perform administrative work--document formatting and editing--that was not particularly specialized or complex. Without any other information to support this claim, we are left to question whether other personnel performing administrative services in the requester's community are customarily paid a \$350 per hour rate of compensation for services similar to the work performed here. Nor has the requester provided adequate--or any documentation, for that matter--for us to find reasonable that this employee, who performed purely administrative tasks, would be paid the same hourly rate as the chief operating officer of the firm for which she works.⁴ As we have noted, the burden is on the requester to submit sufficient evidence to support its claim; that burden is not met by general, inadequately-supported statements that particular costs have been incurred. *Premiums & Specialties, Inc.--Costs, supra.* Here, without additional information to support the reasonableness of Ms. B.C.'s rate of compensation, we are unable to recommend reimbursement for the claimed costs of services provided at \$350 per hour by Ms. B.C.

Contract Specialist

Lastly, Rice Solutions requests to be reimbursed \$3,150 for 9 hours of work by Mr. B.W., an employee identified as a contract specialist, at a rate of \$350 per hour. Req. for Costs at 4. To support the request, Rice Solutions submitted an invoice from Mr. B.W., on letterhead from the firm Collaborative Anesthesia Partners, to Rice Solutions that simply indicated Mr. B.W. performed 9 hours of work on February 1, 2022, for "protest prep" and "management." AR, Exh. 7, Rice Solutions Pay Rate Evidence at 2. We do not find that the submitted documentation adequately shows that Mr. B.W.'s tasks were reasonably related to the preparation of Rice Solutions's protest.

Although a requester is not required to identify each individual task completed in pursuit of a protest in intricate detail, a requester is required to produce enough detail to exemplify that costs were incurred in pursuit of the protest--*i.e.*, detailing the purpose for which the expense was incurred and how that expense relates to protest preparation. *Data Based Decisions, Inc.--Costs*, B-232663.3, Dec. 11, 1989, 89-2 CPD ¶ 538 at 5-6; *Sodexo Mgmt., Inc.--Costs*, B-289605.3, Aug. 6, 2003, 2003 CPD ¶ 136 at 29.

⁴ In this regard, it is not lost upon us that all four individuals for whom the requester seeks reimbursement of costs, are purportedly paid at the exact same rate--\$350 per hour. According to Rice Solutions, the firm paid the following individuals equally, regardless of the services provided: the chief operating officer (Mr. D.R.), a contract specialist (Mr. B.W.), an outside consultant (Mr. R.L.), and a contracted administrative employee (Ms. B.C.). Req. for Costs at 4.

Here, the invoice does not provide sufficient specificity to show that all work performed by Mr. B.W. was incurred in pursuit of the protest.⁵ The invoice lists the date services were completed, along with the hours spent working, but only describes tasks performed as “management” and “protest prep.” AR, Exh. 7, Rice Solutions Pay Rate Evidence at 2. The terms “management” and “protest prep” are too general to determine the nature of Mr. B.W.’s efforts, whether tasks performed were reasonably related to this protest’s preparation, or whether the costs could be deemed duplicative or excessive. *Sodexo Mgmt., Inc.--Costs, supra* at 20 (finding, where our Office recommended costs for proposal preparation, that invoice descriptions of “work towards preparation of a proposal,” “preparing the proposal,” and “work in support of proposal preparation” were insufficient descriptions to properly identify the purpose for which expenses were incurred and how they related to proposal preparation). For these reasons, we find Rice Solutions has failed to meet its burden to submit sufficient evidence to support reimbursement of costs for Mr. B.W.’s services.⁶ Therefore, we deny the request to recommend reimbursement for Mr. B.W.’s services.

In conclusion, we dismiss the portion of the request related to the \$3,581.45 that the agency has already agreed to reimburse Rice Solutions. Further, we deny the request for a recommendation to reimburse Rice Solutions for the services provided by Mr. D.R., Ms. B.C., and Mr. B.W., because Rice Solutions has failed to provide adequate documentation to support the reasonableness of these claims

The request is denied in part, and dismissed in part.

Edda Emmanuelli Perez
General Counsel

⁵ As a preliminary matter, we note that the requester has not even attempted to identify the employment status of Mr. B.W. It is unclear from the record whether Mr. B.W. is an employee of Rice Solutions (or Collaborative Anesthesia Partners, another company owned by Mr. D.R.), an independent contractor, or an outside consultant.

⁶ Additionally, we find that the requester did not provide any documentation to support Mr. B.W.’s rate of compensation. Regardless of whether Mr. B.W. was considered an independent contractor, employed by Rice Solutions or Collaborative Anesthesia Partners, or an outside consultant, the requester provided no information, such as pay statements, tax records, or a consultant agreement, demonstrating that Mr. B.W. gets paid or customarily charges \$350 per hour for protest-related services. See *Galen Med. Assocs. Inc.--Costs, supra* at 5. As discussed above, a requester must provide documentation to support claimed hourly rates. See also *Solutions Lucid Grp., LLC--Costs*, B-400967.2., Oct. 1, 2009, 2009 CPD ¶ 198 at 3. Here, Rice Solutions has not provided any--let alone, adequate--documentation to support Mr. B.W.’s claimed compensation rate of \$350 per hour.