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Decision

Matter of: Spectrum Healthcare Resources, Inc.--Costs

File: B-421325.2

Date: September 11, 2023

Amy Laderberg O'Sullivan, Esq., James G. Peyster, Esq., and David H. Favre, III, Esq., Crowell & Moring LLP, for the protester.

Patrick J. Madigan, Esq., Ekta Patel, Esq., and Matthew Lane, Esq., Department of Homeland Security, for the agency.

Heather Self, Esq., and Peter H. Tran, 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 limit of \$150 per hour based on increase in cost of living is granted where the claim filed with agency presents reasonable basis for adjustment, and agency does not object to the request.

DECISION

Spectrum Healthcare Resources, Inc., a large business of St. Louis, Missouri, with the concurrence of the Department of Homeland Security (DHS), requests that we recommend that the firm be reimbursed attorneys' fees at a rate higher than the \$150 per hour statutory rate limit in connection with a bid protest in which Spectrum prevailed.

We grant the request.

Spectrum protested DHS's award of a contract to Dentrust Dental International, Inc. d/b/a Docs Health, of Pipersville, Pennsylvania, under request for proposals No. 70FA4023R00000001, issued for medical and behavioral health services. Our Office issued a decision sustaining the protest because the record reflected that the agency evaluated in a manner not consistent with the terms of the solicitation. *Spectrum Healthcare Resources, Inc.*, B-421325, Mar. 21, 2023 at 8. We recommended that the agency reevaluate Spectrum's proposal and make a new source selection decision. *Id.* at 10. We also recommended that DHS reimburse Spectrum the cost of filing and pursuing the protest, including reasonable attorneys' fees. *Id.*

Subsequent to our decision, Spectrum 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. Req. for Costs, exh. 1, Cost Claim at 3, 8.¹ The agency does not object to the request. Req. for Costs, exh. 2, Email from DHS to Protester Counsel, July 18, 2023 at 2; Resp. to Req. for Costs at Electronic Protest Docketing System (Dkt.) No. 3.

Under the Competition in Contracting Act of 1984, as amended, when the Comptroller General recommends that a successful protester's costs, including reasonable attorneys' fees, be reimbursed, those fees are limited to \$150 per hour, except when the protester is a small business concern. 31 U.S.C. § 3554(c)(2)(B). This hourly rate may be increased, however, if "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." *Id.*

We have found that the justification for an upward departure from the \$150 limit--which was established by the Federal Acquisition Streamlining Act of 1994, Pub. L. No. 103-355, 108 Stat. 3243, at 3289 (codified at 31 U.S.C. § 3554(c)(2))--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). *Worldwide Language Resources, Inc.--Costs*, B-418767.4, Feb. 28, 2022, 2022 CPD ¶ 71 at 2; *Vencore Servs. & Sols., Inc.--Costs*, B-412949.3, Dec. 12, 2016, 2016 CPD ¶ 363 at 2; *Sodexho Mgmt., Inc.--Costs*, B-289605.3, Aug. 6, 2003, 2003 CPD ¶ 136 at 37-43. Thus, when 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. *Worldwide Language Resources, Inc.--Costs, supra* at 2.

Here, Spectrum represents that the adjustment to the hourly rate of \$150 per hour to between \$289.65 and \$291.97 per hour for attorneys' fees (depending on the month when the costs were incurred) is based on a calculation of a cost-of-living adjustment using DOL's CPI. Req. for Costs, exh. 1, Cost Claim at 8-10. Use of DOL's CPI is consistent with our prior decisions, and, as noted above, the agency does not object to the requested reimbursement rate. See e.g., *Sodexho Management, Inc.--Costs*, B-289605.3, Aug. 6, 2003, 2003 CPD ¶ 136 at 43 n.34. In total, Spectrum is requesting reimbursement of \$29,111.19 (\$28,761.19 in attorneys' fees and \$350 in expenses). The agency advises that it takes no exception to the request for \$29,111.19. Dkt. No. 3.

In light of the documentation provided in the requester's claim, and the agency's representation that it does not object to payment of the adjusted rate, we recommend that the agency reimburse Spectrum in the amount of \$29,111.19, which includes reimbursement for its attorneys' fees at a rate higher than the statutory limit of \$150 per hour. See *Worldwide Language Resources, Inc.--Costs, supra* at 2-3. (recommending reimbursement of protest costs at adjusted rates that were calculated in accordance

¹ Our citations to documents in the record use the documents' Adobe PDF pagination.

with approved CPI formula and where the agency did not object to reimbursement at those rates); *Vencore Servs. & Sols., Inc.--Costs, supra* at 2 (same).

The request is granted.

Edda Emmanuelli Perez
General Counsel