



United States Government Accountability Office  
Washington, DC 20548

## Decision

**Matter of:** A1 Procurement, JVG--Costs

**File:** B-404618.2

**Date:** April 4, 2012

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Derrick Storms, Esq., for the protester.  
Tracy Downing, Esq., Department of Veterans Affairs, for the agency.  
Paula J. Haurilesko, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Where GAO has recommended the reimbursement of protest costs, the appropriate rate for reimbursement of time incurred pursuing the protest by the protester's chief executive officer (CEO), who is also an attorney, should be based upon the CEO's salary and not a billing rate for outside legal counsel.

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### DECISION

A1 Procurement, JVG, of Miami, Florida, requests that our Office determine the rate at which the protester can be reimbursed for the time incurred by the protester's chief executive officer (CEO), Mr. Storms, who is also an attorney, in pursuing its protest in A1 Procurement, JVG, B-404618, Mar. 14, 2011, 2011 CPD ¶ 53.

With respect to the underlying protest, the Department of Veterans Affairs (VA) issued request for proposals (RFP) No. VA-786-10-RP-0329 as a set-aside for service-disabled, veteran-owned small business (SDVOSB) concerns for ground maintenance services at the Golden Gate National Cemetery in San Bruno, California. A1 Procurement, JVG, a joint venture between A1 Procurement, LLC, and Greencarpet Landscaping & Maintenance, Inc., submitted a proposal. The VA rejected the joint venture's proposal because its proposed price was significantly below the government cost estimate and the prices of the other offerors.

On December 8, 2010, Mr. Storms, in his capacity as CEO of A1 Procurement, JVG, protested to our Office.<sup>1</sup> On January 10, 2011, Mr. Storms submitted comments to the agency report in which he identified himself as an attorney with the law firm of Storms and Associates, P.A. The protester's comments indicated that the law firm was located at the same address and had the same telephone number as the protester. Subsequently, we sustained the protest and recommended that the protester be reimbursed its reasonable costs of filing and pursuing the protest. See A1 Procurement, JVG, supra, at 4.

A1 Procurement, JVG, timely submitted a certified claim to the VA for its protest costs, in which the protester sought reimbursement for the time incurred by Mr. Storms in pursuing the protest. The parties disagree as to the appropriate rate to be applied to Mr. Storms' time. This is the sole issue before us.

A1 Procurement, JVG, argues that Mr. Storms acted as outside legal counsel during the protest and therefore the protester is entitled to be reimbursed for his time based on the billing rate charged by outside counsel rather than be reimbursed based on his salary as the protester firm's CEO. A1 Procurement makes numerous arguments essentially asserting that the two organizations are separate legal entities. In this regard, the protester contends that the retainer agreement dated December 3, 2010 evidences this separation and that Storms and Associates represented A1 Procurement during the protest. A1 Procurement Claim for Costs at 8.

The VA responds that Mr. Storms is an employee of the protester and cannot be considered to be outside legal counsel. In this respect, the VA disputes that the protester and Mr. Storms' law firm are separate entities. The VA contends that the appropriate rate for reimbursement of Mr. Storms' time should be based upon his salary as an employee of the protester.

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. W.S. Spotswood & Sons, Inc.--Claim for Costs, B-236713.3, July 19, 1990, 90-2 CPD ¶ 50 at 3. In this regard, a protester may not recover profit on its own employees' time in filing and pursuing its protest or preparing its proposal. Id.; see also Spectrum Leasing Corp. v. General Servs. Admin., GSBICA No. 10902-C, July 27, 1992, 93-1 BCA ¶ 25,317.

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<sup>1</sup> Mr. Storms signed the protest letter in his capacity as CEO of the joint venture; his transmittal email identified him as the CEO of A1 Procurement, LLC.

We agree with the agency that the appropriate rate -- for calculating the amount for which the protester should be reimbursed for the time incurred by Mr. Storms in pursuing the protest -- should be based upon Mr. Storms' salary as an employee of the protester. In this regard, although we accept that Mr. Storms is also an attorney, this does not establish that the time incurred by Mr. Storms in pursuing the protest should be reimbursed at a billing rate for outside legal counsel, which obviously includes profit. Rather, the record, including the "retainer agreement" signed by Mr. Storms both as CEO of the protester and as legal counsel, demonstrates that the relationship between the protester and Mr. Storms was not one where outside legal counsel is representing a client as an agent. Representation by outside legal counsel would reflect an arms-length, agency relationship that is not reflected in the agreement presented here, where Mr. Storms, as CEO of the protester, allegedly engaged himself as outside legal counsel. Our conclusions in this regard are consistent with that of the United States Supreme Court and other federal courts that have held that a pro se litigant that is also an attorney may not be awarded attorney's fees under other fee-shifting statutes. See Kay v. Ehrler, 499 U.S. 432 (1991) (The Civil Rights Attorney's Fees Awards Act of 1976); Kooritzky v. Herman, 178 F.3d 1315 (D.C. Cir. 1999) (Equal Access to Justice Act).

In short, the amount for which the protester should be reimbursed for the time incurred by Mr. Storms in pursuing the protest should be calculated based upon his actual rate of compensation as the protester's CEO, and not as outside legal counsel.

Lynn H. Gibson  
General Counsel