



United States Government Accountability Office  
Washington, DC 20548

## Decision

**Matter of:** The Argos Group, LLC--Costs

**File:** B-406040.3

**Date:** July 3, 2013

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Dennis Cotto, Esq., for the protester.  
Gary Davis, Esq., General Services Administration, for the agency.  
Gary R. Allen, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

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### DIGEST

Claim for costs is denied where the protester failed to submit a timely, adequately documented claim to the agency.

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### DECISION

The Argos Group, LLC, of Washington, D.C., requests that our Office recommend that the General Services Administration (GSA) reimburse the protester the amount of \$89,217.50 for the costs of filing and pursuing its protest in The Argos Group, LLC, B-406040, Jan. 24, 2012, 2012, CPD ¶ 32, recon. denied, General Servs. Admin.--Recon., B-406040.2, Oct. 24, 2012, 2012 CPD ¶ 297.

We deny the claim for costs.

### BACKGROUND

On October 20, 2011, Argos protested to our Office, challenging the terms of GSA's solicitation for the lease of space for the Federal Bureau of Investigation in the vicinity of the Hudson Valley, New York. The protester's only complaint was that the solicitation failed to include a 10-percent evaluation preference for Historically Underutilized Business Zone (HUBZone) small businesses as required by the Historically Underutilized Business Zone Act of 1997, 15 U.S.C. § 657a (2006) (hereinafter "the HUBZone Act"). The protest was submitted on behalf of Argos by Mr. Dennis Cotto, who represented that he was the general counsel and a principal of Argos. Mr. Cotto also submitted Argos' comments on the agency report in his capacity as general counsel and a principal of Argos.

On January 24, 2012, we sustained the protest, finding that the HUBZone Act contains no exemptions that permit its application to be waived for procurements of leasehold interests in real property. As a result, we concluded that GSA was required to include the HUBZone preference in its solicitation. We also recommended that the agency reimburse Argos its costs of filing and pursuing the protest, including reasonable attorney's fees, and informed the protester that its certified claim for these costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days of receipt of our decision.<sup>1</sup> Id.

One day after issuance of the decision, on January 25, Argos submitted to GSA its claim for reimbursement of \$92,487.50 in protest costs. This amount consisted of \$91,137.50 in attorney's fees for Mr. Cotto and \$1,350 for administrative support costs. The claim, which was filed via email, included three attachments: (1) the decision sustaining the protest; (2) a one-page lump-sum invoice on letterhead identifying the Law Offices of Dennis Cotto, Esquire; and (3) a spreadsheet titled "Dennis Cotto, Esq., Billable Records," that indicated that Mr. Cotto had performed 158.5 hours of legal work on the protest from mid-October 2011, through January 2012, at a billing rate of \$575 per hour. Argos also claimed 30 hours of administrative support at a rate of \$45 per hour. Dennis Cotto, Esq., Invoice for Legal Costs, at 3.

The next day, in an email and an attached document on Argos letterhead, Mr. Cotto certified the claim on behalf of Argos; these documents reflect that they are sent from Mr. Cotto as a representative of Argos. The letter attached to the email requested that the entire amount be made payable to Dennis Cotto, Esq. Argos Certification of Costs, Jan. 26, 2012.

On February 13, GSA asked that Argos provide further support for its claim. GSA also raised questions related to the protester's request that the firm be reimbursed for Mr. Cotto's time at an outside counsel's billing rate. Among other things, GSA requested from Argos evidence, such as, internal invoices, detailed billing logs, and rates. GSA Letter to Argos, Feb. 13, 2012.

On February 14, Mr. Cotto provided to GSA copies of retainer agreements between himself and two different third parties, dated in 2006 and 2010, as well as a 2009 independent contractor agreement between himself and another law firm. He also provided handwritten (and nearly illegible) monthly time sheets on letterhead bearing the name Dennis Cotto, Esquire, purporting to describe work that Mr. Cotto had performed in pursuing Argos' protest.

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<sup>1</sup> GSA requested reconsideration of our decision, maintaining that we erred as a matter of law by concluding that the price evaluation preference in the HUBZone Act applies to leasehold acquisitions. We denied GSA's request. General Services Admin.--Recon., supra.

GSA responded on March 1, requesting that Argos either provide concrete evidence that Mr. Cotto represented the company as an outside counsel, or identify Mr. Cotto's compensation rate as general counsel and principal of Argos. GSA also questioned the number of the hours claimed for Mr. Cotto's time. GSA Letter to Argos, Mar. 1, 2012, at 2-4.

On March 4, Mr. Cotto responded to GSA, providing, among other things, a letter between himself and a Mr. Cardenas, dated October 5, 2011, that purported to be an agreement that Mr. Cotto had been retained by Argos to represent the company in its protest to GAO at a rate of \$575 per hour (October Retainer Agreement).<sup>2</sup> Dennis Cotto, Esq., Letter to GSA, Mar. 4, 2012. The October Retainer Agreement provided to GSA was printed on Mr. Cotto's letterhead, and was signed only by Mr. Cotto.<sup>3</sup> In a separate response to GSA's March 1 letter, also dated March 4, Mr. Cotto stated that he had decreased "our claim for legal fees and costs to . . . \$85,012.50." Dennis Cotto, Esq., Letter to GSA, Mar. 4, 2012.

On March 16, the agency again requested evidence of Mr. Cotto's compensation rate as a principal and general counsel of Argos and reiterated its questions concerning the timesheets Mr. Cotto had submitted. GSA also stated that the October Retainer Agreement did not sufficiently establish that Mr. Cotto had been retained as outside counsel by Argos, mainly because it was not signed by Argos. GSA Letter to Argos, Mar. 16, 2012.

Mr. Cotto responded on March 18 by providing a "rescanned" copy of the October Retainer Agreement, presumably to establish that the initially-provided version of the agreement had also been signed by a representative of Argos. Mr. Cotto also contended that since he was engaged by Argos as outside counsel, there was no need to identify his compensation rate as a principal and general counsel of the company. Mr. Cotto also stated his view that sufficient documentation had been provided to the agency. Dennis Cotto, Esq., Letter to GSA, Mar. 18, 2012.

On April 13, GSA issued its final response to this claim. With respect to the "rescanned" October Retainer Agreement, GSA noted discrepancies between the two documents and determined that the "inconsistent nature" of the documents did not permit GSA to conclude that Argos had retained its own general counsel as an

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<sup>2</sup> The website for Argos indicates that Gilberto Cardenas is president and Mr. Cotto is general counsel for Argos. See [www.argosg.com](http://www.argosg.com).

<sup>3</sup> Mr. Cotto contends that the signature for Argos was cut-off in scanning. Claim for Costs at 4.

outside attorney.<sup>4</sup> GSA Letter to Argos, April 13, 2012. Because of these concerns, and others, GSA denied the protester's request for reimbursement of its protest costs, stating that the claim was inadequately documented; that it included costs that were not allowable; and that the claim failed to establish that Argos had retained Mr. Cotto as an outside counsel. Argos filed this request with our Office on April 20.

## DISCUSSION

Argos asks that we recommend that the firm be reimbursed \$85,012.50 for its attorney's fees and administrative costs. This amount is based upon the protester's claim that its attorney incurred 145.5 hours pursuing this protest at an hourly rate of \$575 and that another 30 hours of administrative support was incurred at an hourly rate of \$45. Claim for Costs at 1. Argos also seeks reimbursement of \$4,205 for its costs in responding to the agency's request for reconsideration and in pursuing this claim. Id.

The agency contends that, despite its repeated requests for more information, much of Mr. Cotto's time claimed by Argos was either not incurred in pursuit of the protest, excessive, or not properly documented or supported. The agency also argues that Argos has not provided evidence to establish the appropriate hourly rate for reimbursement of Mr. Cotto's legal services. In this regard, notwithstanding the agency's many requests, Argos refused to provide Mr. Cotto's rate of compensation as a principal and general counsel of Argos. Additionally, to the extent Argos claims that Mr. Cotto acted as outside counsel, the agency argues that Mr. Cotto cannot be considered outside counsel for the company in the face of substantial evidence to the contrary. GSA Memorandum of Law at 4. We agree with the agency.

A recommendation from our Office that an agency reimburse a protester the costs of preparing its proposal, or filing and pursuing its protest, is not a blank check. International Program Group, Inc.--Costs, B-400278.4, B-400308.4, June 22, 2009, 2009 CPD ¶ 128 at 3. The amount claimed 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, the costs do not exceed those that would be incurred by a prudent person in pursuit of a protest. Galen Med. Assocs., Inc.--Costs, B-288661.6, July 22, 2002, 2002 CPD ¶ 114 at 2.

A protester seeking to recover the costs of pursuing a protest must submit sufficient evidence to support its claim. Id.; John Peeples--Claim for Costs, B-233167.2, Aug. 5, 1991, 91-2 CPD ¶ 125 at 3. At a minimum, claims for reimbursement must

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<sup>4</sup> Among other inconsistencies, the GSA noted that Mr. Cotto's signature was missing from the "rescanned" document, but had been present on the initially-provided document.

identify and support the amounts claimed for each individual expense (including cost data to support the calculation of claimed hourly rates for employees), the purpose for which that expense was incurred, and how the expense relates to the protest filed at our Office. International Program Group, Inc.--Claim for Costs, supra.; Maintenance & Repair--Claim for Costs, B-251223.4, June 24, 1994, 94-1 CPD ¶ 381; Diverco, Inc.--Claim for Costs, B-240639.5, May 21, 1992, 92-1 CPD ¶ 460 at 8. The burden is on the protester to submit sufficient evidence to support its claim, and that burden is not met by inadequately supported statements that particular costs have been incurred. Aztec Dev. Co.--Claim for Costs, B-270275.2, Feb. 13, 1997, 97-1 CPD ¶ 73 at 2. Further, the accuracy of the claims must be certified with regard to the time expended and the costs incurred. 4 C.F.R. § 21.8(f)(1) (2012).

GAO will recommend the payment of costs only where, prior to coming to our Office, the protester timely filed an adequately documented, certified claim with the agency within 60 days after receiving our recommendation that costs be paid. Al Long Ford--Costs, B-297807.2, Oct. 18, 2007, 2007 CPD ¶ 189 at 3; see 4 C.F.R. § 21.8(f)(1) (2013). While we do not believe that the 60-day timeframe should be applied in so harsh a manner that a protester receives no reimbursement merely because its initial, timely claim required some supplementation or elaboration, we will consider the claim untimely and regard it as forfeited where the timely submission is of little or no value in supporting the claim. Al Long Ford--Costs, supra., at 4. We note in this connection that a protester's failure to file an adequately documented claim within the 60-day period may result in forfeiture of its right to recover costs even where the parties have continued to negotiate after the 60-day period expired. H.G. Prop. A, L.P.--Costs, B-277572.8, Sept. 9, 1998, 98-2 CPD ¶ 62 at 2–3.

Our review of this record leads us to agree with GSA's conclusion that Argos failed to present an adequately documented claim in a timely manner. Although Argos submitted its claim to GSA within the required 60-day timeframe, the claim was so defective that it did not permit GSA to determine the reasonable costs to be reimbursed. We set out below more details about our conclusion.

We find that the number of attorney hours requested was patently unreasonable given the nature of the dispute and the brevity of the filings. For example, although the protest was only two pages long, and raised a single, straightforward issue, Argos claims Mr. Cotto incurred over 70 hours preparing the protest in the four days before it was filed.<sup>5</sup>

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<sup>5</sup> In addition, in its protest Argos states that it was not until October 19 that it requested that the agency include a HUBZone preference in the RFP. Protest at 2. The protest, which was filed at noon on October 20, also states that the agency did not inform Argos that it would not include the preference until October 20. Id.

(continued...)

As another example, Argos claims that Mr. Cotto incurred 19.5 hours preparing and filing the protester's three-page comments answering the agency report.<sup>6</sup> Dennis Cotto, Esq., Invoice for Costs, Jan. 25, 2012, at 2. GSA's report, however, was filed with our Office and the protester at 5:26 p.m., November 21, and Argos filed its comments the next day at 11:02 a.m., approximately 17.5 hours after receiving the report.<sup>7</sup> Also, with respect to the hours claimed for administrative support, Argos failed to identify what administrative support was provided or by whom, despite the agency's requests that Argos support the reasonableness of these claimed hours.

Finally, we also agree with GSA's conclusion that Mr. Cotto cannot be reimbursed at his claimed-rate as an outside counsel (\$575 per hour), where the evidence does not support his contention that he was acting in a capacity as an outside attorney--rather than as the company's salaried general counsel. During the course of these proceedings, the documents filed with our Office show that Mr. Cotto submitted Argos' protest, and its comments on the agency report, as general counsel and principal of Argos.

To the extent Argos submitted a copy of a retainer agreement, we think inconsistencies in the submission provided ample basis for GSA to conclude that Argos failed to establish that it retained the services of its own general counsel as an outside counsel. As a result, to the extent Argos could be reimbursed for Mr. Cotto's time, we conclude the reimbursement should have been limited to Mr. Cotto's actual rate of compensation as a principal and general counsel of the protester. See A1 Procurement, JVG--Costs, B-404618.2, Apr. 4, 2012, 2012 CPD ¶ 139 at 3. Since, however, Argos refused to provide GSA with Mr. Cotto's compensation rate as the general counsel, despite the agency's repeated requests that it do so, and since Argos otherwise declined to provide the information GSA needed to consider the protester's claim, we will not recommend that Argos be reimbursed the costs it seeks.

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(...continued)

Given these timeframes, it is difficult to conceive of how Argos spent 70 hours preparing its initial two-page filing.

<sup>6</sup> The agency report consisted of a two-page contracting officer's statement, a seven-page memorandum of law, and a copy of the presolicitation notice.

<sup>7</sup> Argos also failed to explain the connection between other claimed attorney hours and its pursuit of the protest. For example, on November 3 and 4, Argos claimed that Mr. Cotto incurred 15.5 hours preparing and sending attachments to our Office. This, however, was two days after Argos submitted its response to the agency's request for dismissal and 17 days before the agency filed its report. Argos provides no further explanation of this time, despite the agency's request that it do so.

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 to be a windfall, a reward, or a penalty against the government. W.S. Spotswood & Sons, Inc.--Claim for Costs, B-236713.3, July 19, 1990, 90-2 CPD ¶ 50 at 3.

The claim for costs is denied.

Susan A. Poling  
General Counsel