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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Ryan P. Slaughter--Costs

File: B-411168.4

Date: December 14, 2015

Ryan P. Slaughter, the protester.

Michael D. McCormack, Esq., Department of the Air Force, for the agency.

Peter D. Verchinski, Esq., and Nora K. Adkins, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's claim for reimbursement of its costs of preparing and filing its protest is denied where the claim is not adequately documented.

DECISION

Ryan P. Slaughter¹ requests that our Office recommend the amount of costs it should be reimbursed by the Department of the Air Force, in connection with pursuing its successful protest in Ryan P. Slaughter, B-411168, June 4, 2015, 2015 CPD ¶ __.

We deny the claim for costs.

In its protest, Slaughter challenged its exclusion from the competitive range under request for proposals (RFP) No. FA4418-14-R-0012, issued by the Department of the Air Force, for grounds maintenance services. The protester argued that its exclusion from the competitive range was the result of an improper evaluation.

On June 4, 2015, our Office sustained Slaughter's protest finding that the agency had improperly eliminated the protester's proposal because the agency had

¹ The original protest and proposal were submitted by Ryan P. Slaughter; the Air Force used the names Appalachian American Consulting and AA Consulting for the protester in its evaluation documents. For the sake of consistency, we use Ryan P. Slaughter in this decision.

established its competitive range without considering price, and had excluded Slaughter's proposal solely on the basis of its unknown confidence past performance rating. Id. at 6. As part of our recommendation, we stated that the agency should reimburse Slaughter the cost of filing and pursuing its protest, 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.² Id. at 7.

On July 7, Slaughter submitted to the Air Force a 1-page invoice in the amount of \$2,560,000.³ Agency Response to Cost Claim, attach. 1, at 1. This invoice included \$1,580,000 for "Loss of Revenue," \$700,000 for "One Time Services," and \$288,000 for a "10 [percent] HUBZone increase." Id.

Following a telephone discussion with the Air Force, Slaughter submitted a revised claim on July 8.⁴ Agency Response to Cost Claim, at 1. The claim consisted of a revised 1-page invoice in the amount of \$3,893,120. Id., attach. 2, at 1. This amount included an hourly rate for Mr. Slaughter of \$3,160, multiplied by 160 hours for "Proposal," 800 hours for "Protest," and 160 hours for "Payment." Id. The amount also included a charge for a HUBzone preference under Federal Acquisition Regulation (FAR) § 19.1307. Id. In addition to the 1-page invoice, the protester's claim also consisted of monthly calendar pages from February through July 2015 with "8 Hrs" written in hand on each weekday. Id., attach. 2b, at 1-6.

Following another conversation with the Air Force, Slaughter subsequently submitted another revised claim on July 29. Agency Response to Cost Claim, at 1. This claim included a revised 1-page invoice in the amount of \$208,560.⁵ Id., attach. 3, at 1. This amount included an hourly rate for Mr. Slaughter of \$316, multiplied by 600 hours for "Protest." Id. The amount also included a charge for a HUBzone preference under FAR § 19.1307. Id. The revised claim did not include any supporting documentation.

² The agency then conducted a new evaluation, which resulted in Slaughter again being excluded from the competitive range. Slaughter filed a new protest of its exclusion. Our Office dismissed that protest for failing to state a valid basis of protest. Ryan P. Slaughter, B-411168.3, Aug. 26, 2015 (unpublished decision).

³ This invoice was dated June 4, 2015. Agency Response to Cost Claim, attach. 1, at 1.

⁴ This invoice was also dated June 4, 2015. Agency Response to Cost Claim, attach. 2, at 1.

⁵ This invoice was also dated June 4, 2015. Agency Response to Cost Claim, attach. 3, at 1.

After several more communications between the Air Force and Slaughter (including a conference call to discuss the cost claim), the Air Force issued its final contracting officer's decision on September 1. Id., attach. 4, at 1-3. The Air Force's decision found that Slaughter had failed to provide adequate supporting documentation for its claim. The Air Force also stated that it had, "in a good faith effort to try to move toward resolving this open claim," calculated the protester's reasonable costs at \$15,620,⁶ and stated that it was willing to settle for that amount "assuming, however, that [Slaughter] might be able to offer at least some adequate form of supporting documentation to justify such a payment." Id., attach. 4, at 2.

On September 2, Slaughter provided a certified invoice to the Air Force in the amount of \$15,620, mirroring the total amount and billing categories included in the final contracting officer's decision. Id., attach. 5, at 1. The protester provided no further documentation other than the 1-page invoice.

By email dated September 3, the protester submitted a request to our Office asking our Office to recommend that it be reimbursed its costs of filing and pursuing its protest.⁷

Our Regulations provide for reimbursement, in appropriate circumstances, of reasonable proposal preparation and protest pursuit costs. 4 C.F.R. § 21.8(d). A protester seeking to recover its protest costs must submit evidence sufficient to support its claim that those costs were incurred and are properly attributable to filing and pursuing the protest. Stocker & Yale, Inc.--Claim for Costs, B-242568.3, May 18, 1993, 93-1 CPD ¶ 387 at 4. At a minimum, claims for reimbursement must identify and support the amounts claimed for each individual expense (including cost data to support the calculation of claimed hourly rates), the purpose for which that expense was incurred, and how the expense relates to the protest before our Office. International Program Group, Inc.--Claim for Costs, B-400278.4, B-400308.4, June 22, 2009, 2009 CPD ¶ 128 at 3. The burden is on the protester to submit sufficient evidence to support its claim; that burden is not met by general, 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. Failure

⁶ The Air Force calculated this amount by using an hourly rate of \$150, multiplied by 40 hours for protest preparation, 48 hours for Slaughter's response to the agency report, and 16 hours for "time processing the protest." Id. The Air Force also included \$20 for miscellaneous material cost. Id.

⁷ The agency subsequently offered Slaughter a settlement agreement, in which the agency proposed to pay Slaughter \$15,620 to settle the matter; however, Slaughter found that the legal document "made no sense and was written in a language which I could not understand." Protester Comments, Oct. 16, 2015. Ultimately, no agreement was reached.

to file an adequately-supported claim in a timely manner will result in the loss of the protester's right to recover costs. Wind Gap Knitwear, Inc.--Claim for Costs, B-251411.2; B-251413.2, Aug. 30, 1995, 95-2 CPD ¶ 94 at 3 (claim that lacks detail is denied).

Although we do not doubt that the protester spent some time in preparing the protest, and responding to the agency report, we find that Slaughter has not provided adequate documentation to support this claim. In this respect, the protester states that it will "settle the claim for any amount," Slaughter Email to GAO, Oct. 16, 2015, and the only supporting documentation provided is a calendar with the phrase "8 Hrs" written on each of the weekdays from February through June of 2015. The protester has not provided any explanation as to what efforts were performed during that time, or by whom. The claim also does not provide any cost data to support the calculation of the hourly rates for Ryan P. Slaughter. Furthermore, repeated requests by the agency for the protester to provide a more detailed accounting of its efforts did not yield any further information.

Although we recognize that the requirement for documentation may sometimes entail certain practical difficulties, we do not consider it unreasonable to require a protester to document in some detail the amount and purposes of its claimed efforts, and to establish that the claimed hourly rates reflect actual rates of compensation. John Peeples--Claim for Costs, B-233167.2, Aug. 5, 1991, 91-2 CPD ¶ 125 at 3. Given the complete lack of documentation we cannot recommend that the Air Force reimburse the costs sought by Ryan P. Slaughter because the claim does not meet the established minimum standards. Wind Gap Knitwear, Inc.--Claim for Costs, *supra*.

The request is denied.

Susan A. Poling
General Counsel