



Decision

Matter of: AeroSage, LLC--Costs

File: B-416381.6

Date: March 13, 2019

David M. Snyder, AeroSage, LLC, for the protester.
Howard M. Kauffer, Esq., Matthew Vasquez, Esq., and Christopher S. Colby, Esq.,
Defense Logistics Agency, for the agency.
Young S. Lee, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Request for recommendation to reimburse protest costs in the amount of \$26,450 is denied in part where the claim is not adequately documented and dismissed in part where that portion of the claim is not disputed by the parties.
 2. Request for recommendation to reimburse costs associated with pursuing a claim at our Office is denied where agency promptly considered the claim and gave it reasonable consideration.
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DECISION

AeroSage LLC, a service-disabled veteran-owned small business (SDVOSB) of Tampa, Florida, requests our Office recommend that the Defense Logistics Agency (DLA) reimburse it in the amount of \$26,450, for the costs of filing and pursuing its protest, which challenged request for proposals (RFP) No. SPE605-18-R-0218, for the delivery of fuel products to locations throughout New England.

We recommend that AeroSage be reimbursed \$350 out of its total claim of \$26,450.¹

¹ AeroSage amended its claim multiple times while its request for recommendation to reimburse costs was pending at our Office. Ultimately, prior to our resolution of this dispute, AeroSage requested a recommendation for reimbursement of \$48,828.51. Second Supplemental Comments, attach. A, Revised Certified Cost Claim, at 1. We cite here to the amount requested by AeroSage in its initial request.

BACKGROUND

On May 15, 2018, AeroSage filed its protest with our Office raising multiple allegations challenging the terms of the agency's RFP. Protest (B-416381) at 2-3; AeroSage, LLC, B-416381, Aug. 23, 2018, 2018 CPD ¶ 288 at 2. On August 23, our Office issued a decision sustaining one of AeroSage's protest grounds challenging DLA's decision not to set aside certain line items for small businesses--where our review of the record confirmed that DLA failed to take into consideration that two of the ten contract line item numbers (identified as CLINs 0004 and 0009) were valued between \$3,500 and \$150,000. Id. at 8-9. With the exception of this one issue, all the other allegations were either dismissed or denied. Id. at 1-13. In our decision, we 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 receipt of the decision. Id. at 13.

AeroSage submitted its first certified claim to DLA on August 24, 2018. Request for Costs (RFC), attach. B, First Cost Claim to Agency, at 1. The agency responded on August 31 by identifying concerns with the documentation provided and requested additional information. RFC, attach. C, First Request for Additional Information, at 1-2. After this initial exchange, DLA continued to attempt to settle the claim, but failed to reach an agreement with AeroSage. RFC, attach. I, DLA Rejection of Claim, at 1; RFC, attach. J, AeroSage Rejection of Offer, at 1. AeroSage filed the instant request with our Office on October 23.² RFC at 1-2.

Our Office subsequently held two teleconferences to request that the parties continue to negotiate to resolve the claim. Electronic Protest Docketing System (EPDS) Docket Entry 15; EPDS Docket Entry 16; EPDS Docket Entry 30; EPDS Docket Entry 31. On January 9, 2019, DLA notified our Office that the parties were still unable to reach an agreement. Agency Notice of Non-Settlement (Jan. 9, 2019) at 1. Our Office held a final teleconference with the parties on January 11, and requested a final agency response, along with final comments from AeroSage. EPDS Docket Entry 36; EPDS Docket Entry 37.

DISCUSSION

AeroSage asserts that it should be reimbursed for the cost of pursuing both its protest and its claim. We conclude that with the exception of the \$350 EPDS filing fee, we have no basis to recommend reimbursement of any other portion of the claim.

² On November 14, 2018, DLA requested that we dismiss AeroSage's request for reimbursement of costs. Dismissal Request at 1. The agency argued that AeroSage failed to challenge the agency's response within 10 days after receipt, as required by 4 C.F.R. § 21.8(f)(4). Id. at 1-2. We declined to dismiss AeroSage's request because the agency filed its response on November 2, and AeroSage submitted its response on November 9, which was before the 10-day deadline.

Reimbursement of Protest Costs

AeroSage contends that it should be reimbursed \$26,450, for over 110 hours of work allegedly performed by its president, at \$250 per hour, in pursuit of both the protest and subsequent claim. RFC at 1; RFC, attach. E, Certified Cost Documentation, at 4. In response, the agency explains that it was unable to reimburse AeroSage for its protest costs because the claim lacked sufficient supporting documentation.³ AR at 1-12.

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. A protester seeking to recover the costs of pursuing its protest must submit sufficient documentation to support its monetary claim. John Peoples--Claim for Costs, B-233167.2, Apr. 5, 1991, 91-2 CPD ¶ 125 at 3. Although we have recognized that the requirement for such 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 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 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. Premiums & Specialties, Inc.--Costs, B-410247.2, June 5, 2015, 2015 CPD ¶ 175 at 3.

AeroSage's first certified claim to the agency consisted of a letter to DLA; a printout of a page from a payroll website; and a table with columns for: dates, hours, a billable rate per hour, and total costs. RFC, attach. B, First Cost Claim to Agency, at 1-4. AeroSage subsequently amended its claim and provided the agency with a letter from AeroSage's certified public accountant (CPA) and revised the previously submitted table with columns to also include a description of work performed, and identification of the entity for which the work was performed. RFC, attach. E, Second Cost Claim, at 1-7.

Based on this record, we find reasonable DLA's conclusion that AeroSage failed to provide the cost data necessary to support the billable hourly rate requested by AeroSage for its president, Mr. Snyder. Accordingly, we are unable to recommend reimbursement for the hours identified in AeroSage's claim. First, we note that although the payroll website printout page that was submitted indicates that Mr. Snyder has a pay rate of \$250 an hour, there is nothing on the printout to identify that it is related to the

³ DLA also identified other concerns with AeroSage's claim. Agency Report (AR) at 1-12. For example, the agency noted that the amount of hours being requested was excessive and unreasonable because the protest was almost, word for word, exactly the same as a protest that had been filed previously by AeroSage. Id. at 6.

hourly rate of compensation Mr. Snyder receives from AeroSage.⁴ RFC, attach. B, First Cost Claim, at 4; RFC, attach. E, Second Cost Claim, at 7. Next, although AeroSage also provided a letter from its CPA stating that Mr. Snyder “earns at least \$250 per hour based on the most recent records available for 2018,” and calculates an hourly rate of \$252.12 per hour for Mr. Snyder “based on [a] 1,820 hour government work year,” none of the records used by the CPA to calculate this rate were included with the letter. RFC, attach. E, Second Cost Claim, at 5-7. Additionally, the CPA’s letter failed to explain or provide the methodology used to calculate the rate being represented.⁵ Id.

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. International Program Group, Inc.--Costs, supra at 3. While AeroSage’s request also included other documents, all representing that Mr. Snyder should be reimbursed at an hourly rate of \$250, our prior decisions make clear that “to substantiate an employee’s actual rate of compensation, a protester must submit objective evidence of the rate, such as corporate payroll records, W-2 forms or tax records.”⁶ Galen Medical Assocs. Inc.--Costs, B-288661.6, July 22,

⁴ Because of the sparse information provided in the printout, it cannot even be determined whether the hourly rate represented from the payroll website applies to the rate AeroSage pays Mr. Snyder, or whether the rate relates to some other entity for which Mr. Snyder works.

⁵ After the initial request was filed, AeroSage subsequently provided our Office with additional documents to substantiate its claim. Response to Dismissal Request at 4; Second Supplemental Comments at 10. These documents were not provided to the agency within the timeframe required by our Bid Protest Regulations. 4 C.F.R. § 21.8(f)(1). Our Office will recommend the payment of costs only where, prior to filing at GAO, the protester timely filed an adequately documented, certified claim with the agency within 60 days after receiving our recommendation that costs be paid. 4 C.F.R. § 21.8(f)(1); Al Long Ford--Costs, B-297807.2, Oct. 18, 2007, 2007 CPD ¶ 189 at 3. Accordingly, we decline to consider the additional documentation. Al Long Ford--Costs, supra. Furthermore, even if the additional documents were to be considered, they do not substantiate a \$250 hourly billable rate. For example, although a paystub and a W-2 were eventually provided, they contained conflicting information. Response to Dismissal Request, attach. F, Additional Documents, at 5; Second Supplemental Comments, attach. C, Snyder W-2, at 1. The W-2 did not support a \$250 rate based on the total compensation Mr. Snyder received from AeroSage in 2018, when considering a work year consisting of 1,820 hours, as recommended by AeroSage’s CPA. Second Supplemental Comments, attach. C, Snyder W-2, at 1; RFC, attach. E, Second Cost Claim, at 7. The discrepancy between the paystub and W-2 was never addressed.

⁶ AeroSage also argues that Mr. Snyder’s compensation is “derived primarily from [AeroSage’s] earnings at end of year and limited hourly payroll.” Second Supplemental Comments at 8. The letter from AeroSage’s CPA also stated that Mr. Snyder “earns most of his compensation from earnings of the company and the increase in goodwill as
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2002, 2002 CPD ¶ 114 at 3. Here, our review of the record confirms that none of the documents that were submitted by AeroSage provide objective evidence of the \$250 rate being requested, and so AeroSage has failed to meet its burden to submit sufficient evidence to support its claim.⁷ Premiums & Specialties, Inc.--Costs, supra at 3-4

Finally, we dismiss the portion of AeroSage's request for reimbursement of the \$350 EPDS filing fee. The record indicates that DLA does not dispute reimbursement of this fee or the amount requested. RFC, attach. D, Second Request for Additional Information, at 1. Where there is no disagreement with regard to the reimbursement of certain protest costs, dismissal of that part of the request is appropriate. Eastern Forestry & Tree Serv. Inc.--Costs, supra, at 7.

Reimbursement of Pursuit of Cost Claim

AeroSage also seeks reimbursement for costs associated with pursuing its claim at our Office.⁸ RFC at 1; Second Supplemental Comments, attach. A, RCC, at 1. In this

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the company grows in the marketplace rather than by payroll compensation." RFC, attach. E, Second Certified Claim, at 5. Neither of these statements provided objective evidence or an explanation for the methodology being used to support a \$250 hour billable rate. While we recognize the dilemma faced by small entities, which may not have the extensive financial record-keeping system common to larger companies, 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 Svrc., Inc.--Costs, B-411848.3, July 20, 2017, 2017 CPD ¶ 229 at 6 (denying request for reimbursement of costs where, among other things, adequate documentation was required even though requester asserted that it was an "S-Corp" which sometimes made payments as "distributions" to its owners, rather than through payroll).

⁷ AeroSage's certified claims also suffered from other deficiencies. For example, the table that AeroSage submitted in its second certified claim contained multiple entries for work Mr. Snyder performed on behalf of both AeroSage and another entity identified as SageCare. RFC, attach. E, Second Cost Claim, at 4. SageCare was not a party to protest B-416381, and the entries failed to identify how much time Mr. Snyder spent working for each company. Id. Where a claim aggregates allowable and unallowable costs into a single claim, and we cannot determine from the record what portion is allowable and what portion is unallowable, the entire claim is unallowable. System Studies & Simulation, Inc.--Costs, B-409375.5, May 8, 2015, 2015 CPD ¶ 155 at 3-4.

⁸ AeroSage also requests reimbursement of costs associated with pursuing its claim at the agency. In this regard, AeroSage requests reimbursement for a \$650 expense incurred for the letter provided by its CPA, and for 8.5 hours of Mr. Snyder's time. RFC at 1; Second Supplemental Comments, attach. A, Revised Certified Claim (RCC) at 1. We do not recommend reimbursement for these costs. Although our Bid Protest Regulations provide that we can recommend reimbursement of costs of

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regard, AeroSage alleges it spent \$31 for a transcription fee service, and requests reimbursement for 73.61 hours of Mr. Snyder's time.⁹ Second Supplemental Comments, attach. A, RCC, at 1

We will only make a recommendation for reimbursement of costs associated with pursuing a claim at our Office if it is shown that the agency unreasonably delayed consideration of the claim, or otherwise failed to give it reasonable consideration. Celadon Laboratories, Inc.--Costs, B-298533.2, Nov. 7, 2008, 2008 CPD ¶ 208 at 8.

For example, DLA responded to AeroSage's initial August 24, 2018 claim on August 31. RFC, attach. C, First Request for Additional Information, at 1-2. In the agency's response, DLA specifically requested, among other things, that AeroSage provide documentation showing the actual amounts paid to the company's president with regard to filing and pursuing the protest, and for documentation establishing the nature of the expenses of AeroSage's claims. On September 19, after receiving no response from AeroSage, the agency submitted a second request for additional documentation, while also notifying AeroSage that DLA did not dispute the request for reimbursement of the \$350 filing fee. RFC, attach. D, Second Request for Additional Information, at 1. Then, on October 12, the agency offered to resolve AeroSage's claim for \$2,500. RFC, attach. G, Settlement Offer (Oct. 12, 2018), at 1. AeroSage rejected the agency's offer to settle the claim on the day it was received. RFC, attach. H, AeroSage rejection, at 1.

We conclude that any delay in resolving the claim appears to have been caused by AeroSage's failure to provide the documentation necessary to substantiate its request. Consequently, there is no basis to recommend reimbursement for any of the expenses or hours AeroSage spent pursuing its claim at our Office, other than the undisputed amount of the filing fee. Celadon Laboratories, Inc.--Costs, *supra* at 7 (denying request for reimbursement of expenses in pursuing a claim with our Office where the agency gave the claim reasonable consideration).

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

Thomas H. Armstrong
General Counsel

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pursuing a claim at our Office, 4 C.F.R. § 21.8(f)(2), there is no provision providing for reimbursement of those costs that are associated with preparing and pursuing a claim at the procuring agency. Eastern Forestry & Tree Serv. Inc.--Costs, *supra* at 6 n.4.

⁹ These costs were included in a series of amended claims that were submitted by AeroSage. RFC at 1; Second Supplemental Comments, attach. A, RCC, at 1.