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Decision

Matter of: WorldWide Language Resources, Inc.--Costs

File: B-418767.4

Date: February 28, 2022

Anne B. Perry, Esq., Katie Calogero, Esq., and Lauren Weiss, Esq., Sheppard Mullin Richter & Hampton LLP, for the protester.

Captain Philip L. Aubart, Lieutenant Colonel Abraham L. Young, and Andrew J. Smith, Esq., Department of the Army, for the agency.

Louis A. Chiarella, 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 claim filed with agency presents reasonable basis for adjustment, and agency does not object to request.

DECISION

WorldWide Language Resources, Inc. (WorldWide), a large business of Fayetteville, North Carolina, with the concurrence of the Department of the Army, requests that we recommend that WorldWide be reimbursed attorneys' fees at a rate higher than the \$150 per hour statutory rate limit in connection with a bid protest in which WorldWide prevailed.

We grant the request.

WorldWide protested the issuance of a task order by the Army to Valiant Government Services LLC, of Hopkinsville, Kentucky, under request for task order proposals No. W911W4-18-R-AFR3, issued for linguist services in support of the United States Africa Command. Subsequently, at the agency's request, our Office conducted an outcome prediction alternative dispute resolution (ADR).¹ Here, in addition to informing the

¹ In outcome prediction ADR, the GAO attorney handling a protest convenes the parties, at their request or at GAO's initiative, and explains what he or she believes the likely

parties that the likely outcome was that the protest would be sustained, we recommended the agency take corrective action by reevaluating WorldWide's cost proposal and Valiant's technical proposal in part, and making a new award decision.

WorldWide subsequently 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. WorldWide Ltr. to the Army, Feb. 9, 2022, at 1-4. The agency advises our Office that the request is fully substantiated and that it has no objection. Army Response to WorldWide Entitlement Request, Feb. 18, 2022, at 1. The Army therefore requests that we recommend reimbursement at the higher rate. *Id.*

Under the Competition in Contracting Act of 1984, as amended, where 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 where the protester is a small business concern. However, this hourly rate may be increased where "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." 31 U.S.C. § 3554(c)(2)(B).

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 (FASA), 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). *Vencore Servs. & Sols., Inc.--Costs*, B-412949.3, Dec. 12, 2016, 2016 CPD ¶ 363 at 2; *Sodexo Mgmt., Inc.--Costs*, B-289605.3, Aug. 6, 2003, 2003 CPD ¶ 136 at 37-43; *see also Department of the Army; ITT Fed. Servs. Int'l Corp. --Costs*, B-296783.4, B-296783.5, Apr. 26, 2006, 2006 CPD ¶ 72 at 2; *Department of State--Costs*, B-295352.5, Aug. 18, 2005, 2005 CPD ¶ 145 at 2. Thus, where 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. *Department of State--Costs, supra* at 2.

Here, WorldWide has provided the agency a detailed explanation of its calculation of the enhanced attorney fee rate of \$269.93 to \$272.09 per hour (depending on the month of billing) using DOL's U.S. City Average CPI, to which the agency does not object. WorldWide Ltr. to Army, Feb. 9, 2022, at 1-4. Use of DOL's U.S. City Average CPI is consistent with our prior decisions. Because the Army does not object, we recommend

outcome will be, and the reasons for that belief. A GAO attorney will inform the parties through outcome prediction ADR that a protest is likely to be sustained only if he or she has a high degree of confidence regarding the outcome; therefore, the willingness to do so is generally an indication that the protest is viewed as clearly meritorious, and satisfies the "clearly meritorious" requirement for purposes of recommending reimbursement of protest costs. *Genesis Bus. Sys.--Costs*, B-411264.11, Dec. 10, 2015, 2015 CPD ¶ 389 at 2.

reimbursement at the claimed higher rates. See *Vencore Servs. & Sols., Inc.--Costs, supra*.

The request is granted.

Edda Emmanuelli Perez
General Counsel