



Comptroller General
of the United States

Washington, D.C. 20548

Vickers

Decision

Matter of: Techniarts Engineering--Claim for Costs

File: B-234434.2

Date: August 24, 1990

Judith H. Deitz, for the protester.

Douglas P. Larsen, Jr., Esq., Department of the Navy, for the agency.

James Vickers, Esq., John Van Schaik, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Request by agency for dismissal of claim for costs of filing and pursuing a protest because claimant did not wait until agency ruled on amount of claim before filing at General Accounting Office is denied since information submitted is sufficient to determine whether claim is allowable and nothing would be accomplished by having the agency review the matter further since it is clear that the agency does not believe that the claim should be allowed.
2. Attorneys' fees claimed by prevailing protester are determined reasonable, and thus are allowable, where the hourly rates are within bounds of rates charged by similarly situated attorneys, and the hours claimed are properly documented and do not appear to be excessive.
3. Claimant is entitled to recover incurred company costs of filing and pursuing General Accounting Office protests, but not agency-level protest, where costs claimed are sufficiently documented.
4. Request for payment of costs associated with following-up agency actions pursuant to sustained decision and pursuing claim for recovery of costs of filing and pursuing protest are denied since such costs are not recoverable in the absence of express statutory or contractual authority.
5. Payment of interest on claim for reimbursement of costs of pursuing a sustained protest is not authorized.

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DECISION

Techniarts Engineering requests that our Office determine the amount it is entitled to recover from the Department of the Navy for filing and pursuing its protest, Techniarts Eng'g, B-234434, June 7, 1989, 89-1 CPD ¶ 531. In that decision, we sustained Techniarts' protest that the Navy failed to conduct meaningful discussions under request for proposals (RFP) No. N00123-88-R-0040 and determined that Techniarts was entitled to recover the costs of filing and pursuing the protest.

The protester has submitted a claim totaling \$42,540, consisting of \$6,000 in attorneys' fees and \$36,540 for time charged by company personnel in pursuing the protest. For the reasons set forth below, we find that Techniarts is entitled to recover \$31,000 as the costs of filing and pursuing its protest.

Initially, the Navy argues that we should deny Techniarts' claim in its entirety because that firm's invoice in support of its claim is so deficient because of its lack of specificity that the Navy did not have the opportunity to review the reasonableness of the claim before the protester filed its claim with our Office. In this regard, the Navy states that Techniarts' original claim for costs, dated October 27, 1989, was not properly certified, included no breakdown of the labor hours charged for Techniarts' employees or for attorneys' fees, and included expenses that were clearly improper. According to the agency, it requested additional information, but the protester's December 20 response was similarly deficient and added little useful information. It is the agency's view that it has not yet had an adequate claim to consider; therefore, the protester's claim is not ready for our Office to review.

We disagree. Techniarts has supplied what documentation it has available and has submitted to our Office a certified claim along with a breakdown of the company's labor rates and attorneys' fees. We think that, in general, this information is sufficient for us to determine whether or not the cost elements claimed are allowable. Compare Patio Pools of Sierra Vista, 68 Comp. Gen. 383 (1989), 89-1 CPD ¶ 374, where we refused to consider a claim because the claimant refused to submit supporting documentation. Also, we believe that nothing would be accomplished by having the agency review the matter further. It is clear from the

agency's submission to our Office and from its earlier responses to the protester that it does not believe that the cost claim should be allowed.

ATTORNEYS' FEES

Techniarts requests reimbursement of \$6,000 for its attorneys' fees, consisting of 32 hours attorney time at \$175 per hour or \$5,600, and \$400 in expenses. The expenses include \$100 for federal express delivery and long distance calls, and \$300 for round trip airfare from New York to Washington, D.C., parking, and taxis to attend the bid protest conference held at our Office on March 28. The hours claimed consist of 20 hours for research and preparation of the brief submitted in support of the protest, 4 hours for attendance at the bid protest conference, and 8 hours for "supplemental legal research and preparation of proposed draft on agency conference."

The Navy has challenged the attorneys' fees on numerous grounds. The Navy contends that the services were performed in March 1989, but the bill is dated December 14, which leads the Navy to conclude that no contemporaneous record of the charges by the attorney was kept. Second, the Navy questions the 8 hours for research and preparation of a proposed draft on "an agency conference" because there was no separate "agency conference." Lastly, the Navy challenges the 4 hours billed for the bid protest conference at our Office because that conference only took 2 hours.

First, we do not agree with the agency that the date on the attorneys' bill is relevant to the propriety of the costs claimed. With respect to the propriety of the claimed costs themselves, we generally accept the number of attorney hours claimed unless specific hours deemed to be excessive can be identified. Princeton Gamma-Tech, Inc.--Claim for Costs, 68 Comp. Gen. 400 (1989), 89-1 CPD ¶ 401.

We believe that the 20 hours charged for the legal brief filed in support of the initial protest submission, along with 4 hours for the conference at our Office, are not excessive. We do not agree with the agency that there is anything improper in charging 4 hours attorney time for a 2-hour conference. It is obvious that preparation is required for a conference appearance and 2 hours for preparation is certainly reasonable. Further, we recognize that there was no separate conference held with the agency but we think it is clear that the reference to the 8 hours charged for the preparation of a draft on the "agency conference" refers to the comments submitted to our Office after the conference was held here. The agency has not

questioned the \$175 per hour rate, and we think that the time expended was reasonable. We allow the full \$5,600 claimed as attorney's fees for professional services. The attorney's bill also includes \$400 for related expenses, such as airfare to attend the conference, telephone, and courier service charges. The agency does not specifically dispute these charges and they are on their face reasonable. We therefore allow the \$6,000 claimed for attorneys' fees.

COMPANY COSTS

Techniarts claims \$36,540 in company costs consisting of \$790 in travel expenses and 286 hours for Techniarts' Director of Administration and Director of Engineering at \$125 per hour, for a total of \$35,750.

In response to the Navy's challenge of the hourly rate of \$125 billed by Techniarts for its Director of Administration and Director of Engineering, Techniarts submitted to our Office a statement from the company's certified public accounting firm that shows that a partner's (both the Director of Administration and Director of Engineering are partners) hourly rate, including salary, benefits, facility burden, and overhead is \$126.36 per hour. We will use the figure of \$125 per hour in computing the amount of the claim.

The Navy argues that a total of \$8,790 in claimed costs incurred from January 29 through February 2, 1989, should be disallowed because they represent expenses incurred prior to the filing of the protest with our Office on February 8. These costs include \$3,000 representing 24 hours for Techniarts' engineer and \$790 in travel expenses incurred in meeting with the contracting officer in January 1989. These costs are related to Techniarts' agency-level protest and, as such, are not allowable. Princeton Gamma-Tech, Inc.-- Claim for Costs, 68 Comp. Gen. 400, supra.

The agency questions the remaining \$5,000 of the \$8,790 total which, according to Techniarts' claim, were incurred February 2 through 8 for the "preparation of initial protest letters and negotiations with C.O. in an attempt to resolve protest." While the protester is entitled to the cost of filing the protest with this Office, the full \$5,000 is not recoverable since part of the 40 hours claimed is attributable to negotiations to resolve the protest and not in preparing the protest itself. Princeton Gamma-Tech, Inc.-- Claim for Costs, 68 Comp. Gen. 400, supra. In a letter dated November 27, the Navy asked Techniarts to explain its claim for expenses incurred prior to filing the protest with this Office. We think that request reasonably put

Techniarts on notice that it would need to identify the actual costs incurred in preparing the protest as opposed to the costs incurred negotiating with the Navy to resolve the matter. Techniarts, nonetheless, never provided a breakdown of how it spent the 40 hours prior to protesting to our Office. While some of the 40 hours may have been spent on protest-related work, since those hours have been billed in the aggregate, we are unable to discern what portion of the charges actually are allowable and, therefore, we disallow the total \$5,000. See Omni Analysis--Claim for Bid Protest Costs, 69 Comp. Gen. ____ (1990), B-233372.4, May 1, 1990, 90-1 CPD ¶ 436.

Likewise, Techniarts lists 22 hours of labor by its Director of Administration from June 14 to October 13, in following-up the Navy's actions pursuant to our June 7 decision and pursuing its claim at a total cost of \$2,750. We will not allow these costs since they were unrelated to the pursuit of the protest. Id.

With respect to the remaining \$25,000 in company costs consisting of 200 hours at \$125 per hour, the Navy argues that Techniarts failed to submit any daily documentation of hours spent on the protest and concerning which tasks were performed by which employee. According to the Navy, this information is necessary so that duplicative labor hours and hours spent on issues upon which the protester did not prevail can be excluded.

First, there is no requirement that a protester produce contemporaneous records to establish its entitlement to the award of costs and we conclude that the evidence submitted by the protester is sufficiently precise to determine the reasonableness of the hours claimed. Data Based Decisions, Inc.--Claim for Costs, 69 Comp. Gen. 75 (1989), 89-2 CPD ¶ 538. Second, Techniarts prevailed on the central issue of the protest, the Navy's failure to conduct meaningful discussions, and only a single award was involved in the protest. We therefore see no reason to attempt to allocate costs between winning and losing issues. Id.

The Navy specifically challenges the hours billed by Techniarts for preparing its April 14 comments on the Navy's administrative report. According to the Navy, Techniarts billed 124 hours of company time at \$125 per hour for a total of \$15,500, all for preparation of this document. The Navy argues that this is excessive.

We do not agree. Techniarts' April 14 submission in response to both the agency report and the conference consisted of a cover submission with two "technical reports"

attached; one of these reports was directed towards the agency report and the other concerned the conference. The firm's claim invoice reflects the form of this submission by containing three entries. The invoice includes 20 hours of engineer and administrator time to prepare the April 14 cover submission, as well as 80 hours for the technical report in response to the Navy's administrative report, and 24 hours for a technical report in connection with the conference.

We do not think that the time spent by the firm on the April 14 submission and attachments was excessive. The central issue of the protest--whether meaningful discussions were held--primarily turned on technical issues which were within the expertise of company officials. Thus, while the Navy argues that Techniarts' April 14 submission only included two case citations, we think it was more important to the pursuit of the protest that the April 14 submission included a great deal of technical information, without which the protest may not have been sustained. Under the circumstances, the time spent by company officials was not excessive.^{1/}

As an example of alleged double billing, the Navy argues that both attorney and company engineer time should not have been claimed for producing the April 14 cover submission which was signed by the attorney. We see nothing wrong with clients providing nonlegal assistance in the preparation and review of filings and factual exhibits and such assistance does not, in our view, compel the conclusion that efforts were needlessly duplicated. Omni Analysis--Claim for Bid Protest Costs, 69 Comp. Gen. ____ (1990), supra. Moreover, Techniarts' April 14 submission included material prepared by both the attorney and company personnel.

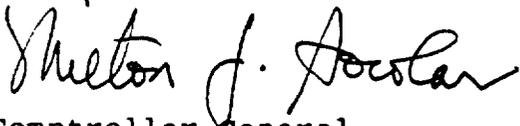
Thus, it is our conclusion that the Navy has not shown that the remaining \$25,000 claimed in company costs are excessive or unreasonable and we will allow them.

^{1/} The invoice included with Techniarts' initial claim indicates that company officials spent 80 hours from March 2 to March 24 to prepare the technical report in response to the Navy's administrative report. The Navy notes that its administrative report was not submitted until March 10 and argues that the costs for hours before that date should be disallowed. The more detailed log of partners' time submitted by Techniarts indicates no time was spent on this task until March 11 when Techniarts received the Navy's report on the protest. Under the circumstances, the full 80 hours should be paid.

Finally, Techniarts' claim for payment of interest on its claim for costs is not reimbursable since payment of interest on such claims is not authorized by any statute. Ultraviolet Purification Sys., Inc.--Claim for Bid Protest Costs, B-226941.3, Apr. 13, 1989, 89-1 CPD ¶ 376.

CONCLUSION

We find Techniarts is entitled to \$6,000 in attorneys' fees and \$25,000 in company protest costs, for a total of \$31,000.

for 
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