



Decision

Matter of: Solutions Lucid Group, LLC--Costs

File: B-400967.2

Date: October 1, 2009

Lyle Glover for the protester.

Edward Murray, Esq., Defense Logistics Agency, for the agency.

Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's request for recommendation that it be reimbursed \$52,800 in protest costs is denied where protester fails to furnish sufficient evidence establishing the number of hours worked and rates of compensation for the individuals who worked on the protest.

DECISION

Solutions Lucid Group, LLC (SLG) of Oklahoma City, Oklahoma requests that we recommend that it recover \$52,800 from the Defense Logistics Agency (DLA) for the costs of filing and pursuing its successful protest in Solutions Lucid Group, LLC, B-400967, Apr. 2, 2009, 2009 CPD ¶ 64.

We deny the request.

BACKGROUND

In Solutions Lucid Group, LLC, we sustained SLG's protest of the agency's failure to solicit it under request for quotations (RFQ) No. SPM4A6-09-Q-0599, for fluorescent lamp starters used on the Eagle F-15 aircraft. We found that the agency had failed to promote competition to the maximum extent practicable by failing to solicit the protester, whom the acquisition specialist knew to be interested in competing and whose ability to furnish the item she did not have a reasonable basis to doubt. We recommended that the agency reimburse SLG for the costs of filing and pursuing its protest. Our decision advised that SLG needed to submit its certified claim for costs, detailing the time spent and the costs incurred, to the agency within 60 days after receipt of our decision.

SLG submitted a claim for \$49,500 to the agency on April 29. The claim consisted of a one-page invoice, which identified four protest-related work products (the original protest, comments on the agency request for dismissal, comments on the agency report, and rebuttal to the agency comments), a number of hours for each work product, and an hourly rate of \$150. In an email message accompanying the claim, SLG's owner stated that he "certif[ied] that the claim [was] made in good faith; that the supporting data [were] accurate and complete to the best of [his] knowledge and belief; that the amount requested accurately reflect[ed] the claim amount for which the contractor believed the government is liable; and that [he was] duly authorized to certify the claim on behalf of [SLG]." Agency Report (AR), Tab 3.

The agency responded to the protester's submission the following day, advising SLG that it needed to substantiate its claim. The agency instructed the protester that it needed to identify by name and position the individuals who had worked on the protest, describe the work that they had performed, and specify the dates on which and number of hours that they had worked. The agency further advised that the protester needed to substantiate its claimed hourly rate with information such as time cards and payroll records. The agency also advised the protester that if it was seeking reimbursement of attorneys' fees, it needed to furnish an itemized accounting for the attorneys' time and certify that they had been paid.

On June 1, the protester submitted a revised claim in the amount of \$52,800.¹ The revised claim provided more detail than the original one, but still failed to furnish much of the substantiating information requested by the agency. The revised submission identified two individuals who had worked on the protest (the company owner and a legal consultant) and furnished generalized descriptions of the protest-related tasks that each had performed and the overall number of hours associated with each task.² The revised claim did not identify the dates on which the tasks were

¹ The original claim sought reimbursement for 330 hours at \$150/hour, whereas the revised claim sought reimbursement for 352 hours at \$150/hour.

² Tasks performed by the company owner (and number of hours claimed) were described as follows: review of original award document (2 hrs.); preparation of documents for original [i.e., agency-level] protest (46 hrs.); discussion with agency after rejection of agency-level protest (5 hrs.); review of GAO filing procedures (2 hrs.); research for GAO protest (50 hrs.); response to agency request for dismissal (22 hrs.); response to agency report (44 hrs.); and response to agency rebuttal comments (17 hrs.). Tasks performed by the legal consultant and number of hours claimed consisted of the following: preparation of GAO protest (32 hrs.); review of agency request for dismissal and preparation of response (40 hrs.); review of agency report and preparation of comments (72 hrs.); and review of agency rebuttal and preparation of response (20 hrs.).

performed; it also failed to furnish any documentation substantiating the claimed hourly rate.

By letter dated June 11, the agency notified SLG that it was denying the protester's claim in its entirety. The letter advised the protester that it had failed to document its claim adequately and that the agency considered the claimed amounts to be unreasonable; in the latter connection, the agency pointed out that SLG was seeking \$52,800 for the preparation of a total of 11 pages of pleadings, which equated to \$4,800 per page. The agency also noted the discrepancy between the number of hours claimed on the original and revised claims. With regard to the portion of the claim seeking reimbursement for the company owner's time, the agency pointed out that hours incurred in pursuing and attempting to settle the agency-level protest were not recoverable and that the protester had failed to furnish the requested documentation substantiating the claimed hourly rate. With regard to the portion of the claim pertaining to the legal consultant, the agency noted that the protester had failed to furnish any invoices or fee agreements documenting the number of hours worked and the hourly fee amount.

On July 2, SLG asked our Office to recommend that it be reimbursed in the full amount of its revised claim. The protester disputed the agency's finding that it had not adequately documented the claim, arguing that neither it, as an 8(a) small business, nor its legal consultant, who was not part of a large consulting firm, could reasonably have been expected to maintain the sort of records that the agency was seeking. In addition, the protester disputed the agency finding that the number of hours for which it was seeking reimbursement was excessive. SLG also furnished additional documentation purporting to establish the hourly rate for its company owner and legal consultant.

DISCUSSION

A protester seeking to recover the costs of pursuing its protest must submit sufficient evidence in support of its monetary claim. The amount claimed may be recovered to the extent that the claim is adequately documented and is shown to be reasonable. Chant Eng'g Co., Inc.—Costs, B-274871.4, Apr. 28, 1999, 99-1 CPD ¶ 79 at 2. To be considered adequately documented, a claim seeking reimbursement of employee and consultant time must provide detail as to the number of hours worked and the purpose of the efforts; it must also contain documentation supporting the claimed hourly rates. Al Long Ford—Costs, B-297807.2, Oct. 18, 2007, 2007 CPD ¶ 189 at 3-4. Where a protester fails to submit sufficient evidence to establish the number of hours worked and/or the rate of compensation for an employee or consultant, we will deny a request for a recommendation that protest costs be reimbursed. See, e.g., McNeil Techs., Inc.—Costs, B-254909.3, Apr. 20, 1995, 95-1 CPD ¶ 207 at 7.

Here, SLG has failed to document adequately the number of hours worked by its owner and the legal consultant. While the protester has furnished overall hours for several generalized categories of work effort (e.g., response to agency rebuttal

comments--17 hours), it has provided no breakdown of the hours claimed by date, and indeed represents that such records do not exist. The absence of any contemporaneous documentation supporting the claimed numbers strongly suggests that the numbers furnished in the claim are after-the-fact approximations based on the personal recollection of the two individuals. In fact, by arguing that it could not reasonably be expected to maintain detailed records of its protest-related work efforts, the protester in effect concedes that the numbers in its claim are based on personal recollections, not committed to writing until months after the work was performed. We do not think that such recollections provide the level of reliability required for our Office to recommend the payment of government funds to a protester.³

In addition to failing to document adequately the number of hours worked, SLG has failed to document sufficiently the rates of compensation for its company owner and legal consultant. The protester has furnished no evidence as to the amount that the company owner was paid by the company. We recognize in this connection that the protester did furnish a copy of a statement of revenue and expenses for the company for 2008, but we cannot determine the owner's compensation from the company's financial statement.

The documentation furnished to establish the legal consultant's rate of compensation is also insufficient. In support of its contention that the hours attributed to its legal consultant should be compensated at a rate of \$150/hour, the protester furnished our Office with a copy of an undated "legal consultancy agreement" signed by both the company owner and the consultant, which provides in relevant part as follows:

CONSULTANT'S FEES. The amount Consultant will receive for consultant's fees for the services to be provided under this agreement will be the consultant's base hourly rate of \$150/hour multiplied by the amount of hours the Consultant documented as having spent relating to this protest, IF AND ONLY IF, the protest is upheld resulting either in the awarding of the contract, and/or the Comptroller General determines that the client is eligible for reimbursement of cost involving the protest. If there is not a favorable outcome involving the protest, Consultant will receive no fees.

³ We also note that, with regard to the number of hours claimed, the hours that SLG spent pursuing and attempting to settle its agency-level protest are not reimbursable, Galen Medical Assocs., Inc.—Costs, B-288661.6, July 22, 2002, 2002 CPD ¶ 114 at 5-6, and that even after the hours associated with those activities are excluded, the number of hours claimed is excessive in light of the fact that the protest raised only a single straightforward issue and did not require the production of a large record.

Request for Costs, Exhibit 8. We do not think that this document establishes that SLG is obligated to compensate the legal consultant for the time that he worked on the protest at a rate of \$150/hour. First, it is not clear from the above language whether SLG is obligated to reimburse the consultant for his time regardless of whether it recovers such costs from the government or only to the extent that it recovers such costs from the government. In this connection we have held that in order for a protester to recover the cost of a consultant's time, there must be evidence to show that it has an obligation to pay the costs regardless of whether they are recovered from the government; an obligation to pay costs that is contingent upon recovery from the government may not properly be reimbursed. Galen Medical Assocs., Inc.-Costs, supra, at 5. Further, the protester has furnished us with no documentation demonstrating that SLG has been billed by or made payment to the legal consultant for his time; the absence of such evidence implies that the parties to the agreement interpret it as providing for payment to the consultant only to the extent that the protester recovers funds from the government. We also note that the consultancy agreement is undated (and that the protester has made no representation in its submissions to our Office as to when it was signed by the parties); thus, there is no evidence that the parties had in fact agreed upon a rate of compensation of \$150/hour at the time the services were performed. In sum, we are not satisfied that the evidence furnished by the protester demonstrates that it is obligated to reimburse its legal consultant at a rate of \$150/hour regardless of whether it recovers costs from the government.

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 submit sufficient evidence to support its claim. E.g., International Program Group, Inc.-Costs, B-400278.4, B-400308.4, June 22, 2009, 2009 CPD ¶ 128 at 3. SLG has not done so here. Because the protester has failed to submit sufficient evidence establishing the number of hours that its owner and legal consultant worked on the protest and their hourly rates of compensation, we are unable to recommend that it be reimbursed for any such costs. Accordingly, SLG's request is denied.

Michael R. Golden
Managing Associate General Counsel