



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Aztec Development Company--Claim for Costs

File: B-270275.2

Date: February 13, 1997

Troy M. Deal, Jr. for the protester.

Talbot J. Nicholas II, Esq., Department of Transportation, United States Coast Guard, for the agency.

Susan K. McAuliffe, Esq., and Jerold D. Cohen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Amounts claimed for costs of filing and pursuing protest may be recovered to the extent that they are adequately documented and are shown to be reasonable; reimbursement is not allowed for lost profits and for cost of filing reimbursement claim with the procuring agency.

DECISION

Aztec Development Company requests that our Office determine the amount it is entitled to recover from the Department of Transportation, United States Coast Guard, for the costs of filing and pursuing a bid protest that we sustained in our decision Aztec Dev. Co., B-270275, Feb. 21, 1996, 96-1 CPD ¶ 108. Aztec has filed a claim for approximately \$76,000; the Coast Guard recommends payment of \$10,862 to the firm. We determine that Aztec is entitled to recover \$11,311.73.

On February 26, 1996, Aztec received our decision sustaining its protest of the agency's rejection of its bid (under invitation for bids No. DTCGG1-95-B-3WK331 for survey and dredging services) as materially unbalanced. Noting that performance of the contract had been completed, we recommended that the Coast Guard reimburse Aztec the costs of filing and pursuing the protest, and the firm's bid preparation costs; the decision notified Aztec that it should submit its detailed and certified claim for costs directly to the agency within 90 days after receipt of the decision. Aztec filed its claim with the Coast Guard on May 24, but the parties have been unable to resolve the matter. On July 29, Aztec filed this claim with our Office requesting that we determine the amount to be paid by the Coast Guard.

A protester seeking to recover the costs of pursuing its protest must submit sufficient evidence to support its monetary claim. Custom Prod. Mfg., Inc.--Claim for Costs, B-235431.7, May 9, 1995, 95-1 CPD ¶ 236. The amount claimed may be recovered to the extent that the claim is adequately documented and is shown to be reasonable. Patio Pools of Sierra Vista, Inc.--Claim for Costs, 68 Comp. Gen. 383 (1989), 89-1 CPD ¶ 374. At a minimum, claims for reimbursement of expenses must identify and support the amounts claimed for each individual expense (including cost data to support the calculation of claimed hourly rates for employees), the purpose for which that expense was incurred, and how the expense relates to the protest filed at the General Accounting Office. Maintenance and Repair--Claim for Costs, B-251223.4, June 24, 1994, 94-1 CPD ¶ 381; Diverco, Inc.--Claim for Costs, B-240639.5, May 21, 1992, 92-1 CPD ¶ 460. Although the requirement for documentation may sometimes entail practical difficulties, the burden is on the protester to submit sufficient evidence to support its claim, and that burden is not met by inadequately supported statements that particular costs have been incurred. Hydro Research Science, Inc.--Claim for Costs, 68 Comp. Gen. 506 (1989), 89-1 CPD ¶ 572.

Aztec first requests payment from the Coast Guard for \$26,200 in lost profits that the firm contends it would have received had it been awarded the contract. We disallow this aspect of Aztec's claim since there is no legal basis for allowing recovery of lost profits. Firebird Constr. Corp.--Recon., B-246182.2, May 27, 1992, 92-1 CPD 473.¹

Aztec next claims \$24,200.36 in costs for pursuing its protest and has submitted lists of claimed costs for activities performed and expenses incurred by the firm between August 1995 and April 1996. Aztec, however, did not file its protest with our Office until October 20, 1995, and we issued our decision sustaining the protest on February 21, 1996. Consequently, we disallow the costs claimed to have been incurred both prior to the filing of the protest (including the costs claimed for pursuit of Aztec's agency-level protest) and after the issuance of our protest decision, since they are not reasonably related to Aztec's pursuit of the protest to

¹In its comments responding to the agency's report on the claim, Aztec requests that it be paid \$9,611.62 for its bid preparation costs pursuant to the recommendation in our February 21 decision. Aztec, however, did not pursue bid preparation costs in its May 24 claim to the Coast Guard. Our decision sustaining the protest cautioned the protester to file its claim for such costs, detailing and certifying the time expended and costs incurred, with the contracting agency within 90 days after receipt of our decision. Aztec's failure to file the claim for its bid preparation costs within that time resulted in forfeiture of the firm's right to recover those costs. Test Sys. Assocs., Inc.--Claim for Costs, 72 Comp. Gen. 169 (1993), 93-1 CPD ¶ 351.

our Office. Techniarts Eng'g--Claim for Costs, 69 Comp. Gen. 679 (1990), 90-2 CPD ¶152; Komatsu Dresser Co.--Claim for Costs, B-246121.2, Aug. 23, 1993, 93-2 CPD ¶ 112; Diverco, Inc.--Claim for Costs, supra.

For costs incurred between the protester's filing and our decision, Aztec has submitted an itemization of its personnel's work hours, and applicable hourly rates, relating to the pursuit of its protest. The Coast Guard reports that it finds the claimed hourly rate of \$150 for the chairman of the company reasonable. Multiplying the \$150 rate by the number of hours (60.75) claimed for the chairman's time and activities between the time period of October 20, 1995, and February 21, 1996 (i.e., during the pendency of the protest to our Office), we calculate payment for the chairman's time in pursuing the protest at \$9,112.50.

The Coast Guard contends, however, that the claimed hourly rate of \$75 for administrative assistants is unreasonably excessive and inadequately supported, and that the agency considers \$25 to be a more reasonable hourly rate for this labor category. Aztec supports the \$75 rate by stating that more than one administrative assistant worked on the protest at a time, and that "a fair and reasonable Lump Sum Rate was determined to include the cost of these various personnel."

As stated above, a reimbursement claim must identify and support the amounts claimed for each individual expense, with cost data to support the calculation of claimed hourly rates. Maintenance and Repair--Claim for Costs, supra. Aztec has not provided any supporting cost documentation reflecting the employees' actual rates of compensation, however. Moreover, assuming that \$25 per hour is a reasonable rate for a single administrative assistant--which Aztec does not dispute--the documentation submitted by the protester does not, in our view, identify with sufficient detail the individual activities of each of the administrative assistants to justify an across-the-board application of the lump sum rate to hours claimed for work allegedly performed contemporaneously. For example, (1) for one date, Aztec claims 1 hour of administrative assistant time, at the lump sum hourly rate of \$75, to fax and mail a document, which would reflect three people each working an hour at \$25 each, and (2) for another date, Aztec claims 3 hours of the chairman's time (at \$150 per hour), and 8 hours of administrative assistant time at the lump sum rate, to "review, edit, and finalize with exhibits," and fax, a 20-page protest submission--which would reflect three assistants each working 8 hours on the effort. Absent additional detail, we are unwilling to apply the claimed lump-sum rate to every instance in which an administrative assistant might have been utilized.

Nonetheless, neither our Office nor the Coast Guard has any basis to dispute Aztec's assertion that administrative assistants were used during the identified protest period. Because a \$25 hourly rate evidently corresponds to this labor category, and since the record does not support the consistent application of a lump-sum rate, we believe Aztec should be reimbursed for the claimed number of

hours for the relevant period of time (October 20, 1995, to February 21, 1996) for administrative assistant(s) work (i.e., 59.25 hours) at an hourly rate of \$25, which totals \$1,481.25.

Aztec next claims reimbursement for certain other expenses, including facsimile transmission charges and miscellaneous costs, stated as lump-sum amounts, for items such as computer usage, photocopying (for supplies and a technician), assorted supplies, mailing costs and costs for the facsimile machine technician's time.² We accept the lump-sum amounts as reasonable except for items regarding facsimile transmission telephone charges and outgoing telephone charges. The facsimile charges on Aztec's list of miscellaneous expenses reflect a slightly inaccurate transcription from the telephone company bills provided by the protester for its facsimile machine's transmissions; we have used the actual bills to calculate the correct facsimile transmission costs (\$51.48) for the protest period. We disallow the claimed outgoing telephone call charges of \$10.55 as inadequately supported and unrelated to the protest period. Consequently, we conclude that payment should be made in the amount of \$717.98 for the listed miscellaneous expenses.

Aztec also requests payment of \$21,468.50 for costs related to the preparation and submission of its claim for costs submitted to the Coast Guard, and \$4,600 for the costs involved in bringing the current claim to our Office; Aztec contends that these costs were incurred in pursuit of its protest. We disallow these costs. First, the costs of filing and pursuing a bid protest at the General Accounting Office do not include costs associated with pursuing a claim for those costs with the contracting agency. Manekin Corp.--Claim for Costs, B-249040.2, Dec. 12, 1994, 94-2 CPD ¶ 237. Second, we will disallow reimbursement for costs allegedly incurred in pursuing a claim to our Office where, as here, the agency acted reasonably expeditiously in responding to the claim filed with the agency. Id. The record shows that Aztec first filed its claim nearly 3 months after its receipt of our decision sustaining its protest, and that the agency responded and expressed its concerns regarding the claim to Aztec within 2 months of its receipt of the claim. Given the reasonableness of the agency's concerns about certain aspects of the claim, as

²Aztec explains that it also included costs labeled "faxes" to reflect "fax machine overhead" costs. These costs, however, are inadequately supported; we also note that the expenses claimed for the use of the facsimile machine already appear to be accounted for in Aztec's allowed claim for actual facsimile transmission costs (as charged by the telephone company), the time of the facsimile machine technician, and supplies.

discussed in this decision, and the agency's reasonably expeditious response to the claim in light of those concerns, Aztec is not entitled to the costs of challenging the agency's position regarding the claim. See ViON Corp.--Claim for Costs, B-256363.3, Apr. 25, 1995, 95-1 CPD ¶ 219.

Finally, Aztec requests interest on the claim for protest costs. The request is denied, since such payment is not authorized by any statute. John Peeples--Claim for Costs, 70 Comp. Gen. 661 (1991), 91-2 CPD ¶ 125.

In sum, we find that Aztec is entitled to be reimbursed a total of \$11,311.73 for the costs of filing and pursuing its protest.³

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³The \$449.73 difference between this amount and the amount recommended by the Coast Guard reflects our allowance of certain additional miscellaneous expenses and correction of calculation errors.