



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Chant Engineering Co., Inc.--Costs

File: B-274871.4

Date: April 28, 1999

Philip Chant for the protester.

John E. Lariccia, Esq., Department of the Air Force, for the agency.

Jacqueline Maeder, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

General Accounting Office (GAO) recommends that successful protester be reimbursed costs of filing and pursuing GAO protest to the extent they are documented and were reasonably incurred in pursuing the protest.

DECISION

Chant Engineering Co., Inc. requests that we determine the amount it should recover from the Department of the Air Force for filing and pursuing its protest under request for proposals (RFP) No. F04699-96-R-A010 for two aircraft test stations. As discussed below, we recommend that Chant be reimbursed \$6,802 in protest costs.

In its protest, Chant alleged that the awardee's proposed electronic console, which was part of the test station, did not meet the RFP specification that all components of the electronic console "shall use IEEE-488 standard interface." After our Office denied its request that we dismiss the protest as untimely, the Air Force submitted a report and then a response to the protester's comments on the report, in which the agency contended, in essence, that Chant misinterpreted the requirement for the IEEE-488 interface and that the IEEE-488 interface requirement applied only to inter-component communications. The agency argued that, because the awardee "packaged" its components in a unique way, the IEEE-488 standard was not applicable. The awardee's submissions specifically stated that only one of its components met the IEEE-488 standard interface requirement. After a subsequent telephone conference in which all parties participated, the agency notified our Office that it would take corrective action by revising the specifications and resoliciting best and final offers. Our Office then dismissed the protest and Chant requested reimbursement for its costs of filing and pursuing its protest. We recommended that Chant be awarded protest costs because we found that the Air

Force unduly delayed taking corrective action in response to a clearly meritorious protest. Chant Eng'g Co., Inc.--Request for Costs, B-274871.2, Aug. 25, 1997, 97-2 CPD ¶ 58.

Chant first submitted its claim to the Air Force on September 10, 1997, seeking reimbursement of \$37,773. It submitted a revised claim on November 13, requesting reimbursement of \$38,228, consisting of \$22,119 for direct labor costs, \$6,868 for overhead, \$9,209 for general and administrative costs and \$32 for mailing expenses. Chant's Revised Claim, Nov. 13, 1997, enclosure, at 1st unnumbered page. After a series of negotiations, the Air Force, believing Chant's costs were not substantiated with appropriate documentation and that its claim of more than 500 hours of effort was excessive, offered Chant \$3,804.81 in settlement of the claim. Letter from Air Force Office of General Counsel to Chant Eng'g Co. 2 (Dec. 15, 1997). Chant refused the offer and submitted the matter to our Office for resolution.

Chant seeks reimbursement for 508.5 hours of time for its president, vice-president and secretary at hourly rates of \$51.03, \$49.03 and \$13.16, respectively, plus the associated overhead, general and administrative costs and mailing expenses noted above. Chant's Submittal to GAO, Mar. 23, 1998, enclosure. To support these expenses, Chant has submitted a seven-page timeline outlining by date the task performed, the time spent on the task and the person or persons performing the task. Id. For example, the protester indicates that on October 8, 1996, its vice-president spent 6 hours on the Internet researching a case cited by the Air Force; on November 21, the 3 employees spent a total of 20 hours contacting component distributors, verifying part numbers and descriptions, confirming costs of IEEE-488 and non-IEEE-488 printers, and formulating general arguments to counter erroneous points made in the agency report; and, on November 22, the three employees spent a total of 14 hours reading the agency report, outlining arguments to rebut agency arguments, and discussing the protester's response.

The Air Force does not challenge the hourly rates or the overhead and general and administrative rates submitted by Chant or the \$32 in mailing costs which were substantiated by invoices. However, the agency argues that Chant did not provide adequate documentation or explanation to support its direct labor costs and related general and administrative and overhead costs. The Air Force also argues that the direct labor hours claimed are excessive and unreasonable.

A protester seeking to recover the costs of pursuing its protest must submit sufficient evidence to support its monetary claim. The amount claimed may be recovered to the extent that the claim is adequately documented and is shown to be reasonable; a claim is reasonable, if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the pursuit of a protest. E&R, Inc.--Claim for Costs, B-255868.2, May 30, 1996, 96-1 CPD ¶ 264 at 2; Data Based Decisions, Inc.--Claim for Costs, B-232663.3, Dec. 11, 1989, 89-2 CPD ¶ 538 at 2-3.

As a preliminary matter, we disallow all costs claimed for 164.5 labor hours incurred after our December 31, 1996 dismissal of Chant's protest because these costs relate to Chant's request for reconsideration and its preparation of its cost claim and were not incurred in pursuit of the protest. Aztec Dev. Co.--Claim for Costs, B-270275.2, Feb. 13, 1997, 97-1 CPD ¶ 73 at 4. We also disallow costs for 7 direct labor hours plus associated overhead and general and administrative costs for which Chant does not identify the work that was performed. While Chant lists these hours on its timeline at its December 13 entry, Chant specifically writes that it is "[u]nable to account for this time." Chant's Submittal to GAO, Mar. 23, 1998, enclosure at 5.

The remaining 337 hours charged by Chant (163 hours for research and 174 for protest submittal preparations) we consider to be grossly excessive, considering the nature and events of the protest. The more than 8 staff-weeks of time expended in pursuing this relatively simple and straightforward protest far exceed what a prudent person familiar with the technical issue being protested and with some knowledge of the federal procurement system should have reasonably needed to identify and research the applicable law and regulations and the technical standards and component costs and to respond to the agency's arguments.

Chant claims 163 labor hours of research, including 86 labor hours of legal research on procedures, case law and regulations and 77 hours of technical research on IEEE-488 components and prices.¹ We recommend that Chant recover for 6 hours of the 86 labor hours Chant claims for legal research. Specifically, Chant may recover for 3 hours of work performed by its vice-president on September 26 researching our procedures for filing a protest; 2 hours on October 8 researching on the Internet a case cited by the Air Force in its dismissal request in order to rebut the agency's argument; and 1 hour over December 24 and 26 researching in our regulations possible responses to the dismissal of a protest. We find these 6 hours reasonable for the limited legal research required by the protest issue and our simple, straightforward filing requirements.

The remaining 80 legal research hours are disallowed because Chant did not submit any documentation indicating what regulations, cases or procedures were reviewed and how this research related to the protest, or because the effort on the part of the principals was duplicative and excessive. For example, Chant reports that in September and October, its secretary spent 3 work days at different libraries researching "GAO and protests." Id. at 1-2. Chant never explains what the secretary was researching but simply states that she, for example, "went to [the] Federal Law Library in Philadelphia" or to the "Doylestown Courthouse Law Library . . ." Id. at 2. Chant also claims that its vice-president and secretary spent 7 hours reviewing

¹For purposes of this analysis, we have categorized the hours claimed in light of the activities identified by Chant in its day-by-day breakdown.

information she had found in her library searches. Again, Chant provides no specifics on what was reviewed but states only that "nothing was relevant." Id. We recommend that none of these claimed labor hours be reimbursed.

Similarly, Chant claims almost 20 hours researching our case law and regulations on the Internet "reading everything about GAO . . ." Id. at 1. Yet, again, Chant does not specifically indicate what it was researching, noting only, for example, that on September 25 it "[b]egan searching internet sites" and that on September 27, it was "[b]ack on [the] internet reading everything about GAO . . ." Id. In only one instance does Chant specifically state that it was researching a case cited by the Air Force. While Chant claims its vice-president spent 6 hours on the Internet researching this case, we find 6 hours excessive and allow, as noted above, 2 hours for this research.

Chant also claims approximately 20 hours of work contacting personnel in other agencies, such as the Small Business Administration and the Internal Revenue Service, for information concerning our regulations. Because Chant has not shown the relevance of these contacts, we recommend that it not be reimbursed for these costs.

We do recommend that Chant recover costs for a total of 11 of the 77 labor hours it claims for researching IEEE-488 components. Specifically, we recommend that Chant recover for 6 hours its vice-president and 1 hour its president and secretary each spent over November 13, 14, and 21 obtaining information--availability, models, prices--on IEEE-488 printers and other components in response to an agency request. While Chant claims 39 hours for this work for its 3 employees, we find 39 hours excessive and the work duplicative. Similarly, Chant's claim for reimbursement for more than 20 hours for research work performed on December 20 and 23 is excessive. Specifically, during our December 19 telephone conference, we requested that Chant submit an estimate of the cost difference between its proposed electronic console with all components meeting the IEEE-488 interface requirement and what it would have offered if the solicitation had provided that only inter-component communications must meet the IEEE-488 standard. As noted above, Chant claims a total of more than 20 hours for this effort; yet its response to our Office--which was less than 1 page in length--includes a specific price for only one component. Under these circumstances, we find that Chant may recover for only 2 hours that its vice-president spent and 1 hour that its president spent on December 20 and 23 obtaining price information on IEEE-488 components in response to the request from our Office.

Chant claims 174 hours for preparing its various submissions to our Office, including its protest and responses to the agency's dismissal request, report and supplemental report, as well as preparing for and participating in a conference call with all the parties. We recommend that Chant recover the costs incurred for 70 of

these hours, including 42 hours for its vice-president, 18 hours for its president and 10 hours for its secretary.

Specifically, we recommend that Chant recover for 4 hours on September 28 and 4 hours on October 1 its vice-president spent drafting and finalizing its protest and for 1 hour Chant's secretary spent typing the protest on October 1. We recommend that Chant also recover for 1 hour its vice-president spent discussing procedures with our Office and reading the Air Force's dismissal request on October 7; for 2 hours its vice-president spent on October 11 drafting and finalizing its response to the dismissal request; and for 1 hour the secretary spent typing and proofing the response. Chant may also recover for 1 hour its vice-president spent in conversation with GAO personnel on November 7, for 6 hours its vice-president and 4 hours its president spent reading the agency report and outlining Chant's response on November 18, 19, and 20 and for 8 hours its vice-president, 4 hours its president and 3 hours its secretary spent drafting and finalizing Chant's response from November 22 through 25. The protester may also recover for 10 hours its vice-president spent, 7 hours its president spent and 4 hours its secretary spent reading the Air Force's supplemental report, drafting a response and finalizing, typing and proofing its response from December 5 through December 10. The protester may recover for 4 hours of its vice-president's time and 2 hours of its president's time preparing for and participating in the December 19 conference call concerning the protest. Chant may also recover for 1 hour its vice-president spent preparing a revised cost estimate and for 1 hour its secretary spent typing and faxing its cost information to our Office on December 23. Finally, Chant may recover for 1 hour its vice-president spent and 1 hour its president spent on December 26 drafting a letter opposing the corrective action proposed by the agency.

The remaining 104 of the 174 hours claimed for reading, drafting and finalizing submissions are disallowed because, again, the effort on the part of the principals is duplicative and/or excessive. For example, Chant claims that its 3 employees spent 58 hours reading and responding to the agency's response to the protester's comments on the initial agency report. Our records show that the agency's response was five pages in length, including essentially a three-point rebuttal and five-paragraph contracting officer's statement. In spite of Chant's own position that the Air Force's response basically restated the arguments in the initial report, Chant claims that it required more than 1 staff week to read and respond to this five-page submission. In our view, these hours are excessive and more than a prudent person would incur. Similarly, Chant claims more than 30 hours reading the agency's initial report--which consisted primarily of five pages plus a three-page contracting officer's statement. We view these hours as both excessive and duplicative and have, as noted above, recommended that only a portion of them be reimbursed.

In sum, we recommend that the Air Force reimburse Chant a total of \$6,802² for the costs of filing and pursuing its protest, consisting of \$3,912 in direct labor costs (\$2,746 for 56 direct labor hours for its vice-president, \$1,021 for 20 direct labor hours for its president, and \$145 for 11 direct labor hours for its secretary) plus \$1,205 in overhead expenses, \$1,653 in general and administrative costs, and \$32 in mailing expenses.

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²In calculating amounts for recommended reimbursement, we have rounded amounts to the nearest dollar.