



United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Dual Inc.--Costs

File: B-280719.3

Date: April 28, 2000

Michael A. Gordon, Esq., Holmes, Schwartz & Gordon, for the protester.
John E. Lariccia, Esq., Department of the Air Force, for the agency.
Peter A. Iannicelli, Esq., and Michael R. Golden, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

General Accounting Office will not consider a claim for the costs of filing and pursuing a protest where the claim was filed with the contracting agency more than 60 days after protester's counsel received a protected copy of the protest decision under a protective order.

DECISION

Dual Inc. requests that we recommend the amount it should recover from the Department of the Air Force for the costs it incurred in filing and pursuing its protest in Dual, Inc., B-280719, Nov. 12, 1998, 98-2 CPD ¶ 133. In that decision, we sustained Dual's protest against the award of a contract to Camber Corporation and recommended that Dual be reimbursed its protest costs, including reasonable attorneys' fees.

We dismiss the claim.

Our decision sustaining Dual's protest specifically directed Dual to submit its certified claim for costs, detailing the time expended and the costs incurred, directly to the contracting agency within 60 days after receipt of that decision. *Id.* at 9. The Air Force requests that we dismiss Dual's claim because it was not filed with the Air Force until more than 60 days after a protected version of our decision was issued to Dual's counsel. Dual responds that it filed a claim with the Air Force within 60 days after Dual itself received a redacted copy of the decision from its attorney.

The November 12, 1998, decision contained information subject to a protective order and therefore was faxed to Dual's counsel, but not sent to the client, on

November 13. Once our Office had approved a redacted version of the decision, Dual received a copy of that version from its counsel via facsimile transmission on December 7. On February 5, 1999, Dual sent a facsimile copy of a 1-page letter to the contracting officer requesting \$67,932.21 in protest costs; the letter included no detailed explanation or supporting documentation to show how the costs were incurred. The record indicates that the contracting officer received the original of that letter and some supporting documentation on February 11. By letter of June 11, the Air Force dismissed the claim insofar as it requested proposal preparation costs, disputed other parts of the claim, and requested that Dual submit additional supporting documentation. When Dual had not responded or provided the requested additional documentation, by letter of January 10, 2000, the Air Force denied the entire claim as legally insufficient.

Our regulations, which we cited in the Dual decision, state:

The protester shall file its claim for costs, detailing and certifying the time expended and the costs incurred, with the contracting agency within 60 days after receipt of GAO's recommendation that the agency pay the protester its costs. Failure to file the claim within that time may result in forfeiture of the protester's right to recover its costs.

4 C.F.R. § 21.8(f)(1) (2000). We measure compliance with our timeliness rules from the time that protester's counsel receives notice of a protestable issue, and we apply the same rule when measuring timeliness of claims for protest costs. See Continental Maritime of San Diego, Inc.--Claim for Cost, B-249858.5, Dec. 17, 1993, 93-2 CPD ¶ 323 at 2-3; Columbia Research Corp., B-247073.4, Sept. 17, 1992, 92-2 CPD ¶ 184 at 4-5. Accordingly, Dual was required to file a certified and detailed claim for protest costs with the Air Force within 60 days of receipt of the protest decision by Dual's counsel, or by January 12, 1999, at the latest.

While we recognize that counsel could not share the protected version of the decision with its client, we see no reason why Dual's counsel would not have advised Dual immediately upon receipt of the protected decision on November 13, 1998, that the protest had been sustained and that we had recommended that Dual be reimbursed its protest costs, and we see no valid reason for Dual not to have begun gathering the necessary documentation to support its claim at that time.¹ Moreover,

¹ Although we reject Dual's position, we note that, even if we were to measure timeliness from Dual's December 7 receipt of the redacted decision as Dual proposes, the claim would still be untimely because Dual's initial claim, filed by facsimile transmission on February 5, was legally insufficient as it included only a blanket statement of the total amount claimed without any detailed explanation of costs incurred. See Test Sys. Assocs., Inc.--Claim for Costs, B-244007.7, May 3, 1993, 93-1 CPD ¶ 351 at 3. To the extent that Dual did file some supporting documentation with the Air Force, that documentation was not received by the Air

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even if Dual's counsel failed to advise Dual promptly of its right to file a claim for its costs and of the timeliness requirements, our protest decision specifically advised Dual of the time frame for filing its claim with the Air Force, and Dual still had ample time--35 days--to file a timely and detailed claim after receiving the redacted decision.

Because Dual did not send its initial claim for costs (which, as noted above, was legally insufficient) to the Air Force until February 5, it was untimely filed and will not be considered by our Office.

The claim for protest costs is dismissed.

Comptroller General
of the United States

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Force until February 11, more than 60 days after Dual itself received a redacted version of our decision.