



Decision

Matter of: DTV Transition Group, Inc.–Costs

File: B-401466.2

Date: April 7, 2010

Stephen Thomas Yelverton, Esq., Yelverton Law Firm PLLC, for the protester. Maureen Duignan, Esq., and Derek A. Yeo, Esq., Federal Communications Commission, for the agency. Eric M. Ransom, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Claim for costs is denied where protester fails to adequately document its claim and aggregates allowable and unallowable costs such that the allowable costs cannot be determined on the basis of the record.

DECISION

DTV Transition Group, Inc. (DTG) of Washington, D.C., requests that our Office determine the amount that it should recover for the costs of preparing its proposal under Federal Communications Commission (FCC) solicitation No. 09000057, for walk-in centers to provide consumer assistance related to the transition to digital television.

We deny the claim for costs.

DTG filed its original protest on June 8, 2009, alleging that the FCC failed to comply with the small business set-aside provisions of the solicitation and made awards that would not meet the agency's needs. Our Office dismissed that protest as academic on July 15, following the FCC's decision to take corrective action consisting of agreeing to pay DTG's reasonable proposal preparation costs. Payment of costs was the only available corrective action in the protest because, due to the impending nationwide transition to digital television, the FCC made a determination under Federal Acquisition Regulation § 33.103(f)(3) to continue performance of the awarded contracts, and the contracts were largely performed during the pendency of the protest.

In our decision dismissing the protest, our Office cautioned DTG that costs claimed by a protester may be recovered only to the extent that they are adequately documented and shown to be reasonable. We further noted that claims for reimbursement of expenses must identify and support the amounts claimed for each individual expense, the purpose for which that expense was incurred, and how the expense relates to the claim.

On July 24, DTG submitted a claim for costs to the FCC in the amount of \$118,500, supported by a short affidavit from the managing director of DTG. The affidavit explained that the costs were related to services provided by two firms, SinoPowell Capital LCC and Yelverton Law Firm PLLC, which were engaged in the preparation of the proposal. This affidavit further stated:

Considering the size and scope of DTG's \$18 Million Bid Proposal and the specialized and complex research and analysis that was required, SinoPowell Capital and Yelverton Law Firm were engaged for flat fees of 2.5% each of the bid amount awarded by the FCC, with a minimum fee due to SinoPowell Capital of \$100,000.00 and to Yelverton Law Firm of \$18,500.00. These fees were due in the event that the bid proposal was not implemented for any reason.

Claim for Costs, July 24, 2009, Affidavit, at 1. The claim for costs also included an invoice from SinoPowell in the amount of \$100,000 for "market, demographic, financial, cost, and Bid Proposal analysis and assistance," stating that "[w]ork included detailed analysis and financial modeling for the 240 facilities outlined in the Bid Proposal for Region 6." Id., SinoPowell Invoice.

The FCC responded to DTG on October 6, concluding that its claim was not adequately documented to allow the FCC to determine what costs were actually incurred, the correlation between those costs and the preparation of DTG's proposal, and the reasonableness of those costs.¹ The FCC therefore requested that DTG submit additional information, including copies of the analysis performed by SinoPowell, documentation of attorneys' fees, and supporting records such as timesheets, calendars, expense reports, billing statements, and receipts. The FCC also requested documentation to support that the fees charged were within the range of what other firms would charge for such services, and noted that the apparent commonality of interests between DTG and SinoPowell (the FCC asserted that the

¹ In its filing with our Office, the FCC also expressed concern regarding the total amount of the costs claimed by DTG, noting that the solicitation had limited technical proposals to three pages in length. FCC Response, Jan. 27, 2010, at 1. The FCC also noted that DTG's proposal was for only one of the six regions at a proposed price of \$18 million; in contrast, the total amount allocated by the FCC for all six regions was only \$11.6 million, and was eventually reduced to \$11,410,000. Id.

managing director of DTG was also the managing director of SinoPowell) might indicate the lack of an arms-length transaction.

DTG responded to the FCC's request on November 10, but did not provide any of the requested documentation of its claimed costs. Rather, DTG explained that, in view of the circumstances of the procurement, "DTG believed in good faith . . . that it was certain to receive some part of the overall awards" and that "[t]he professionals that were needed to put the bid proposal together . . . thus negotiated as their compensation [that] they would be an integral part of implementing the project . . . and would be paid for their services on such basis." DTG Response, Nov. 10, 2009, at 1.

The FCC denied DTG's claim in full on December 8, concluding that DTG's November 10 response indicated that DTG had not actually incurred proposal preparation costs for any services provided by the identified firms and that, in any event, DTG had not provided adequate documentation of any proposal preparation costs, or shown that any costs incurred were reasonable. DTG filed its claim with our Office on December 28.

Even where an agency agrees to reimburse a protester's reasonable proposal preparation costs, a protester seeking to recover such costs must submit sufficient evidence to support its claim. John Peeples--Costs, B-233167.2, Aug. 5, 1991, 91-2 CPD ¶ 125 at 3. At minimum, claims for reimbursement 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 each expense was incurred, and how the expense relates to the claim. Maintenance and Repair--Costs, B-251223.4, June 24, 1994, 94-1 CPD ¶ 381 at 4. 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 document in some detail the amount and purposes of its claimed efforts. W.S. Spotswood & Sons, Inc.--Costs, B-236713.3, July 19, 1990, 90-2 CPD ¶ 50 at 3. It is our obligation to ensure that any protester seeking to recover costs meets these minimum standards.

Here, we have reviewed the record and agree with the FCC that DTG has failed to provide sufficient support for its claim. Even after the FCC's specific request for the necessary documentation, DTG failed to provide more than the vague SinoPowell invoice as evidence of its costs. Further, DTG's statements have raised doubts as to whether any amounts due to SinoPowell and Yelverton Law Firm were incurred for the preparation of the proposal. For example, in the claim for costs filed with our Office, DTG states that SinoPowell and Yelverton Law Firm "negotiated as their compensation for bid preparation that they would be an integral part of implementing the \$18 million project to be awarded to DTG, and would be paid for their services on such an integrated basis, and not just for bid preparation." Claim for Costs, Dec. 28, 2009, at 2 (emphasis in original).

We interpret DTG's various statements to the agency and to our Office to indicate that there is a portion of the "integrated" costs included in its claim for \$118,500 that is not attributable to the preparation of its proposal under the solicitation, and is therefore not properly reimbursable. Where, as here, a protester has aggregated allowable and unallowable costs, and provided such insufficient documentation that we cannot tell from the record before us what portion is allowable, the entire amount must be disallowed even though some portion of the claim may be properly payable. TRESP Assocs., Inc.—Costs, B-258322.8, Nov. 3, 1998, 98-2 CPD ¶ 108 at 4. Accordingly, DTG's claim must be denied in full.

The claim is denied.

Lynn H. Gibson
Acting General Counsel