



Comptroller General  
of the United States  
Washington, D.C. 20548

907712

# Decision

**Matter of:** Manekin Corporation--Claim for Costs  
**File:** B-249040.2  
**Date:** December 12, 1994

Timothy Hutchens, Esq., J. Andrew Jackson, Esq., and Merle M. DeLancey, Esq., Dickstein, Shapiro & Morin, for the protester.  
Emily C. Hewitt, Esq., Gary F. Davis, Esq., and Jeffrey M. Hysen, Esq., General Services Administration, for the agency.  
Barbara C. Coles, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

1. Protester's claim for reimbursement of the cost of employee time and company expense in preparing a proposal and pursuing a protest is allowed where based upon actual rates of compensation plus reasonable overhead.
2. Agency properly found that pre-construction architecture costs incurred several months prior to the time the protester first expressed an interest in the procurement are not reimbursable as proposal preparation costs.
3. Bid Protest Regulations do not contemplate the award of costs associated with pursuit of claim for proposal preparation and protest costs before the contracting agency.
4. Costs associated with pursuit of claim before General Accounting Office are not recoverable where record shows that agency proceeded expeditiously in responding to the claim.

## DECISION

Manekin Corporation requests that our Office determine the amount it is entitled to recover from the General Services Administration (GSA) for the costs of preparing its proposal under solicitation for offers (SFO) No. 90-088 and the costs of filing and pursuing its protest in Manekin Corp., B-249040, Oct. 19, 1992, 92-2 CPD ¶ 250. The SFO contemplated the award of a 5-year lease with a 5-year

renewal option for 75,000 net useable square feet of office space for the Department of Energy.

We sustained Manekin's protest against award of a lease to Bellemeade Development Corporation because GSA failed to conduct meaningful discussions with Manekin. Because a possible termination for convenience of Bellemeade's lease--if another round of discussions resulted in the selection of Manekin--was not a feasible remedy, we awarded Manekin the reasonable costs of preparing its proposal and of filing and pursuing its protest.

On January 14, 1993, Manekin submitted its claim to the agency for proposal preparation and protest costs (\$67,672.35) and for the costs of pursuing its claim (\$12,034.98). After reviewing Manekin's claim, GSA--by letter dated April 8--advised Manekin that some of its costs were not reimbursable and requested additional information about other costs.

After reviewing the additional information, the contracting officer sent Manekin a check for \$19,358.28 to cover the company's protest and proposal preparation costs.<sup>1</sup> Manekin then filed its claim here, requesting that our Office find it entitled to the remaining \$60,191.55.<sup>2</sup>

#### PROPOSAL PREPARATION COSTS

Manekin's remaining proposal preparation costs at issue here total \$52,518.55: \$7,695.05 for employees' time and company expenses, and \$44,823.50 for architecture-related costs. Manekin calculated the \$7,695.05 by applying a 75 percent overhead rate<sup>3</sup> to the total hourly wages for the employees

<sup>1</sup>The record does not offer an explanation for the disparity between GSA's settlement offer of \$19,358.28 and its concession that Manekin is entitled to a total of \$19,367.28 (\$5823.69 for proposal preparation costs and \$14,241.81 for protest costs). Since the agency's detailed explanation of each allowable cost was unambiguous, we assume that the \$9.00 difference is the result of a mathematical error.

<sup>2</sup>Manekin's original claim included attorneys' fees of \$157.50 for pre-protest activities that the firm has subtracted from its total costs claimed here.

<sup>3</sup>Manekin explained that its 75 percent overhead rate was for overhead and administrative expenses. Manekin does not distinguish between types of overhead, or identify the portion of the applied rate related to general and administrative (G&A) expenses.

who worked on the proposal. GSA challenges the majority of these claimed costs.

#### Employee Time and Expenses

While GSA does not challenge Manekin's claimed hourly wages or the hours claimed by Manekin's employees that were incurred while working on the proposal, it argues that Manekin's method of calculating the 75 percent overhead rate it applied to employee salaries (i.e., dividing the firm's total expenses other than salaries for 1991--\$3,158,259-- by the total paid for employee salaries for 1991--\$4,197,397) was unreasonable. According to GSA, Manekin's overhead should be calculated using only expenses and salaries associated with its leasing activities, not its sales activities. GSA instead used 10 percent as the overhead rate to be applied to the claimed hourly wages.

In response to GSA's request for an explanation of Manekin's methodology, Manekin furnished GSA with the company's "Scheduled Statement of Income", which listed the income generated from the services it performs and a breakdown of employee, occupancy, marketing, and G&A expenses. Manekin also described its business operation. In this regard, Manekin explained that its employees perform services in all aspects of its real estate ventures and are not assigned to service-specific units to handle, for example, only leasing activities. Similarly, the firm does not segregate its business expenses into separate accounting pools for leasing and sales.

While GSA contends that Manekin should exclude all non-leasing income and expenses from its calculation of overhead, GSA has failed to show why, given the cost and impracticality required, Manekin should alter its business and accounting practices for the purpose of calculating the overhead rate applicable to this claim. GSA has not suggested any reason to believe that this approach would result in a materially different rate than the one claimed, and the record otherwise contains no indication that a different rate would result. GSA has also failed to provide an explanation concerning the nexus, if any, between the 10 percent overhead rate it claims is more appropriate, and an overhead rate calculated only with leasing expenses and income. Given the fact that Manekin's reasoned explanation of its calculation is based on its established accounting practices, and that GSA has not shown Manekin's position to

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<sup>1</sup>Manekin selected 1991 figures to calculate its costs because 1991 was the year preceding the bid protest.

be unreasonable or substantiated its own calculation, we accept Manekin's calculation of its overhead rate.

GSA also objected to reimbursement of Manekin's claimed employee costs on the basis that Manekin submitted two proposals for two different buildings, the Bennington and the Cloverleaf, but failed to state the proportionate costs for preparing each proposal.<sup>5</sup> As a result, GSA reduced Manekin's allowable costs by an additional 20 percent.

Generally, a protester seeking to recover its proposal preparation costs must submit evidence sufficient to support its claim that these costs were incurred and are properly attributable to proposal preparation. See Stocker & Yale, Inc.--Claim for Costs, 72 Comp. Gen. 193 (1993), 93-1 CPD ¶ 387. Where a protester has aggregated allowable and unallowable costs in a single claim such that we cannot tell from the record what portion is unallowable, the entire amount may be disallowed even though some portion of the claim may be properly paid. Omni Analysis--Claim for Costs, 69 Comp. Gen. 433 (1990), 90-1 CPD ¶ 436.

Although GSA specifically questioned Manekin about the references to the Cloverleaf building in its work documents, Manekin failed to submit any evidence demonstrating the proportionate proposal preparation costs. According to Manekin, the Cloverleaf proposal was prepared without "additional measurable cost or effort." The record shows, however, that certain costs specifically related to the Cloverleaf differ from those related to the Bennington; therefore, the preparation of the Bennington proposal did not subsume Manekin's efforts for the Cloverleaf proposal. Given Manekin's failure to distinguish the costs associated with the Cloverleaf proposal from the claimed costs here, we conclude that the agency's decision to allow only 80 percent of these costs was reasonable.

In sum, we conclude that Manekin is entitled to recover \$6,156.04 (the total claimed cost, including Manekin's overhead rate--i.e.,--\$7,695.05--multiplied by 80 percent). Since GSA already has paid a total of \$3,975.47 for these costs, Manekin is entitled to recover an additional \$2,180.57.

#### Architecture-Related Costs

The largest portion of Manekin's claim, \$44,823.50, represents architecture-related costs which the protester states it incurred in the preparation of its proposal. To

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<sup>5</sup>Manekin did not protest GSA's evaluation and rejection of its proposal for the Cloverleaf building.

support its claim, Manekin submitted invoices, totalling \$42,927.69, from the architectural firm that prepared its building plans; Manekin also explained that it paid \$1,895.81 to cover the costs of a site drawing, a bar chart, and interior space plans and slides. GSA disallowed all of these costs except those related to the preparation of the site drawing and the bar chart.

While GSA does not dispute that Manekin incurred the claimed costs for building plans, GSA disallowed these costs because they were incurred prior to the date Manekin states that its proposal preparation began. According to GSA, proposal preparation does not encompass work performed prior to that date. Although Manekin conceded that the costs for the building plans were incurred prior to the date it submitted an expression of interest in response to GSA's advertisement in The Washington Post, Manekin explains that these costs were required in order for Manekin to submit its proposal.

In our view, the costs for the building plans do not fall within the scope of proposal preparation costs and, therefore, are not reimbursable. The record shows that Manekin ordered the plans several months prior to the time it first expressed an interest in the procurement. As a result, we cannot conclude that the costs for these plans were incurred solely in anticipation of competing for this contract.

GSA next explains that the costs for the interior space plans and slides are not reimbursable because the items were not requested by the agency and, thus, are not relevant to the procurement. In response, Manekin argues that although the SFO did not require these items, they were used by the company to aid in its calculation of proposed prices.

With regard to the interior slides, Manekin generally claims that it used these slides during the preparation of its proposal. Absent any persuasive evidence from the protester to show specifically either that the company needed the slides to prepare its proposal or that they were submitted with its proposal, we have no reason to conclude that they were in fact necessary. Therefore, the costs associated with the slides are not recoverable.

On the other hand, we think that Manekin is entitled to recover the costs associated with the interior space plans. Under the terms of the SFO, offerors were required to submit prices based on the annual price per square foot, including the option periods. The protester specifically argues--and the agency does not effectively refute--that these items were necessary because they were used to calculate Manekin's price. Since interior space plans are reasonably related to price calculations, we have no basis to question the

protester's request for reimbursement of these costs. Accordingly, the protester is entitled to reimbursement of an additional amount of \$698.22.<sup>6</sup>

#### PROTEST COSTS

GSA opposes reimbursement of Manekin's claimed amount of \$2,031.43 for employee time and company expenses incurred in pursuing the bid protest here. As with its claimed costs for employee expenses related to the preparation of the proposal, Manekin multiplied the total hourly wages for the employees who worked on the protest, \$1,160.85, by a 75 percent overhead rate. According to GSA, the same principle applies to these expenses that applied to Manekin's expenses for its proposal preparation efforts--namely, that Manekin's overhead rate should be calculated using only expenses and salaries associated with its leasing activities. For the reasons discussed above, we conclude that Manekin properly calculated its overhead rate and is entitled to the claimed amount of \$2,031.43. Since GSA already has paid \$1,276.94 for these costs, Manekin is entitled to recover an additional \$754.49.

#### CLAIM COSTS

Manekin requested that GSA reimburse it \$12,034.98 for the costs incurred in pursuing its claim with the agency. GSA responded by arguing that these costs are not reimbursable. Our Bid Protest Regulations, 4 C.F.R. § 21.6(f)(2) (1993) provide that we may declare a protester entitled to reimbursement of the costs of pursuing its claim at our Office. They do not, however, contemplate reimbursement of the costs of pursuing its claim before the contracting agency. See The Pevar Co.--Claim for Costs, B-242353.3, Sept. 1, 1992, 92-2 CPD ¶ 144.

To the extent that Manekin argues that it should be reimbursed the costs for pursuing its claim here, we decline to award Manekin's costs. The purpose of our regulation allowing such recovery, 4 C.F.R. § 21.6(f)(2), is to encourage expeditious agreement between a successful protester and the contracting agency as to the quantum of recoverable costs. See Komatsu Dresser Co.--Claim for

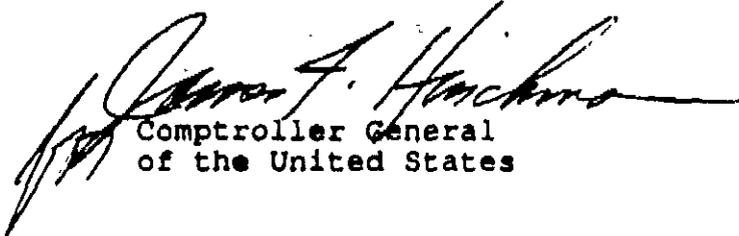
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<sup>6</sup>Notwithstanding adequate documentation from Manekin distinguishing the costs associated with space plans, site drawings, the bar chart, and related delivery charges (\$1,848.22) from the costs associated with the slides (\$47.59), Manekin only received \$1,150 for these costs from GSA. Based on our calculation, Manekin is entitled to the remaining claimed costs (\$745.81) minus the costs associated with the slides (\$47.59).

Costs, B-246121.2, Aug. 23, 1993, 93-2 CPD ¶ 112. As discussed above, we believe that the agency reasonably concluded during negotiations that several claimed costs were not reimbursable. In view of this fact, and the fact that the parties did not spend a prolonged period of time negotiating the claim before submitting the matter to our Office, we cannot conclude that the agency failed to act expeditiously. Accordingly, Manekin is not entitled to the costs for pursuing its claim here.

#### CONCLUSION

Based on the analyses set forth above, we find that Manekin is entitled to an additional \$2,878.79 for proposal preparation costs; an additional \$754.49 for protest costs; and \$9.00 to offset GSA's mathematical error, for a total additional amount of \$3,642.28.



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of the United States