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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Department of State--Costs

File: B-295352.5

Date: August 18, 2005

Dennis J. Gallagher, Department of State, for the agency.

David F. Innis, Esq., Rogers Joseph O'Donnell & Phillips, for Inter-Con Security Systems, Inc., the claimant.

Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request that Comptroller General recommend reimbursement of attorneys' fees at a rate higher than the statutory cap of \$150 per hour based on increase in cost of living is granted where protester's claim filed with agency presented a reasonable basis for the adjustment.

DECISION

The Department of State (DOS) requests that our Office provide a recommendation as to whether an enhanced attorney fee rate should be paid in connection with a claim filed with the agency by Inter-Con Security Systems, Inc., for reimbursement of its costs of pursuing a bid protest and defending a request for reconsideration.

Inter-Con protested the award of a contract to Wackenhut International, Inc. (WII) under solicitation No. S-IV100-2002-Q-0567, issued by DOS for guard services in Abidjan, Ivory Coast. We sustained Inter-Con's protest because we found that WII had provided insufficient information--and the agency lacked any other sufficient information--to establish that WII satisfied all requirements for application of a 10-percent evaluation preference to its proposal. Inter-Con Sec. Sys., Inc., B-295352, B-295352.2, Feb. 8, 2005, 2005 CPD ¶ 23. We recommended that DOS terminate WII's contract, make award to Inter-Con, and reimburse Inter-Con its reasonable costs of filing and pursuing the protest, including attorneys' fees.

Both WII and DOS sought reconsideration of our decision. We affirmed our decision, but modified our recommendation to permit DOS to delay the termination

of WII's contract and the new award to Inter-Con, and recommended, inter alia, that DOS reimburse Inter-Con both the reasonable costs of filing and pursuing its protest, including attorneys' fees, and the costs of responding to the agency's reconsideration request. Department of State; Wackenhut Int'l, Inc.--Recon. and Modification of Recommendation, B-295352.3, B-295352.4, Apr. 19, 2005, 2005 CPD ¶ 81.

Under the Competition in Contracting Act of 1984, as amended, where, as here, the Comptroller General recommends that a successful protester's costs, including reasonable attorneys' fees, be reimbursed, those fees may not exceed \$150 per hour "unless the agency determines, based on the recommendation of the Comptroller General on a case by case basis, that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee." 31 U.S.C. § 3554(c)(2)(B) (2000).

As part of its claim for costs filed with the agency, Inter-Con requested reimbursement of attorneys' fees at rates of \$196.89 to \$197.77 per hour. DOS has requested our recommendation as to whether these "enhanced" fees should be paid.¹

We have previously reasoned that the justification for an upward fee adjustment is self-evident if the claimant alleges that the cost of living has increased, as measured by the Department of Labor's Consumer Price Index (CPI). Sodexho Mgmt., Inc.--Costs, B-289605.3, Aug. 6, 2003, 2003 CPD ¶ 136 at 41. In this regard, we have declined to impose a requirement that a claimant do more than request an adjustment and present a basis upon which the adjustment should be calculated. Id.; see Brickwood Contractors, Inc. v. United States, 49 Fed. Cl. 148, 164 (2001); California Marine Cleaning Servs., Inc. v. United States, 43 Fed. Cl. 724 (1999). Where a claimant meets this standard, and an agency does not articulate any objection, we will grant a claimant's request for a recommendation in favor of a cost of living adjustment to the fee cap. Sodexho Mgmt., Inc.--Costs, supra.

In support of its claim for attorneys' fees above the \$150 level, Inter-Con provided a detailed explanation of its calculation of the rates and included a printout of the "All Urban Consumers" CPI for the San Francisco-Oakland-San Jose, California area. Inter-Con Claim Letters, dated April 8 and 26, 2005. Use of the "All Urban Consumers" CPI for a specific area is consistent with our decision in Sodexho. See Sodexho Mgmt., Inc.--Costs, supra, at 43 n.33. In requesting our recommendation, DOS agrees that the protester's "request appears to be consistent with the standards followed in [Sodexho]," and provides no specific objection to the

¹ DOS apparently concedes the appropriateness of all other submitted claims. DOS has stated that, to the extent our Office concurred that the higher attorneys' fees should be paid, it intended to "pay the claims submitted for the protest costs of Inter-Con and for its costs of responding to the requests for reconsideration." DOS Letter, May 31, 2005, at 2.

higher fees. DOS Letter, June 3, 2005. We have reviewed Inter-Con's calculation in support of the higher requested fees, and find that they appear properly supported and reasonable. Accordingly, we recommend that DOS pay the higher attorneys' fees claimed.

Anthony H. Gamboa
General Counsel