Normally we don't focus on bid protests. They are not all that relevant to government contract cost accounting and related matters; they are more relevant to government contracting officers who need to understand what bid protests have been upheld (and why) so that they can avoid similar mistakes. To that end, Bob Antonio's WIFCON offers an excellent repository of bid protest decisions, updated frequently—so we don't need to do so.

(However, when we do see a bid protest decision worth thinking about, that decision tends to become of the focus of a long article rather than a blog post. See, for example, **t his one** .)

But a recent bid protest **decision** over at the U.S. Court of Federal Claims caught our eye. Actually, it wasn't a bid protest decision: it was a decision regarding a successful protester's request to have its proposal preparation costs and attorney fees reimbursed by the Federal government.

Q Integrated Companies LLC ("Q Integrated") asked the Court to approve reimbursement of $63.4K in proposal preparation costs and $82.6K in attorney fees. The government was willing to pay Q Integrated $9.05K in proposal prep costs and objected to paying anything for attorney fees or, in the alternate, argued that the company would be entitled to no more than $24.7K in attorney fees.

Remember that, although the proposal prep costs would be reimbursed via Q Integrated's G&A expense rate, its attorney fees would be unallowable under the cost principle at 31.205-47(f)—thus any dollar not reimbursed would reduce the company's profit. So perhaps the stakes were higher than the numbers might otherwise indicate.

The government's primary objection to Q Integrated's proposal costs was that the company submitted ten "nearly identical" proposals to the U.S. Department for Housing and Urban Development (HUD) and the successful bid protest only concerned three of the ten proposals. Further, the government noted that Q Integrated actually won one of the ten proposals it submitted, so Q Integrated actually benefited from its proposal preparation costs.

Judge Lettow was not persuaded by the government's arguments, writing "Q Integrated …

unnecessarily incurred bid costs with respect to the three contract areas at issue in this case. The fact that a similar proposal was used in a winning bid for one area is of no relevance to this protest; Q Integrated devoted at least some of the bid costs it incurred to proposals rendered futile by HUD's errors in the procurement process."

However, the court accepted the argument that not all proposal prep costs should be reimbursed. Consequently, Judge Lettow then "allocated" the B&P costs between the ten submitted proposals to calculate the amount associated with the three proposals at issue in the bid protest. He used the FAR Part 31 definition of "allocable" to support his position, writing –

A claimed cost is allocable if it '[i]s incurred specifically for the contract,' or if it '[b]enefits both the contract and other work, and can be distributed to them in reasonable proportion to the benefits received.' FAR § 31.201-4(a), (b). More specifically, a cost is allocable if 'a sufficient 'nexus' exists between the cost and a government contract.' *Boeing N. Am., Inc. v. Roche*, 298 F.3d 1274, 1281 (Fed. Cir. 2002) (quoting *Lockheed Aircraft Corp. v. United States*, 375 F.2d 786, 794 (Ct. Cl. 1967)). In its original application for bid costs, Q Integrated sought to recover all of the costs it incurred in connection with the HUD procurement. … The government has argued, however, that Q Integrated is only entitled to bid costs for the three contract areas at issue in this case, not for all ten areas for which Q Integrated submitted bids, which would result in an award of 30% of Q Integrated's total bid costs incurred. … Q Integrated countered in its reply that it is entitled to bid costs for all of the areas for which it did not receive an award, i.e., nine out of the ten submitted proposals, which would result in an award of 90% of total bid costs.

In this instance, a 30% allocation of bid costs is appropriate. Even though all of the bid costs incurred by Q Integrated are attributable to each area for which Q Integrated submitted a proposal (i.e., all of the costs were necessarily incurred for each proposal, regardless of how many proposals were submitted), such costs must be allocated among the proposals 'in reasonable proportion to the benefits received.' FAR § 31.201-4(b).

The quote above is interesting in the sense that it applies allocation rules to costs incurred for one or more B&P "projects". When a B&P project is established in a contractor's accounting system, it must be treated like a final cost objective in many respects. For example, it must receive the same direct labor charges that would have been received by a revenue-generating contract. Those labor charges must be burdened the same way that they would have been burdened if charged to a revenue-generating contract. (See 31.2015-18 and CAS 420.) However, it seems fairly clear that such B&P projects are *not* revenue-generating projects.

Importantly, they do not receive an allocation of G&A expense. Accordingly, we would argue that such B&P projects are *not* final cost objectives in the contractor's cost accounting system. They are not one of the "final accumulation points" because their costs are allocated to final cost objectives via use of the same base as is used for allocation of G&A expenses. (See CAS 410.)

Thus, we would assert that Judge Lettow's rationale for cost allocation is inapposite. He applied rules designed to govern final cost objectives to cost objectives that were not final. Note: We are *not* saying that he didn't reach a fair answer; we are saying that his rationale in support of his calculation was wrong.

Judge Lettow then turned to the question as to whether Q Integrated proposal prep costs were reasonable in amount. Here the Judge was on more solid ground (in our view), citing to the cost principle at 31.201-3(a)—which applies to all contractor costs, both direct and indirect. Unfortunately for Q Integrated, its two principals who generated the majority (if not all) of the labor costs associated with the proposal preparation did not maintain "contemporaneous time records" to support their labor hours and associated labor costs. Although the government wanted to make a big deal out of this issue, Judge Lettow found that the labor estimates and rationale provided by Q Integrated were sufficient for these purposes, noting "Such summaries that are based on records maintained by the business are sufficient to support a claim for reasonable bid costs, particularly with regard to small businesses that do not regularly maintain contemporaneous time records. See *Geo-Seis*, 79 Fed. Cl. at 80; *Beta Analytics Int'l, Inc. v. United States*, 75 Fed. Cl. 155, 163 (2007)."

The next challenge was to analyze the hourly labor rates associated with the two principles. As Judge Lettow wrote—

Following the government's objections to Q Integrated's use of market rates to calculate direct labor cost, Q Integrated revised its application to apply an hourly rate based on Michael Ognek's and Christopher Ognek's annual compensation for the years they worked on the HUD proposal, as reflected in the company's tax filings for each year, and 'calculated by dividing [each] employee's total compensation by 2,080 (52 weeks at 40 hours).' … This approach is reasonable, see *Gentex Corp. v. United States*, 61 Fed. Cl. 49, 54 (2004) ('[B]id proposal costs 'must be based upon actual rates of compensation . . . and not market rates.'') (citations omitted), and the court accepts that Q Integrated incurred $43,702.75 in direct labor costs in preparing its proposal.

Judge Lettow also evaluated Q Integrated's request for reimbursement of consultant expenses and other direct costs purported incurred in support of the HUD proposals. Certain expenses were withdrawn by Q Integrated, based on the timing of incurrence or because the claimed expenses "were not supported by credit card statements." In sum, the Court found that Q Integrated had incurred $70.4K in reasonable and allowable proposal prep costs, of which 30% or $21.1K would be reimbursed by HUD.

With respect to the attorney fees, the Court awarded Q Integrated "338.35 hours of attorney time at a rate of $192.08 per hour," for a total of $65.0K.

Thus, while Q Integrated sought $63.4K in proposal preparation costs and $82.6K in attorney fees, it was awarded $21.1K in proposal prep costs and $65.0K in attorney fees. The remainder of the unreimbursed proposal prep costs will presumably be recovered in Q Integrated's G&A expense rate, while the remainder of the unreimbursed attorney fees will come out of Q Integrated's bottom-line profit.