

When Court Says No, It Means No

Having prevailed in a post-award bid protest contesting a contract award by the United States Army to provide installation and infrastructure upgrades to fiber optic cable networks in the Hashemite Kingdom of Jordan, Hyperion, Inc. filed a petition for attorneys' fees and costs under the Equal Access to Justice Act (EAJA). Hyperion argued that the Army's decision to declare three other offers technically acceptable was prejudicial to Hyperion, and asked that the U.S. Court of Claims set aside the contract award made to Technical Communications Solutions Corporations.

The trial judge ruled in favor of Hyperion on the merits, explaining that the Army acted unreasonably in finding that the other offerors submitted technically acceptable proposals. The court further concluded that Hyperion had sufficiently demonstrated that it was prejudiced and thus granted Hyperion the relief it sought.

Having lost on the merits, the Government however opposed an award of attorneys' fees and costs, arguing that its defense position on the merits was substantially justified, which is a ground for defeating an attorneys' fee petition under EAJA, and that the fees sought in the petition were unreasonable. The court rejected the Government's argument that its defense was substantially justified, explaining again its rationale for why the Army had lost on the merits:

But for the government's error in deeming the other three offers technically acceptable, Hyperion had a substantial chance of receiving the award. Indeed, an analysis of the offers showed that it was the only qualifying offeror. . . . Remarkably, a review of the administrative record revealed that the Army failed to make any inquiry into each offeror's ability to comply with the limitation-on-subcontracting provision of the FAR, a prerequisite for the offerors' proposals to be considered technically acceptable.

The trial court thus held that the Government's contention that its agency acted "rationally" in reviewing the proposals had no support in the record.

Hyperion had requested attorneys' fees amounting to \$30,252.64. But the court reduced the billing rate for some tasks explaining that those tasks were typically non-lawyer in nature (e.g., "complet[ing] and fil[ing] Application for Access"). Nevertheless, the court awarded Hyperion \$31,296.19 in attorneys' fees based on the statutory rate modified by the cost-of-living adjustment. Together with costs the court awarded Hyperion \$32,137.45 for attorneys' fees and costs.

Read full decision [here](#).