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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-208204.2

DATE: April 22, 1983

MATTER OF: RCA Service Company

DIGEST:

Cancellation of a request for proposals (RFP) issued in accordance with Office of Management and Budget Circular A-76 was unjustified where agency could have adjusted its in-house estimate, if necessary, to correct possibility that Government estimate was not based on same scope of work as reflected in revised RFP under which commercial offerors submitted best and final offers.

RCA Service Company (RCA) protests the cancellation of request for proposals (RFP) No. DAAG60-82-R-0049 issued by the Department of the Army (Army) for guard and custodial services at the United States Military Academy (USMA), West Point.

We sustain the protest.

The RFP, issued on November 10, 1981, solicited proposals for providing custodial and security guard services at USMA. The procurement involved a cost comparison in accordance with Office of Management and Budget (OMB) Circular A-76 to determine whether the Army should contract for the services or continue in-house performance of the requirement. Sixteen firms submitted initial proposals by the February 1, 1982, closing date. Fourteen of the proposals were determined acceptable. After reviewing the RFP and proposals submitted, the contracting officer on February 11, 1982, wrote to the commercial activity steering committee, which has overall responsibility for the conduct of this procurement, suggesting that the solicitation overstated the services that were "currently and historically being performed by the in-house work force." The contracting officer requested a review of the solicitation custodial requirement before negotiating with technically acceptable offerors.

In response to the contracting officer's request, the Director of Engineering reevaluated the requirements and

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recommended revisions which reduced the scope of work. These revisions were incorporated into the solicitation by an amendment issued on April 6, 1982. In recommending these revisions, the Director of Engineering also advised that the modifications to the scope of work did not affect the in-house cost estimate and that the in-house cost estimate did not have to be modified.

After completion of the negotiations, best and final proposals were submitted on April 23, 1982. Thus, offerors submitted best and final offers under the revised RFP. On June 25, 1982, the Army conditionally awarded a contract to RCA. The Federal Managers Association and American Federation of Government Employees (appellants) appealed the Army's determination that contracting out was less costly than in-house performance. The appellants contended that RCA's offered price failed to consider the cost of inflation and, therefore, was unrealistically low; USMA had overestimated various costs; the in-house estimate did not reflect a reduction in cost attributable to reductions in work under the modification; and the in-house estimate should be adjusted downward. The appellants argued that a cost comparison with a correct in-house estimate and realistic price by RCA would demonstrate that contracting cost more than in-house performance.

On September 7, 1982, the Army Administrative Appeal Board for Commercial Industrial-Type Activities (Board) sustained the appeal of the appellants, concluding that: "The Board's independent investigation and finding supports the appellants' position that the solicitation be canceled." The Board determined that the Government's in-house cost estimate and commercial costs were not both based on the same scope of work and the same level of performance as is required by paragraph 9a(1) of OMB Circular A-76 because of the reduction in the scope of the statement of work by amendment after completion of the in-house cost estimate.

The Board decided to cancel the solicitation on the recommendation of the Judge Advocate General (JAG) that "recomputation of in-house cost did not appear to be a proper remedy under the circumstances" and that immediate resolicitation was not appropriate because prices had been exposed.

RCA appealed the Board decision to the Army on October 8, 1982, and on October 11, 1982, RCA filed a protest with GAO. While RCA's protest was pending, the Board affirmed its prior decision.

RCA contends that the Board determination that the in-house cost estimate and RCA's offer were not based on the same level of work is not supported by the record and, even assuming that the record supports the Board's decision, since the offerors submitted best and finals based on the revised RFP, recomputation of in-house costs, not cancellation, would have been the proper remedy. RCA asks that the award to RCA be reinstated.

Generally, we do not review an agency decision to perform work in-house rather than to contract for the services because we regard the decision as a matter of policy within the province of the executive branch. Midland Maintenance, Inc., B-202977.2, February 22, 1982, 82-1 CPD 150. Where, however, an agency uses the procurement system to aid in its decisionmaking, spelling out in the solicitation the circumstances under which the Government will award or not award a contract, we will review whether the agency followed announced procedures in comparing in-house and contract costs. We do so because we believe it would be detrimental to the system if, after the agency induces the submission of offers, it deviates from the ground rules or procedures announced in the solicitation and which were relied on by those induced to submit offers. See, e.g., MAR, Incorporated, B-205635, September 27, 1982, 82-2 CPD 278; D-K Associates, Inc., B-201503, B-201625, September 10, 1981, 81-2 CPD 208.

As noted above, after the Army used the procurement system as an aid in its decisionmaking, specifically as a basis for evaluation of commercial offers versus the in-house estimate, the Board, relying on the JAG legal opinion, canceled the RFP rather than recompute the in-house cost estimate to reflect any Government cost revisions which the Board, when it considered the specific grounds of the appeal, might have decided were necessary. Here, the Army has not shown the recomputation of the Government estimate was unfeasible. We think the determination to cancel the solicitation and perform the contract in-house has not been justified. In effect, we think RCA's offer has been improperly rejected. See Satellite Services, Inc., B-207180, November 24, 1982, 82-2 CPD 474; MAR, Incorporated, supra.

Therefore, we recommend that the RFP be reinstated. The Army should analyze the cost implications, if any, of the RFP amendment, with due consideration of the original appellants' contentions in their appeal and, if justified, adjust the Government estimate. If, after any adjustments are made, RCA again is determined to be the low offeror, making contracting more cost effective than continued in-house performance, we recommend that the Army reinstate the award of June 25, 1982, to RCA.

Since this decision contains a recommendation for corrective action, we are furnishing a copy to the congressional committees referenced in section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 720, formerly section 1176, which requires the submission of written statements by the agency to the House Committee on Government Operations, Senate Committee on Governmental Affairs, and the House and Senate Committees on Appropriations concerning the action taken with respect to our recommendation.

By separate letter of today, we are also notifying the Secretary of the Army of our recommendation and his obligations under section 236.

for *Harry D. Van Clave*
Comptroller General
of the United States