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DECISION



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

FILE: B-213149 **DATE:** May 14, 1984
MATTER OF: Mercury Consolidated, Inc.

DIGEST:

Protest alleging that contracting agency failed to recognize past statistics and actual employment opportunities for federal employees affected by contracting out under Circular A-76 is denied, since situation is largely judgmental matter and, while protester may disagree with contracting agency as to employment outlook, that does not mean that contracting agency's own forecast for its employees is wrong.

Mercury Consolidated, Inc. (Mercury), protests the Navy's decision, pursuant to an Office of Management and Budget (OMB) Circular A-76 cost comparison, to continue government provision of public works services of the Naval Regional Medical Center, Portsmouth, Virginia, rather than contract out the services to Mercury, the low bidder, under invitation for bids (IFB) No. N62470-82-B-2366.

We deny the protest.

Essentially, it is Mercury's position that the Navy overestimated the amount of severance pay (payments to employees forced to leave federal service) and retained pay (payments to employees forced to relocate to lower paying jobs within the federal service) the Navy would incur in the event that the services were contracted out. Mercury states that actual experience shows that the number of government employees that would be entitled to severance pay and retained pay would be less than estimated. Mercury contends that, under cost comparison guidance, it was improper for the Navy to ignore the actual experience.

We generally do not review an agency decision to perform work in-house rather than to contract out for the services because we regard the decision as a matter of policy within the province of the executive branch. Crown Laundry and Dry Cleaners, Inc., B-194505, July 18, 1979, 79-2 CPD 38. Where an agency, however, utilizes the procurement system to aid its decision, specifying the

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circumstances under which a contract will or will not be awarded, we will review an allegation that the agency did not follow established cost comparison procedures, since a faulty or misleading cost comparison which would materially affect the decision whether or not to contract out would be abusive of the procurement system. MAR, Incorporated, B-205635, September 27, 1982, 82-2 CPD 278.

We do not find anything in the A-76 guidance that required the Navy to do any more than make an estimate of the impact that contracting out would have upon federal employees. For example, while the cost comparison handbook in effect at the time of bid opening states that historical data from the agency or other agencies can be considered in arriving at the appropriate severance pay and retained pay, it does not make that consideration mandatory. Further, the Transmittal No. 6 modification of the cost comparison handbook only makes mandatory that an estimate be made of the number of employees who will retire, separate or be downgraded as a result of contracting out.

In this case, Mercury raised a number of objections to the original cost comparison. The Navy subsequently issued a decision finding in Mercury's favor for the most part. On the matter of severance pay and retained pay, the Navy revised the original estimates of the number of employees that would be affected. In revising the estimates, the Navy considered the status of each of the affected employees and the likelihood that the employee would find other employment, retire or take a reduction in grade. Mercury contends that the Navy estimate failed to recognize past statistics and the actual employment opportunities available to the employees with the resultant overstatement of labor conversion costs. In our view, the situation is largely a judgmental matter. While Mercury may disagree with the Navy as to the employment outlook for Navy employees, that does not mean that the Navy's forecast for its employees is wrong. If the Navy is wrong, at the worst, it exercised poor judgment.

As indicated above, our review in these cases is directed largely to whether the agency has followed established cost comparison procedures. While there may be a disagreement in this case over the judgment exercised, we do not find that the cost comparison guidance was ignored.

Milton J. Fowler

Acting Comptroller General
of the United States