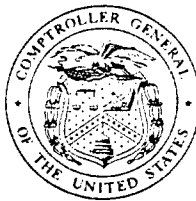


DECISION



12457 Cohen
THE COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

FILE: B-195642

DATE: January 8, 1980

MATTER OF: Tri-States Service Company

DIGEST:

1. Army was not required to use cost factors in 1979 revision to OMB Circular A-76, effective May 1, 1979, when comparing bids under IFB issued May 1, 1979, with cost of continuing performance in-house, since implementation of revision in DOD was delayed by section 814 of DOD fiscal year 1979 Appropriation Authorization Act.
2. GAO does not conduct investigations pursuant to bid protest function for purpose of establishing validity of protester's statements, as protester has burden to affirmatively prove its case.

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Tri-States Service Company (Tri-States) protests the cancellation by the Department of the Army of invitation for bids (IFB) No. DABT51-79-B-0074 for laundry and dry-cleaning services at Fort Bliss, Texas. The solicitation provided that the low bid would be subject to a Government cost comparison to determine the economic feasibility of performing the services in-house, and for the cancellation of the solicitation if that bid exceeded the Government's in-house cost estimate. Tri-States, the low bidder, protests that the Army's cost comparison, which resulted in the decision to cancel the IFB, was not based on the factors prescribed for such a comparison in Office of Management and Budget (OMB) Circular A-76, revised on March 29, 1979, effective May 1, 1979 (the day the solicitation was issued). The

[Protest Involving Cancellation of IFB]

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Circular reflects Executive branch policy considerations in deciding whether a service should be contracted out or performed in-house. Tri-States contends that the use of those factors would have resulted in a substantially higher estimate of the cost of maintaining the present Fort Bliss laundry operation than calculated by the Army for its cost comparison. Tri-States also protests that the comparison overstated the severance and early retirement pay that would have been incurred if award were made to Tri-States. For the reasons set forth below, the protest is denied.

Concerning Tri-States' first point, the implementation of Revised OMB Circular A-76 was delayed for the Department of Defense (DOD) by section 814(b) of the DOD Appropriation Authorization Act, 1979, Pub. L. No. 95-845, 92 Stat. 1611, 1625 (1978), which prohibited DOD from contracting out commercial or industrial functions unless performance by a private contractor began before the date of its enactment (October 20, 1978), or would have been allowed by the policy and regulations in effect before June 30, 1976. The section further provided that such prohibition would apply until 60 days after DOD submits a report to the Congress as required by section 814(a) providing the details of any proposed change in the referenced policy or regulations. The report was received by the Congress on August 1, 1979, and thus the prohibition in section 814(b) did not expire until October 1, 1979. Accordingly, the Army effectively was precluded by the statute from using Revised OMB Circular A-76 in preparing the instant cost analysis for Fort Bliss. See Amex Systems, Inc., B-195684, November 29, 1979, 79-2 CPD ____.

The Army advises that the cost analysis method in general use prior to June 30, 1976, was that in its Training and Doctrine Command (TRADOC) Pamphlet 235-5. We have reviewed the Army's cost analysis in light of the provisions thereof, which the record indicates also was analyzed and verified by the Army

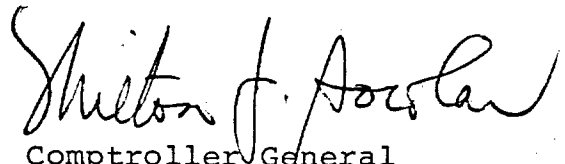
Audit Agency. Our review shows that with respect to the factors that concern Tri-States, the analysis properly was based on those prescribed in TRADOC Pamphlet 235-5.

Regarding the Army's severance and early retirement pay calculations, Tri-States asserts that they were based on Fort Bliss' laundry service structure as of June 1979, whereas the date contract performance was to begin was October 1, 1979. Tri-States argues that a more realistic basis for the calculations would have been the laundry personnel strength current closer to the contract starting date; Tri-States contends that an investigation by our Office would show that the number of laundry service personnel at Fort Bliss as of August 10, 1979, and their status (full-time, part-time or temporary), was substantially different than in June 1979, and that less severance and early retirement pay would actually have been incurred than was estimated.

844 - The record indicates that the Army's preliminary analysis was based on personnel strength in May 1979 when the solicitation was issued. The Army Audit Agency review is dated June 28, and concludes that the analysis is "reasonably accurate." Further, in response to Tri-States' protest against the cancellation, filed in our Office on August 2, the Fort Bliss Comptroller reviewed the present laundry operation's personnel strength and essentially confirmed the June 28 conclusion. In this regard, the contracting officer states that "no other personnel changes are expected to occur * * * in the foreseeable future." With respect to Tri-States' assertion that our Office independently investigate the accuracy of the personnel figures, we do not conduct investigations pursuant to our bid protest function for the purpose of establishing the validity of a protester's statements. Rather it is the protester that has the burden to affirmatively prove its case. Colonial Ford Truck Sales, Inc., B-194047, June 27, 1979, 79-1 CPD 458. Accordingly, under the circumstances we cannot dispute the Army's cost comparison. Amex Systems, Inc., supra.

We note here that Tri-States suggests that even if the Army's cost analysis was in accordance with applicable guidelines, those guidelines should be modified in a number of ways. However, since the guidelines in Revised OMB Circular A-76 and its accompanying Cost Comparison Handbook are now for application, we consider this matter to be academic.

The protest is denied.

A handwritten signature in dark ink, appearing to read "Shilton J. Fowler". The signature is fluid and cursive, with the first name being the most prominent.

For The Comptroller General
of the United States