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DECISION



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

FILE: B-202977.2

DATE: February 22, 1982

MATTER OF: Midland Maintenance, Inc.

DIGEST:

Protest of the Army's determination to perform refuse collection and disposal services in-house rather than by contract is denied where the protester has not shown that the cost comparison was faulty or violated mandated procedures for determining the costs of in-house operations versus contracting.

Midland Maintenance, Inc. protests the Army's decision to cancel invitation for bids (IFB) DABT15-81-B-0001 for refuse collection and disposal services at Ft. Benjamin Harrison, Indiana. The determination to cancel is based upon a cost comparison analysis conducted under the guidance of Office of Management and Budget Circular No. A-76, from which it was concluded that the work could be performed at a lower cost to the Government through continued use of Government personnel rather than by a contractor.

Midland timely filed an administrative appeal of the determination. The Army denied the appeal and Midland subsequently filed a protest with GAO. Midland essentially contends that the cost comparison upon which the determination to cancel was based did not comply with applicable Army policies and procedures. We deny the protest.

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. Crown Laundry and Dry Cleaners, Inc., B-194505, July 18, 1979, 79-2 CPD 38. 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 mandated procedures were followed in comparing in-house and contract costs. The reason is that we believe it would be detrimental to the system if,

after the agency induces the submission of bids, it employs a faulty or misleading cost comparison which materially affects the determination of whether a contract will be awarded. Jets, Inc., 59 Comp. Gen. 263 (1980), 80-1 CPD 152; D-K Associates, Inc., B-201503, B-201625, September 10, 1981, 81-2 CPD 208.

The IFB solicited prices for a one-year base period and two one-year option periods. Midland submitted the low bid in response to the IFB. As a result of the cost comparison analysis, the Army determined that the total cost of contracting with Midland for a three-year period would exceed the cost of performing the services in-house. Midland, in its administrative appeal, questioned numerous entries in the cost comparison worksheet which the Army used to reach its determination. The Army answered most of these questions to the apparent satisfaction of Midland. In the course of reviewing the worksheet to respond to Midland's appeal and to this protest, the Army discovered computational errors and revised its calculations. The Army's final determination is that it would cost the Government \$930,551 to contract for the services, and \$927,038 to perform the services itself. This protest involves a cost comparison worksheet entry that Midland maintains is incorrect.

The first eight lines of the cost comparison worksheet reflect the costs of in-house performance, e.g., direct material (line 1), and direct labor (line 2). The total is entered on line 9. Lines 10-16 are for the costs of contracting, e.g., the contract price (line 10), and contract administration costs (line 12). They are totaled on line 17. The rest of the cost comparison worksheet is for various additions to and deductions from the lines 9 and 17 totals. For example, the comparer must list on line 27 the amount of Federal taxes that a contractor would pay in connection with its performance; since the Government would lose that amount if it does not contract, the amount is deducted from the cost of contracting.

Line 24 of the cost comparison worksheet is entitled "Utilization of Government Capacity." The Department of Defense Cost Comparison Handbook (CCH) explains that this factor is intended to measure the impact on the work center of contracting for a service that the work center currently

provides. The decision to contract can result in the work center becoming completely idle, operating at a reduced capacity, or operating at the same or increased capacity. If contracting out would cause the work center to operate at less than its current level of utilization of capacity, the cost, if any, of this underutilization of capacity must be considered. In that case, any overhead/general and administrative costs currently allocable to the service being considered which will continue to be incurred if the service is contracted out must be absorbed by the remaining in-house activities. These continuing costs are a cost of contracting out and they must be charged, in the course of comparing costs, to the bidder. This is accomplished by adding line 24 to the total cost of contracting as entered on line 9.

Midland contends that the cost comparison was faulty in that the three-year cost of \$220,914, which the Army calculated for line 24 and then added as a cost of contracting, is overstated. The protester asserts that the Army did not deduct from the line 24 total the amount of overhead/general and administrative expense that had already been considered in other lines of the cost comparison worksheet as a contracting cost.

First, Midland claims that in computing line 24 the Army failed to deduct the full amount of Government-furnished property which had already been added on line 13 of the cost comparison worksheet as a cost of contracting. The line 13 total is \$42,624. The entry for Government-furnished property in the worksheet used to calculate line 24 is zero.

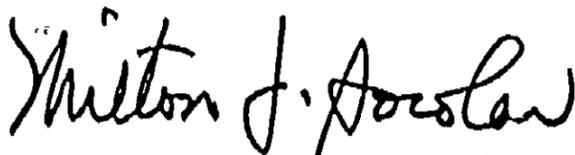
Department of Defense Transmittal Memorandum No. 5 to A-76 specifies the costs which must be considered in computing line 24. The Army points out that the Transmittal Memorandum specifies that only that portion of line 13 which is attributable to material and operations overhead is to be considered in computing line 24, since line 24 is limited to overhead/general administrative expense. The record indicates that the \$42,624 listed on line 13 does not include any material and operations overhead. Thus, the Army properly did not deduct any amount for Government-furnished property in the line 24 worksheet.

The protester similarly contends that the line 24 computation is erroneous because the Army failed to deduct the full amount of one-time conversion costs that had been entered on line 25 as a cost of contracting. The line 25

total is \$2,382 for the three-year period, while the line 24 worksheet deduction for one-time conversion costs is \$324 for the three-year period. The Army correctly points out that the Transmittal Memorandum requires only that the portion of one-time conversion costs attributable to general and administrative expense be considered in computing line 24. The record indicates that of the \$2,382 conversion costs, \$324 is general and administrative expense. Thus, the Army correctly included \$324 for the three-year comparison period on the line 24 worksheet as the entry for one-time conversions costs to be deducted from the cost of contracting.

Last, Midland contends that the Army erred by failing to deduct the full amount of line 16, general and administrative expense, which was already added to the contracting cost. Line 16 is \$10,166 for the three-year period. It would appear that Midland reached the conclusion that the \$10,166 was not considered on the basis of a partially complete line 24 worksheet which was supplied to Midland during the course of the administrative appeal. The worksheet had no entry for general and administrative expense. The Army's revised and recertified breakdown, however, clearly indicates that the \$10,166 was properly deducted on the line 24 worksheet as the general and administrative expense elsewhere considered.

We find that the Army's cost comparison was not faulty in the respects contended by the protester and that the Army complied with mandated procedures. The protest is denied.

for 
Comptroller General
of the United States