

DECISION

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

FITZMAURICE
23652

FILE: B-207180

DATE: November 24, 1982

MATTER OF: Satellite Services, Inc.

DIGEST:

Cancellation of an invitation for bids issued in accordance with Office of Management and Budget Circular A-76 was unjustified since the agency should have adjusted its in-house estimate to include a proper amount of holiday premium pay rather than cancel the IFB. GAO recommends that the IFB be reinstated, that the agency's in-house estimate be adjusted to include holiday premium pay, and, if the protester's bid is now found to be low, that the agency award the contract to the protester.

Satellite Services, Inc. (Satellite), protests the cancellation of invitation for bids (IFB) No. F3063582-B-0004 issued by the Department of the Air Force (Air Force), Griffiss Air Force Base, New York.

We sustain the protest.

The IFB solicited bids for transient aircraft maintenance services at Griffiss Air Force Base. The procurement involved a cost comparison in accordance with Office of Management and Budget (OMB) Circular A-76 to determine whether the Air Force should contract out or continue in-house performance of the requirement.

Although 18 potential bidders were solicited, only Satellite attended the prebid conference. At this conference, Satellite raised several questions, among them: what, if any, services would have to be provided on Federal holidays? The base contracting officials replied that certain minimum services would be required on Federal holidays. Satellite therefore prepared its bid in light of this information.

At bid opening, the only bids received were Satellite's and the Government's sealed bid prepared in accordance with

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OMB Circular A-76. When these were opened, it appeared that continued in-house performance was the most cost-effective way of meeting the requirement. Satellite's price for the base period and 2 option years was \$567,111. This was \$2,414 more than the Government's estimate.

However, after reviewing the Government-prepared bid, Satellite concluded that the agency had underestimated the total cost of in-house performance. Therefore, in accordance with the IFB's cost comparison provisions and OMB Circular A-76, Satellite appealed the validity of the Government's estimate to the Base Level Cost Comparison Appeal Review Team. The review team agreed with Satellite on all points except with Satellite's argument that the in-house estimate erroneously omitted holiday premium pay for the Federal workers who would perform the services if done in-house. Thus, even though the in-house estimate was adjusted upward, it still remained \$625 less than Satellite's bid price.

The review team's explanation for omitting holiday premium pay from the in-house estimate was that transient aircraft services are not scheduled for holidays and whatever limited services are occasionally required on Federal holidays are paid for on an overtime basis. Since the overtime computation in the Government estimate covered this contingency, the review team believed that Satellite's request would result in double-costing for holiday service. Satellite, however, disagreed with this method of holiday compensation and filed an appeal with the Major Command Appeals Review Board at Headquarters, Strategic Air Command.

This second level of review concluded that the IFB contained inadequate and ambiguous specifications regarding holiday service requirements. More specifically, the review board held that the IFB's Statement of Work, section C-1, paragraph 1.1.1, erroneously required a 7-day workweek without explicitly excluding Federal holidays as workdays. In the review board's opinion, this did not reflect the Air Force's actual needs and had misled Satellite in the preparation of its bid. The review board therefore recommended cancellation of the IFB and a resolicitation which accurately reflected the agency's needs. Upon learning of this decision, Satellite filed the present protest.

Satellite argues that the specifications are adequate, that holiday premium pay has in fact been paid at Griffiss Air Force Base in the past for the services in question and that, if holiday premium pay were added to the Government's

estimate as it should be, it would become apparent that it is more cost effective for the Air Force to contract out than perform the services in-house. Satellite notes that paragraph 1.1.1. of the Statement of Work sets out a 7-day-per-week work schedule with no exception for holidays. Satellite also notes that the question of holiday work was brought up at the prebid conference and the advice received was that holiday work would be required. In addition, Satellite points out that on the day of the prebid conference, its representative read at the Griffiss Base Operations Flight Planning Room the Department of Defense publication entitled "IFR-Supplement," which describes any local conditions affecting transient aircraft traffic and which stated that holiday service was available at Griffiss.

According to Satellite, the foregoing clearly indicates that the Air Force knew that work would have to be performed on Federal holidays on a routine basis. As further support for this, Satellite notes that the Air Force's own records (included as part of the IFB--"Technical Exhibit 2, Workload Distribution") show an historical pattern of services being performed on Federal holidays. Moreover, an internal Air Force audit reveals that \$23,001 was expended in holiday premium pay during the past 3 fiscal years at Griffiss Air Force Base for employees of the transient aircraft maintenance activity.

Thus, in Satellite's opinion, the specifications were not inadequate or ambiguous, but in fact reflected the Air Force's actual need for at least limited services on Federal holidays. Satellite argues, therefore, that the Air Force decision to cancel the solicitation was arbitrary and not supported by substantial evidence. It requests, then, that the IFB be reinstated and that the in-house estimate be corrected to include a proper amount of holiday premium pay. This having been done, Satellite believes that the corrected in-house estimate will show that awarding a contract to Satellite is more cost effective than continued in-house performance.

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, June 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 procurement 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. Midland Maintenance, Inc., B-202977.2, February 22, 1982, 82-1 CPD 150.

As noted above, after using the procurement system as an aid in its decisionmaking, the Air Force ultimately decided that the specifications regarding the need for holiday service were inadequate and thus canceled the solicitation. The Defense Acquisition Regulation (DAR) states that, after bids have been opened, award must be made to the responsible bidder who submits the lowest responsive bid, unless there is a compelling reason to reject all bids. DAR § 2-404.1(a) (1976 ed.). A number of reasons considered sufficiently compelling to justify cancellation are listed in the DAR, including inadequate or ambiguous specifications. DAR § 2-404.1(b). We have consistently held that the authority vested in a contracting officer to decide whether to cancel a solicitation under the regulation is extremely broad and, in the absence of a showing of abuse of discretion, a contracting officer's decision to cancel an IFB will be upheld. 49 Comp. Gen. 584 (1970).

Satellite has demonstrated that, during the past 3 fiscal years, Griffiss transient aircraft maintenance personnel have been required to work on some Federal holidays. The Air Force does not deny this, but dismisses the amount of work done as minimal and states that the Government employees were not paid holiday premium pay (double time), but overtime (time and a half). However, Satellite has obtained recent information from the Air Force which shows that, during the past 3 fiscal years, Griffiss transient aircraft maintenance personnel have been paid \$23,001 in holiday premium pay, but only \$9,069 in overtime pay for the same period. This information was brought to the contracting office's attention in Satellite's comments on the agency's administrative report and has not been rebutted.

We also note that holiday premium pay is to be paid for work on a holiday which falls within an employee's regular tour of duty; overtime compensation is to be paid for work done on a holiday during hours outside of the employee's regular tour of duty. 37 Comp. Gen. 1 (1957). Thus, insofar as past holiday work at Griffiss was performed during the employees' regular tours of duty, those employees were entitled to holiday premium pay and not, as the Air Force maintains, merely overtime compensation.

In view of the facts Satellite has presented, we find that the Air Force has not demonstrated that cancellation of the IFB was justified. The Air Force records show that work was in fact performed on Federal holidays during the past 3 fiscal years and that this work was compensated by means of holiday premium pay. Moreover, the Air Force in-house estimate indicates that holiday work will continue to be required during the next 3 fiscal years. These facts contradict the Air Force claim that the IFB erroneously included Federal holidays as workdays. Therefore, we recommend that the IFB be reinstated. Since the Air Force has records on the number of aircraft serviced on holidays and the number of man-hours required to provide holiday service, we recommend that it adjust its in-house estimate to include a proper amount of holiday premium pay. If, after this latest adjustment, Satellite's bid becomes low, making contracting out more cost effective than continued in-house performance, we recommend that the Air Force award the contract to Satellite.

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 Air Force of our recommendation and his obligations under section 236.

Milton J. Fowler
for Comptroller General
of the United States