

DECISION

24622
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-209904**DATE:** March 25, 1983**MATTER OF:** Monarch Enterprises, Inc.**DIGEST:**

1. GAO will consider a protest over an agency's decision to continue to perform services with its own employees rather than by contract only to determine if the cost comparison procedures established in the solicitation have been followed. Where the record shows that the cost comparison procedures have been followed and the cost of contracting is found to be more costly, the decision to retain the work in-house is proper.
2. A new basis of protest presented after the filing of the initial protest must independently satisfy timeliness criteria prescribed in the GAO Bid Protest Procedures, 4 C.F.R. Part 21 (1982). Where a protester learns of a new basis of protest in November 1982 and presents the basis to GAO for the first time in its January 1983 comments on the agency report, the filing does not meet the requirement that protests be filed not later than 10 working days of the time of the basis of the protest is learned.

Monarch Enterprises, Inc. protests that the Department of the Navy violated established procedures for evaluating bids to maintain the grounds at the Naval Avionics Center, Indianapolis, Indiana. The Navy solicited bids under invitation for bids (IFB) No. N62472-82-B-6556 for the purpose of determining whether to perform the work in-house or by contract. Based on a comparison of the Government estimate of in-house performance with Monarch's low bid (the only bid submitted), the Navy determined it would be less costly to maintain the grounds in-house. We deny the protest in part and dismiss the protest in part.

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Generally, we do not review an agency decision to perform work with its own employees rather than to contract for the service 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 it will award or not award a contract, we will review the matter to determine whether mandated procedures were followed in comparing in-house and contract costs. Midland Maintenance Inc., B-202977.2, February 22, 1982, 82-1 CPD 150.

The Navy solicited prices for a 1-year base period and two 1-year option periods. Monarch's bid of \$504,267 for the 3-year period was the only bid submitted. The Navy conducted a cost comparison analysis under the guidance of the Office of Management and Budget Circular A-76 and concluded that contracting with Monarch for the 3-year period would cost the Government \$582,860, while performing the service in-house would cost the Government a total of \$370,547, a difference of \$212,313 over the 3-year period.

Monarch filed a timely administrative appeal of the cost comparison analysis, questioning the Navy's computation of the cost of performing in-house. Monarch specifically questioned sixteen of the worksheet line items. The Navy discovered errors in some of the entries and explained the other entries to Monarch's apparent satisfaction. Correction of the errors raised the estimate of in-house costs for the 3-year period to \$67,272. Therefore, the Navy deducted the \$67,272 from the \$212,313 cost advantage it initially computed, and on the basis of the net \$145,041 cost advantage of in-house performance over contracting out, it affirmed its initial decision to retain the function in-house.

Monarch now contends that the Navy erred when it revised its computation to reflect the \$67,272 understatement. Monarch believes that the Navy subtracted the amount from Line 33 of the cost analysis worksheet, "Adjusted Cost

of In-House" rather than adding it, thereby doubling the initial error instead of correcting it.

Monarch clearly misinterprets the Navy's summary of its adjustments to the cost comparison analysis. The Navy did not subtract the \$67,272 from Line 33 as Monarch believes; rather, it subtracted that amount from Line 35, "Cost of In-House Over (Under) Cost of Contracting." Line 35, initially determined to be \$212,313, reflects in this case the amount the Government would save by retaining the service in-house. Thus, the Navy properly reduced the estimated cost advantage of performing in-house from \$212,313 to \$145,041 and Monarch's contention is without merit.

Monarch also contends that the Navy violated its regulations by using short-form cost comparison guidelines. The Chief of Naval Operations Instructions B authorize the short-form method of cost comparison where the annual operating cost of the function under study is \$100,000 or less. Monarch contends that the annual operating cost exceeds \$100,000.

Initially, we note that it is not clear from the solicitation whether compliance with the Instructions was mandated in this case. In any event, we will not consider this allegation because it was untimely filed. Monarch learned that the Navy used the short form at the latest when it received the administrative appeal review paper which assessed the appropriateness of short-form procedures as a matter of course (Monarch did not contest the use of the short form analysis in its request for review). The Navy concluded that use of short-form procedures was proper because it determined the annual operating cost to be \$97,857. Monarch received the review paper in early November 1982, but did not contest the use of the short-form until January 28, 1983, when it submitted its comments on the agency report.

Our Bid Protest Procedures require protests to be filed not later than 10 working days after the protester learns the basis of protest. 4 C.F.R. § 21.1(b)(2) (1982). The question of the timeliness of a specific basis of protest raised after the filing of a timely initial general protest revolves around the relationship later raised basis bears to the initial protest. Where, as here,

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the later basis presents a new and independent ground for protest, the bases must independently satisfy the timeliness requirements of our Bid Protest Procedures. Southwestern Bell Telephone Company; Northern Telecom, Inc., B-200523.3, B-200523.4, B-200523.5, March 5, 1982, 82-1 CPD 203. Since this basis of protest was first presented to our Office more than 2 months after Monarch learned of it, the basis is untimely and will not be considered by our Office.

The protest is denied in part and dismissed in part.



Acting Comptroller General
of the United States