

**DECISION**

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

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**FILE:** B-210796**DATE:** August 29, 1983**MATTER OF:** Contract Services Company, Inc.**DIGEST:**

Protest against agency's determination to retain function in-house based on A-76 cost comparison with bids received in response to IFB is denied where errors made by the agency in computing its in-house cost estimate, if viewed in their worst light, do not impact the evaluation result.

Contract Services Company, Inc. (CSC), protests the Naval Coastal Systems Center, Panama City, Florida (Navy), cancellation of invitation for bids (IFB) N62467-82-B-2843 and its decision to continue in-house performance of the transportation, operation and maintenance requirements covered by the solicitation.

We deny the protest.

The IFB, issued August 7, 1982, stated that "services will be provided under guidelines set forth in [Office of Management and Budget] OMB Circular A-76." Three bids were received. On September 23, 1982, bids were opened with CSC being the apparent low bidder with an adjusted cost of contracting-out of \$1,381,426 versus the adjusted estimated cost of in-house performance of \$1,400,404, for the contract period of 1 year plus 2 option years.

Subsequent to bid opening, but prior to the end of the 10-working-day public review period, the Navy conducted an extensive review of the cost comparison documents and revised its cost comparison forms. Contemporaneously, two interested parties filed timely appeals with the Navy identifying areas of the cost study supporting the revisions made by the Government. The revisions indicated that in-house performance would be \$136,070 less costly than the cost of contracting-out.

CSC timely filed an administrative appeal of the Navy's determination to continue in-house performance. In both its initial and final review, the Navy denied CSC's

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appeal. CSC subsequently filed a timely protest with GAO. CSC contends that: (1) the Navy's post-bid-opening decision to revise its cost study was improper because the revision was not based on an appeal by an interested party; and (2) the cost study contained inaccurate calculations in violation of the Navy's Cost Comparison Handbook (CCH) and omitted certain costs required to be included in the in-house cost estimate.

Initially, we point out, with regard to a protest involving a dispute over an agency decision to perform work in-house rather than to contract out the services, we will only consider allegations of a faulty or misleading cost comparison. Midland Maintenance, Inc., B-202977.2, February 22, 1982, 82-1 CPD 150; D-K Associates, B-201503, B-201625, September 10, 1981, 81-2 CPD 208. In the course of our review, we will question only whether mandated procedures were followed and not the procedures themselves, since the procedures are matters of policy within the province of the executive branch. D-K Associates, supra.

CSC's contention that the Navy improperly decided to revise its cost study because the revision was not based on an appeal by an interested party is without merit. In addition to the Navy, two interested parties, the National Federation of Federal Employees and a Navy employee who would potentially be affected by the determination made in this case, identified areas in the original cost study believed not to be in compliance with the cost comparison guidelines established in the Department of Defense (DOD) and OMB CCH, and related regulations. Since both the DOD and OMB CCH (at page 9, paragraph 9) list "bidders, affected employees, and unions representing affected employees" as interested parties, the decision to revise the cost estimate cannot be said to have been made without an appeal by an interested party. In addition, we find nothing in the OMB or DOD CCH or the applicable regulations which would preclude the Navy from revising its cost estimate if it determines, in good faith, that its estimate was originally in nonconformance with the CCH guidelines, applicable regulations, or solicitation provisions.

CSC argues that the Navy should not be permitted to reduce the in-house estimate by a sum of \$11,040 reflecting a decrease in the labor rate escalation factor from 5.1 percent to 4 percent. We disagree. A Navy directive (CNO Washington, D.C., msg 092109Z Apr. 82), in effect prior to and during the issuance of the solicitation, required that:

"If, after bid opening, it appears likely that application of latest inflation indices might materially affect outcome of cost comparison, major claimant is to review cost comparison and, if warranted, direct recalculation using inflation indices in effect at bid opening."

Because the inflation indices were different at bid opening than when the cost estimate was calculated, the Navy acted properly in adjusting its cost estimate.

CSC objects to an adjustment of \$22,907 made to the projected cost of materials resulting from amendment 0004 (August 9, 1982), which limited contractor liability for vehicle repairs to \$2,000 per year in excess of a maximum one-time repair cost. Due to the amendment, the cost over and above the contractor's liability for materials, estimated by the Navy from historical repair costs, would be borne by the Government whether the function is contracted out or remains in-house. For this reason, that portion of the estimated cost (i.e., \$22,907, including an adjustment for inflation referenced to FY 1981 dollars) should be considered a "wash item" and deleted from the material cost line, in accordance with the IFB, amendment 0004, paragraph 5.10 (excessive repairs) and OMB Circular A-76 Transmittal Memorandum No. 6, section 2.6, January 26, 1982. CSC states that the data used for the reduction was not made available to CSC for its consideration and, therefore, violates both the letter and intent of OMB Circular A-76. In contrast, the agency states that "all raw data used for determining FY 1981 material costs was available to any interested bidder and all bidders were advised of this." Where, as here, conflict exists between the protester and the agency on a disputed question of fact and the only evidence before GAO consists of contradictory assertions, the protester has not carried its burden of affirmatively proving its allegation. East Wind Industries, Inc., B-208170, December 29, 1982, 82-2 CPD 587.

CSC further objects to the 3-year total addition of \$68,670, added after bid opening to the Navy's estimate of contracting-out costs, based upon retained pay costs projected from a mock reduction-in-force (RIF). The agency states that the final determination of reasonable retained pay costs was based on an analysis of the best case (least cost) and worst case (greatest cost) RIF scenarios. The proposed best case analysis would have added a cost of \$24,462 to the contractors' bid for retained pay. The worst case scenario would have added \$157,256 to the

contractors' bid. Under the circumstances, we find the Navy's estimate of retained pay costs to be reasonable and in accord with the mandates of OMB circular A-76, transmittal memorandum No. 6, attachment "A," part "C," January 26, 1982, which merely requires that the agency performing the cost study "estimate the retained pay costs associated with those persons who would be downgraded as a result of a conversion." (Emphasis added.) The protester has not met its burden of proving that the Navy's estimates are not reasonably based. See G. & B. Packing Company, Inc., B-204192, April 20, 1982, 82-1 CPD 359.

CSC contends that the Navy's cost study incorrectly omitted material overhead costs. CSC cites OPNAVINST 4860.6C, at III-14(3)(g), as requiring that material overhead should be estimated at 15 percent of direct material costs. The Navy correctly points out, however, that the guidance presented on page III-14 is merely the review format for currently contracted-out Navy cost analysis functions and is to be used only when contracting-out is undergoing an assessment prior to contract renewal and a review prior to resolicitation. Factors such as material overhead are estimated at 15 percent of direct material costs on the form as a simplified procedure for contract review and are not used under a full cost study.

The Navy states that it estimated that there would be no material overhead costs because no whole man-years were identified for the supply of direct material and the above-noted Navy directive did not require inclusion less than whole man-years in the estimate of material overhead costs. We find that the Navy correctly followed the CCH guidelines of OMB transmittal memorandum No. 6, paragraph 2.b., amending the CCH paragraph 9.a.(3) to state: "\* \* \* costs that would be the same for either in-house or contract operation need not be included in the cost comparison."

Since no whole man-years were identified under the area of material overhead, there would be no material overhead savings realized by the Government due to contracting-out. We conclude that the Navy properly analyzed its material overhead costs.

CSC points out that the Navy has allocated zero General and Administrative (G&A) expenses to the performance of the contract, whereas OPNAVINST 4860.6C at III-14(3)(h) requires that G&A expenses be calculated at 10 percent of the costs of direct labor and fringe benefits.

We find that the 10-percent figure found in OPNAVINST 4860.6C is to be used only as an estimate for review purposes, and we also conclude that the Navy did not err in failing to include any G&A expenses in its cost estimate. In justifying its omission of G&A expenses, the Navy cites its directive, which states that in calculating their estimates, procuring activities are to "cost only whole man-years of effort needed to support activity under study. Partial man-years are excluded because they would continue to exist for either in-house or contract performance." The agency argues that "a reduction of only 12 positions out of about 600 total in the NCSC workforce would not [under the guidelines of the aforementioned directive] generate any G&A savings." Therefore, the Navy allocated no G&A to the performance of the IFB requirements. We conclude that the Navy correctly followed the guidelines of OMB transmittal memorandum, quoted above.

CSC argues that the Navy's failure to include a figure under line 6 of the cost study ("other direct costs") renders the comparison unfair and inaccurate. We disagree. OPNAVINST 4860.6C at IV - 28 H.2. gives examples of "other direct costs" by stating that they "may include special travel expenses, printing services, shop supplies, and utilities." The Navy states that while addressing possible omissions to the "other direct cost" line, four items were found which might have been presented on this line: vehicle muffler repair, transportation of things, miscellaneous other costs, and instrumentation changes. The Navy states that these costs were not ignored, but instead were included under line one, "material costs." We agree with the Navy's comment that "computation of these costs results in the same total regardless of where it was decided to place them." Even if there was an error in placement of the item, it does not impact the evaluation result. See Dyneteria, Inc., B-205487, June 1, 1982, 82-1 CPD 506.

CSC contends that the Navy failed to include adequate costs for its operations overhead in its cost study, including, for example, the costs of insurance, salaries and fringe benefits of supervisors and administrative personnel, vacations, sick leave, training time, maintenance and repair of Government equipment, and support costs for work done off base.

The Navy has stated that it treated insurance as a "wash item" because the Government is self-insured and continues to be "largely responsible" for casualty insurance on facilities and equipment if the functions are contracted but performed on Government property. Even if the Navy were "fully responsible" for casualty insurance (which it is not), the Navy erred by failing to include an estimate for liability losses, thereby violating the mandates of OMB and DOD CCH at p.35. However, the error, calculated to be less than \$1,000, is negligible in view of the fact that the Government's estimate indicated that in-house performance would be \$136,700 less costly than the cost of contracting-out. See Dyneteria, Inc., supra.

The Navy states that it did not cost operations overhead positions and related fringe benefits, vacations, sick leave, and training costs because it concluded that the workload required "significantly less than one manyear of effort" and that the Navy directive states that only whole man-years of support from the supervisory work center should be costed. In line with our analysis of the Navy's handling of its G&A costs, we conclude that the Navy did not err by not allocating operations overhead costs to this study.

CSC claims that the Government's estimates of its fringe benefits costs have been calculated incorrectly. We agree. While the Navy has used the standard figure of 26 percent of direct labor costs as suggested by the CCH to figure standard fringe benefits, it has not computed the figure accurately. The Navy lists \$309,159 as its direct labor costs. Twenty-six percent of this figure yields a base fringe benefit figure of \$80,381 versus the \$75,341 computed by the Navy. This \$5,040 yearly error amounts to a total error of \$15,120 over the 3-year contracting period. This error is found, however, to have no impact on the determination to continue in-house performance. See Dyneteria, Inc., supra.

CSC contends that the Navy failed to include the cost of depreciation of equipment and tools under the IFB which were not being supplied as Government-furnished equipment (GFE). The Navy states that non-GFE required under the solicitation costs less than \$1,000 and was costed under line 1 (direct material) of the cost comparison, which need be neither capitalized nor depreciated. CSC has not met its burden of proving error in this instance. See East Wind Industries, Inc., supra.

CSC contends that the Navy's failure to include costs for direct labor pay escalation in the second and third years of the contract conflicts with our decision in Serv-Air, Inc.; Avco, 60 Comp. Gen. 44 (1980), 80-2 CPD 317, where we found that an Air Force estimate did not reflect the actual cost of performing the function in-house because it straight-lined personnel costs for the second and third year of the contract, whereas the offeror escalated second and third year personnel costs. We agree in part with CSC.

The Navy points out that since the solicitation contains the "Fair Labor Standards Act and Service Contract Act" price adjustment clause, contractor wage increases resulting from revised Department of Labor wage rates are expected to be borne by the Government in the form of contract price increases. Because of this, the Navy argues these costs should be treated as "wash items" and the Navy should not have to calculate direct labor pay escalation into its estimate. In Serv-Air, supra, we rejected an argument similar to the Navy's by stating that the "Fair Labor standards act and Service contract act" clause:

"\* \* \* only provides for contract price adjustments if the contractor is compelled to increase employees' wages to comply with a change mandated by the Department of Labor. Thus, if a contractor is already paying its employees more than the minimum wage when an increase in the minimum wage becomes operative, there will be no contract price adjustment unless the new wage exceeds the one being paid. Further, offerors certainly may plan to increase proposed personnel costs in years two and three based on business judgment independent of the minimum wage."

The Navy states that our Serv-Air decision is inapplicable here due to guidance provided by CNO Washington D.C., msg 141917Z, May 82, which is the same as OMB circular A-76 transmittal memorandum No. 6, attachment "A," part "A," which reads:

"In cases where a contract for the needed product or services would include some form of economic adjustment clause for subsequent years, no allowance for inflation of those costs protected by the adjustment clause is included in out-year contract pricing, and corresponding costs of Government performance should not be inflated. For example, contracts subject to the Service Contract Act include a clause that provides for adjustments to accommodate labor cost increases necessitated by future minimum wage determinations. Accordingly, when contract performance would be under a contract subject to the service contract act, Labor costs for Government employees in occupations that would be included in the act should be deducted from the base for inflation calculations." (Emphasis added.)

As emphasized above, only labor costs for contract employees in occupations that are covered by the Service Contract Act and to the extent covered by the act need not be included in the base for inflation calculations. For example, since the Service Contract Act of 1965 specifically exempts executive, administrative and professional employees, 41 U.S.C. § 357(b) (1976); Serv-Air, Inc.; AVCO--Air Force Request for Reconsideration, B-195183.3, November 3, 1981, 81-2 CPD 375, labor costs for such employees should have been included in the inflation calculations. However, even if an inflation calculation would be based on the presumption that all of the contract employees would be exempt from the Service Contract Act and that the Government should escalate all of its direct labor costs, the corresponding increase in the Government's estimate, \$37,717.40 ( $\$309,159 (0.04 + 0.082)$ ) 1/ would not impact on the evaluation result, where, as here, the Government's estimate indicated that in-house performance would be \$136,700 less costly than the cost of contracting-out. See Dyneteria, Inc., supra.

1/ \$309,159 = Total estimated direct labor costs per year;  
0.04 = second year inflation coefficient; 0.082 = third  
year inflation coefficient; see OMB CCH page 50.

Conclusion

Since the Navy's errors, viewed in the worst possible light, amount to less than half of the \$136,700 difference between the estimated cost of in-house performance and the cost of contracting-out, correction of the errors would have no impact on the evaluation result. Dyneteria, Inc., supra.

The protest is denied.

*for* *Harry R. Van Cleave*  
Comptroller General  
of the United States