

DECISION

Yan genberg
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**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548****FILE:** B-214793**DATE:** October 22, 1984**MATTER OF:** Support Services, Inc.**DIGEST:**

1. Navy properly considered "retained pay" of government employees as separate item to be added to contractor's proposed cost in making cost comparison under TM-6 of OMB Circular A-76 and Cost Comparison Handbook, rather than as "retained pay" part of flat rate "conversion" factor. Solicitation was issued and proposals were opened when TM-6 was still effective, prior to issuance of August 1983 revision of OMB Circular A-76, which made "retained pay" part of "conversion" factor. August 1983 revision specifically excepted cost comparisons which had already begun.
2. Protester has not met burden of showing Navy's complex and subjective calculations of estimate of retained pay, which were based upon mock-reduction of force and which were part of cost comparison between in-house and contract effort conducted pursuant to OMB Circular A-76 and Cost Comparison Handbook, were erroneous or excessive.

Support Services, Inc. (SSI), protests the Navy's determination that the Navy could perform the personal property services function at the Naval Supply Center (NSC), Charleston, South Carolina, at a lower cost in-house than SSI. This determination was based on a comparison of SSI's proposal submitted under request for proposals (RFP) N00612-83-R-0307 with the Navy's estimate for in-house performance. The only contentions made by SSI are that the Navy improperly added an amount representing an estimate of "retained pay" of government employees performing this function to SSI's proposed price in making the comparison and that, even if it was proper to consider "retained pay," the estimated amount added was false and misleading. We deny the protest.

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On June 1, 1983, the RFP for these services for 3 years was issued by the Navy. Four proposals were received on July 15, 1983. The two low proposals were submitted by large businesses which were not found to be responsible contractors. SSI's proposal was the low remaining proposal in the amount of \$1,038,654.

The in-house cost estimate was completed and validated on July 14, 1983, placed in a sealed envelope and submitted by July 15, 1983. Because of the various reviews of contractor responsibility, the in-house estimate was not opened until October 28, 1983. Based upon a comparison with SSI's proposal, the cost of 3 years' in-house performance was found to be \$1,264,300 while the cost of SSI's proposal, as adjusted for comparison purposes, was \$1,424,700, that is, the estimate for in-house performance was \$160,400 lower than the cost of SSI's proposed contract performance. SSI filed a timely administrative appeal on November 17, 1983. After some review, the Navy denied this appeal on March 16, 1984. SSI then protested to this Office.

The decision on whether to perform work in-house or by contract involves a matter of executive branch policy which we generally do not review under our bid protest function. Crown Laundry and Dry Cleaners Inc., B-194505, July 18, 1979, 79-2 C.P.D. ¶ 38. However, when an agency utilizes the procurement system to aid its decision, spelling out the circumstances under which a contract will or will not be awarded, we will review the matter to determine whether the procedures identified in or applicable to the solicitation were followed, particularly in comparing in-house and contract costs. Serv-Air, Inc.; AVCO, 60 Comp. Gen. 44 (1980), 80-2 C.P.D. ¶ 317.

OMB Circular No. A-76 and its supplement, the Cost Comparison Handbook (CCH), outline the method for comparing the performance of services in-house or by contract. The Navy implemented these procedures in OPNAVINST 4860.6c. The Navy states it followed the foregoing procedures, as they were in effect on July 15, 1983, in conducting this procurement and preparing the in-house cost estimate.

As indicated above, SSI's protest only concerns the addition of \$211,800 in "retained pay" costs on line 26, "other costs," of the cost comparison worksheet to SSI's proposal price. "Retained pay" is compensation to government employees who have been downgraded to reimburse them at their formerly held grade for a certain period of time. But for the addition of this amount, SSI's proposal price

would have been lower than the in-house estimate. SSI contends that this amount should not have been included in line 26, but rather should have been included in the calculation of the "conversion" factor in line 32 of the cost comparison worksheet. This "conversion" factor provides for an increase in the cost of contracting out equal to a flat 10 percent of the in-house-personnel-related costs. There is no breakdown of individual elements of "conversion" since "conversion" is intended to give consideration to miscellaneous cost elements, including loss of production, the temporary decrease in efficiency and effectiveness, other unpredictable risks that result any time a change in the method of operation is made and "personnel turbulence that results from such a change." See section VI.B of the CCH (March 1979).

On January 26, 1982, in attachment "A" to Transmittal Memorandum No. 6 (TM-6) to OMB Circular No. A-76, the CCH was amended as follows:

"Estimate the retained pay costs associated with those persons who would be downgraded as a result of a conversion. These incremental costs (the difference between current pay and downgraded pay) are continuing and not considered a one time conversion cost. This cost should be shown on line 26."

TM-6 was the effective edition of OMB Circular A-76 at the time proposals were received and opened under this RFP. Under the previously effective CCH, this amount would have been included in line 25, which also would be added to the contractor's proposed cost.

On August 4, 1983, after proposals had been received on this RFP, OMB Circular A-76 and the CCH were completely revised. One of the changes made was that "retained pay" was not to be separately estimated for cost comparison purposes, but was to be included in the "conversion differential" line. See section 4.A of the CCH (August 1983). The Navy states that it did not remove "retained pay" from the cost comparison after receipt of notice of the August 1983 edition of OMB Circular No. A-76 because it believed the procurement regulations did not allow for modification to the comparison after receipt of proposals and implementation of the revised guidance would have delayed the study process.

With respect to the OMB Circular A-76 cost comparison procedures, we only look to see that the comparison is not faulty or misleading. Holmes and Narver Services, Inc., et al., B-212191, Nov. 17, 1983, 83-2 C.P.D. ¶ 585, modified, B-212191.2, Apr. 17, 1984, 84-1 C.P.D. ¶ 425; Video Visions, Inc., B-210010.2, June 26, 1984, 84-1 C.P.D. ¶ 667. The solicitation in this case did not specify any particular cost comparison procedures that would be used. However, we believe that it would be reasonable for offerors in the present case to have assumed that the procedures in OMB Circular A-76 and the CCH that were in force at the time the solicitation was issued would be followed. Video Visions, Inc., B-210010.2, supra at 4. The Navy did follow the then currently applicable TM-6 procedures with regard to its treatment of "retained pay" in making the cost comparison. Although the protester disagrees and states that "retained pay" should have been included in "conversion," even under the TM-6 procedures, this argument has no merit in view of the above-quoted TM-6 section that indicates that "retained pay" should be included on line 26, "other costs." In this regard, this Office has never questioned the legitimacy of including "retained pay" in cost comparisons made pursuant to the OMB Circular A-76 procedures. See Contract Services Company, Inc., B-210796, Aug. 29, 1983, 83-2 C.P.D. ¶ 268; Joule Maintenance Corporation, B-210182, Sep. 29, 1983, 83-2 C.P.D. ¶ 389; Video Visions, Inc., B-210010.2, supra at 6-7; Mercury Consolidated Inc., B-213149, May 14, 1984, 84-1 C.P.D. ¶ 519; Mercury Consolidated, Inc., B-213350, June 11, 1984, 84-1 C.P.D. ¶ 612.

The Navy acted properly in not modifying its cost comparison based on revisions to A-76 made after proposals were received. While we have recognized that revisions to the cost comparison can be made after receipt of proposals to correct errors, see Contract Services Co., Inc., B-210796, supra at 3; Space Age Engineering, Inc., B-209543.2, Apr. 19, 1984, 84-1 C.P.D. ¶ 447, we believe that the Navy committed no error in this case and did not have to make a new cost comparison simply because the executive branch modified its policies regarding cost comparisons. See Day & Zimmerman, Inc., B-212017, Apr. 3, 1984, 84-1 C.P.D. ¶ 377. In this regard, the revised OMB Circular A-76 on August 1983 states:

"12. Effective Date. This Circular and its Supplement [CCH] are effective immediately but need not be applied where a cost comparison was begun, using the March 1979 Circular, prior to the effective date."

Finally, the protester argues that the amounts included in line 26, "other costs," were excessive, false and misleading. The Navy employed a "mock reduction in force (RIF)" to calculate severance pay and "pay retention" in this case. The protester states that the Navy erroneously limited the mock-RIF to NSC instead of all federal agencies in the Charleston, South Carolina, area, and that if the "mock-RIF" had been based on that larger area, the 17 employees displaced by this contract would have been easily absorbed by other federal agencies in the Charleston area.

The "mock-RIF" procedure is a proper and recognized method to calculate severance pay and "pay retention" for displaced federal employees in making the OMB Circular A-76 pay comparison. Joule Maintenance, B-210182, supra at 5-7; Contract Services Co., Inc., B-210796, supra at 3-4. In the present case, the Navy states it complied with Federal Personnel Manual 351.402, which provides that the minimum competitive area for a field activity undergoing a RIF action is "an activity under separate administration within the local commuting area," that is, NSC, in this case. The Navy explains that to extend a RIF competitive area beyond NSC, higher level approvals are necessary, which were considered impractical to obtain in the present case because other agencies would be reluctant to expose their workforce to a RIF and such a RIF would be extremely expensive to administer in any case. The burden is on the protester to show the inaccuracy of the cost comparison. Video Visions, Inc., B-210010.2, supra at 2. Estimates of retention pay and/or severance pay involve complex and somewhat subjective judgments which we are not in the position to second-guess. Facilities Engineering & Maintenance Corporation, B-210376, Sept. 27, 1983, 83-2 C.P.D. ¶ 381. Mere disagreement with the Navy's judgment does not meet the protester's burden to prove its case. Video Visions, Inc., B-210010.2, supra at 7. In view of the Navy's explanation of the mock-RIF in this case, the protester has not met its burden of showing the Navy's calculations were erroneous or excessive.

In view of the foregoing, the protest is denied.



Acting Comptroller General
of the United States