

**DECISION**

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

**FILE:** B-214458.3; B-214458.4      **DATE:** November 14, 1984

**MATTER OF:** Griffin-Space Services Company--  
Reconsideration

**DIGEST:**

1. Analyses presented by an agency in its request for reconsideration of a decision sustaining a protest against the determination of the agency to continue to perform services in-house rather than by contracting out for the services will not be considered since the agency declined to present any comments or analyses at the time of the protest and the information which forms the basis for the analyses was available at that time.
2. Neither Office of Management and Budget (OMB) Circular No. A-76 nor agency regulations preclude a protest to GAO from an agency's administrative review of a contractor's appeal of an in-house cost estimate.
3. The provision in OMB Circular No. A-76 concerning independent preparation and confidentiality of government in-house cost estimate does not preclude GAO from recommending, pursuant to a protest, that the agency recalculate the cost of in-house performance.

Griffin-Space Services Company (Griffin) and the Department of the Navy (Navy) request reconsideration of our decision in Griffin-Space Services Company, B-214458.2, Sept. 11, 1984, 84-2 C.P.D. ¶ 281, where we sustained Griffin's protest and recommended corrective action.

Navy's Request

We sustained Griffin's earlier protest against the Navy's determination that the Navy could perform utilities plant operation and maintenance for a 3-year period at the United States Naval Submarine Base, New London, Connecticut, at a lower cost than Griffin, based on a comparison of Griffin's low bid under a two-step formally advertised solicitation, with adjusted cost estimates prepared by the

Navy. The Navy did not rebut Griffin's allegation that the Navy relied on inaccurate and understated historical costs in developing its cost estimates and violated the ground rules for the cost comparison.

In a letter dated April 24, 1984, responding to our request for an agency report on Griffin's protest to GAO, counsel for the Navy commented that its position is that it is precluded from commenting on the issues raised in the protest. That letter stated:

"The protest involves the administrative review made by the Commander, Submarine Force, U.S. Atlantic Fleet, of a cost comparison ancillary to the solicitation. Under DOD 4100.33, paragraph 9.c., the administrative review is not subject to our negotiation, arbitration, or agreements with affected parties. Therefore we are precluded from commenting on the issues raised in the protester's protest, or on the propriety of the final decision rendered under the administrative review."

The Navy's request for reconsideration states that while the Navy was constrained from commenting directly regarding the Navy's final administrative determination of February 3, 1984, denying Griffin's appeal against the results of the cost comparison, there is no such constraint regarding GAO's September 11, 1984, decision.

The Navy, citing Office of Management and Budget (OMB) Circular No. A-76 (Circular) and regulations, basically argues that the GAO does not have jurisdiction to examine the results of a cost comparison after an administrative review has occurred and, therefore, the Navy does not have to defend through a report to the GAO the results of an administrative review. We do not agree.

We have held that we will not review cost comparisons until the administrative review process has been completed. See Halifax Engineering, Inc., B-214379, Mar. 14, 1984, 84-1 C.P.D. ¶ 308. However, although we have recognized that the underlying determination involved in cost comparisons, whether work should be performed in-house by government

personnel or performed by a contractor, is one which is a matter of executive branch policy and not within our protest function, we have stated that where, as here, a contracting agency utilizes the procurement system to aid in its determination of whether to contract out, by spelling out in a solicitation the circumstances under which a contractor will or will not be awarded a contract, a protest from a bidder alleging that its bid has been arbitrarily rejected will be considered by our Office. See Jets, Inc., 59 Comp. Gen. 264 (1980), 80-1 C.P.D. ¶ 152. While the finality provisions of the Circular and the regulations preclude further administrative review, we do not believe they can be interpreted to preclude an appeal to our Office in appropriate circumstances.

Our initial decision was based on the record available to us at that time. The Navy declined to comment on the protester's statements concerning the cost comparison and the administrative review which indicated that the cost comparison had been conducted in a faulty manner. The Navy's attempt to now support the propriety of the cost comparison will not be considered since the Navy could have presented its analyses at the time of the protest, but chose not to. See Development Associates, Inc.--Reconsideration, B-205380.2; B-205380.3, Mar. 28, 1983, 83-1 C.P.D. ¶ 313. Our procedures do not permit piecemeal presentation of information to our Office and we have held that parties that withhold or fail to submit all relevant evidence, information, or analyses for our initial consideration do so at their own peril. Development Associates, Inc.--Reconsideration, B-205380.2; B-205380.3, supra.

The Navy's request for reconsideration is denied.

#### Griffin's Request

Griffin requests that we reconsider our recommendation that the Navy recalculate the cost of in-house performance and thereafter make a second comparison with Griffin's bid. Griffin argues that permitting the Navy to recalculate its costs after learning Griffin's bid price would be tantamount to giving the Navy a second chance to retain the contract in-house. Griffin contends that this procedure is in conflict with the provisions of the Circular which require that the government must prepare its bid, as would any other

contractor, independently and without the knowledge of the prices of other bids. In support of its position, Griffin cites the Circular, part IV, chapter I, paragraph "g," which states:

"g. The confidentiality of all cost data, including the contract price, must be maintained to ensure that Government and contract cost figures are completely independent. For example, the contracting officer will not know the in-house cost estimate until the cost comparison is accomplished at bid opening date."

Griffin therefore requests that we recommend that the Navy award the contract in question to Griffin without permitting the Navy a chance to first recalculate its costs.

We believe that the above-quoted language applies only to the initial bid opening procedure and not to the results of cost comparisons which are appealed. In fact, chapter II, section (D)(6), of the March 1979 Cost Comparison Handbook (supplement No. 1 to the Circular), which is applicable to this procurement, allows for changes to be made in the government's estimate after the cost comparison has been conducted where significant discrepancies are noted during the review process. We have recognized on prior occasions the propriety of permitting the government to recalculate its estimate after bids are exposed where significant errors are found in its estimate. See Holmes & Narver Services, Inc., and Morrison Knudsen Company, Inc., B-212191, Nov. 17, 1983, 83-2 C.P.D. ¶ 585; RCA Service Company, B-208204.2, Apr. 22, 1983, 83-1 C.P.D. ¶ 435; Satellite Services, Inc., B-207180, Nov. 24, 1982, 82-2 C.P.D. ¶ 474.

Because Griffin has not shown any error of fact or law in the recommendation which we made, it is affirmed.

*Milton J. Jordan*  
for Comptroller General  
of the United States