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DECISION



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

FILE: B-220991.2

DATE: December 30, 1985

MATTER OF: Department of the Navy--Request for
Reconsideration

DIGEST:

GAO will not reconsider a decision sustaining a protest against an agency's determination to perform services in-house instead of contracting out for the services where agency's unsupported argument presented for first time in request for reconsideration does not show that decision, based principally on agency's own administrative appeal decision, was in error.

The Department of the Navy requests reconsideration of our decision in Alliance Properties, Inc., B-217544, Oct. 16, 1985, 85-2 CPD ¶ ____, in which we sustained Alliance's protest.

Alliance challenged the Navy's determination that the Navy could perform public works services at the Naval Training Center, Great Lakes, Illinois, at a lower cost than Alliance. This determination, made pursuant to procedures set out in Office of Management and Budget (OMB) Circular A-76, was based on a comparison of Alliance's bid price, submitted in response to invitation for bids (IFB) No. N62472-84-B-6574, with the Navy's cost estimate for in-house performance. Alliance took issue with several elements of the cost comparison, including the Navy's decision to omit from its estimate the personnel and overhead costs associated with operating a work reception desk called for in the IFB. We sustained the protest on the ground that the Navy should have amended the IFB to delete the requirement for bidders to include the cost of operating the desk in their bids.

In response to our request for an agency report on the protest, the Naval Facilities Engineering Command (NAVFAC) stated that it was precluded from commenting on the issues raised by the protester by the Supplement to

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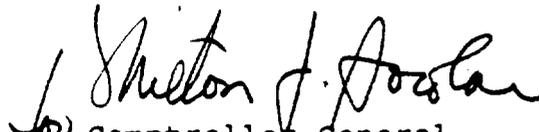
OMB Circular A-76. This argument already had been raised by NAVFAC and rejected by our Office in Griffin-Space Services Co., B-214458.2, Sept. 11, 1984, 84-2 CPD ¶ 281, aff'd on reconsideration, 64 Comp. Gen. 64 (1984), 84-2 CPD ¶ 528, and we reiterated our conclusion that NAVFAC's position is without merit.

Due to NAVFAC's refusal to submit a report on the issues raised by Alliance, our review of the protest was confined to the record established by the protester, consisting principally of Alliance's earlier agency appeal and the Navy's response, and to materials we were able to obtain on our own. One of the objections Alliance raised in its administrative appeal to the Navy concerned the Navy's omitting from its estimate the cost of operating the work reception desk called for by the IFB, while requiring bidders to include the cost in their bids. The Navy's reply was that the "Government's work control/trouble desk" had been classified as a governmental function, and therefore was properly excluded from the Navy's cost estimate. Since it appeared that the governmental function classification meant that the work reception desk could be operated only by government employees, not an outside contractor, we concluded that the work desk was no longer intended to be operated by the contractor and therefore should have been deleted from the statement of work under the IFB.

The Navy now asserts that we misinterpreted its statement that the work desk function had been classified as a governmental function, and states that the function classified as a governmental function was not the work reception desk called for in the IFB, but the "work input control" function, which the NAVFAC indicates is a separate function.

As we advised NAVFAC in its request for reconsideration in Griffin-Space Services Co., B-214458.2, supra, we are not inclined to reconsider a prior decision where an agency bases its reconsideration request on information it could have presented during our initial consideration of the protest but chose not to do so. NAVFAC's approach--refusing to address the merits of a protest until our Office issues a decision contrary to its position--undermines the goal of our bid protest forum to produce decisions based on consideration of both parties' arguments on a fully developed record. By refusing to participate, NAVFAC in effect seeks to reserve the right to challenge our decision after it is issued, without first assuming the responsibility of presenting its legal argument and interpretation of the facts during initial consideration of the protest.

Be that as it may, we point out that our recommendation in the initial decision (that the Navy properly evaluate the protester's bid or else conduct a new cost comparison) was to the effect that the Navy take steps to assure that the cost evaluation in this case be conducted on the basis of the proper scope of work. We see no reason to change the essence of that recommendation. If in fact, however, the Navy requires operation of the work reception desk, then the cost of operating the desk should be included in both the protester's bid and the Navy's cost estimate.

for 
Comptroller General
of the United States