



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Rappahannock Rehabilitation Facility, Inc.--
Request for Reconsideration
File: B-222961.4
Date: January 9, 1987

DIGEST

1. General Accounting Office will consider protest of agency's determination, based on comparison of in-house and contract costs, not to purchase particular services from workshop designated by Committee for Purchase from the Blind and Other Severely Handicapped pursuant to Wagner-O'Day Act--even though the act does not compel the government to purchase services--for purpose of assuring fair treatment of the offeror, since the agency advised offeror that award decision would be based on those cost comparison procedures.
2. Protest that agency's in-house cost estimate was understated is denied where record contains no conclusive evidence that agency's estimate was not based on the full statement of work.

DECISION

Rappahannock Rehabilitation Facility, Inc., requests reconsideration of our decision Rappahannock Rehabilitation Facility, Inc., B-222961.3, Sept. 10, 1986, 86-2 C.P.D. ¶ 280, in which we dismissed its protest of a Department of the Navy procurement of custodial services for the Marine Corps Development and Education Command in Quantico, Virginia. We are persuaded to review the merits of Rappahannock's complaint, but we deny the protest.

Rappahannock's protest concerned the Navy's determination whether to purchase the services pursuant to provisions of the Wagner-O'Day Act, 41 U.S.C. § 46 et seq. (1982). Under this act, certain supplies and services are included on a "procurement list" administered by the Committee for Purchase from the Blind and Other Severely Handicapped. If the government decides to purchase supplies or services that are on the list, the act requires that such purchases be made exclusively from qualified workshops, such as Rappahannock.

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The Navy employed Office of Management and Budget Circular A-76 cost comparison procedures to aid in its decision whether to contract at all for the required services; the agency compared its in-house cost with an offer of \$2,584,809 provided by Rappahannock after the firm was furnished, through the Committee, a copy of a solicitation that would have been issued for a competitive procurement. This comparison indicated it would cost \$439,538 less for a 3-year period (base year plus 2 option years included in evaluation) to retain performance in-house using government employees, and the Navy decided not to award a contract.

Rappahannock appealed the results of the cost comparison to the Marine Corps Commercial Activities Review Board, mainly asserting that an accurate cost analysis was not possible from the information contained in the solicitation, and that Rappahannock therefore had to rely on supplemental information supplied in map form by the Navy Department of Public Works to compute the area of the buildings to be serviced. Rappahannock complained that the Navy did not base its calculations on that same information, which Rappahannock further discovered to be erroneous. The Board denied Rappahannock's appeal, asserting that an independent recalculation had validated the Navy's calculations and cost estimate, and that Rappahannock had acted at its own risk in relying on information other than that in the solicitation.

Rappahannock subsequently filed a protest with our Office, reasserting the contention it raised before the Marine Corps Commercial Activities Review Board. We dismissed the protest on the ground that, even where a cost comparison is conducted, the Wagner-O'Day Act does not compel the government to buy any services or supplies--it only requires purchase from a designated firm in lieu of purchase from another source--so review of the cost comparison by our Office would serve no useful purpose.

Rappahannock's reconsideration request is based on its view that, notwithstanding the terms of the Wagner-O'Day Act, once the Navy opted to use the cost comparison to determine the lowest cost alternative, it was bound to conduct the comparison properly and to make award to Rappahannock if the firm's proposed cost was lower than the Navy's in-house estimate.

On reflection, we are persuaded to consider Rappahannock's protest on the merits. While the Wagner-O'Day Act vests agencies with discretion, generally, whether to contract at all for listed supplies or services, the Navy did invite Rappahannock's offer on the understanding that the decision whether to contract would be based on a cost comparison. The

rule applicable to other cost comparison situations is that although an agency is not required to employ cost comparison procedures in deciding whether to contract for services, Jets, Inc., 59 Comp. Gen. 263 (1980), 80-1 C.P.D. ¶ 152, where such procedures are held out to an offeror as the basis for the award decision, they must be applied properly. Joule Maintenance Corp., B-208684, Sept. 16, 1983, 83-2 C.P.D. ¶ 333. It is our view, on reconsideration, that review of the protest by our Office is appropriate to assure that the cost comparison was conducted properly, and that Rappahannock was treated fairly.

The solicitation requested firm, fixed unit and extended prices for a base year and 2 option years for services such as sweeping stairwells and mopping floors, and the total price for all 3 years was to be evaluated. Each unit price bid was to be based on the size of an area or the number of items to be cleaned. The IFB also called for unit prices for indefinite-quantity work cleaning family housing units, calculated per occurrence (the Navy provided estimates of annual occurrences for the purpose of bid evaluation). In addition, the solicitation gave notice that, since this contract was to be part of a government cost comparison, the government's cost estimate would be based on the statement of work in the solicitation.

The IFB provided for a site visit by the offeror and noted that bidders were expected to satisfy themselves as to the general and local conditions that might affect the cost of contract performance. The IFB also advised bidders that, in the Navy's view, it was impractical to determine the exact nature of the work and site conditions under which the work was to be performed without an inspection. The solicitation further noted that the specifications, standards, plans, drawings, descriptions and other pertinent documents cited were available from the Resident Officer in Charge at the Marine Corps Development and Education Command.

Rappahannock argues that due to discrepancies between the square footage and historical data upon which the Navy relied, and the greater square footage derived using maps the firm obtained from the Navy Department of Public Works, upon which Rappahannock relied, the Navy's cost estimate was not based on the same work that Rappahannock used to calculate its costs. Rappahannock concedes that its bid was excessive based on its use of the maps, but argues that the Navy's estimate failed to include in each of the 3 contract years the cost of an additional 10.99 full-time equivalents (FTE's) per year that, in Rappahannock's view, are necessary to perform the contract requirements for certain of the

buildings, and thus was too low. Rappahannock concludes that its offer would have been low had it and the Navy bid on the same statement of work.

The Navy responds that the in-house estimate was calculated based on the quantity of work listed in the solicitation, and that the calculation was based on a most efficient organization (MEO) of 36.74 FTE's (per year) to accomplish all the work, determined with the aid of historical data (April 1983 building measurements) contained in the solicitation. In response to Rappahannock's contention in its appeal that the Navy's estimate was not based on performing all elements of the statement of work in certain buildings, the Navy recalculated the area of the challenged buildings and determined that the total square footage to be serviced actually was lower than that stated in the IFB--370,155 instead of 419,952--although the man-year requirements to clean this area would be higher each year--23.9 instead of 21.3--due to changes in the number of spaces and types of surfaces to be cleaned since the original estimate had been formulated. (For example, the Navy explains that when tiled areas are covered with carpet, man-year requirements decrease, and vice-versa.) Although its in-house estimate would be low using either 21.3 or 23.9 man-years, the Navy urges that the lower number is proper for cost comparison purposes since it is based on the square footage and historical data in the IFB. The Navy attributes all of the additional FTE's urged as necessary by Rappahannock to the firm's measurements from the maps that were not a part of the solicitation. By the Navy's estimate, Rappahannock's calculations overstate the actual area by 201,458 square feet.

We find Rappahannock's protest unsupported in the record. Simply put, we find nothing to indicate that the Navy's estimate was not based on performing all the contract work. First, the Navy is adamant that Rappahannock's apparent assumption that the agency in fact based its estimate on the lower, recalculated square footage instead of the IFB-based area, simply is wrong. Moreover, the details of Rappahannock's own calculations to show that the Navy would need 10.99 more FTE's per year to service the larger area in no way are discernible from the record. Finally, we have no basis to question the Navy's conclusion, as noted above, that an updated recalculation based on the agency's 1986 measurement (reflecting a 12 percent lower square footage than specified in the IFB) would have increased the in-house labor requirement only marginally (23.9 instead of 21.3 FTE's), so that we cannot conclude that Rappahannock was prejudiced in any event.

Further, while there is no conclusive evidence that the Navy's estimate was understated, we think it is relevant that Rappahannock concedes that its bid--based on maps obtained from other than the source listed in the IFB--was mistakenly higher than necessary to perform the contract work. We share the Navy's view that Rappahannock assumed the risk of any inaccuracies resulting from the use of these maps, and would not be entitled to correct these inaccuracies by rebidding.

The protest is denied.

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel