



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Raytheon Support Services Company
File: B-228352
Date: January 19, 1988

DIGEST

1. In preparing government's in-house estimate for cost comparison under OMB Circular A-76, agency properly excluded the cost of staff positions which, even though included in organization chart of most efficient organization study, were not performing work included in solicitation's performance work statement.
2. In preparing government's in-house estimate for cost comparison, it was proper for agency to partially cost six staff positions included in organization chart of most efficient organization (MEO), where the MEO specifically stated that these positions were to be costed in this manner and there is no evidence that the partial cost included in the estimate does not represent government's actual cost of performing the work required.
3. Agency's failure to follow formal cost comparison procedures for obtaining waiver from contract administration cost limits is a mere procedural defect not affecting the propriety of the cost comparison, where the official authorized to grant such a waiver approves the most efficient organization study, which includes proper justification for increased number of administrators.

DECISION

Raytheon Support Services Company protests the determination by the United States Coast Guard, pursuant to an Office of Management and Budget (OMB) Circular A-76 cost comparison, to continue to perform certain electronic maintenance and repair services in-house rather than contract for them, under invitation for bids (IFB) No. DTCG30-87-B-10019. Raytheon alleges that the Coast Guard conducted the cost comparison improperly and, as a result, incorrectly concluded that continued performance by government personnel would be less costly than contracting with Raytheon. We deny the protest.

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The IFB solicited firm, fixed-price bids for a base period plus 4 option years, and provided that for purposes of award the bids would be evaluated by adding the total price for all options to the price for the base requirement. The IFB stated that a cost comparison would be conducted in accordance with OMB Circular A-76 to compare the total price for the lowest responsible bidder to the government estimate of the cost to perform the work in-house using the most efficient organization (MEO).

Raytheon was the low bidder among the seven firms responding to the solicitation. Based upon a comparison of Raytheon's bid with the government's in-house estimate, however, the Coast Guard found that the work could be performed by government personnel for \$6,703,477, or \$1,057,326 less than Raytheon's total proposed cost (including contract administration costs and a conversion differential) of \$7,760,803.

Raytheon first challenges the agency's failure to include in its estimate the cost of eight staff positions (electronic technicians assigned to buoy tenders), and the agency's determination to cost six other staff positions (group electronics materials officers) only partially (.5 full time equivalents (FTE) each). Raytheon points out that the Coast Guard included the eight staff positions in the proposed organizational chart set forth in the MEO study, and concludes that since these employees are performing tasks included under the solicitation's performance work statement, they should have been included in the in-house estimate. Similarly, Raytheon states, the six positions which were only partially costed were included in the MEO as full time positions and, thus also should have been fully costed in the in-house estimate. We disagree with Raytheon.

First, regarding the eight excluded positions, the Coast Guard specifically denies that the employees staffing these positions will be performing work included in the performance work statement. Rather, the Coast Guard explains, these personnel are allocated to operational floating units (buoy tenders) to perform work (electronic maintenance and repair on Coast Guard vessels) the agency determined to be governmental in nature, and thus not suitable for performance by contract or for inclusion in the IFB. We have reviewed the IFB and find no basis for Raytheon's unsupported statement that the work performed by these eight employees was encompassed by the work description. This is the same conclusion reached by the appeals board reviewing the cost comparison in connection with Raytheon's administrative appeal.

We do not agree with Raytheon that because the eight positions were included in the MEO study's organizational chart, the labor costs associated with these positions had to be included in the government estimate. These eight positions apparently were included in the proposed MEO organization only because the MEO study extended beyond the work to be included in the cost comparison. In this regard, the MEO specifically indicated that because individuals filling these eight positions would be performing governmental functions, they were to be excluded from the cost comparison. We therefore conclude that the Coast Guard properly excluded the cost of these eight positions from the government's in-house estimate. Trend Western Technical Corp.--Request for Reconsideration, B-221352.2, July 9, 1986, 86-2 CPD ¶ 47.

Regarding the six partially costed staff positions, we have held that a determination by an agency of the number of employees needed to accomplish a performance work statement is largely a management decision involving judgmental matters that are inappropriate for our review. We believe the agency should be free to make its own management decisions on staffing levels so long as they are not made fraudulently or in bad faith, and so long as the subsequent cost comparison is done in accordance with the established procedures. Dwain Fletcher Co., B-219580, Sept. 27, 1985, 85-2 CPD ¶ 348. Here, the Coast Guard determined that the personnel filling these six positions would spend only half their time performing functions specified in the IFB, and the MEO specifically provides for costing these positions at only .5 FTE each. Raytheon has not shown that the agency acted contrary to cost comparison guidelines or in bad faith in partially costing these positions, and Raytheon's mere disagreement with the MEO study results is not sufficient to establish that the cost comparison was flawed. See Trend Western Technical Corp., B-221352, May 6, 1986, 86-1 CPD ¶ 437. Again, as explained above, the fact that these six positions were included in the MEO organization chart did not mandate that the full labor costs associated with these positions be included in the government estimate, since it is clear from the MEO that only partial costing was contemplated.

Raytheon also contends that the Coast Guard improperly added the cost of 3.5 contract administrators to its proposal in spite of the fact that the cost comparison procedures provide that the cost of only three contract administrators is to be added in a contract of this size and staff. Raytheon recognizes that the procedures also provide that this limit represents normal contract administration costs, and that where the function under study is "technically specific or geographically dispersed," thus requiring

additional contract administrators, the limit may be waived and a higher number of administrators substituted. Raytheon maintains, however, that the contracting activity here did not formally request a waiver from the proper agency authority (the Commandant of the Coast Guard); that a proper waiver was not obtained; and that the cost comparison thus had to be based on the 3.0 FTE limit.

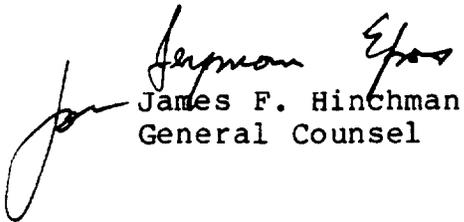
Although it does appear the Coast Guard never executed a separate waiver document, the MEO study included a requirement for 3.5 FTE for contract administration; recognized that this level exceeded the allowance for contract administration specified in the cost comparison procedures; and justified the additional .5 FTE on the basis that this electronic support function was both technically specific and geographically dispersed. The MEO, including this justification, was eventually certified by the Commandant of the Coast Guard. Given that the higher contract administration level was approved by the proper official based on a proper justification, we believe it was proper to base the comparison on the higher level. The fact that the waiver may not have precisely conformed to the prescribed procedures is a mere procedural defect not affecting the propriety of the cost comparison. See McDonald Welding & Machine Co., B-227004, Apr. 14, 1987, 87-1 CPD ¶ 409.

Raytheon also challenges the Coast Guard's determination that contracting would not result in the elimination of any supervisory personnel. Since Raytheon calculates the impact of this alleged deficiency at \$678,554, however, even were we to resolve this issue in favor of the protester, it still would be less costly to retain the function in-house. Therefore the alleged errors would not affect the evaluation result and will not be considered. See Dwain Fletcher Co., B-219580, supra.

Raytheon finally complains that the Coast Guard violated OMB Circular A-76 by not furnishing the entire MEO study for review, thereby severely limiting the firm's efforts to ascertain whether the Coast Guard's estimate included other staffing costs. We have reviewed the withheld materials, however, and they pertain only to the methodology employed by the Coast Guard to determine the staffing levels needed

to perform certain electronic maintenance and support functions; these materials did not contain any government cost calculations. See Dwain Fletcher Co., B-219580, supra.

The protest is denied.

 James F. Hinchman
General Counsel