



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Transcontinental Enterprises, Inc.
File: B-230216.2
Date: November 22, 1988

DIGEST

1. Where protester fails to present evidence adequate to establish either the alleged error or the amount of the alleged error in in-house estimate, protest against agency determination made under Office of Management and Budget Circular A-76 cost comparison is denied.
2. Agency determination of the staffing level required to accomplish the performance work statement under cost comparison will not be questioned where the record does not show the determination was made in a manner tantamount to fraud or bad faith.
3. Agency properly excluded from in-house cost estimate the cost of support personnel whose positions would not be eliminated if a contract were awarded; cost comparison procedures require inclusion in estimate only of costs for positions that would be eliminated.

DECISION

Transcontinental Enterprises, Inc., protests a determination made pursuant to Office of Management and Budget Circular No. A-76 to retain certain operations in-house at Headquarters, Naval District Washington (NDW). The protester alleges that the agency made several errors in comparing the cost of performing these operations with in-house personnel and the cost of performance by contract, and that if these errors are corrected, the cost of performance by contract to Transcontinental will prove to be the more economical alternative.

We deny the protest.

On August 7, 1987, the agency issued invitation for bids (IFB) No. N62477-86-B-1531, seeking offers for a firm

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fixed-price lump sum and indefinite quantity contract for management, operation, maintenance and repair of transportation equipment at NDW located at the Washington, D.C., Navy Yard for a base period of 9 months, with three 1-year options.^{1/} The solicitation advised potential bidders that the agency would select the low responsive, responsible bid for comparison with a previously prepared estimate of the cost of in-house performance, and that the agency would only award a contract if this comparison indicated that contractor performance would be more economical.

The cost comparison, for which the agency selected the protester's bid, indicated that in-house performance would cost less than the cost of contracting with the protester. On December 9, 1987, the protester filed a timely administrative appeal, identifying alleged errors in the cost comparison. Although the administrative appeals official found some validity to the majority of the protester's appeal issues and adjusted the comparison,^{2/} the agency determined that performance by in-house personnel remained the less expensive alternative.

By letter of February 10, 1988, Transcontinental filed a protest with our Office, alleging that despite the adjustments made as a result of its administrative appeal, substantial errors remained uncorrected in the in-house estimate. In addition, Transcontinental protested the agency's failure to provide documentation in support of its

^{1/} Fixed price operations included performance of safety and preventive maintenance service, regular taxi service and bus service, fuel and package delivery, solid waste collection and street sweeping and snow removal. Certain irregular services (i.e., unscheduled bus service and waste collection and heavy trucking services) were priced as indefinite quantity line items using estimated quantities for evaluation purposes.

^{2/} The appeals determined that the management study required by OMB Circular No. A-76 had set personnel grades at too low a level in some instances; the official also substituted newer data and corrected inflation factors for several items of cost, chiefly material and supplies.

estimates for shop store materials, vehicle maintenance supplies and office supplies and GSA purchases.^{3/}

While our Office was considering this protest, the agency advised our Office that it had reviewed documentation pertaining to shop store materials and had identified errors that would render Transcontinental's bid low. However, the agency had found that in the government estimate, it had included requisitions, representing vehicle maintenance supplies paid for by the NDW Comptroller, but ordered and used by Naval Support Facility (NSF) in Thurmont, Maryland. The agency found that the costs contained in these requisitions should not have been included under the government's in-house cost since the work and costs were not covered by this contract. The agency concluded that these adjustments again supported a determination that the cost of performance in-house remained low.

The protester did not have an opportunity to challenge this new data during the administrative appeals process, and our Office accordingly requested the agency to provide the documentation supporting its adjustment for vehicle maintenance supplies to the protester and to give the protester an opportunity to dispute the agency's calculation under the administrative appeals procedures. See Transcontinental Enterprises, Inc., B-230216, May 27, 1988, 88-1 CPD ¶ 506.4/

On June 23, the protester appealed to the agency reviewing official, claiming that many of of the NSF Thurmont requisitions were for items covered by the solicitation performance work statement (PWS). On July 1, 1988, the agency appeals official denied the protester's appeal on the ground that the solicitation clearly limited a potential contractor's responsibility for the NSF Thurmont vehicles to

^{3/} In-house estimates under OMB Circular A-76 generally contain five line items: (1) personnel costs; (2) material and supply costs; (3) other specifically attributable costs; (4) overhead, and (5) additional costs.

^{4/} Since the issue concerning vehicle maintenance supplies appeared dispositive of the protest, we did not address the other protest allegations raised by Transcontinental. We dismissed Transcontinental's request to modify its bid to include a thrift savings plan since it was not timely appealed under the agency appeals procedure. Such an appeal is a prerequisite to our review of the issue. See Apex International Management Services, Inc., B-228885.2, Jan. 6, 1988, 88-1 CPD ¶ 9.

major repairs and that the requisitions covered minor repairs. The appeals official concluded that in-house performance was less costly than contracting out the function. This protest followed.

The protester calculates that the government estimate for line 2, materials and supplies, should include the cost of additional parts provided to NSF Thurmont for other than minor repairs and maintenance, adjusted for inflation over the period of the contract. It also argues that the agency should add to the in-house estimate Thurmont personnel costs for providing other than minor repairs and preventive maintenance. Thus, Transcontinental argues that the government estimate is substantially understated.

Although the protester has generally alleged that there are several thousand dollars in requisitions that are not for minor repairs and preventive maintenance, it fails to identify the specific requisitions that it challenges. Our own review reveals that a considerable proportion of these requisitions are for precisely the kind of preventive maintenance that the NSF Thurmont personnel are supposed to perform by the terms of the IFB--replacement of lights and new windshields and supplies of oil, anti-freeze and fuel, in addition to tire repair.

Furthermore, in its agency appeal, the protester alleged that its bid included costs to perform all maintenance other than minor repairs and preventive maintenance and offered to reduce its bid by a relatively small amount if the agency wanted to do all maintenance on the NSF Thurmont vehicles at NSF Thurmont. We believe, however, that the small price reduction offered by the protester raises doubts concerning its new estimate that in-house performance costs for these same services are substantial.

As indicated above, our review of the requisitions indicates that many of the requisitions are for minor repair supplies not within the scope of the contract. Further, the protester has submitted inconsistent estimates of the supply costs allegedly not costed by the government. We thus conclude that the protester has not shown that the in-house estimate omitted work required or that the government costs are understated.

The protester also believes that the in-house estimate, should be increased to include the costs of additional maintenance personnel, overtime for taxi drivers, and staffing to perform crane and rigging service and construction equipment support. The protester believes that

these adjustments are necessary because the government function is inadequately staffed to perform the PWS.

We have held that an agency should be free to make its own management decisions on staffing levels so long as they are not made in a manner tantamount to fraud or bad faith. Raytheon Support Services Co., B-228352, Jan. 19, 1988, 88-1 CPD ¶ 44. Since the protester's assertion that overtime or additional personnel will be necessary to accomplish the PWS constitutes a challenge to the agency's estimated staffing level, our Office will not review the agency's determination that overtime and further contract assistance are not needed absent evidence of fraud or bad faith. Bay Tankers, Inc., B-230794, July 7, 1988, 88-2 CPD ¶ 18. The protester essentially disagrees with the government's staffing determinations. However, this does not constitute fraud or bad faith in the agency's preparation of the in-house staffing levels.

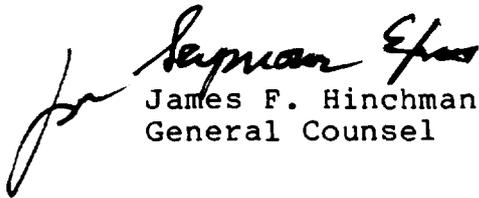
The protester also argues that the salary of the transportation supervisor which the Navy has determined would be retained as a full-time government employee (residual staff performing governmental in nature (GIN) function) should be added to the government's cost. The agency did not include this employee in its estimate because the employee will be retained in the event a decision were made to contract the work. We have recognized, however, that the underlying determination 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. Winston Corp., B-229735.2, July 26, 1988, 88-2 CPD ¶ 85. The protester has not shown that the agency acted contrary to cost comparison guidelines or in bad faith by treating the transportation superintendent position as a "wash" cost, that is, the position exists whether or not the work is contracted out; in such circumstances, we will not review an allegation that a particular position was improperly excluded from the comparison. Bara-King Photographic, Inc., B-231916, Oct. 20, 1988, 88-2 CPD ¶ ____.

The protester argues further that the reductions in overhead that would accrue to the agency from eliminating the 135 positions in the transportation function should be added to the government estimate. In this regard, the cost comparison handbook recognizes that while a portion of support costs are theoretically attributable to the function under study, the cost comparison should only show calculations of support costs that would be eliminated in the event the function is contracted. The agency has polled the various support agencies that service the transportation

facility, and none of them has identified any positions that would be eliminated in the event a decision is made to contract. We cannot therefore find that the procedures set forth by OMB Circular No. A-76 required that the agency adjust its estimate to recognize any reduction in overhead costs. See Bay Tankers, Inc.--Request for Recnsideration, B-224480.10, Aug. 19, 1988, 88-2 CPD ¶ 158.

Transcontinental further asserts that there are a number of other deficiencies in the cost comparison. These remaining deficiencies are less than the difference between the cost of accepting the protester's offer and in-house performance. We therefore find that the agency properly determined that operating the function in-house would be less costly to the government than contracting with the protester. Bay Tankers, Inc., B-227965.3, Nov. 23, 1987, 87-2 CPD ¶ 500.

The protest is denied.


James F. Hinchman
General Counsel