F. JORDAN

The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: DynCorp

File: B-233727.2

Date: June 9, 1989

DIGEST

1. Protest that agency failed to include all costs required for in-house performance and otherwise miscalculated costs in conducting a cost comparison under Office of Management and Budget Circular No. A-76, is sustained where the agency failed to include all costs attributable to conversion from predominantly military activity to all civilian activity and misled the protester with regard to inclusion of costs in its proposal for a budget manager position.

2. In a cost comparison conducted under Office of Management and Budget Circular No. A-76, the agency properly applied the 10 percent conversion differential to protester's costs since application is required where in-house commercial activity is being considered for contract.

3. Where an agency deviated from procedures identified in solicitation, but properly followed guidance issued by the Office of Management and Budget implementing a statutory change, protest that agency failed to follow solicitation instructions is denied, where the protester was not prejudiced by the agency's action.

DECISION

DynCorp protests a determination made by the Air Force pursuant to Office of Management and Budget (OMB) Circular No. A-76 that it would be more economical to convert the predominantly military-operated aircraft maintenance services at Laughlin Air Force Base, Texas, to in-house performance by civilian employees, rather than to contract for these services. DynCorp alleges that the Air Force improperly conducted the cost comparison that justified this decision under solicitation No. F41689-88-R-0003, issued by Randolph Air Force Base, Texas.

We sustain the protest.

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The cost comparison was conducted in conjunction with a solicitation for offers for a fixed-price incentive-fee contract to provide maintenance of aircraft engines and associated ground equipment to support the undergraduate pilot training and accelerated copilot enrichment programs at Laughlin for 4-1/2 years. Eight firms submitted offers and, after evaluation, discussions, and best and final offers, DynCorp's offer of $66,940,608 was selected as most advantageous to the government.

The Air Force then opened its sealed, in-house proposal of $76,987,972 and conducted a cost comparison under OMB Circular No. A-76. As part of that comparison, the cost of federal income tax was deducted and the costs of contract administration, one-time conversion (including relocation costs of government employees calculated by using a mock reduction in force (RIF)), and a conversion differential equal to 10 percent of the government's in-house personnel costs, were added to DynCorp's offer, raising it to $77,608,843. Since this figure exceeded the total in-house costs by $620,871, the Air Force decided to accomplish the activity in-house.

DynCorp timely appealed to the Laughlin cost comparison administrative appeal review team which concluded that DynCorp was correct as to two errors and revised the cost comparison to reflect a difference of only $557,140 between in-house and contract costs. DynCorp then requested and received a second tier major command review of the cost comparison as is contemplated by the Air Force procedures. See Intelcom Support Services, Inc., B-234488, Feb. 17, 1989, 89-1 CPD ¶ 174. The major command agreed with the findings of the original appeal review team and the solicitation was canceled. DynCorp then filed a protest with our Office.

In reviewing an A-76 cost comparison, our decision turns on whether the agency complied with the applicable procedures in selecting in-house performance over contracting. Dynateria, Inc., B-222581.3, Jan. 8, 1987, 87-1 CPD ¶ 30. In deciding whether the procedures were followed, we will look to see that the comparison is not faulty or misleading. Nero and Assocs., Inc., B-218166, June 11, 1985, 85-1 CPD ¶ 666.

DynCorp alleges numerous failures of the Air Force to include all costs of in-house performance and claims that the Air Force improperly deviated from the cost comparison procedures provided in the solicitation. We find that the Air Force failed to include all costs associated with

phase-in from a predominantly military work force to an all civilian work force, and that it misled the protester, to its prejudice, with regard to inclusion in its proposal of a separate budget manager position. The other issues raised by DynCorp have no merit.

PHASE-IN COSTS

The solicitation provides for a 25 percent per week incremental changeover from the existing work force to the replacement force, with the requirement that all maintenance functions be assumed by the end of the first month of operation. In accordance with the statement of work (SOW), offerors were expected to provide only authorized and qualified technicians to perform tasks peculiar to aircraft and associated equipment. According to section M of the solicitation, proposals were to address a "sound recruitment plan" and a "phase-in plan that provides a sufficient number of skilled employees to assume responsibility for all facets of maintenance by completion of the changeover schedule." Section L of the solicitation provided that the cost estimate for performance by the government would be based on the SOW and submitted no later than the closing date for receipt of proposals.

DynCorp, which included costs associated with the 1-month phase-in--recruiting, training, certifying, and relocating personnel--in its cost proposal, contends that the Air Force is required to include its comparable costs in its estimate. The Air Force only included personnel salary and benefit costs for the first month phase-in. With regard to training, the Air Force cost comparison indicates that some of the government's new civilian work force would be trained prior to the phase-in start date and the balance would be trained in the following 90 days. The Air Force indicates it included costs for the trainers it would use during this 90-day training period, but, because it could not predict how many of its new personnel would require training, it did not determine how many trainers it would use prior to the phase-in, or include costs for phase-in training. The Air Force also did not include in its cost estimate mobilization costs, that is, certification, recruiting, hiring and relocation costs for new personnel. In deciding not to include these phase-in costs, the Air Force relied on guidance from the Air Training Command, issued in July 1988 in response to questions raised by an unsuccessful offeror in an A-76 cost comparison for aircraft maintenance services at Columbus Air Force Base, which guidance allowed omission of certain phase-in costs from the government estimate.

We believe the Air Force's failure to include these phase-in costs in the instant cost estimate was in error and that its application of the Columbus precedent to the present situation was unreasonable. The SOW plainly required phase-in, with fully trained employees, to be complete in the first month. The Air Force's failure to include the costs of recruiting, hiring, relocating, certifying, and training these employees means that its offer did not adhere to the same scope of work as required of the offerors and thus it was underestimated.

We have consistently held that contractors and the government should compete on the basis of the same scope of work on an A-76 procurement. See, e.g., EC Services Co., B-218202, May 23, 1985, 85-1 CPD ¶ 594. In this regard, the Supplement to OMB Circular No. A-76 states:

> "To assure a fair and equitable comparison, in-house cost estimates must be based on the same scope of work provided in the performance work statement and include estimates of all significant and measurable costs." Supplement, Part IV ("Cost Comparison Handbook"), Ch. 1, para. C.1.

To assure that all attributable costs are included in the government estimate, Chapter 2, section H of the Handbook, as well as Air Force Regulation (AFR) 26-1, Vol. I, section 9-9, which also implements OMB Circular A-76, provide that additional costs resulting from unusual or special circumstances, which may be encountered in particular cost studies, should be included in the government's cost estimate. Here, unlike the usual A-76 cost comparison, where an in-house civilian work force represents the status quo, the in-house work force, consisting of primarily military personnel, will have to be largely replaced with new in-house civilian employees. We think it is clear that the government will incur, and therefore should include in its estimate, the costs of installing that new work force, such that it will comply with the SOW requirement that phase-in training be completed within the first month. Consequently, we find the Air Force should have followed the Handbook and its own implementing regulations, in performing the cost comparison, to assure comparability between the government estimate and offerors' proposals, instead of the undisclosed internal guidance, based upon the Columbus situation, that was not issued until a month after the closing date for receipt of proposals under this RFP.

Additionally, we find the Columbus-based guidance was addressed to that particular case and is of marginal relevance to this cost comparison. In that case, costs to recruit, hire, or train new employees were not included in the estimate because the Air Force intended to hire personnel who were already qualified, and because the Columbus civilian personnel section was capable of recruiting and hiring with no increase in staff or regular operating expenses. Also, since the Air Force could not tell how many hires would be federal employees entitled to relocation costs, these costs were not included in that government estimate. Here, unlike the Columbus situation, the record shows that the Air Force anticipated hiring as in-house employees other than fully trained employees, and incurring recruiting, hiring, and relocation costs. Indeed, the Air Force has provided an after-the-fact estimate of some of these costs, that is, the costs of recruiting, hiring and relocating employees. Thus, we think it was inappropriate for the Air Force to rely upon the Columbus-based guidance in the present situation.

Accordingly, the Air Force should have included in the government estimate those phase-in costs necessary to have a fully qualified government work force by completion of the changeover as was required of DynCorp and the other offerors. These phase-in costs are in two parts, one for which no estimate has been made and one where the Air Force has made a post hoc estimate.

The Air Force has provided no estimate for up-front training and certification phase-in costs. DynCorp estimates these costs as $231,056.89.1/ We are unable to determine whether DynCorp's estimate is reasonable. Therefore, we are recommending that the Air Force calculate the cost of having its work force trained and certified in order to meet the 1-month phase-in schedule, and that this amount be included in the government estimate.

For relocation costs, DynCorp contends that a "mock hiring" should have been conducted using the same assumptions as the

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1/ In reaching this result, DynCorp assumes an average of 4.7 man-days per employee for training and certification, multiplied by 461 new Air Force employees (2,166.7), multiplied by a weighted labor cost of $106.64. The number of Air Force employees is calculated by subtracting the number of current civilian employees (122) from the government proposed most efficient organization (MEO) of 583 that was used in the government estimate.

"mock-RIF" that was employed in the Air Force cost evaluation to account for one-time conversion costs associated with government employee permanent change of station (moving) expenses in the event the agency contracted for the services.2/ DynCorp calculates this amount as $2,024,000.3/ Even though it did not include these costs in its cost estimate, the Air Force has subsequently calculated its recruiting, hiring, and relocation costs as $168,000.4/ DynCorp disputes the Air Force calculation as being an after-the-fact, undocumented estimate, which grossly underestimates the government's recruiting and relocation costs.

Calculation of such costs are largely a judgmental matter with which we will not interfere, so long as they are not made fraudulently, in bad faith, or inconsistently with cost comparison guidelines. See Raytheon Support Services Co., B-228352, Jan. 19, 1988, 88-1 CPD ¶ 44; Trend Western Technical Corp., B-221352, May 6, 1986, 86-1 CPD ¶ 437. With one exception (discussed below), we find no basis to question the government's post hoc estimates of its recruiting and hiring costs, or the number of employees for whom it would have to pay relocation costs. See Winston Corp.--Request for Reconsideration, B-229735.2, Oct. 4, 1988, 88-2 CPD ¶ 44.

2/ As discussed below, DynCorp also protests the "mock-RIF" adjustment. DynCorp argues that if its proposal is charged costs for government employee relocation occasioned by a contractor taking over the operation, then the same assumptions should be made regarding the percentage of government employees who would relocate presuming the government operates the facility. In the alternative, DynCorp suggests that the $550,000 attributable to relocation costs under the "mock-RIF" should be eliminated from its adjusted cost estimate.

3/ DynCorp reaches this result by adopting the government assumptions on the "mock-RIF", that is 20 percent of the work force (92 of 461 employees) multiplied by the $22,000 per employee relocation cost figure used by the government in the "mock-RIF."

4/ The Air Force estimates spending $8,000 for newspaper advertising, $10,000 in increased staffing costs for processing applications, and $15,000 for each of the estimated 10 federal employees whose moving expenses would have to be paid.

However, we agree with DynCorp that there appears no rational reason for the $7,000 difference per employee for moving expenses between the $22,000 estimate for those government employees relocated from Laughlin as part of the "mock-RIF" and the post hoc $15,000 estimate for relocation costs for those government employees to be transferred to Laughlin. The Air Force has provided no explanation for this discrepancy. Thus, we are recommending that the government's estimate for moving expenses for its 10 relocated employees should be increased to $220,000, making its total estimated cost for recruiting, hiring and relocating employees $238,000 instead of $168,000, and that this amount be included in the government estimate for cost comparison purposes.

BUDGET MANAGER POSITION

Under the original SOW, offerors were specifically required to provide an on-site contract manager, who was to be responsible for overall management and coordination of the contract, and, as part of its management support, provide a single point of contact for coordinating all plans, host-tenant/interservice support agreements, and memoranda of agreement. There was no mention of specific budgeting tasks or positions in the original SOW. After the initial proposals were submitted, offerors were advised by an amendment to the SOW that the "contractor will provide a budget manager to account for supply and equipment expenditures within the maintenance complex." The amendment also detailed, in four separate paragraphs, the duties of the budget manager. In response, DynCorp included a separate budget manager position at a personnel cost of $131,478.44 for the life of the contract.

When the cost comparison was conducted, the Air Force did not increase its personnel costs to provide for a separate budget manager. It explained that a GS-7 "plans analyst," who was included in the government's original estimate, already performed duties identical to those listed in the amendment to the SOW for the budget manager position.

DynCorp argues that the Air Force was required to either (1) include in its estimate a separate employee to be the budget manager or (2) treat this position as a "common cost" that would have been incurred regardless of whether this work was done in-house, and exclude this cost from DynCorp's cost proposal. The Air Force maintains that it legitimately covered the budget manager duties in its GS-7 "plans

analyst" position and that it was simply a matter of DynCorp's judgment to create a separate position, since the SOW did not require this.

We disagree. The original SOW made no mention of budget manager duties, yet the SOW amendment speaks in terms of a budget manager who will perform various specific tasks. In contrast, the Air Force explains that it had included these tasks as part of another position in a proposal prepared weeks before the amendment to the SOW.

Given the specific references in the amendment to a budget manager who is required to perform specified duties, as opposed to a mere listing of budget management duties alone, we find reasonable DynCorp's interpretation that a separate position was required. However, in light of the Air Force's explanation of its actual intent, we find DynCorp was misled to its competitive prejudice. See Aspen Systems Corp., B-228590, Feb. 18, 1988, 88-1 CPD ¶ 166. The gravity of the prejudice is evident from a comparison of the DynCorp budget manager's full-time position and salary with the Air Force use of a GS-7 "plans analyst," who has part-time budget manager responsibilities.

Accordingly, we believe the Air Force should determine, and advise DynCorp, whether the budget manager position is a "common position" and, if not, whether it was required to be a separate position. If the Air Force decides this position is a "common position," then the Air Force should delete the associated costs for this position from DynCorp's proposal. If the Air Force determines the budget manager should be a separate position, the Air Force cost for a similar separate position must be calculated, documented and included in the government estimate. If the Air Force determines that the budget manager need not be a separate position, then DynCorp must be provided an opportunity to recompute and document its costs for the government's actual requirement for this function.

OTHER CLAIMS

DynCorp alleges the Air Force made several other mistakes in the cost comparison: (1) that it miscalculated the initial performance period; (2) that it failed to include certain pay raises due to use of the wrong effective date; (3) that it omitted salaries for certain training personnel; (4) that it improperly used a "mock-RIF" in calculating the one-time conversion costs; (5) that it understated the overtime costs; (6) that it overstated contract administration costs; (7) that it erroneously applied the full 10 percent conversion differential; and (8) that it improperly deviated

from the RFP procedures by not properly accounting for social security and thrift plan contributions. The Air Force maintains that it properly calculated all the costs challenged by the protester. We have examined each of those DynCorp allegations and the Air Force responses and find these remaining claims to be without merit. In view of the dollar value of the "mock-RIF," overtime, conversion differential, and social security/thrift plan claims, we will specifically discuss these issues.

DynCorp challenges the addition to its proposal (as part of the one-time conversion costs) of costs for permanent change of station (moving) expenses occasioned by a "mock-RIF." The Air Force calculated that it would cost $22,000 for each of 25 employees (20 percent of the 122 current civilians) for these expenses, or $550,000. We have held that the "mock-RIF" procedure is a proper method of calculating one-time conversion costs associated with the selection of a contractor, instead of continuing performance in-house, since such estimates include complex and somewhat subjective judgments. Raytheon Support Services Co., B-228032.2, Dec. 30, 1987, 87-2 CPD ¶ 641. We find the addition of relocation costs attributable to the "mock-RIF" as a one-time conversion cost is reasonable on its face and is consistent with the requirements of the Handbook.

DynCorp alleges that the Air Force estimate for overtime is unreasonably understated as $100,454.40 or .0013 percent for the entire contract performance period. DynCorp notes that the existing military-civilian work force documented 30,208 man-hours of overtime or 3.2 percent for the period April 1987 through March 1988 with a work force almost twice the size of the proposed MEO. Since, according to DynCorp, it is common for such Air Force units to budget 1.5 to 2.0 percent overtime, 1.5 percent or $1,220,400.06 is a more reasonable estimate; thus, this cost is understated by $1,119,845.66.

The Air Force replies that the overtime estimate was developed as an integral part of the MEO by the management study working group. The group planned for maintenance to be accomplished by a two-shift operation requiring minimal overtime. Although DynCorp itself planned for a two-shift operation, the Air Force MEO also called for nearly 100 more government employees than proposed by DynCorp, providing an additional 208,000 annual man-hours, further minimizing the amount of overtime.

We have recognized that the projection by an agency of personnel changes resulting from a conversion is largely a judgmental matter and that an agency should be free to make

its own management decision 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 established procedures. Trend Western Technical Corp., B-223152, supra. Further, we have upheld an agency's estimate for overtime hours, where, as here, the estimate is reasonable on its face, recognizing that the government may have inherent advantages in organizing its manpower that a contractor cannot achieve in an A-76 exercise. Facilities Engineering & Maintenance Corp., B-210376, Sept. 27, 1983, 83-2 CPD ¶ 381. Based on our review, we find nothing objectionable in the Air Force's overtime estimate.

With regard to the 10 percent conversion differential, DynCorp urges that it is unfair to apply the full percentage amount to its offer under the circumstances of this case. The Air Force responds that OMB Circular No. A-76 requires application of the total differential. We agree with the Air Force.

OMB Circular No. A-76 requires that cost margins must be exceeded before converting an "in-house commercial activity" to contract. That cost margin is equal to 10 percent of in-house personnel related costs and it is to be added to the cost of contracting. See chapter 4, section A of the Handbook; AFR 26-1, Vol. I, section 9-20. The rationale for including this amount, here more than $7.5 million, is "to give consideration to the loss of production, the temporary decrease in efficiency and effectiveness, the cost of retained grade and pay, temporary operation of facilities at reduced capacity and other unpredictable risks that result anytime a conversion is made." Id.

DynCorp argues that in situations such as this, where the agency will be replacing the majority of in-house personnel, its conversion will suffer from the same risks attributable to conversion to a contract. As such, it suggests this procurement is more akin to a "new requirement,"5/ as opposed to a conversion of an in-house commercial activity to contract.

5/ A "new requirement" is defined to be a "newly established need for a commercial product or service," see Part I, Ch. 1, para. C.4. of the Supplement, and, with new requirements, a similar conversion differential is added to the government's cost instead of to the contractor's cost. See Ch. 5, sec. E of the Handbook.

However, in its definition of in-house commercial activities the Air Force includes activities operated by both Air Force military and civilian personnel such as the one in question here. See AFR 26-1, Vol. I, Para. 2-2b(1). Also, there is no provision in OMB Circular No. A-76 that would allow less than the full 10 percent conversion differential to be applied. Therefore, we cannot question the application of the conversion differental in this case.

Finally, DynCorp contends that the Air Force improperly deviated from the cost comparison procedures provided in the solicitation, which provided that offerors who submitted separate figures for social security and thrift plan contributions would have these costs deducted for cost comparison purposes as then prescribed in the OMB Circular A-76 Handbook. DynCorp submitted separate figures for social security and thrift plan contributions in the amount of $4,815,075, which if deducted from DynCorp's cost would clearly result in a decision to contract.

The Air Force did not deduct DynCorp's stated contributions because of Transmittal Memo (TM) No. 7 to OMB Circular No. A-76, dated August 8, 1988, which, among other things, provided that this deduction was no longer to be made in any cost comparison where the government's in-house cost estimate had not been opened prior to July 13, 1988.6/ This change also required government contributions for retirement, social security, and thrift/profit sharing plans to be included in the government estimate and was occasioned by the passage of Public Law 100-366, amending the Federal Employees' Retirement System Act of 1986.

In mid-October 1988, the contracting office at Laughlin received a copy of TM No. 7 along with Air Force Headquarters guidance requiring deletion of this deduction provision from solicitations in which the cost comparisons had not yet been made. Even though no selection had been made under the RFP, and the government's in-house offer was not opened until nearly a month later, the Air Force inexplicably failed to amend the solicitation. The Air Force major command review board found this failure to be in error, but reasoned that DynCorp was not prejudiced since it had to include these contributions as part of its costs in any event. As such, reasons the Air Force, an amendment to the solicitation would not have led to any reduction in DynCorp's costs.

6/ The government estimate here was opened on November 8, 1988.

DynCorp contends that the Air Force is required to deduct these contributions in accordance with the original solicitation provision, relying upon Pan Am World Services, Inc., B-215829, June 24, 1985, 85-1 CPD ¶ 712, and Joule Maintenance Corp., B-208684, Sept 16, 1983, 83-2 CPD ¶ 233. DynCorp also disputes the Air Force assessment that it would not have reduced its offer had it been apprised of the change, claiming that it would have lowered its target fee by 1 percent to allow for the difference in cost.

As indicated in the decisions cited by DynCorp as well as this decision, agencies may not materially deviate from the cost comparison procedures stated in the solicitation. However, the purpose of an A-76 cost comparison procedure is to determine whether the cost comparison accurately reflects the least expensive method of performing the work under review. Joule Maintenance Corp., B-208684, supra, at 8-9. Under the policy extant prior to the issuance of TM No. 7 separately stated social security and other contributions were deducted from contractor proposals because these same costs were not included in the government estimate. However, here, these costs were included in the government estimate as required by TM No. 7. Therefore, allowing a deduction of such costs from the contractor's costs would produce an anomalous result.

Further, we are persuaded that DynCorp was not prejudiced by the Air Force's action in this case. There appears no argument that DynCorp's proposed costs, attributable to the contributions, would have been reduced if an RFP amendment disclosing the TM No. 7 policy had been issued. Indeed DynCorp is legally liable to pay these costs. DynCorp's assertion, after disclosure of the government's costs, that it would have lowered its target fee to make up any difference is too speculative and self-serving to sustain its protest on this ground. See Apex International Mgt. Services, Inc., B-228885.2, Jan. 6, 1988, 88-1 CPD ¶ 9.

RECOMMENDATIONS

In view of the Air Force failure to include all costs associated with the conversion to civilian in-house performance and its misleading advice concerning the budget manager position, we recommend: (1) that the Air Force calculate the costs attributable to training and certifying its work force in advance of full phase-in; (2) add $238,000 in additional costs for relocation and recruiting costs associated with phase-in; and (3) determine the status of budget manager and account for this position in accordance with this decision. The amounts claimed for these items by DynCorp are sufficient to eliminate the government's cost

advantage. Thus, if the Air Force calculations, made in compliance with the recommendations of this decision equal or exceed the current cost difference of $557,140, the contract should be awarded to DynCorp.

In any event, since we have found that the Air Force miscalculated and failed to include all costs in the comparison, we find that DynCorp is entitled to the costs of filing and pursuing the protest. 4 C.F.R. § 21.6(d)(1) (1988).

The protest is sustained.

Milton J. Socolar

Acting Comptroller General
of the United States