



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: EPD Enterprises, Inc.
File: B-236303
Date: October 30, 1989

DIGEST

Protest of determination to perform trash pickup service and operation of a construction debris landfill in-house rather than by contract is denied where the protester has not shown that the agency's prorated allocation of certain government equipment operating costs, as adjusted under an administrative appeal, was inaccurate or violated Office of Management and Budget Circular A-76 procedures for determining the cost of in-house operation versus contracting.

DECISION

EPD Enterprises, Inc., protests the Marine Corps' determination to continue in-house performance of trash pickup service and operation of a construction debris landfill at Marine Corps Air Station, Cherry Point, North Carolina, because it was more economical than contracting with EPD. The Marine Corps based its determination on a cost comparison of the agency's in-house estimate with EPD's bid under invitation for bids (IFB) No. N62470-89-B-4031, pursuant to Office of Management and Budget (OMB) Circular A-76.

We deny the protest.

In accordance with the Circular, the Marine Corps compared the government estimate of the total costs of continuing in-house performance with the sum of the total costs associated with the acceptance of EPD's offer plus an OMB imposed 10 percent conversion differential. The cost comparison, as adjusted by the Marine Corps Commercial Activities Review Board in response to an appeal by EPD, showed that costs associated with EPD's bid would be \$10,206 greater than in-house performance.

EPD protests that, despite adjustments the review board made as a result of EPD's appeal, the Marine Corps has underestimated costs of in-house performance in a way that

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materially affects the outcome of the cost comparison. Specifically, EPD contends that the Marine Corps has underestimated depreciation, maintenance and repair, and fuel costs for a bulldozer used in the landfill operations which was not being supplied as government-furnished equipment.^{1/}

Where a contracting agency uses the procurement system to aid in its determination whether to contract out, we will review a protest that a bid has been arbitrarily rejected to determine if the agency conducted the cost comparison in accordance with applicable procedures. To succeed in its protest, a protester must demonstrate not only that the agency failed to follow established procedures, but that this failure could have materially affected the outcome of the cost comparison. Bay Tankers, Inc., et al., B-224480.6 et al., Mar. 25, 1988, 88-1 CPD ¶ 306.

Here, the agency's initial cost comparison omitted the costs associated with operation of the bulldozer in question. In response to EPD's cost comparison appeal, the agency review board added \$11,309.01 to the in-house cost estimate: \$5,443.77 for depreciation, \$5,090.79 for maintenance and repair of the bulldozer (\$1,508.22 for labor, \$3,587.57 for material), and \$774.45 for fuel cost to operate the bulldozer. The board calculated these costs based on use of the bulldozer 35 percent of the time to support the construction debris landfill operation. EPD argues that proper calculation of the bulldozer costs on a 100 percent basis would increase the estimated cost of in-house performance by more than \$25,000, which would be sufficient to warrant award to EPD.

EPD contends that there is no evidence in the management study to indicate that the bulldozer is used for other functions, and therefore 100 percent of the bulldozer's costs should be included in the government estimate, rather than the 35 percent included by the board in its adjustment to the cost comparison.

^{1/} Initially, EPD also alleged that the Marine Corps failed to include in the government estimate the costs of transporting the bulldozer between the landfill and other sites. Because the Air Force rebutted this argument in its report on the protest, and the protester did not pursue this basis of protest in its comments, we consider it abandoned. See Pan Am World Servs., Inc., B-235976, Sept. 28, 1989, 89-2 CPD ¶ ____.

Our review of the record leads us to conclude otherwise. The management study stated that an engineering equipment operator augmented refuse collection and disposal personnel by operating the bulldozer to compact and cover refuse at the construction debris landfill for only approximately 700 hours per year. Neither the equipment operator's salary nor the costs associated with the bulldozer were included in the original government estimate. The review board determined that the work required under the IFB's Performance Work Statement could not be accomplished without the bulldozer, and that without including costs associated with the bulldozer, the government and the contractor were not bidding on the same scope of work. The board calculated that the bulldozer was used 35 percent of the time to support the construction debris landfill operation by dividing the 700 hours specified in the management study by the normal labor rate of 2,087 man hours available per year. Although the 700 hours equated to 33.5 percent of the time, the review board gave the protester the benefit of the doubt and used the 35 percent factor to calculate the costs associated with the bulldozer. For the evaluation under the cost comparison appeal, the contracting activity further supported the 35 percent use factor by establishing that the bulldozer was used for other standing work and under specific work orders and tickets, which included sludge handling from a disposal plant, unpaved road maintenance, utility right of way clearing, and outside storage area maintenance.

We have recognized that OMB Circular A-76 empowers agencies to review and, where necessary, to adjust its in-house estimate to correct the possibility that the government estimate was not based on the scope of work specified in the solicitation. Winston Corp.--Request for Recon., B-229735.3, Oct. 4, 1988, 88-2 CPD ¶ 311; Trend Western Technical Corp., B-212410.2, Dec. 27, 1983, 84-1 CPD ¶ 25. To assure that all significant and measurable costs are included in the government estimate, Chapter 2, Section H of the OMB Cost Comparison Handbook provides 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. Consistent with this guidance, here the Marine Corps review board revised the government estimate to include costs for a bulldozer which was not entirely dedicated to the function under study, but which was associated with direct accomplishment of work outlined in the Performance Work Statement.

The Handbook does not preclude proration of equipment costs in a case like this to reflect the amount actually attributable to the function under study. Here, the government's

records show that for the most recent available calendar year the bulldozer was used for 700 hours in conjunction with landfill operations, and for 1293.2 hours under work orders and tickets associated with unrelated sludge handling, road maintenance, right of way clearing and outside storage area maintenance. Accordingly, we find no basis for objection to the review board's inclusion of only 35 percent of the bulldozer's costs in the government estimate, since this percentage accurately reflects the proportion of the bulldozer's use which was associated with the landfill operations. See ISS Energy Servs. Inc., B-211171, Aug. 1, 1983, 83-2 CPD ¶ 145.

EPD also contends that the Marine Corps has grossly understated the bulldozer's maintenance and repair and fuel costs. According to EPD, these costs are low in comparison with established commercial costs. Furthermore, EPD argues, the expected maintenance hours which the Marine Corps attributes to the bulldozer are only about one-third of the maintenance hours projected for bulldozers in NAVFAC P-300, Management of Transportation Equipment, an official agency publication.

The Marine Corp states that the estimates used in the cost comparison appeal decision were based on the average actual usage figures for the most recent period of time. We find no basis to object to the Marine Corps calculations based on these actual use figures as more accurate and thus more appropriate for cost comparison purposes than the estimating guide suggested by the protester.

In accordance with Chapter 2, Section H of the Handbook, the Marine Corps has explained the underlying assumptions and methods of computation it used to determine the bulldozer's costs. The figures used in computing total equipment costs were based on source documents, shop repair orders and vehicle fuel system vehicle fuel reports. The costs were prorated based on the 700 engineering equipment operator hours to determine the percentage of total documented costs that were attributable to the operation of the construction debris landfill. The 700 hours were documented in the Facilities History File maintained by the Facilities Maintenance Department and relate directly to the labor hours charged through the official accounting records by Job Order Number to the landfill operation function. There is nothing in the record to suggest that these cost calculations are either inaccurate or contrary to cost comparison guidelines. EPD's mere disagreement with the agency's cost

study result is not sufficient to establish that the cost comparison was flawed. See Raytheon Support Servs. Co., B-228352, Jan. 19, 1988, 88-1 CPD ¶ 44.

The protest is denied.

for *Raymond E. Hinchman*
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General Counsel