

Shimamura



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Alltech, Inc.

**File:** B-237980

**Date:** March 27, 1990

James S. Risher, for the protester.

Ronald C. Allen, Esq., Department of the Army, for the agency.

Amy M. Shimamura, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protest that contracting agency improperly evaluated bids under solicitation issued for cost comparison purposes pursuant to Office of Management and Budget Circular No. A-76 is denied where agency followed applicable procedures in conducting the cost comparison and protester fails to show that the methodology used was unreasonable or inconsistent with the Circular and other related guidelines.

### DECISION

Alltech, Inc., protests the methodology used in evaluating bids and the agency determination to perform the work in-house under invitation for bids (IFB) No. DACW65-89-B-0040, issued by the Army Corps of Engineers, Norfolk, Virginia, for the operation and maintenance of the administrative motor vehicle pool in the Norfolk District, and the operation and maintenance of heavy construction equipment at the Craney Island Disposal Area, Portsmouth, Virginia. Alltech contends that the Corps improperly evaluated the cost of hauling materials at Craney Island.

We deny the protest.

The IFB was issued on July 14, 1989, pursuant to Office of Management and Budget (OMB) Circular No. A-76 in order to provide the Corps with a cost comparison for the purpose of determining whether it would be more economical to perform

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the required work in-house or by contract.<sup>1/</sup> The IFB required bids for a base year and 4 option years for specified support services for the Norfolk motor pool, and the operation of the Craney Island Disposal Area. The Craney Island services included the construction and maintenance of perimeter dikes, cross dikes and roads, which surround and intersect the island, for the purpose of providing an adequate disposal area for Norfolk Harbor and vicinity dredgings. In order to maintain the dikes at required widths and heights, the contractor would be required to haul sandy soil by truck from various pits located on the eastern side of Craney Island.

With regard to the evaluation of bids, the IFB advised that bids would be adjusted upward to account for any additional costs that the government would incur if the function were contracted out, and that contract award might not be made unless it would result in savings of at least 10 percent of the estimated government personnel cost for the period of the comparative analysis.

Five bids were received by bid opening on September 27. Alltech was the apparent low bidder at \$5,841,794; the government estimate was \$5,712,552. With the necessary adjustments for contract administration costs, Alltech's bid was substantially higher than the government estimate. The Corps therefore decided to retain the motor pool and Craney Island Disposal Area work in-house.

Alltech protested the determination to the Corps, which found that Alltech had failed to demonstrate the existence of material errors in the costing guidance that were of such magnitude as to warrant a reversal of the Corps' determination. Alltech then filed this protest with our Office. Alltech contends that the methodology used by the Corps in evaluating the cost of hauling materials on Craney Island was inconsistent with OMB guidance and materially affected the outcome of the cost comparison.

The record shows that in calculating the hauling costs portion of the in-house estimate, the Corps averaged the prices paid under two fiscal year (FY) 1988 hauling contracts for the same work at Craney Island; under those contracts, the Corps paid \$2.31 per cubic yard and \$1.44 per

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<sup>1/</sup> OMB Circular No. A-76 establishes federal policy regarding commercial activities and sets forth procedures for determining whether commercial activities should be operated under contract by commercial sources or in-house using government facilities and personnel.

cubic yard, for an average of \$1.84 per cubic yard. To arrive at its in-house estimate for the work, the Corps multiplied the estimated cubic yards to be hauled under the current solicitation by the \$1.84 per cubic yard average price. The protester contends that it was improper to average the cubic yard costs under the two contracts because an important cost variable, the round trip mileage of the trucks hauling the material, was not taken into consideration. Alltech also maintains that the Corps' "real" cost under the FY 1988 contracts was \$2.29 per cubic yard, although it does not explain how it arrived at this figure. The protester contends that in calculating its hauling cost, the Corps should have used either the \$2.29 per cubic yard price, which, Alltech maintains, also is consistent with the price under the Corps' FY 1989 hauling contract; the price paid (\$2.31 per cubic yard) under the higher priced of the two FY 1988 contracts; or the \$2.76 per cubic yard price set forth in "Means Site Work Cost Data 1989," which Alltech states is a widely accepted estimating manual that is used by the construction industry. Alltech contends that by using any one of the above three cubic yard costs, the calculations indicate that the contract should have been awarded to its firm.

The Corps responds that since the scope of work here, including the round trip mileage, is comparable to the scope of work in both of the FY 1988 contracts, the use of the FY 1988 average hauling cost of \$1.84 per cubic yard was proper and in accord with OMB guidance. Additionally, the agency states that the method of averaging the costs of the two contracts was proposed by the U.S. Army Audit Agency as an acceptable cost technique. Further, the Corps states that in a similar A-76 cost comparison case, the use of estimates based on average actual usage figures for the most recent period of time was upheld by our Office. See EPD Enters., Inc., B-236303, Oct. 30, 1989, 69 Comp. Gen. \_\_\_\_, 89-2 CPD ¶ 393. The agency concludes that the protester has failed to show that devising estimates by averaging actual costs is unreasonable or inconsistent with the OMB Circular or other related cost guidelines.

As a general rule, our Office will not review an agency's decision concerning whether work should be performed in-house or by a contractor because that is a matter of executive branch policy. However, where an agency uses the procurement system to aid in this determination by spelling out in a solicitation the circumstances under which it will or will not award a contract, we will consider a protest alleging that the agency has improperly rejected a bid or proposal. We do so because a faulty or unfair comparison

would be detrimental to the procurement system. Base Servs., Inc., B-235422, Aug. 30, 1989, 89-2 CPD ¶ 192.

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. To succeed in its protest, a protester must demonstrate not only that the agency failed to follow established procedures, but also that its failure could have materially affected the outcome of the cost comparison. Dyneteria, Inc., B-222581.3, Jan. 8, 1987, 87-1 CPD ¶ 30. Here, the record indicates that the Corps properly conducted the cost comparison pursuant to OMB Circular No. A-76 and Appendix D to Army Regulation (AR) 5-20, the Army's implementation of the Circular which sets forth the agency's procedures for conducting cost comparisons of in-house and contract performance.

Alltech argues that relying on the costs under the two FY 1988 contracts to arrive at the government estimate was improper because the round trip mileage for the trucks used for hauling was not considered. The record indicates, however, that the average round trip mileage was not specified in the solicitations for the FY 88 contracts; rather, bidders prepared their bids, and the contracts were awarded, based solely on the total cubic yards to be hauled at a fixed contract price. In order to determine the average hauling cost per cubic yard, the agency divided the total price of the two contracts by the total cubic yards to be hauled under the contracts. Under the circumstances, the actual round trip mileage of the hauling trucks was not a relevant consideration in determining the average cost of hauling a cubic yard of material.

With regard to averaging hauling costs under the two FY 1988 contracts, that method was specifically endorsed by the audit agency which reviewed the Corps' estimate pursuant to the OMB Circular and AR 5-20, both of which require a review of an agency's cost estimate by an impartial agency that is organizationally independent of the commercial activity being studied and the activity preparing the cost comparison. Although Alltech contends that the use of an industry estimate would be more appropriate since the agency's average cost is too low, agency estimates based on actual average usage figures are more accurate and more appropriate for cost comparison purposes than commercial estimating guides suggested by a protester. EFD Enters., Inc., B-236303, supra.

Alltech also suggests that more current cost figures should have been used. However, the Corps' use of FY 1988 costs is

in accord with Appendix D of AR 5-20, which states that where, as here, estimates are based on historical costs, the last full year's accounting reports may be used. The record indicates that when the Corps prepared its in-house estimate in May, the only full year's accounting reports that were available were for FY 1988. The Corps states that the FY 1989 contract was awarded on February 22; performance began on April 19; and since no payments under the contract had been made at the time the government estimate was being prepared, no cost figures were available on the FY 1989 hauling contract. Thus, the Corps' use of FY 1988 cost figures in devising its hauling cost estimate was in accord with applicable guidance.

Since the Corps, in compliance with OMB Circular No. A-76 and AR 5-20 guidance, considered in-house estimates of hauling costs which were based on the same scope of work, used the most recent full FY's accounting reports on hauling costs in estimating its costs, and averaged its costs under two FY 1988 hauling contracts as advised by an independent reviewing agency, and the protester has not shown that the agency failed to follow established procedures, we see no basis upon which to object to the cost comparison conducted by the Corps under the IFB.

The protest is denied.

  
for James F. Hinchman  
General Counsel