



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Trans-Regional Manufacturing, Inc.

File: B-245399

Date: November 25, 1991

Karl Dix, Jr., Esq., Smith, Currie & Hancock, for the protester.

Lt. Col. George W. Ash and John Pettit, Esq., Department of the Air Force, for the agency.

Aldo A. Benejam, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

The General Accounting Office will not consider a protest against the propriety of a cost comparison conducted pursuant to Office of Management and Budget Circular No. A-76 where the protester did not raise its objection in an appeal to the contracting agency.

DECISION

Trans-Regional Manufacturing, Inc., as low offeror under request for proposals (RFP) No. F45603-90-R-9030, protests the Department of the Air Force's decision to retain in-house military family housing maintenance services at McChord Air Force Base, Washington. After conducting a cost comparison pursuant to the Office of Management and Budget (OMB) Circular No. A-76, the Air Force concluded that it would be more advantageous for the government not to contract for the services.

We dismiss the protest.

The RFP was issued on September 28, 1990, to provide the Air Force with a cost comparison to determine whether it would be more economical to perform the services in-house or by contract. Best and final offers from three firms which submitted initial proposals were received and evaluated on March 27, 1991. Trans-Regional submitted the apparent low offer.

On May 6, the contract specialist telephoned all offerors, including the protester, and informed them that the cost comparison between the government's cost estimate and the most advantageous proposal favored continued performance of

the services in-house. During that telephone notice, the contract specialist also informed offerors that the cost comparison had been limited to only certain specified line items, and that offerors could appeal the cost comparison within 15 working days. By letter dated May 7 to all offerors, the contracting officer confirmed the telephonic notice of the results of the cost comparison, forwarded a copy of Air Force Form 346 (the cost comparison worksheet) for their review, and again reminded offerors of the 15-day appeal period.

On May 23, Trans-Regional filed an administrative appeal of the cost comparison in accordance with Air Force regulations and OMB Circular A-76, arguing that the government had failed to include in its estimate the costs for construction materials allegedly required to be supplied by the successful contractor, and challenging as excessive the amount of the conversion differential used in the comparison. Trans-Regional did not specifically challenge the agency's decision to limit the cost comparison to only the line items identified by the contract specialist. In a June 18 letter, received by the protester on June 21, the agency denied Trans-Regional's appeal. The agency also informed Trans-Regional that it had 10 working days from receipt of the letter to file a second-tier appeal of the cost comparison.

On August 8, Trans-Regional filed a second-tier appeal of the cost comparison, reiterating the argument it raised in its initial appeal concerning the cost of certain materials; Trans-Regional did not specifically challenge the agency's decision to limit the cost comparison to only certain line items. On August 16, the agency summarily denied Trans-Regional's second appeal as untimely since it was filed more than 10 working days after the protester received the agency's June 18 letter denying the initial appeal. Trans-Regional filed this protest in our Office on August 27.

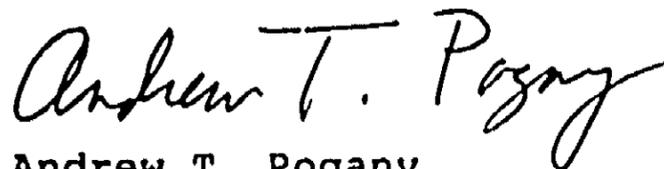
Trans-Regional argues that the Air Force improperly conducted the cost comparison. In support of its position, the protester points to the agency's August 16 letter, which allegedly shows that the government's proposal for cost comparison purposes failed to include costs for certain line items in the solicitation. According to the protester, the government's proposal should have been rejected because the solicitation stated that any offer which did not include prices for all line items would be rejected.

We will not consider this argument since the protester failed to raise it in its appeal to the contracting agency. Dyneteria, Inc., B-222581.3, Jan. 8, 1987, 87-1 CPD ¶ 30. Federal Acquisition Regulation (FAR) § 7.307, in accordance with OMB Circular No. A-76, requires that agencies establish appeals procedures for informal administrative review of

cost comparisons. In response to this requirement, the Air Force has established a two-tiered appeal process in which the findings of a cost comparison administrative appeal review team may be reviewed by a major command. Since there is a relatively speedy appeal procedure formally included as part of an OMB Circular No. A-76 decisionmaking process, those decisions are not final until the review procedures have been exhausted. See Intelcom Support Servs., Inc., B-234488, Feb. 17, 1989, 89-1 CPD ¶ 174. Where, as here, there is an established appeal procedure available for review of an agency's cost comparison under OMB Circular No. A-76, we consider a protest alleging deficiencies in such a cost comparison only after the protester has exhausted the agency's appeal process, and we will not review any objections to a cost comparison not specifically appealed to the agency. Dyneteria, Inc., supra.

Although expressed in terms of a challenge to the evaluation of the government's proposal, the protester's contention concerns the correctness of limiting the cost comparison to only certain line items for which the government submitted the cost estimates used in the calculation of the Air Force's proposal and, consequently, the propriety of the cost comparison. The record shows, and the protester does not deny, that the contract specialist informed it on May 6 that the cost comparison was limited to only those line items she identified. Trans-Regional's allegation, therefore, raised for the first time in its protest to our Office, should have been raised in an administrative appeal to the contracting agency. Trans-Regional cannot use our Office's bid protest procedures as a substitute for filing a cost comparison appeal. See ISS Energy Servs., Inc.-- Recon., 64 Comp. Gen. 231 (1985), 85-1 CPD ¶ 116. Since the protester did not specifically raise its allegation in an administrative appeal to the contracting agency, we will not consider its protest. Raytheon Support Servs. Co., B-228032.2, Dec. 30, 1987, 87-2 CPD ¶ 641.

The protest is dismissed.



Andrew T. Pogany
Acting Assistant General Counsel