



Comptroller General  
of the United States

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Washington, D.C. 20548

## Decision

**Matter of:** Tecom, Inc.  
**File:** B-253740.3  
**Date:** July 7, 1994

Theodore M. Bailey, Esq., and Garreth E. Shaw, Esq., Bailey, Shaw & Deadman, for the protester.  
Paul Shnitzer, Esq., and Stephanie B. N. Renzi, Esq., Crowell & Moring, for ITT Federal Services Corporation, an interested party.  
Jeffrey S. Dubois, Esq., Maj. Wendy A. Polk, and Col. Riggs L. Wilks, Jr., Department of the Army, for the agency.  
Tania L. Calhoun, Esq., Ralph O. White, 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 conducted cost comparison between the government's in-house proposal and protester's proposal to justify agency determination to convert a support services contract to in-house performance 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 Office of Management and Budget Circular No. A-76 and other related guidelines.

### DECISION

Tecom, Inc. protests the Department of the Army's decision to convert the logistics support services at Fort Leonard Wood, Missouri, to in-house performance by civilian employees, rather than to continue to contract for these services, as solicited under request for proposals (RFP) No. DABT31-91-R-0012. The Army based its determination on an Office of Management and Budget (OMB) Circular No. A-76 comparison of the estimated costs of Army performance with Tecom's offer to perform these services. Tecom contends that the cost comparison was flawed for various reasons discussed below.

We deny the protest.

## BACKGROUND

The solicitation, issued on March 6, 1992, contemplated award of a cost-plus-award-fee contract for these services, which include supply support, maintenance and repair of equipment, vehicle operations, rail transportation, troop issue subsistence support, and maintenance assistance and instruction. At the time the solicitation was issued, the services were being performed by a private contractor, ITT Base Services, Inc. (ITT BSI). However, since the result of an Army cost-effectiveness review indicated that it might be less costly to perform the services in-house, the solicitation was amended to inform offerors that the Army intended to conduct an A-76 transfer cost study for the services. The amended RFP stated that the solicitation was part of a government cost comparison to determine whether accomplishing the specified work under contract or by government performance was more economical. If, after the comparison, government performance was determined to be more economical, no contract would be awarded.

The source selection evaluation board (SSEB) evaluated the seven proposals submitted and established a competitive range of three proposals, including Tecom's. After conducting discussions and evaluating best and final offers, the SSEB recommended the selection of Tecom's proposal for the cost comparison, based on its superior technical merit and competitive price.<sup>2</sup> Tecom's proposed cost, less award fees, was \$45,791,118.

The Army completed the cost comparison pursuant to OMB Circular No. A-76 and other associated guidelines, and used its Commercial Activities Services (CAS) software to estimate the cost of the government's proposal. Tecom's price was adjusted by deducting the cost of federal income tax and adding the cost of contract administration and various additional costs, raising it to \$47,618,246. Since this figure exceeded the Army's estimate of its in-house costs of \$45,886,013 by \$1,732,233, the Army decided to perform these services itself. On January 4, 1994, the Army

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<sup>1</sup>A transfer cost study "is prepared when a review of an existing contract concludes that in-house performance is likely to be less costly than commercial sources." Army Regulation (AR) 5-20, "Commercial Activities Program," § 4-8a (1986).

<sup>2</sup>A protest to our Office of the selection of Tecom for the cost comparison was filed by the second offeror in the competitive range, ITT Federal Services, Inc., (of which ITT BSI is a wholly-owned subsidiary), and denied. ITT Fed. Servs., Inc., B-253740.2, May 27, 1994, 94-1 CPD ¶ \_\_\_\_.

announced that it had selected Tecom for the cost comparison, and that it had decided to perform the services in-house. After Tecom's timely appeal of this decision to the administrative appeals board was denied, it filed this protest with our Office.

#### ANALYSIS

OMB Circular No. A-76 describes the executive branch's policy on the operation of commercial activities that are incidental to the performance of governmental functions. It outlines procedures for determining whether commercial activities should be operated under contract by private enterprise or in-house using government facilities and personnel. Generally, such decisions are matters of executive branch policy that our Office declines to review. Base Servs., Inc., B-235422, Aug. 30, 1989, 89-2 CPD ¶ 192. However, where, as here, 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 arbitrarily rejected a bid or proposal. Jets, Inc., 59 Comp. Gen. 263 (1980), 80-1 CPD ¶ 152. We do so because a faulty or unfair cost comparison would be detrimental to the procurement system. Apex Int'l Mgmt. Servs., Inc., B-228865.2, Jan. 6, 1988, 88-1 CPD ¶ 9.

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. Alltech, Inc., B-237980, Mar. 27, 1990, 90-1 CPD ¶ 335. 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. Id.; Dyneteria, Inc., B-222581.3, Jan. 8, 1987, 87-1 CPD ¶ 30. Here, Tecom primarily alleges numerous failures by the Army to include all costs of in-house performance. Our review indicates that the Army properly conducted the cost comparison pursuant to OMB Circular No. A-76 and Army Regulation 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.

#### Costs of In-House Performance

Tecom first contends that the Army's failure to prepare and price the same staffing labor proposal matrix included in the solicitation resulted in understated costs.

OMB Circular No. A-76 requires agencies to prepare in-house cost estimates on the basis of the most efficient and cost effective in-house operation (MEO) needed to accomplish the requirements. The Army's Draft Commercial Activities Study Guide requires the agency to use the MEO Staff Task Analysis chart to determine MEO staffing; the work load depicted must exactly match the work load exhibit in the solicitation's performance work statement (PWS) as to the listed tasks and work load. Army Pamphlet 5-XX, §§ 4-17d(7), 9-12c(1) (1992). While the Army agrees it did not prepare and price a matrix identical to that contained in the solicitation, it followed the guidance in the draft study guide and used the required staffing chart to determine MEO staffing.

Tecom argues that the matrix is more detailed than the staffing chart, and that without that additional detail the Army could not be certain that its staffing assessment was accurate. However, our review of both the matrix and the staffing chart does not show a material difference between the two. The solicitation's matrix lists each PWS task by paragraph number and description, assigns man-hours for each task, and allocates those man-hours to a specific worker. Likewise, the staffing chart lists each PWS task by paragraph number and description, the skill of the worker required to do the task, and the man-hours assigned for each task. Under the circumstances, we have no basis to object to the Army's use of the staffing chart rather than the matrix. See Raytheon Support Servs. Co., B-216898, Sept. 25, 1985, 85-2 CPD ¶ 334.

Tecom next argues that the Army improperly failed to allocate hours to certain PWS tasks that were annotated on the Army's staffing chart as being performed by government functional managers. Tecom asserts that since these managers will have their hours expended to do work that is not allocated to PWS tasks, the Army has understated its manpower and, thus, its costs.

In response, the Army points out that each functional area of the PWS has hours assigned to a manager to "manage and operate" the function. For example, paragraph C-5.2.1.1 of the staffing chart allocates 1,744 hours to a position to "manage and operate" the Ammunition Supply Point; the Army reports that this position includes various PWS tasks for the Ammunition Supply Point that are annotated to be performed by government functional managers. The Army states that 18 manager positions in the staffing chart fall into this category, comprising a total of 16.3 work-years; no PWS tasks with work-load-related hours are assigned against these manager positions; and all of the tasks annotated to be performed by government functional managers

will be performed by personnel in these managerial positions. As a result, these positions are in fact accounted for and costed.

In its comments on the agency report, Tecom does not dispute that these positions are accounted for and costed; rather, it now argues that since these managers are already full-time government employees fulfilling other governmental functions, the Army must account for the costs of hiring someone to do the work currently performed by these personnel. The record indicates that, in the current contract mode of operation, these personnel primarily perform contract administration functions, such as monitoring contractor operations and analyzing, preparing, or reviewing documentation related to contract modifications, government estimates, customer complaints, and contractor performance. They also serve as technical experts and provide policy advice and guidance, and some perform inherently governmental functions such as property accountability, forecasting, programming, and budgeting.

The Army reports that, in an in-house mode of operation, most of these positions would replace contractor functional managers or foremen, assume the responsibility for directing the activities of the functional area, and take on the supervision and management of the personnel who staff the function. Thus, the time required to perform these new tasks is now spent on contract management and related tasks. Since it appears that the functions now performed by these personnel will not be required if the services are performed in-house, we have no basis to find the Army's cost proposal objectionable on this ground.

Tecom next contends that the Army improperly failed to cost other PWS tasks that are annotated as "not applicable to government operations." These tasks include such things as security of classified material, property control system, and damage reports. Tecom argues that personnel providing these services will expend man-hours to perform these tasks whether the services are provided in-house or by a contractor, and that the Army's failure to allocate costs to these tasks resulted in an understatement of manpower and costs.

The Army explains that these tasks are unique to contract operations and will not be performed in an in-house operation, and our review of each task cited by Tecom shows that each is indeed specific to contractor operations. For example, the task concerning security of classified material requires the contractor's plan to comply with Department of Defense requirements; the task concerning the property control system requires the contractor's plan to be complete; and the task concerning damage reports requires

the submission of a report when a contractor's employee damages government property. For each of these tasks, if there is no contract, there is no necessity for a contractor's plan or report. While Tecom argues that, for example, it is unreasonable to believe that the Army will not maintain procedures for a property control system, the task at issue here strictly concerns a contractor's responsibility with regard to such a system. Finally, several of the tasks cited by Tecom are related to the conduct of contract phase-in or termination inventories, and the cost for these inventories was properly addressed in the Army's cost comparison.

Tecom asserts that the Army improperly listed many PWS tasks as performed by another government section outside the contract manning organization, and thus did not allocate man-hours or cost to perform these tasks in such areas as the energy conservation, physical security/crime prevention, fire prevention, occupational safety and health, and hazardous material/waste plans.

The Army reiterates that these tasks are, in fact, already being performed by other government staff outside the contracting organization, such as the plans and systems branch and the logistics operations division; that the Directorate of Logistics already provides input to several of the above listed plans; and that government activities are already required to prepare and review these plans. The Army asserts that the effort to incorporate the contracted functions into existing plans during the normal review and update process would be minimal, and Tecom has provided us no basis to find otherwise.<sup>3</sup> See generally Trend Western Technical Corp., B-221352, May 6, 1986, 86-1 CPD ¶ 437.

Finally, Tecom argues that the federal benefits cost in the Army's proposal improperly fails to include that portion of lifetime retirement costs earned during the contract period. However, the record shows that the federal benefits factor of 29.55 percent is loaded in the mandatory, automated CAS system and used for all full-time staffing--this percentage includes retirement costs in accordance with OMB Circular No. A-76, Part IV. In addition, our review shows that the difference between the federal benefits factor of

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<sup>3</sup>In a similar vein, Tecom's protest raised three other issues, concerning tasks to be performed by other government personnel, contract positions assigned to government-in-nature staff, and the individuals who prepared the cost estimate. The agency addressed these issues in its report, and Tecom's comments did not rebut the agency's position. As a result, we consider the issues to be abandoned. See EPD Enters., Inc., B-236303, Oct. 30, 1989, 89-2 CPD ¶ 393.

29.55 percent used by the agency and the rate used by the protester is de minimis.

#### Impact of Discussion Questions

Tecom argues that during discussions it was asked numerous questions concerning its ability to perform the PWS tasks with its proposed staffing. As a result, it adjusted its staffing upward to 268 full-time equivalents (FTE), based on 1,927 productive hours for each employee. Tecom asserts that since the Army's staffing used in the cost comparison was 258 FTEs, based on 1,744 productive hours for each employee, it was either misled into increasing its staffing, or the government has understated its manning requirements.

Our review of the discussion questions asked of Tecom does not indicate that they improperly led the offeror to increase its staffing; rather, the questions generally asked the firm to explain how it intended to accomplish various tasks with its proposed staffing, or to substantiate its staffing and methodology for determining productive rates and hours for various tasks.

As for the issue of the sufficiency of the staffing contained in the MEO, we have held that to the extent that the agency determines that staffing under the MEO is sufficient to accomplish all work included in the PWS, we will not review a protester's assertion that additional manpower will be required, absent evidence of fraud or bad faith. Bara-King Photographic, Inc., B-231916, Oct. 20, 1988, 88-2 CPD ¶ 377; Bay Tankers, Inc., B-230794, July 7, 1988, 88-2 CPD ¶ 18. The record shows that the Army's task analysis and staffing was audited by the U.S. Army Audit Agency, which concluded that the staffing levels were reasonable and sufficient to perform the tasks in the PWS. As the Army reports, not all of its staffing is based on 1,744 productive hours, as staffing with intermittent employees is based on 2,015 productive hours, and some of the differences in the number of productive hours are overcome by the consolidation of functions, the increased use of intermittent and temporary personnel, and the reduction in management and supervisory staff. Under the

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<sup>4</sup>In its comments submitted to this Office, Tecom also argued, for the first time, that the agency's cost comparison improperly failed to accurately consider the cost of wage increases and inflation. Since the protester did not raise this issue before the agency's appeals board, which is a prerequisite to our consideration of the issue, we will not consider the protester's arguments in this regard. Trans-Regional Mfg., Inc., B-245399, Nov. 25, 1991, 91-2 CPD ¶ 492; Dyneteria, Inc., supra.

circumstances, Tecom has provided us with no basis upon which to review the Army's MEO staffing levels.<sup>5</sup>

#### Costs of Contractor Performance

Tecom argues that the Army improperly added the costs of contract administration to its proposed cost, and did not add these same costs to its own cost estimate.

The Army's regulatory guidance for assessing the cost of contractor performance mandates the consideration of contract administration effort and defines such effort as all post-award functions necessary to assure that the contract is properly executed by both the government and the contractor. AR 5-20, § 3-3. These efforts include reviewing contractor performance and compliance with the terms of the contract (quality control plan), processing contract payments, negotiating change orders, and monitoring the closeout of contract operations. Army Pamphlet 5-20, 5-13. While contract administration is required for any contract, it is not required where the services are performed in-house.

The Army reports that its management study added to Tecom's price the cost of quality assurance personnel in the Directorate of Logistics, and contract administration personnel in the Directorate of Contracting. The Army further asserts that the quality assurance personnel will be retrained and placed in the MEO in accordance with Army guidance.

Although the protester asserts that reassigning these existing personnel to perform PWS tasks will require the Army to replace these individuals with employees who will perform their current work, and argues that these costs should be included in the Army's cost estimate, we disagree.

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<sup>5</sup>As for Tecom's argument that the Army's cost estimate cannot be accurate because it far exceeded the proposed cost of the incumbent, one of the reasons for conducting the transfer cost study was the fact that performance by the incumbent had become too expensive.

As discussed above, the personnel identified here were assigned to administer the contract for these services and, absent a contract, there is no need to replace them--and no need to calculate a cost associated with doing so.

The protest is denied.

/s/ Robert H. Hunter  
for Robert P. Murphy  
Acting General Counsel

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<sup>6</sup>Tecom also asserts that the costs of retraining these personnel should be included in the cost estimate. While we cannot discern from the record whether the Army has included such costs, Tecom has not given us any reason to believe that a failure to do so could have materially affected the outcome of the cost comparison.