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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Rice Services, Ltd.–Costs

File: B-284997.2

Date: May 18, 2001

David B. Dempsey, Esq., Piper, Marbury, Rudnick & Wolfe, for the protester.
Paul W. Knoth, Esq., Department of the Navy, for the agency.
Glenn G. Wolcott, Esq., and Michael R. Golden, Esq., Office of the General Counsel,
GAO participated in the preparation of the decision.

DIGEST

Request for recommendation that agency reimburse protester for the costs it incurred in pursuing an administrative appeal of the agency's initial cost comparison decision under Office of Management and Budget Circular No. A-76 is denied because GAO's authority to recommend reimbursement of protest costs does not extend to costs incurred by a protester in litigating in another forum.

DECISION

Rice Services, Ltd., requests that we recommend that the Department of the Navy reimburse Rice for the costs Rice incurred in pursuing an administrative appeal which sought the Navy's internal review of a contracting officer's initial decision, pursuant to Office of Management and Budget (OMB) Circular No. A-76, to perform food service activities in-house at the United States Naval Academy rather than to contract with Rice for those services.

We deny the request.

In January 1998, the Navy announced that it intended to perform a commercial activities study, pursuant to OMB Circular A-76, to determine whether it would be more economical to perform food service activities at the U.S. Naval Academy in-house using government employees or under contract with a private-sector firm. Pursuant to the procedures established in OMB Circular No. A-76 and that Circular's Supplemental Handbook, the agency created a performance work statement (PWS) establishing a common basis for preparation of private offerors' proposals and the government's Most Efficient Organization/Management Study (MEO).

Following creation of the PWS, the agency conducted a competition between private sector offerors and concluded that, as between the private sector proposals, Rice's proposal offered the best value to the government. The contracting officer then compared Rice's proposed price with the costs reflected in the government's MEO and, after making certain adjustments, made an initial determination that the costs incurred under the MEO would be lower than Rice's proposed price and, therefore, that the services should be performed in-house. Rice was notified of this initial determination and filed an administrative appeal with the Navy's appeal authority, challenging various aspects of the cost comparison.¹ The Navy's administrative appeal authority ratified the contracting officer's initial cost comparison decision.

Upon receiving the agency's final decision from the administrative appeal authority, Rice filed a protest with our Office under the provisions of the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. §§ 3551-56 (1994). We sustained that protest on the basis that the agency had failed to reasonably compare the level and quality of performance to be obtained under the MEO with the level and quality of performance to be obtained under Rice's proposal and recommended, among other things, that Rice be reimbursed the reasonable costs of filing and pursuing its protest to our Office. Rice Servs., Ltd., B-284997, June 29, 2000, 2000 CPD ¶ 113 at 10-11. The agency subsequently implemented our recommendations.

As relevant here, the agency reimbursed Rice for costs Rice had incurred in filing and pursuing its GAO protest. The agency, however, declined to reimburse Rice for the costs it incurred in pursuing the administrative appeal within the Navy. Rice now requests that we recommend reimbursement of those costs. Specifically, Rice argues that, because GAO does not generally consider protests alleging deficiencies in A-76 cost comparison decisions until completion of the internal A-76 administrative appeal process, see Trans-Regional Mfg. Inc., B-245399, Nov. 25, 1991, 91-2 CPD ¶ 492 at 2-3, the costs Rice incurred in connection with its agency appeal should have been reimbursed along with the costs Rice incurred in connection with its GAO protest.

Our authority to recommend reimbursement of protest costs is based on the statutory provisions of CICA. 31 U.S.C. § 3554(c)(1). Those provisions limit our bid protest jurisdiction as well as our corresponding authority to recommend the payment of costs to those incurred in filing and pursuing protests filed with our Office. Id.; Diverco, Inc.—Claim for Costs, B-240639.5, May 21, 1992, 92-1 CPD ¶ 460.

¹ The Federal Acquisition Regulation (FAR) requires that "each agency shall establish an appeals procedure for informal administrative review of the initial [A-76] cost comparison result," and explains that the purpose of this review is "to ensure that final agency determinations are fair, equitable, and in accordance with established policy." FAR § 7.307(a).

We have consistently rejected assertions that our cost reimbursement authority under CICA is properly applied to litigation costs incurred in connection with matters brought in different forums, since we do not view such costs as having been incurred in filing and pursuing a protest with our Office. Test Systems Assocs., Inc., B-256813, Oct. 29, 1996, 96-2 CPD ¶ 161 at 4 (disallowance of costs associated with protest-related actions at U.S. District Court and U.S. Small Business Administration); Diverco, Inc.—Claim for Costs, supra (disallowance of costs associated with an agency-level protest).

As noted above, the administrative appeal process established by the FAR and OMB Circular No. A-76 is separate from GAO's bid protest process. Accordingly, our statutory authority to recommend reimbursement of costs does not extend to the costs associated with Rice's administrative appeal of the initial A-76 cost comparison. While it is true that, here, Rice was required to complete the administrative appeal process within the agency prior to filing a protest with our Office, that requirement does not alter the reach of our statutory authority.

The request is denied.

Anthony H. Gamboa
General Counsel