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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-199437

DATE: November 12, 1980

MATTER OF: DATARS, Inc.

[Protest of RFP Cancellation]
DIGEST:

1. Contracting agency's request to General Services Administration for authority to conduct procurement which values services at \$100,000 establishes that estimate was made before receipt of offers.
2. Protest contending that estimate made by Administrative Office of United States Courts of cost to perform work in-house does not meet OMB Circular A-76 standards is irrelevant, since A-76 is directed to "heads of executive departments and establishments" and Administrative Office is not within category.
3. Where contracting agency has determined that it could and would perform services in-house for less than proposals received and has indicated that it did not conduct negotiations with offerors to obtain lower cost proposals because need for services did not permit delay that would attend another round of proposals, contracting agency did not act unreasonably in canceling RFP.

DATARS, Inc. (DATARS), protests the cancellation by the Administrative Office of the United States Courts (Administrative Office) of request for proposals (RFP) No. 80-0001-DIS issued for the procurement of software services and the decision to perform the services in-house.

The Administrative Office canceled the RFP after the receipt of initial proposals (\$137,250 to \$645,920)

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because it determined that it could accomplish the work (\$100,000) cheaper in-house. DATARS contends that the RFP should not have been canceled without first conducting negotiations in an attempt to obtain better offers. Further, DATARS contends that the in-house estimate was unfair in that it was prepared after the offers were evaluated. Finally, DATARS questions whether the estimate met Office of Management and Budget (OMB) Circular A-76 standards. To rectify the situation, DATARS seeks either to have the RFP reinstated with subsequent negotiations with all offerors or to be reimbursed for proposal preparation costs.

On the question concerning the \$100,000 estimate, the record establishes that the procurement was estimated at \$100,000 before the receipt of offers. In a request to the General Services Administration for authority to conduct the procurement, the Administrative Office valued the services at \$100,000.

On the matter of whether the \$100,000 estimate met the standards of OMB Circular A-76, that is irrelevant since the circular is directed only to the "heads of executive departments and establishments." The Administrative Office is not within the quoted category.

Finally, we do not find that the Administrative Office acted unreasonably or in an irrational fashion in canceling the RFP without first conducting negotiations to try to obtain better prices. The Administrative Office has indicated that the basis for the decision to cancel was that:

"* * * (1) The prices of the various proposals had been determined to be unreasonable, (2) the agency estimate indicated that the cost for accomplishing the work in-house would be reasonable, and (3) the agency could not suffer the time delay which would have occurred as a consequence of another solicitation. * * *"

The proposals were determined to be unreasonable as to price based upon a comparison with the cost of performing the work in-house. While the proposal costs are denominated "unreasonable," this appears to be in the sense that the Administrative Office determined that it could and would perform the services cheaper in-house. Further, the Administrative Office has indicated that it did not conduct negotiations with the offerors to obtain lower cost proposals because the need for the services did not permit the delay that would attend another round of proposals.

Where an agency estimated what it would cost to perform in-house and it believed the in-house costs were lower than the cost of proposals received and it was concerned about the loss of time that would be incurred in getting the work started if there were further delays to decide who would perform the work, we upheld the cancellation of the RFP on the basis that it was not totally unreasonable. United States District Court for the District of Columbia, 58 Comp. Gen. 451, 466 (1979), 79-1 CPD 301. That holding is controlling here.

Accordingly, the protest and the request for proposal preparation costs are denied.

Harry R. Van Cleave
For the Comptroller General
of the United States