

**DECISION**

23217

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

**FILE:** B-205635

**DATE:** September 27, 1982

**MATTER OF:** MAR, Incorporated

**DIGEST:**

1. GAO sustains protest against agency decision to perform service in-house, based on comparison of Government estimate with solicited offers, where agency failed to comply with procedures for conducting the cost comparison identified in the request for proposals, and where such failure casts doubt on the validity of the outcome of the comparison.
2. While the protester bears the burden of proving an A-76 cost comparison was materially deficient, the agency must identify and document all elements of the cost comparison, and the protester may meet its burden when agency's failure to so document the comparison reasonably places the outcome in doubt.

MAR, Incorporated protests that the National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (Commerce) violated established procedures for evaluating offers to operate and maintain the NOAA Ship Chapman. NOAA had solicited offers under request for proposals (RFP) No. NASO-81-00124 for the purpose of determining whether to perform the work in-house or by contract. Based on a comparison of the Government estimate of in-house performance with MAR's low offer, NOAA determined it would be less costly to operate the Chapman in-house.

We sustain the protest to the extent that NOAA's determination is not supported by the documentation that the agency has furnished to our Office.

The RFP notified offerors that a Government estimate of the cost of in-house performance was being developed for comparison with the prices proposed in response to the RFP, and that the Government estimate would be developed in accordance with the requirements

and cost standards contained in the Office of Management and Budget Circular A-76 Cost Comparison Handbook, Supplement No. 1 (Handbook). After NOAA announced its intention to retain the function in-house, MAR alleged several violations of the Handbook and appealed the decision to Commerce's Assistant Secretary for Administration. Upon review, Commerce revised NOAA's cost estimate, but still determined that the costs of in-house performance would be \$538,457 less costly than contracting with MAR, whose offered price was slightly more than \$3,100,000 for three years. Therefore, Commerce affirmed NOAA's decision to operate the Chapman utilizing Federal employees.

Basically, MAR contends that the revised cost estimate failed to adhere to the Handbook in five areas: (1) NOAA allegedly violated the requirement that the Government estimate and commercial offers be based on the same scope of work; (2) the Government estimate understated fuel costs; (3) NOAA computed General & Administrative Expenses (G&A) on the basis of direct labor rather than on the basis of total costs as specified in the Handbook; (4) the Government estimate overstated one-time conversion costs and shore-support costs (as costs to the Government of contracting, which are added to the offeror's proposed price); and (5) NOAA failed to have a proper audit of the Government estimate performed to substantiate its accuracy.

Commerce, in reviewing NOAA's cost comparison, concluded that the Handbook procedures were not followed. Commerce observed that NOAA used a different statement of work to compute its cost estimate than the statement of work contained in the RFP, although Commerce concluded that both statements of work required the same level of performance. Commerce also conceded that NOAA did not adhere to the Handbook in calculating G&A, but ruled that the figure used by NOAA was substantially the same as it would have been had NOAA strictly adhered to the Handbook.

Regarding the statement of work, the Handbook states:

"\* \* \* To ensure an equitable comparison, both cost figures [for in-house performance and contracting] must be based on the same scope of work, and include all significant costs that would be incurred by the Government under either alternative. \* \* \* The work statement should \* \* \* provide performance standards to ensure a comparable level of performance with either alternative and to provide a basis for evaluation." Handbook, Chapter II, paragraphs A and C.

To achieve an equitable comparison, the Handbook also requires that the Government prepare its cost estimate concurrently with the solicitation of offers, and base the estimate on the same work statement that is used in the solicitation. Handbook, Chapter II, paragraph D.2.

NOAA clearly did not follow these provisions. Whereas the RFP was issued on March 16, 1981 and contained a detailed description of the required tasks and level of performance, NOAA's cost estimate was computed by a contractor in December 1980 based on a statement of work that merely comprised a rough outline of the broad performance areas contained in the RFP.

Concerning G&A, the Handbook explains that this cost element consists of those financial, management or other expenses that are incurred for the benefit of an organizational unit as a whole. Handbook Chapter III, paragraph G.1. In other words, G&A is an indirect cost incurred for the benefit of the entire organization, and not just the particular function that forms the basis for the cost comparison. The Handbook requires that in estimating the amount of G&A applicable to the function, the agency compute what percentage of the organization's total costs incurred for the previous year are G&A costs, and apply that percentage to the total estimated annual cost of performing the function. NOAA admits that its G&A was not estimated in this manner, but was computed as a percentage of direct labor only. Apparently, NOAA utilized this approach because its automated financial management system computes NOAA's G&A on that basis.

MAR contends that NOAA's failure to follow mandated procedures is sufficient for our Office to find the cost comparison invalid, regardless of its effect on the cost comparison's outcome. While we sustain the protest as explained below, we disagree with this contention. The reason is that the decision whether to perform work in-house or by contract involves a matter of executive branch policy which we generally do not review under our bid protest function. When an agency, however, utilizes the procurement system to aid its decision, spelling out the circumstances under which a contract will or will not be awarded, we will review an allegation that the agency did not comply with the established ground rules. It would be detrimental to the procurement system if, after the agency induces the submission of offers, there is a faulty or misleading cost comparison which materially affects the decision. See Serv-Air, Inc.; AVCO, 60 Comp. Gen. 44 (1980), 80-2 CPD 317.

Thus, the protester must demonstrate not only that the agency failed to follow mandated procedures, but that the failure materially affected the cost comparison's outcome. The protester may meet its burden by presenting sufficient evidence to raise a reasonable doubt whether the cost comparison's result would be different if the correct procedures were followed if the agency does not dispel that doubt. See Serv-Air, Inc.; AVCO, *supra*. In this regard, we have held that it is essential to the integrity of the cost comparison process that the agency identify and document all elements of the comparison. See Serv-Air, Inc.; AVCO--Air Force Request for Reconsideration, B-195183.3, November 3, 1981, 81-2 CPD 375. Thus, if the agency fails to do so, it runs the risk of being unable to dispel the doubt raised by a protester.

Here, we sustain the protest principally because NOAA's failure to comply with the Handbook's methodology for computing G&A casts doubt on the cost comparison's validity and the agency has not presented documentary evidence which dispels that doubt. The effect of computing G&A as a percentage of direct labor costs, instead of a percentage of total costs as required by the Handbook, obviously will vary depending on how much more or less labor-intensive the particular effort in issue is in comparison to the organization as

a whole. If it is more labor-intensive, the method of computing G&A that NOAA uses will lead to a greater G&A estimate than the Handbook method; if the effort is less labor intensive, NOAA's method will result in a lower G&A estimate.

In considering this protest, we have reviewed the cost comparison in depth to determine first, whether NOAA is correct that in this case either method leads essentially to the same result, and second, if NOAA's position is not supportable from the record, whether the Handbook method might lead to a G&A estimate that itself could change the cost comparison result.

We are constrained to conclude, however, that the data needed to make either of those judgments simply is lacking. Despite the fact that NOAA's position has been challenged in considerable detail through both the agency's appeal and the bid protest processes, the agency has not provided any rationale or documentation to support its position that the results of its method of computing G&A and the Handbook's required methodology do not materially differ. As indicated, where a decision whether to contract for services is based on a comparison of estimated in-house costs with offers received in a competitive procurement, it is important to the integrity of the entire process that the agency provide supporting data for all elements of a cost comparison; we believe that the proposition is particularly appropriate where the agency has, in compiling its cost comparison, deviated from the procedures that prospective offerors expressly were advised would form the ground rules for the decision.

We also note that the record supports the protester's position that certain repair costs may have been duplicated as a result of NOAA's using a different work statement to calculate the Government estimate than the statement contained in the RFP. Although the RFP made any contractor responsible for certain repairs (but not for spare parts), the Government's estimated costs for contracting include estimated repair costs in addition to the contract price. The cost comparison

does not document or explain this. In addition, it appears that the revised comparison failed to correct an error recognized by NOAA, namely that the cost of contracting overstates agency support costs by \$14,072 (first year). While these two factors alone would not erase the more than \$500,000 difference between the estimated three-year cost of in-house performance and contracting, when considered in conjunction with the agency's failure to document its G&A cost estimates they cast doubt on the cost comparison's validity.

We find no merit in the remaining protest grounds. Concerning the alleged overstated fuel costs, the RFP stated the Government will supply fuel. Thus, the identical cost (whatever the figure) must be included in determining the cost of performance in-house or by contract. As regards the allegedly excessive one-time conversion and shore-support costs, the protester fails to show that the Government's estimate was faulty. Rather, the protester merely disagrees with NOAA's judgment that a transition crew is required (attributing to one-time conversion costs) and implies that the shore-support cost was overstated because it is inconceivable that the agency's shore-support costs should be as high for performance by a contractor as for accomplishing the work in-house. This mere disagreement with NOAA's position does not meet the protester's burden to prove its case with respect to this protest ground. See Jets, Inc., 59 Comp. Gen. 263 (1980), 80-2 CPD 317.

In light of our conclusion above, that the validity of the cost comparison cannot be determined because of the agency's failure to document its position regarding G&A cost estimates, we are recommending that NOAA generate the information required by the Handbook and reevaluate its estimates. In the event that NOAA's accounting system precludes capture of the necessary information, the agency should consider seeking authority to deviate from the Handbook, issuing a new solicitation, and conducting a new cost comparison to determine whether performance should be in-house or by contract; the new solicitation should advise prospective offerors of where and how the cost comparison will deviate from the Handbook.

The protest is sustained.

*Harry R. Ch. Case*  
for Comptroller General  
of the United States