

DECISION

29294
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-214458.2**DATE:** September 11, 1984**MATTER OF:** Griffin-Space Services Company**DIGEST:**

Protest against an agency's determination to perform services in-house based on a cost comparison with solicited bids is sustained because the agency failed to follow prescribed guidelines in conducting the comparison. The agency's estimate of in-house costs was based upon fiscal year 1983 operation costs and was not properly adjusted to account for differences between 1983 costs and those which the amended performance work statement indicate will be incurred.

Griffin-Space Services Company (Griffin) protests the Navy's determination that the Navy could perform utilities plant operation and maintenance for a 3-year period at the United States Naval Submarine Base, New London, Connecticut, at a lower cost than Griffin, based on a comparison of Griffin's low bid (under two-step formally advertised solicitation No. N62472-83-B-0907) with adjusted cost estimates prepared by the Navy. Griffin alleges that the Navy relied on inaccurate and understated historical costs in developing its cost estimates, thereby incorrectly implementing the regulations, policies, and procedures referenced in the solicitation as the ground rules for the cost comparison. We sustain the protest.

At bid opening (step two of the procurement), the only bids received were Griffin's low contract bid, one other contractor's bid, and the government's sealed bid. When these were opened, it appeared that continued in-house performance was the most cost-effective way of meeting the requirement. Griffin's price for the base period and 2 option years was \$4,288,800. While this figure was substantially less than the government's estimate for in-house performance, when Griffin's figure was adjusted according to the cost comparison guidelines, the cost of contracting to Griffin appeared to be \$123,528 greater than the in-house performance estimate.

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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. See Serv-Air, Inc.; AVCO, 60 Comp. Gen. 44 (1980), 80-2 C.P.D. ¶ 317. We believe it would be detrimental to the system if, after the agency induces the submission of offers, there is a faulty or misleading cost comparison which materially affects the decision. Serv-Air, Inc.; AVCO, 60 Comp. Gen. at 44, 80-2 C.P.D. ¶ 317 at 2.

In this case, the ground rules were set forth in solicitation clause number 21 (among other places), which advised bidders that the procurement would be subject to a cost comparison between the cost of in-house performance and the cost of contracting and that the comparison would be accomplished according to the procedures in the Office of Management and Budget Circular No. A-76 (Revised) (OMB Cir. A-76). Clause 21 additionally stated that the government's ". . . in-house cost estimate shall be based on the performance work statement [PWS] set forth in this solicitation."

Following a determination by the Navy that the adjusted cost of contracting exceeded the adjusted cost of in-house performance, Griffin requested and received the Navy's cost comparison worksheet upon which the Navy's decision was based. Pursuant to the provisions of OMB Cir. A-76, Griffin requested that the Navy review its cost comparison. Griffin contended that the Navy's cost estimates for in-house performance, which were based upon fiscal year (FY) 1983 production, were significantly understated because of the fact that they did not reflect the return to operation and the resulting costs of two additional turbo-generators. In denying Griffin's appeal, the Navy admitted that its in-house cost estimate was, in fact, based upon FY 1983 costs, but denied that there are any major changes incorporated in the PWS between FY 1983 operation and the proposed contract period. The Navy concluded that the ". . . return of two turbo-generators to operational readiness has minimal effect on the amount of generated electricity and boiler operation as specified in para. 3.2" of the solicitation.

Following the denial of its administrative appeal, Griffin protested to the GAO alleging that the Navy failed to base its estimate on the requirements of the PWS, as amended. Griffin contends that the amended PWS, in contrast to the Navy's assertion in its response to Griffin's administrative appeal, contemplates the use of all available generation equipment to minimize the amount of electricity which must be purchased from outside sources. Griffin argues that the Navy's failure to assess the cost of operation of the two additional turbo-generators, which Griffin asserts will be utilized and not merely kept in "readiness," as the Navy stated, caused the Navy to deviate from the PWS in calculating its in-house performance estimate. We agree.

Because the Navy states that pursuant to Department of Defense Instruction § 4100.33, paragraph 9.c., it is "precluded from commenting on the issues raised in the protester's protest," our review of the record was limited to Griffin's arguments to our Office and to the Navy and the Navy's response to Griffin's agency appeal, which we believe establish that the cost comparison conducted by the Navy was faulty in material ways.

Section 3.2 of the solicitation, "Operation Performance Standards," was amended to add the following clauses:

"Peak Electrical Demand:

"As determined by the Subase load requirements and the available turbine generating capacity the Government will establish a peak electrical demand limit for purchased electricity. The contractor shall operate available turbines to ensure that the purchased electrical peak is not exceeded. It is anticipated that the purchased electrical peak will be established in accordance with the following formula.

"Purchased Peak (megawatts) = Subase Load (Megawatts) - Capacity of Available Generation Equipment.

"The contractor will be responsible for scheduling his turbine preventive maintenance schedule in such a way as to ensure that the established purchased peak demand is not exceeded."

These clauses make it clear that under the amended PWS, the contractor would be expected to use and the Navy contemplates the use of all available generation equipment, including the two turbo-generators not in use during FY 1983, in order to minimize the quantity of electricity purchased from outside sources.

In addition, the modification by amendment 3 of paragraph 3.2.1 of the solicitation evidences that the Navy anticipated that the return to service of the two turbo-generators will impact on the operational requirements. The original paragraph 3.2.1 read:

"Based upon historical data, the following approximate annual and peak requirements will be required during the contract period:"

Paragraph 3.2.1 was modified by amendment 3 to state:

"Based upon historical data, the following approximate annual and peak requirements were produced during the last 12 months. These requirements do not reflect future operational requirements, such as, return to service of two turbine generators during FY 1983."

Griffin argues, and we agree, that the Navy failed to follow the guidelines of OMB Cir. A-76, part IV, paragraph E.2., which requires the government, in calculating its in-house material and supply cost estimate, to "adjust historical material usage and cost data to reflect requirements of the PWS." Similarly, the Navy has not followed OMB Cir. A-76, part IV, paragraph D.2.b., "In-House Staffing Estimate," which cautions that:

". . . it is important that the estimated workload be based on the PWS and not necessarily on the current workload, staffing or work methods. If an existing manpower standard or

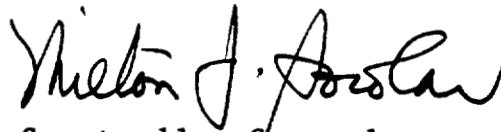
staffing guide is used, it may be necessary to make upward or downward adjustments. The adjustments are necessary because existing standards or guides may be based on work elements or performance standards or describe work methods which may not be appropriate to accomplish the workload described in the PWS."

Griffin alleges that if the Navy had followed the PWS instead of basing its in-house performance estimate on FY 1983 figures, the cost of performing in-house would be increased by \$730,093, substantially more than the \$123,528 which the Navy calculated to have been the amount that contracting-out would exceed the in-house performance cost. Largely because the Navy has declined to comment on Griffin's protest to GAO, and because the Navy's denial of Griffin's appeal fails to address the effect of the amendment to the PWS, it is unclear exactly how much the cost of in-house performance should be increased to adequately reflect the requirements stated in the amended PWS. Griffin contends, however, and the Navy has not rebutted the allegation that, in light of the amended PWS, personnel costs alone would be increased by over \$300,000 due to the productive use of the two extra turbo-generators which were not used in FY 1983.

Because of the likelihood that the Navy's failure to adhere to the guidelines established for the cost comparison yielded a faulty comparison, we recommend that the Navy recalculate the cost of in-house performance, adhering to the requirements of the PWS and OMB Cir. A-76, as discussed above. See Satellite Services, Inc., B-207180(1), Nov. 24, 1982, 82-2 C.P.D. ¶ 474. If, after recalculating the cost of in-house performance, Griffin's bid becomes more cost effective, we recommend that the Navy award the contract to Griffin.

Since this decision contains a recommendation for corrective action, we are furnishing copies to the Senate Committees on Governmental Affairs and Appropriations and the House Committees on Government Operations and Appropriations under section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 720 (1982), which requires the submission of written statements by the agency to the committees concerning the action taken with respect to our recommendation.

By separate letter of today, we are also notifying the Secretary of the Navy of our recommendation and his obligations under section 236.

for 
Comptroller General
of the United States