

Westfall



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Americorp  
File: B-225667  
Date: April 14, 1987

### DIGEST

1. General Accounting Office does not, as a general rule, review an agency decision concerning whether work should be performed in-house or by a contractor, since this is a matter of executive branch policy not within our bid protest function.
2. Fact that inadequacy of a solicitation could have been detected prior to bid opening does not preclude cancellation after opening if award under the solicitation would not meet the agency's needs.
3. There is no requirement that an agency notify the Small Business Administration prior to cancellation of a solicitation that has been set aside for small business.
4. Claim for bid preparation costs is denied where there is no indication that agency originally issued the solicitation in bad faith or that cancellation was improper.

### DECISION

Americorp protests the Air Force's cancellation of invitation for bids (IFB) No. F26600-87-B0018 for a personal financial management program manager at Nellis Air Force Base, Nevada. The Air Force canceled the IFB after determining that the specifications did not provide for a volunteer counselor program and that therefore it would be in the government's interest to perform the function in-house.

Americorp contends that the specifications were adequate and that it would be less costly for the government to accept its bid than to perform the function itself. The protester asks that it be awarded the contract as the low bidder under the IFB or, if that is not possible, it claims its bid preparation costs. We deny the protest and the request for costs.

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The IFB sought bids for a personal financial program manager for a 10-month base period and three 1-year options. The Air Force explains by way of background that the program manager services had previously been contracted out, but that the manager had been assisted by four to five military volunteer counselors. In developing the specifications used in this IFB, the Air Force concluded that the Service Contract Act, 41 U.S.C. §§ 351-358 (1982), prohibited the use of volunteers in the performance of a government contract;<sup>1/</sup> the IFB therefore required that all counselors be employees of the contractor.

Americorp's bid of \$112,700 for the base and option periods was the lowest of the 12 received on the November 10, 1986 bid opening date. At this point, according to the Air Force, the requesting activity realized that in-house volunteers would no longer be available to augment the contract program. Since the low bid apparently did not include the cost of the counselors needed to meet the anticipated counseling workload,<sup>2/</sup> and since, according to the agency, the cost of the additional counselors would exceed the available funding, the requesting activity asked that the solicitation be canceled so that the program could be performed in-house.

The protester argues that the specifications were adequate since all offerors knew, or should have known, that volunteers were an integral part of the personal financial management program. It is the protester's view that therefore there was no reason to cancel the solicitation and that the cancellation was merely an excuse for the agency to retain the services of the prior contractor's manager. In this regard, Americorp maintains that it will be more costly for the agency to perform the services itself.

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<sup>1/</sup> Americorp argues that this procurement involves executive, administrative or professional personnel which are excluded from coverage by the Service Contract Act. 41 U.S.C. § 357(b). While the contractor's manager may be a professional employee, there is a substantial basis to conclude that the counselors would be service employees covered by the Act. See 29 C.F.R. § 4.156 and Part 541 (1986).

<sup>2/</sup> In fact, the protester confirms this in its March 6, 1987 protest submission which states: "The protester knew of the use of volunteers and planned to utilize a staff of volunteers in the course of fulfilling the contract requirements."

In essence, the Air Force has determined based on its need for volunteer counselors that the services can be provided more economically in-house. As a general rule, our Office does not review an agency decision concerning whether work should be performed in-house or by a contractor, since this is a matter of executive branch policy not within our bid protest function. Research, Analysis & Management Corp., B-215712.2, Jan. 18, 1985, 85-1 CPD ¶ 54. We have allowed a limited exception to this rule when an agency issues a solicitation to compare the costs of contracting for services with the costs of performing them in-house; this exception is inapplicable here, however, since the RFP did not indicate that it was to be used to make an in-house/contract determination. Id.

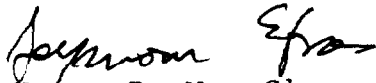
Americorp also argues that the Air Force violated the Federal Acquisition Regulation (FAR), 48 C.F.R. § 19.506 (1986), by failing to advise the Small Business Administration (SBA) in writing that it intended to withdraw a small business set-aside. A decision to cancel a solicitation that has been set aside for small business is not, however, equivalent to a decision to withdraw a set-aside determination. There is no requirement that the agency contact the SBA prior to cancellation of a solicitation set aside for small business. In fact, the regulations provide that if a set-aside acquisition is not awarded, the set-aside determination is automatically dissolved. FAR, 48 C.F.R. § 19.507(a).

Americorp further contends that the Air Force failed to exercise advance procurement planning in failing to recognize the inadequacy of the solicitation prior to bid opening. While 10 U.S.C. § 2305(a)(A)(ii) (Supp. III 1985) requires agencies, in preparing for procurements, to use advance planning in order to obtain full and open competition the requirement does not mean that the government guarantees that its solicitations are completely free of errors that could be detected by advanced planning; agencies are not precluded from canceling an IFB after opening where, as here, award under the solicitation would not meet the agency's needs. W.H. Smith Hardware Co., B-219987.2, Jan. 21, 1986, 86-1 CPD ¶ 62.

Finally, Americorp argues that the using activity wanted to perform the activity in-house but failed to inform the contracting activity of this until after bid opening and concludes that it was improperly induced to submit a bid. Therefore it requests reimbursement of the costs of preparing its bid.

Since we have no basis upon which to object to the cancellation and the protest thus is without merit, there is no basis on which to require the Air Force to allow Americorp to recover its bid preparation costs. Bid Protest Regulations, 4 C.F.R. §§ 21.6(d) and (e). Even assuming, as Americorp contends, that the issuing activity was negligent in failing earlier to inform the contracting activity that it did not wish to continue the program without the ability to use volunteers, such a mistake or lack of diligence provides no basis on which to allow recovery of bid preparation costs where, as here, there is no indication that the Air Force originally issued the IFB in bad faith, and the subsequent cancellation was proper. Martin Widerker, Inc.-- Request for Reconsideration, B-223159.3, Mar. 18, 1987, 87-1 CPD ¶ \_\_\_\_.

The protest and request for costs are denied.

*for*   
Harry R. Van Cleve  
General Counsel