



The Comptroller General
of the United States

Washington, D.C. 20548

Spiegel - PL

Decision

Matter of: Brown & Root Services Corporation

File: B-228331

Date: December 10, 1987

DIGEST

Agency's decision to cancel a solicitation prior to the closing date and perform the work in-house will not be reviewed since decision whether to perform work in-house is matter of executive branch policy, not within GAO's bid protest function.

DECISION

Brown & Root Services Corporation protests cancellation of solicitation No. N62474-87-B-3126 by the Western Division of the Naval Facilities Engineering Command (WESTDIV). That solicitation sought bids for the operation and maintenance of public works facilities and utility systems at the Naval Construction Battalion Center in Port Hueneme, California. Brown & Root requests that WESTDIV reinstate the solicitation. We dismiss the protest.

The solicitation was originally issued on March 31, 1987, as a small business set-aside, for use in making a decision whether to retain the service in house or contract out in accordance with the Office of Management and Budget Circular A-76. Bid opening was June 2, 1987, and no bids were received. Only the government in-house estimate was in the bid box. Amendment No. 0003 was issued on June 17, 1987, deleting the small business set-aside and extending the opening date to September 29, 1987, which was later extended to November 4, 1987.

Between June 2 and 19, 1987, the government's in-house estimate was removed from the bid box by a person or persons unknown. On June 19 it was received in the regular mail at Port Hueneme. Following an investigation which concluded that the government estimate may have been compromised the solicitation was canceled and the services retained in-house.

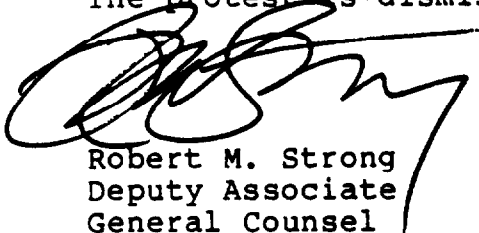
We need not decide whether the solicitation was properly canceled because WESTDIV states the required services for the operation and maintenance of public works and utility

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systems can be performed on an in-house basis. As a general rule, our Office does not review an agency decision concerning whether work should be performed in-house or by a contractor, because we regard this to be a matter of executive branch policy not within our bid protest function. Midland Maintenance, Inc., B-202977.2, Feb. 22, 1982, 82-1 C.P.D. ¶ 150. We have recognized, however, a limited exception to this rule where an agency utilizes the procurement system to bid in its determination by issuing a competitive solicitation for the purpose of comparing the costs of in-house performance with the costs of contracting out. We consider protests that the agency failed to follow established cost comparison procedures because it would be detrimental to the procurement system if, after the submission of offers, an agency were permitted to alter the procedures it had established and upon which offerors had relied. Creative Resources, Inc., B-225950, Feb. 11, 1987, 87-1 C.P.D. ¶ 153.

The facts surrounding this procurement do not fit within the limited exception referenced above. Here, WESTDIV did not use the procurement system in making its determination to provide the required services in-house and there was no cost comparison involved, since the solicitation was cancelled 2 months before offers were to be submitted. See, Schonstadt Instrument Company, B-215531, Aug. 1, 1984, 84-2 C.P.D. ¶ 141.

The protest is dismissed.



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