

Ayer



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: Raytheon Support Services Company  
File: B-228032.2  
Date: December 30, 1987

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## DIGEST

1. The General Accounting Office will not question properly obtained waivers of Office of Management and Budget Circular No. A-76 cost comparison guidelines concerning the number of contract administrators needed to monitor contractor performance.
2. The General Accounting Office will not consider protest of an agency's calculation in connection with an Office of Management and Budget Circular No. A-76 cost comparison where protester did not specifically raise its objection to the calculation in an appeal to the agency.

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## DECISION

Raytheon Support Services Company protests an Air Force determination to continue in-house performance of various base support functions at Westover Air Force Base, Massachusetts. The Air Force based its determination on a comparison under Office of Management and Budget (OMB) Circular A-76 of the estimated costs of government performance of the functions with the costs of performance by a contractor, as determined under request for proposals (RFP) No. F19617-85-R0003. We deny the protest in part and dismiss it in part.

The total of Raytheon's offer and the A-76 conversion differential was \$10,815,573; the Air Force's estimate of the total costs of continuing in-house performance was \$9,709,355. Given the difference of \$1,106,218, the cost comparison decision was to maintain in-house performance. Raytheon appealed the decision first to Air Force officials at Westover, and then to an Air Force review board. The board found no basis for adjusting any of the figures in the original cost comparison and sustained the decision to retain the services in-house.

In its protest to our Office Raytheon maintains that OMB Circular A-76 requires several adjustments that the board refused to make and that these adjustments, if made, would change the cost comparison outcome and show that an award to Raytheon would be more economical than in-house performance. Following a conference at our Office, Raytheon stated its three major contentions: (1) the agency obtained improper and unreasonable waivers to A-76 requirements; (2) the in-house estimate is not based on all of the work required by the RFP's Performance Work Statement; and (3) the Air Force did not follow proper procedures during the cost comparison.

As a general rule, we do not review agency decisions to perform work in house or by contract because these decisions are matters of executive branch policy. Crown Laundry and Dry Cleaners, Inc., B-194505, July 18, 1979, 79-2 C.P.D.

¶ 38. Where, however, an agency uses the procurement system to aid in its decision, spelling out the circumstances under which a contract will or will not be awarded, we will consider a protest of the cost comparison result to determine whether the comparison was faulty or misleading.

Support Services, Inc., B-214793, Oct. 22, 1984, 84-2 C.P.D.

¶ 428. We consider such protests only after the protester has exhausted the agency's appeal process, and we will not review any objections to a cost comparison not specifically appealed to the agency. Dyneteria, Inc., B-222581.3, Jan. 8, 1987, 87-1 C.P.D. ¶ 30.

In this case, Raytheon contends first that the apparent cost of converting to contractor performance was increased unjustifiably through improper and unreasonable waivers of normally applicable A-76 requirements in the areas of contract administration and severance pay. With respect to contract administration, Raytheon argues that Table 3-1 of the A-76 Cost Comparison Handbook shows that a staff of 5 contract administrators is required to oversee contractor performance. The agency, by waiver, increased the number of contract administration personnel from 5 to 11, thus increasing the evaluated cost of contracting by \$608,266. Raytheon contends that Westover obtained the waiver from the wrong Air Force office and that waivers from the Table 3-1 requirements are permissible only when it is necessary to monitor work that is either "technically specific" or "geographically dispersed," neither of which, in Raytheon's view, applies here.

The Air Force reports that its policy is to follow the Table 3-1 guidance absent a proper waiver. Here, however, Westover obtained a waiver concerning contract administration personnel from the Air Force's Directorate of Manpower and Organization, which the agency reports is the proper office for such waivers under Department of Defense

Instruction 4100.33. Raytheon, on the other hand, has offered no support for its position that the wrong office issued the waiver, and there is thus no basis for us to so conclude. Further, we have held that where a contracting activity receives a waiver concerning contract administration personnel from the proper authority, the protester's disagreement with the number of administrators necessary to assure proper contract performance provides no basis for our Office to question the waiver. Dyneteria, Inc., B-222581.3, supra.

With regard to severance pay, the A-76 Cost Comparison Handbook states that "a two-percent [of base year personnel costs] severance pay factor is appropriate for use in most cost studies." Westover obtained a waiver authorizing the use of a severance pay cost figure that Raytheon calculates is more than 30 percent of the base year personnel costs and that increased the apparent cost of contracting out by \$252,633. Westover based its request for a waiver on a mock reduction-in-force (mock RIF) that indicated only six incumbent employees would accept employment with Raytheon and that 37 incumbent employees would be entitled to severance pay. Raytheon questions the Air Force's conclusion that only six employees would accept employment with Raytheon because, it says, it is the largest employer in the State of Massachusetts and well able to absorb many of the incumbent employees.

We have held that the mock RIF procedure is a proper method of calculating severance pay, recognizing that estimates of severance pay involve complex and somewhat subjective judgments. Support Services, Inc., B-214793, supra, at 5. Here, the record shows that the review board was concerned by Westover's assertion that only six employees would accept positions with the contractor; nevertheless, after reviewing the mock RIF documentation the board ultimately concluded that it was very possible that following an actual RIF there might be only six eligible employees who would accept employment with a contractor. During the mock RIF, Westover had made individual assessments of employees' ages, skills, and backgrounds to determine which employees stood a reasonable chance of being offered comparable work by a contractor. The record also shows that Westover, which calculated the severance pay costs before learning the identity of any of the potential contractors, considered information concerning the experience of certain groups of employees in obtaining contractor employment discussed in our audit report DOD Functions Contracted Out Under OMB Circular A-76: Costs And Status Of Certain Displaced Employees, GAO/NSIAD-85-90 (Appendix III). In addition, we note that the Air Force Management Engineering Agency reviewed and approved the results of the mock RIF before the

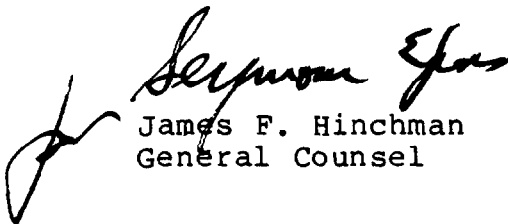
waiver was granted. Although Raytheon disputes the agency's projections concerning the potential severance costs, the firm has not shown how the agency's calculations may have been defective, and from the record as a whole, we cannot say that the agency's calculation of severance costs was unreasonable.

Raytheon's second major objection to the cost comparison is that the Air Force underestimated the baseline man-hours required to accomplish the work outlined in the Performance Work Statement by more than 48,000 man-hours. Raytheon argues that Westover began its assessment with a 117,090.50 man-hour baseline instead of the 165,389 man-hours actually required to perform the work. Raytheon contends that this action unfairly reduced the cost of in-house performance by over \$2.5 million.

In Raytheon's initial appeal to Westover, the firm referred to the 117,090.50 man-hour baseline used by the agency and proceeded to question a number of adjustments made by the agency to that number. The firm raised the same arguments in its appeal to the review board and, as originally structured, in its protest to this Office. In none of these submissions, however, did the firm object to the baseline man-hours used by the agency. Rather, this issue was raised for the first time in connection with the conference on its protest. Consequently, because this issue was not specifically raised by Raytheon in its administrative appeal, we will not consider it. Dyneteria, Inc., B-222581.3, supra; Dyneteria, Inc., B-205487, June 1, 1982, 82-1 C.P.D. ¶ 506.

Raytheon's remaining arguments concern Westover's 3,746 man-hour reduction for "work backlog" (worth approximately \$220,000), a 4,221 "man-hour availability factor adjustment" (worth approximately \$500,000), and Westover's alleged improper submission of two best and final offers (worth approximately \$50,144). The difference of more than \$1.6 million between the Air Force's and Raytheon's total performance cost figures is greater than the total of these alleged errors. Therefore, even if we were to resolve all of these points in Raytheon's favor, it would not affect the cost comparison result. Dwain Fletcher Co., B-219580, Sept. 27, 1985, 85-2 C.P.D. ¶ 348.

The protest is denied in part and dismissed in part.

  
James F. Hinchman  
General Counsel