

Matter of: Professional Services Unified, Inc.

File: B-257360.2

Date: July 21, 1994

Janice M. Bellucci, Esq., for the protester.

Neil H. O'Donnell, Esq., and Allen Samelson, Esq., Rogers, Joseph, O'Donnell & Quinn, for Inter-Con Security Systems, Inc., an interested party.

Joseph M. Goldstein, Esq., Department of the Air Force, for the agency.

Linda S. Labowitz, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

The General Accounting Office will not consider a protest challenging the agency's cost comparison decision made pursuant to Office of Management and Budget Circular No. A-76 that in-house performance of services was more economical than contractor performance where the protester failed to exhaust the agency's administrative appeal process.

DECISION

Professional Services Unified, Inc. (PSU), the low, technically acceptable offeror under request for proposals (RFP) No. F04689-93-R-0001, protests the decision of the Department of the Air Force to perform security police services in-house at Onizuka Air Force Base (AFB) in Sunnyvale, California, as opposed to awarding a contract to PSU for these services. PSU challenges the Air Force's cost comparison decision made pursuant to Office of Management and Budget (OMB) Circular No. A-76.

We dismiss the protest.

After conducting the A-76 cost comparison between the government's in-house performance price and PSU's low evaluated price, by letter dated March 18, 1994, the Air Force notified all offerors, including PSU, of its determination that government in-house performance was more economical than contractor performance. The Air Force subsequently furnished to PSU copies of the government's cost comparison and the government's management study.

On April 6, PSU filed at Onizuka AFB an administrative appeal of the government's cost comparison decision in accordance with Air Force Pamphlet (AFP) 26-12, Guidelines for Implementing the Air Force Commercial Activities Program, dated September 25, 1992, and OMB Circular No. A-76. In the base-level appeal, PSU raised 18 issues. By letter dated May 4, the Air Force advised PSU that each issue identified in its appeal had been addressed by the base cost comparison administrative appeal review team and that as a result of certain issues raised in the appeal, revisions were made to the government's in-house performance price. However, the base-level appeal was denied, with the Air Force stating that these revisions did not alter the cost comparison decision to accomplish the services in-house. The Air Force advised that if PSU disagreed with this decision, it could request additional review by Headquarters, Air Force Space Command. The letter specifically stated that "[t]he scope of the headquarters-level appeal review is limited to the content of your original base-level appeal." See paragraph 15-2(c)(4) of AFP 26-12.

By letter dated May 16, PSU filed a headquarters-level appeal of the government's cost comparison decision. In its letter, PSU stated that the base-level appeal team failed to address the facts of its initial appeal, which it specified as two issues. These issues, which were phrased slightly different, effectively raised a single issue, namely that the government's in-house performance price was defective since it was based on services being performed by security guards, not security police as required by the RFP's performance work statement (PWS). PSU concluded by stating that "[w]e believe that the [c]ost [c]omparison should be overturned and rejected. The sole result should be the award of a contract to [PSU]." While it was not clear that this issue was within the scope of PSU's base-level appeal, the headquarters-level appeal team nevertheless reviewed the issue, determining that there was no basis to overturn the cost comparison decision that in-house performance was more economical than contractor performance. Therefore, PSU's headquarters-level appeal was denied.

On June 29, PSU filed a protest with our Office challenging the Air Force's cost comparison decision to perform the services in-house. PSU states that three issues raised in its protest were not raised in its base-level appeal. PSU further reiterates in its protest the 18 issues which it raised in its base-level appeal, including the issues which resulted in revisions to the government's in-house performance price, but which PSU admits it did not expressly raise in its headquarters-level appeal.

Federal Acquisition Regulation (FAR) § 7.307, in accordance with OMB Circular No. A-76, requires that agencies establish appeal procedures for informal administrative review of cost comparisons. In response to this requirement, the Air Force has established a two-tiered appeal process in which the findings of a cost comparison administrative appeal review team may be reviewed by a major command. Since there is a relatively speedy appeal procedure formally included as part of the OMB Circular No. A-76 decision-making process, those decisions are not final until the review procedures have been exhausted. Trans-Regional Mfg., Inc., B-245399, Nov. 25, 1991, 91-2 CPD ¶ 492. Where, as here, there is an established appeal procedure available for review of an agency's cost comparison made pursuant to OMB Circular No. A-76, our Office considers a protest alleging deficiencies in such a cost comparison 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. Id.; Dynetaria, Inc., B-222581.3, Jan. 8, 1987, 87-1 CPD ¶ 30. Here, we will not consider PSU's protest since PSU failed to exhaust the Air Force's administrative appeal process.

With respect to the three issues which PSU states that it did not raise in its base-level appeal, we will not consider these issues since, according to PSU, they were raised for the first time in its protest to our Office when, in fact, they should have been raised in its initial base-level appeal, and if not resolved to PSU's satisfaction, in its subsequent headquarters-level appeal. PSU cannot use our Office's bid protest procedures as a substitute for filing administrative appeals of the government's cost comparison decision. Trans-Regional Mfg., Inc., supra; see ISS Energy Serv., Inc.--Recon., 64 Comp. Gen. 231 (1985), 85-1 CPD ¶ 116.

Next, PSU admits that in its headquarters-level appeal, it did not expressly request review of each of the issues raised in its base-level appeal. Rather, PSU argues that based on the language in the Air Force's letter of May 4--that "[t]he scope of the headquarters-level appeal review is limited to the content of [its] original base-level appeal," and its statement in its letter of May 16 that the "[c]ost

¹We point out that while PSU states that it did not raise these three issues in its base-level appeal, it appears from our review of the record that these issues were raised in that appeal. However, regardless of whether these issues were raised at the base-level, since these issues were not specifically raised at the headquarters-level, GAO will not consider them since PSU failed to exhaust the Air Force's administrative appeal process concerning these issues.

[c]omparison should be overturned and rejected . . . and award [should be made] to [PSU]," it believed that all issues raised in its base-level appeal "would [be] include[d]" in the headquarters-level appeal, in addition to the specific issue raised concerning whether the government's use of security guards, as opposed to security police, conformed to the RFP's PWS.

However, PSU's interpretation of the language used in the Air Force's letter of May 4 is simply incorrect. This letter did not state that issues raised in PSU's base-level appeal "would [be] include[d]" in the headquarters-level appeal. Rather, this letter stated, in accordance with paragraph 15-2(c)(4) of AFP 26-12, that "[t]he scope of the [headquarters]-level appeal review is limited to the contents of the original base-level appeal." In other words, the only issues for which a firm can request additional review in a headquarters-level appeal of a government's cost comparison decision are those issues which were raised, but not deemed satisfactorily resolved, in a firm's base-level appeal. However, these issues are not automatically reviewed--they must be specifically and expressly raised in the headquarters-level appeal in order for the headquarters-level appeal team to be able to "review each element of the appeal" in accordance with paragraph 15-2(c)(4)(b) of AFP 26-12, and for this team to be able to afford meaningful relief to the firm, specifically revising the government's in-house performance price and ultimately reversing the government's cost comparison decision to perform the services in-house. Trans-Regional Mfg., Inc., supra; Dynetaria, Inc., supra.

In this case, the headquarters-level appeal team was entitled to know which issues decided by the base-level appeal team still were questioned by PSU, including those issues which resulted in revisions to the government's in-house performance price and the cost comparison. Other than effectively raising one issue concerning whether the government's use of security guards, as opposed to security police, conformed with the RFP's PWS, an issue which the Air Force broadly construed as falling within the scope of PSU's base-level appeal,² PSU failed to specify any other outstanding issues for which it sought further review by the headquarters-level appeal team. Since PSU did not exhaust the Air Force's administrative appeal process by

²We point out that other than a factual reference to the RFP's PWS, PSU does not raise, and does not otherwise state that it raised, in its protest to our Office the issue concerning whether the government's use of security guards, as opposed to security police, conforms to the RFP's PWS. Thus, we have no basis to review this issue.

specifically raising all outstanding issues from its base-level appeal in its headquarters-level appeal, we will not consider the 18 issues which it raised in its appeal at the base-level because these issues were not specifically raised in its appeal at the headquarters-level.

The protest is dismissed.

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