



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: R.W. Beck
File: B-258781
Date: January 30, 1995

DECISION

R.W. Beck (Beck) protests the Air Force's decision not to contract with it for architectural-engineering (A-E) services including inspection and management of a construction contract to build military family housing. The Air Force wanted a private A-E contractor to act as an extension of the government's management team in overseeing the construction contract and, initially, planned to fulfill the A-E requirement by contracting out to a private firm using procedures prescribed in the Brooks Act for the procurement of professional A-E services.¹ The Air Force began negotiating a contract with Beck but, after significantly reducing the scope of the work, decided that it would perform the reduced requirements using in-house staff. Beck contends that the Air Force's decision to perform the work in-house was improper.

We dismiss the protest.

On November 12, 1993, the agency announced in the Commerce Business Daily (CBD) its requirement for A-E services associated with construction of family housing units at Tyndall Air Force Base, Florida, during fiscal years 1994 and 1995.² The CBD announcement stated, among other things, that the A-E contract would include: reviewing construction project designs and shop drawings; developing construction reports, modifications, and cost estimates; coordination between the contractor and base civil

¹The Brooks Act requires federal agencies to select contractors on the basis of demonstrated competence and qualifications; the procedures do not include price competition. Once a firm is selected as the most highly qualified to provide the services, the agency is required to negotiate a contract at a fair and reasonable level of compensation. See 40 U.S.C. § 541 et seq. (1988).

²No separate solicitation was issued for the A-E services; in effect, the CBD announcement was the solicitation.

engineering and contracting staff; and providing on-site inspectors, including a project manager. Interested firms were invited to submit a letter of interest and standard forms 254 and 255 describing the skills, knowledge and experience of their employees, as well as the composition of the firm and its relevant experience.

In February 1994, the Air Force notified Beck that it had been selected for negotiation of the A-E contract but negotiations would not begin until after the construction project was reprogrammed and redesigned. In July the Air Force provided Beck with a statement of work and requested a cost proposal from the firm. In response, Beck proposed to do the basic contract work for a total amount of \$562,512. After reviewing both the statement of work and Beck's proposal, the Air Force determined that the proposed total costs exceeded the funds allocated for supervision, inspection, and overhead for the construction project. Rather than drawing additional funds from the construction project's budget, the Air Force decided to make significant reductions in the scope of the A-E work required. After further negotiations with Beck, the Air Force notified Beck that it was reducing the scope of work required, identified several of Beck's proposed cost items that were considered too high, and requested a revised cost proposal. Beck's revised cost total for the basic work was \$249,220.

On September 20, 1994, the Air Force advised Beck by telephone that it no longer needed outside A-E services and would, therefore, not award Beck a contract. The Air Force sent Beck a letter, dated September 27, in which it explained that the "funds available for construction [would] be maximized by pursuing a less expensive method of construction surveillance." The Air Force also stated that it would perform the construction surveillance using its own employees and would have design reviews performed under an existing indefinite-delivery, indefinite-quantity contract.


Beck contends that the Air Force's decision to cancel the procurement after negotiating with it was improper because the Air Force should have conducted a cost comparison in accordance with Office of Management and Budget (OMB) Circular No. A-76.

Our Office does not generally review agency decisions to cancel procurements so as to perform the services in-house since such decisions are a matter of executive branch policy, which is not within our protest function. RAI, Inc., B-231889, July 13, 1988, 88-2 CPD ¶ 48. We have recognized a limited exception to this rule where an agency utilizes the procurement system to aid in its determination by issuing a competitive solicitation for the stated purpose of comparing the costs of in-house performance with the

costs of contracting. We will consider a protest that the agency failed to follow established cost comparison procedures because we believe 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. Id.; Services Alliance Sys., Inc., B-243306, Mar. 18, 1991, 91-1 CPD ¶ 297.

In this case, the Air Force did not issue the solicitation (i.e., the CBD announcement) for the purpose of performing an A-76 cost comparison. In this regard, there was no mention in the CBD of OMB Circular A-76 nor any indication that a cost comparison would be conducted. Rather, the Air Force conducted a Brooks Act procurement for A-E services and simply elected to cancel the procurement when it realized that the services could be performed more cheaply in-house. The record shows that, after reviewing Beck's initial cost proposal, the Air Force realized that it would have to draw funds from the construction project itself, thereby reducing the construction budget, in order to have an outside A-E contractor perform the project management and surveillance services originally envisioned. After significantly reducing the scope of the A-E services and reviewing Beck's revised cost proposal, the Air Force determined that it could do the work in-house and that doing so would be less expensive. Under these circumstances, even though Beck may have incurred costs in pursuing the award, the agency may properly cancel the solicitation, and review by our Office is not appropriate. Stephen E. Harriman AIA & Assocs., B-248973.4, Nov. 23, 1994, 94-2 CPD ¶ ____.

The protest is dismissed.



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