

DECISION

David Weiskopf
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**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548****FILE:** B-213828**DATE:** September 5, 1984**MATTER OF:** Samsel Services Company**DIGEST:**

1. An agency's failure to announce at bid opening its estimated in-house costs, for the purposes of a cost comparison with commercial bids, provides no valid basis for protest where the agency did not use information from the offers to compute its costs and the protester was not otherwise prejudiced.
2. GAO will decline to review an allegation that a particular aspect of a contracting agency's cost comparison was faulty if the protester failed to raise the objection in an appeal with that agency.
3. Protester objecting to a contracting agency's cost comparison between commercial bids and the agency's estimated in-house costs bears burden of showing that agency failed to follow established ground rules and that such failure materially affected the cost comparison's result. GAO will not consider the fairness of the ground rules themselves, and will not object to a cost comparison based on unsupported allegations or mere disagreement with the agency's estimated costs.

Samsel Services Company protests the results of the Army Corps of Engineers' cost comparison under invitation for bids No. DACW31-83-B-0016, issued for the purpose of determining whether the Army should perform certain waterway debris-collection services in-house, as in the past, or contract with a commercial source for the services. Based on projected savings of in-house performance, the Corps made no award and retained the function in-house. The protester complains that the Corps did not announce the government's estimate for in-house performance when bids were opened, and only announced the results of the cost comparison after the

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contracting officer had adjourned the bid opening in order to complete the cost comparison form. Samsel also challenges the Corps's calculations for various elements of the cost comparison.

We dismiss the protest in part and deny it in part.

I. Standard of Review

Initially, we point out that we generally do not review an agency's decision to perform work in-house rather than to contract with commercial sources, because we regard the decision to be a policy matter within the discretion of the executive branch. However, where, as here, an agency utilizes the procurement system to aid its decision, specifying that the decision will be based on a cost comparison between the government's own in-house estimate and solicited offers, we will review an allegation that the agency did not follow the ground rules established for comparing the costs. Holmes & Narver Services, Inc., and Morrison-Knudsen Company, Inc., B-212191, Nov. 17, 1983, 83-2 CPD ¶ 585.

In this regard, the protester bears the burden of showing that the cost comparison was faulty. Serv-Air, Inc.; AVCO, 60 Comp. Gen. 44 (1980), 80-2 CPD ¶ 317. Moreover, we will not take exception to an agency's cost comparison unless it is also shown that the agency's failure to follow mandated ground rules materially affected the cost comparison's outcome and thus prejudiced the protester. See MAR, Incorporated, B-205635, Sept. 27, 1982, 82-2 CPD ¶ 278.

II. Failure to Announce In-House Cost Estimate

The Corps apparently adjourned the bid opening in order to complete the cost comparison form to reflect the low bid received at the opening, whereas the solicitation stated that at the time of bid opening the bids and the government in-house estimate would be opened and announced. The record indicates that the in-house estimate was prepared in advance of the bid opening as it shows that the Army Audit Agency had audited and approved the estimate prior to that time. Since the agency did not

utilize the information in the offers to compute its own costs and since we fail to see how the protester was otherwise prejudiced, we find no basis to object to the agency's action. See Jets, Inc., 59 Comp. Gen. 263 (1980), 80-1 CPD ¶ 152.

III. Elements of Cost Comparison

The protester challenges the Corps' computation of costs in four basic areas as follows:

- A. the protester alleges that the Corps' fuel costs, contained in the line-item for in-house costs of direct materials, do not reflect the operation of debris-collection vessels to the same extent as required by the solicitation;
- B. the protester maintains that the Corps had an unfair advantage regarding labor costs because the solicitation required that the successful contractor comply with Service Contract Act minimum wage rates whereas those rates do not apply to the Corps, and because the Corps added the costs of severance pay and retained pay for its displaced employees to the protester's offered price;
- C. the protester complains that the costs of the government's vessels are understated for the purpose of computing its in-house costs, and also for the purpose of computing the net cost of disposing of the vessels in the event of a conversion; and
- D. the protester argues that the Corps unreasonably attributed no administrative and general expense (G&A) to the in-house estimate while increasing the costs of contracting out to reflect contract administration expenses.

We separately discuss each objection below.

A. Fuel Costs

In an appeal to the Corps, Samsel initially took general exception to the agency's estimated in-house fuel

costs, and specifically objected to the fuel figures for one vessel in the Corps' supporting documentation. The protester argued that while the particular vessel was best suited to patrol for debris, the in-house estimate included the cost of only 36.3 gallons of fuel for its operation. The protester contended that 36.3 gallons was not enough for the routine patrolling required by the solicitation (5 days per week). The Corps responded that it had utilized five other vessels to accomplish the patrolling, and indeed the same documentation relied upon by the protester shows that the Corps included in its estimate the cost of 7,827.3 gallons of fuel consumed by these vessels.

In light of the agency's explanation, we find that the protester has failed to show either that the 36.3-gallon consumption data is erroneous or that the agency improperly calculated its fuel costs based on such data. Since the protester bears the burden of affirmatively proving its case (see Section I, supra), we deny the protest to the extent it questions the 36.3-gallon fuel consumption of one particular vessel.

In its submissions to this Office, the protester for the first time also argued that the total number of gallons included in the government's estimate (7,863.9) also was not sufficient to accomplish the full services required by the solicitation.

We will not consider this argument since the protester failed to raise it in its appeal to the contracting agency. See Dyneteria, Inc., B-205487, June 1, 1982, 82-1 CPD ¶ 506. Because the pertinent procurement regulation provides that an affected party may request a review of the government's calculations, and requires the government to respond within 30 days, Defense Acquisition Regulation (DAR), § 4-1203.4(c), reprinted in 32 C.F.R. pts. 1-39 (1983), we have held that we will not review a protest against a cost comparison unless the protester has exhausted this relative speedy administrative remedy available with the contracting agency itself. JAC Management, Inc., 60 Comp. Gen. 372 (1981), 81-1 CPD ¶ 274. Moreover, the regulation and a mandatory clause in the solicitation (paragraph L.13 in this solicitation) require that any objections raised on appeal must be specific. We therefore generally will decline to review any objections to a cost comparison not specifically appealed to the contracting agency. Dyneteria, Inc., supra.

B. Alleged Unfair Government Advantage Regarding
Certain Labor Costs

We find no merit to these allegations or otherwise will not consider them. It is well-settled that while the government and offerors must compete on the same statement of work, they may be subject to different legal requirements in obtaining or performing the contract that may cause the commercial concerns to suffer a cost disadvantage. Executive-Suite Services, Inc., B-212416, May 29, 1984, 84-1 CPD ¶ 577. Since the government does not pay its employees Service Contract Act wage rates, see Joule Maintenance Corporation, B-208684, Sept. 16, 1983, 83-2 CPD ¶ 333, page 5 n.2, its true costs for in-house labor are its employees' salaries. See Joule Maintenance Corporation, B-210182, Sept. 29, 1983, 83-2 CPD ¶ 389.

The protester's disagreement with the policy of attributing to the contract price the government's costs of severance pay and retained pay in the event of performance by a commercial contractor raises a matter of executive policy that we will not review. The ground rules for a cost comparison generally are set out in the solicitation and the Office of Management and Budget Circular A-76 Cost Comparison Handbook (Handbook). Transmittal Memorandum No. 6, 47 Fed. Reg. 4629 (1982), modifying the Handbook in effect at the time, specifically required the government to add the estimated costs of severance pay and retained pay to a commercial concern's offered price. As indicated above (Section I, supra), our review is largely limited to whether the contracting agency followed established cost comparison procedures. See also Mercury Consolidated, Inc., B-213350, June 11, 1984, 63 Comp. Gen. _____, 84-1 CPD ¶ 612.

The protester also disagrees with the Corps' computation of severance pay and retained pay based on its projection that the protester would hire only five of ten government employees currently performing the work, whereas the protester's offer included a list of six employment openings. We have held that the projection of personnel changes resulting from a conversion is largely a judgmental matter. Mercury Consolidated, Inc., supra. While the protester may disagree with the Corps' judgment, that does

not mean that the judgment was unreasonable. Further, the protester has not shown that the alleged error would have had a material effect on the cost comparison's outcome. See Contract Services Company, Inc., B-210796, Aug. 29, 1983, 83-2 CPD ¶ 268. Indeed, the government's estimated total costs for displaced employees (less than \$150,000) was less than a quarter of the more than \$600,000 difference between the estimated costs of in-house performance and contracting out.

C. Reasonableness of Vessel Costs and Disposal of Assets

The protester questions the Corps' projected acquisition timetable and costs for replacing three vessels if the function were retained in-house. The Corps projected it would replace two of the vessels in fiscal year 1985 and a larger vessel in 1986, while the solicitation encompassed 1 base year of services in 1984 plus options to continue the services in each of the 4 succeeding years. The protester intimates that the acquisition timetable was conveniently arranged so that the costs of the new vessels (which, for cost comparison purposes, must be amortized over their useful lives, see Mid-East Services, Inc., B-201722, March 24, 1982, 82-1 CPD ¶ 278) would have little or no impact on the government's estimate for the first years of in-house performance.

The protester also questions, as too low, the Corps' estimate of \$190,000 that replacement of the vessels would cost. In this regard, the protester complains that the supporting documentation contains no specifications for the vessels, no bids from prospective shipbuilders and suppliers, and no cost breakdowns to support the projected acquisition costs.

The Corps, in its report responding to the protest, explains that the decision to replace the vessels came only as a result of the Corps' preparation for the cost comparison. Office of Management and Budget Circular No. A-76 (revised) requires that, in connection with an in-house/contract decision, an agency conduct a management study with a view towards accomplishing the work more

efficiently, when feasible. In the course of its management study, the Corps determined that three vessels had reached the end of their useful lives and recommended their replacement. Although the Corps' operating district has accepted this recommendation, the projected acquisition time reflects the lead time needed to design the vessels, develop specifications, solicit bids, and construct the vessels.

The Corps' explanation for the projected delay in acquiring the vessels is reasonable; Samsel's speculation that the Corps conveniently arranged the acquisition timetable to understate its costs does not meet the protester's burden of showing that established ground rules were not followed.

Regarding the projected cost of replacing the vessels, the Corps states that the agency's Chief of the Operations Division, whose responsibilities include debris-collection in the area covered by the solicitation, calculated the vessel replacement costs based on the actual costs (\$670,000) of similar vessels in fiscal years 1980 and 1981, adjusted for inflation and the like. The protester has failed to submit any evidence that the replacement estimate was unreasonable, but merely questions the estimate since the Corps' documentation lacked competitive bids or a detailed cost breakdown based on specifications for the vessels.

Nothing in the Handbook required that the contracting agency develop specifications and obtain commercial bids or detailed cost breakdowns for the purpose of calculating the in-house costs of tangible capital assets such as the vessels. The Handbook only required that the agency spread the cost of tangible capital assets, less their residual value, over their estimated useful lives on a straight-line basis. Handbook, Chapter III, paragraph D(4)(c); Mid-East Services, Inc., supra. The Handbook left determining the costs of tangible capital assets to the contracting agency's exercise of reasonable discretion. Since the protester has failed to show that the agency abused its discretion, or that the estimated replacement costs were unreasonable, we find no merit in this aspect of the protest.

Concerning the reasonableness of the Corps' estimated costs for disposing of its vessels in the event of contracting, as well as certain other one-time conversion costs, we note that the effect of these items was only to add approximately \$71,000 to the cost of contracting; even if that amount were reduced to zero, or changed to reflect a slight gain, it would not materially alter the cost comparison's outcome. See Contract Services Company, Inc., supra.

D. No Cost for G&A

The protester's complaint that the Corps unreasonably attributed no G&A to the costs of in-house performance basically challenges the Department of Defense's policy that G&A and certain overhead expenses reflecting support from outside the work center shall not affect the government's costs unless contracting out would eliminate a whole man-year of work from the outside supporting office. See Facilities Engineering & Maintenance Corporation, B-210376, Sept. 27, 1983, 83-2 CPD ¶ 381. Absent such an impact, the government's cost essentially is viewed as the same whether or not a contract were awarded.

We have approved the exclusion by contracting agencies of the costs of G&A support services that would be the same for in-house or contractor performance. Id.; TS Infosystems, Inc., B-209900, Aug. 2, 1983, 83-2 CPD ¶ 155. Since the protester has submitted no evidence to show that the Corps unreasonably determined that G&A would be the same in any event, we have no basis to take legal objection to the Corps's computing its in-house G&A to be zero. See Facilities Engineering & Maintenance Corporation, supra; TS Infosystems, Inc., supra.

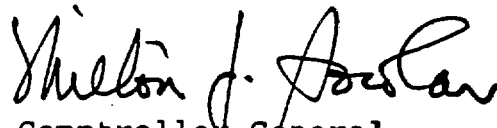
The Corps did add a 4-percent factor to the protester's offered price to reflect the government's contract administration costs. Doing so was required by the Handbook, which explains that this factor does not only include G&A associated with contract performance, but also the costs of quality control, processing payments, negotiating change orders, and monitoring the close-out of contracted operations. See Handbook, Chapter II, paragraph D(a). To reflect these costs, the Handbook stated that the costs of contract administration "will be determined by applying four percent (4%) to the contract price."

While the implementing instructions of the Army permitted the use of a smaller factor if there was "precise and supportable evidence" that contract administration costs would be less than 4 percent, Department of the Army Circular 235-1, Appendix D, the Corps determined that in this case its personnel would spend approximately 208 hours providing the various administrative functions required, and that the 4-percent factor was appropriate. The protester has submitted no evidence to show otherwise.

We therefore deny the protest as it relates to the Corps' calculations of its in-house G&A and the costs of contract administration.

IV. Conclusion

Samsel's protest of the Corps' cost comparison raises grounds that involve matters inappropriate for our review or that lack merit on the record before us. We therefore dismiss the protest in part and deny it in part.

for 
Comptroller General
of the United States