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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Johnson Controls World Services, Inc.

File: B-295529.2; B-295529.3

Date: June 27, 2005

David R. Johnson, Esq., Amanda J. Kastello, Esq., and Amy R. Napier, Esq., Vinson & Elkins, for the protester.

Maj. Gregg A. Engler and Capt. Joseph Fratarcangeli, Department of the Army, for the agency.

Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In the context of a cost comparison study of base operation services conducted pursuant to Office of Management and Budget Circular A-76, a decision by the agency's Independent Review Official to withdraw its certification that the agency's plan for performing the services includes all of the required costs associated with in-house performance renders academic a protest alleging that the agency's cost estimate for performing the work in-house failed to include all required costs.

DECISION

Johnson Controls World Services, Inc. (JCWS)¹ protests the decision by the Department of the Army, pursuant to Office of Management and Budget (OMB) Circular A-76, that it would be more economical to provide base operations support services in-house at the Walter Reed Medical Center in Washington, D.C., rather than contract for those services pursuant to solicitation No. DADA10-03-R-0001. JCWS argues that the cost estimate based on the Army's plan for performing this work, which was used to compare the cost of in-house versus contractor performance, failed to include all of the costs required for performance.

¹JCWS changed its name to IAP World Services, Inc., effective March 30, 2005. Since the proposal was submitted under the name JCWS, and this protest was initially filed under that name, this decision will refer to the company as JCWS, rather than IAP.

We dismiss the protest.

In June 2000, the Army announced its intent to conduct an A-76 cost comparison study of these services. A solicitation was issued to potential private sector offerors on June 4, 2003. Although OMB Circular A-76 was substantially revised on May 29, 2003, the Army received authorization from the Department of Defense to continue with its cost comparison study under the previous version of the A-76 Circular. Contracting Officer's Statement at 1.

Prior to receipt of proposals from private sector offerors, the Army's plan for performing these services in-house was submitted for review to the agency's Independent Review Officer (IRO)--in this case the Army Audit Agency--as anticipated by the OMB Circular No. A-76 Revised Supplemental Handbook (Mar. 1996) (hereinafter, the "Supplemental Handbook") at 12.² IRO review is required to assure that the MEO's plan for performance will comply with the solicitation's performance work statement. Id. at 12. In the event changes to the MEO are needed to meet the requirements of the performance work statement, those changes must be made before the IRO can certify that the MEO "reasonably establish[es] the Government's ability to perform the [performance work statement] within the resources provided by the MEO." Id. The IRO here first certified the MEO proposal in April 2004. Hearing Transcript (Tr.) at 84.

After certification of the MEO, and after the receipt of proposals from private sector offerors, the agency issued an amendment to the solicitation--amendment 16, issued July 23, 2004--that made numerous changes to the performance work statement. In September 2004, the MEO was reopened so that changes could be made to reflect the changes in work incorporated by amendment 16. In the last days of September, shortly before the cost comparison was conducted, the MEO was again certified by the IRO. Tr. at 44-49, 51-54. On September 29, the date of the cost comparison, the MEO was compared to the offer submitted by JCWS, and the Army determined that in-house performance of these services would be less expensive than having them performed by contract awarded to JCWS. Tr. at 54.

After an administrative appeal, and after an earlier protest to our Office, this protest was filed on March 30, 2005. As indicated above, the instant protest argues that the MEO failed to include all of the costs required for in-house performance of these services, and that, as a result, the IRO's certification of the MEO was unreasonable.

² When activities deemed "commercial" are subjected to a cost comparison study pursuant to the OMB Circular, the Supplemental Handbook terms the government's plan for performing such activities (and specifically, the in-house organization proffered for performance of those activities) the Most Efficient Organization (MEO). Supplemental Handbook at 36.

After receipt of an agency report, and the protester's comments, our Office held a hearing in this matter on June 8-9, to explore in greater detail the protester's contentions. The hearing included witnesses from the Army Audit Agency, which, as indicated above, was serving as the Army's IRO. After the hearing, by letter dated June 15, the Army advised our Office that the IRO was withdrawing its certification of the MEO package submitted in this cost comparison study. As a result, the Army asked that this protest be dismissed as academic.

By letter dated June 16, JCWS opposed the Army's request for dismissal of the protest, and argued instead that the protest should be sustained, and that our Office should recommend award of a contract to JCWS for the base support services at issue.

In our view, the protester's challenges to the adequacy of the MEO, and to the IRO's certification of the MEO, have been rendered academic by the agency's actions. The decision of the Army's IRO to withdraw its certification of the MEO means that the Army Audit Agency has determined that additional changes to the MEO may be needed before the MEO can be properly certified. Until the IRO concludes that the MEO properly reflects the work required here, including the work required by amendment 16 to the solicitation, there is, in effect, no MEO to compare to JCWS's offer to perform this work. For this reason, we cannot grant the protester's request that we sustain this protest and recommend award to JCWS. If and when the IRO concludes that the MEO can be properly certified--i.e., if and when the IRO concludes that the MEO properly provides for performance of the work solicited here--the Army will be in a position to complete its cost comparison study, and the protester again will be able to challenge the outcome if it is not selected for award.

In short, the situation here is analogous to an agency decision, in the context of a protest challenging the agency's evaluation of proposals and selection decision, to reevaluate one of the proposals and make a new selection decision. In such a case, the protest is rendered academic by the agency's action. See OEA, Inc., B-226971, May 20, 1987, 87-1 CPD ¶ 530 at 1-2. We do not consider academic protests because to do so would serve no useful public policy purpose. East West Research, Inc.--Recon., B-233623.2, Apr. 14, 1989, 89-1 CPD ¶ 379 at 2.

The protest is dismissed.

Anthony H. Gamboa
General Counsel