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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Aberdeen Technical Services--Modification of Recommendation

File: B-283727.3

Date: August 22, 2001

Ruth Y. Morrel, Esq., DynCorp, for the protester.
Vera Meza, Esq., U.S. Army Materiel Command, for the agency.
Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

General Accounting Office modifies recommendation to include reimbursement of protester's costs of preparing its proposal where agency canceled the solicitation, thus depriving protester of opportunity to compete.

DECISION

Aberdeen Technical Services (ATS) requests that we recommend that the Department of the Army reimburse ATS for costs the firm incurred in preparing its proposal in response to request for proposals (RFP) No. DAAD05-98-R-0565.

The Army issued the RFP on August 4, 1998, as part of a cost comparison pursuant to Office of Management and Budget Circular No. A-76 to determine whether it would be more economical to manage and operate base industrial operations in-house at the Aberdeen Proving Ground, Maryland, rather than contract for these services. Of the three private sector proposals submitted in response to the RFP, the Army concluded that ATS's proposal offered the best value to the government. Ultimately, the Army concluded that performance in-house would be less expensive than awarding a contract to ATS.

ATS filed a protest with our Office challenging the agency's decision. We sustained ATS's protest on several grounds, and recommended that the Army either revise the in-house cost estimate and ATS's offer in accordance with the findings in our decision and conduct a new cost comparison, or revise the RFP, reopen the competition among the private sector offerors, and then conduct a new cost comparison. Aberdeen Tech. Servs., Inc., B-283727.2, Feb. 22, 2000, 2000 CPD ¶ 46.

The Army has not yet implemented the recommendation set out in our February 2000 decision. The agency has advised our Office that, while it still plans to resolicit, there will be additional delays in doing so because of changes in the Army's requirements, requiring that the original solicitation be canceled. The Army estimates that a new solicitation will be issued in early 2002, some 2 years after issuance of our decision and recommendation. On June 19, 2001, we advised the relevant congressional committees that, in our view, this lengthy delay constituted a failure to implement our recommendation. See 31 U.S.C. § 3554(e)(1) (1994 and Supp. IV 1998).

In view of the cancellation of the RFP, which has deprived ATS of an opportunity to compete for the scope of services contemplated in the solicitation at issue in the protest, ATS requests that we modify our earlier recommendation to allow ATS to be reimbursed the costs of preparing its proposal. The Army has no objections to ATS's request. Under these circumstances, we modify our recommendation to provide that ATS should be reimbursed the costs of preparing its proposal under the canceled solicitation.¹ 31 U.S.C. § 3554(c)(1), 4 C.F.R. § 21.8(d)(2) (2001).

Anthony H. Gamboa
General Counsel

¹ We understand that ATS has already submitted its certified claim for such costs, detailing the time expended and costs incurred in preparing its proposal, and that the Army is considering the claim.