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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: LBM, Inc.

File: B-291775

Date: March 21, 2003

David Barbour for the protester.

Catherine L. Horan, Esq., and Richard G. Welsh, Esq., Naval Facilities Engineering Command, for the agency.

Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency miscalculated in-house performance costs (associated with federal pay raise assumptions) in Office of Management and Budget Circular A-76 cost study is denied where record shows that agency's calculations were in accordance with policy guidelines, and calculations reflect actual costs agency will experience during first period of performance.
 2. Protest that agency improperly failed to include certain direct costs in preparing agency in-house cost estimate is denied where record shows that agency properly treated costs as "wash" costs, consistent with applicable guidance.
 3. Protest allegations that involve dollar amount insufficient to change outcome of Office of Management and Budget Circular A-76 cost study are denied where, even if protester were correct in its allegations, correction of the alleged errors would not change the study's outcome.
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DECISION

LBM, Inc. protests the Department of the Navy's determination, pursuant to Office of Management and Budget (OMB) Circular A-76, that in-house performance of motor transportation operation and maintenance services at the Marine Corps Recruiting Depot at Parris Island, South Carolina, would be more economical than awarding a contract under request for proposals (RFP) No. N62467-02-R-0333. LBM maintains that the agency made several errors in calculating the cost of in-house performance.

We deny the protest.

The RFP sought fixed-price offers for a base year with four 1-year options. After a competition among private sector offerors, LBM was selected as the concern offering the best overall value to the government. After making certain adjustments to LBM's proposed price called for by Circular A-76 (such as application of the 10 percent one-time conversion cost (Circular A-76 Revised Supplemental Handbook at 26)) the agency compared LBM's price to the government's in-house cost estimate (IHCE) for performance by the most efficient organization (MEO); based on this comparison, the agency concluded that it would be less expensive to retain the requirement in-house. Specifically, the agency determined that the cost of in-house performance would be \$13,747,300, whereas converting to performance by LBM would cost \$14,047,332, for a difference of \$300,032 in favor of in-house performance.¹ In response to this protest, the agency has conceded errors in its calculations that resulted in understating the IHCE by \$123,089.87, AR at 14-17; correcting these errors reduces the price difference to \$176,942.83. LBM still takes issue with five elements of the cost comparison.²

FEDERAL PAY RAISE ASSUMPTION

LBM contends that the IHCE understates the costs of direct labor for federal wage system (FWS) employees by \$241,722, due to the agency's failure to apply appropriate inflation factors. In this respect, the protester relies on language found in section C.1.2.4. of the Department of Defense (DOD) A-76 Costing Manual (Interim Guidance, Mar. 14, 2001), which provides: "Positions subject to an [economic price adjustment provision] are inflated using inflation factors applicable to (and through) the first performance period only." The inflation factors to which this guidance refers are percentages by which a baseline salary figure must be increased to arrive at a current year wage rate for the employees in question. OMB publishes the inflation factors for use by agencies in preparing A-76 cost studies; for purposes of this protest, OMB Transmittal Memorandum No. 24 (which provides updated information for calculating current year wage rates) includes the inflation factors applicable from 2001 through 2012 and specifies January of each year as the effective date for each inflation factor. AR, exh. 12.

¹ The agency initially found that the relative costs of in-house performance versus performance by LBM were slightly different from the above figures. Agency Report (AR) at 8. LBM filed an administrative appeal and the agency's administrative appeals board arrived at the corrected figures noted above. AR at 9.

² LBM's initial protest raised an additional assertion relating to the cost of insurance for purposes of calculating the cost of in-house performance. After receiving the agency's report, LBM concurred with the Navy's position that the insurance costs were understated by \$25,200. AR at 13-14; LBM comments, Jan. 24, 2003, at 4-5; LBM Supplemental Comments, Feb. 11, 2003, at 3.

The base period of performance for this requirement runs from March 1, 2003 through February 29, 2004. The record shows that, for purposes of calculating FWS employee costs, the agency used baseline wage rates established in September 2001. The agency then applied the inflation factors for 2002 and 2003 to update the FWS wages. Citing the language of the DOD A-76 Costing Manual quoted above, LBM contends that, since the base period of performance runs “to and through” February 2004, the agency also was required to apply the 2004 inflation factor in updating FWS wages because it is designated in Transmittal Memorandum No. 24 as “effective” in January 2004.

The Navy maintains that it properly omitted the 2004 inflation factor from its calculations.³ It states that, since the FWS employees at issue are governed by wage determinations that are issued in September of each year and remain valid for 12 months, the employees will be governed by the September 2003 wage determination during January and February of 2004 (the period during which LBM claims the 2004 inflation factor applies). The Navy concludes that it would be improper to apply the 2004 inflation factor in adjusting the base year FWS rates, since the agency will not actually pay rates at that higher level during the base year.

The agency’s calculations are unobjectionable. LBM’s reliance on the DOD A-76 Costing Manual language quoted above is misplaced, because its interpretation fails to take into consideration other provisions of the manual that recognize the need to take the effective periods for wage rates into consideration when applying inflation factors. In this regard, as noted, the FWS employees at issue are governed by FWS wage determinations issued in September and are valid for 12 months. However, FWS employees in other locations may be governed by wage determinations issued at different times throughout the year. In contrast, General Schedule (GS) employees are governed by adjustments to the GS rates that occur in January of every year. While the Transmittal Memorandum includes inflation factors with a January effective date, the DOD A-76 Costing Manual seeks to accommodate the different effective dates of wage increases for different employee groups in the following stated policy for application of the inflation factors discussed above:

³ The record shows that the agency arrived at its calculation using a DOD-maintained software package known as win.COMPARE2, which automatically calculates wage rates after being provided the necessary data, such as the number of employees, their respective wage rates (including the effective date of the FWS wage determination being used) and the latest inflation factors from Transmittal Memorandum No. 24. AR, exh. 3, at 3-4. The win.COMPARE2 software automatically calculates the agency’s direct labor costs based on the information provided, without any opportunity for manipulation on the part of the contracting activity.

The General Schedule (GS) salary table is effective for the calendar year while the Federal Wage System (FWS) pay table is effective for twelve months beginning in any month of the year. win.COMPARE2 uses . . . GS Annual Salaries [and] . . . FWS Hourly Wages . . . *effective periods* as the baseline for determining the need for inflation when coupled with the performance period dates

DOD A-76 Costing Manual at 35 (emphasis supplied).

We read this language as providing, in effect, that the inflation factors are to be applied on the anniversary of the wage determination in question. While for GS employees this means that the inflation factors are applied in January of each year (because the GS pay schedules are adjusted in January), for FWS employees the inflation factors are applied on the anniversary of the FWS wage determination--September in the case here. This is what the agency did; since the FWS employees in question will not receive their 2004 wage increase until September 2004, the agency properly determined that the FWS wages for the months of January and February 2004 should not be adjusted using the 2004 inflation rate included in the Transmittal Memorandum.

DIRECT SUPPORT

LBM contends that the agency improperly failed to include certain elements of direct support costs in the IHCE that would increase the cost of in-house performance by \$84,579. Direct support includes costs for all direct and indirect managers and supervisors above the first line of supervision that are essential to performance of the function. DOD A-76 Costing Manual at 23. LBM maintains that support will be needed from the Base Safety Department and the Base Licensing and Testing Department. LBM maintains that the Base Safety Department will provide support for the requirement by issuing safety directives and by performing compliance management activities for the MEO. LBM further maintains that the Base Safety Department will actually perform a more active role for the MEO than it would for LBM, since LBM claims that its proposal includes a safety and quality control officer, while the MEO does not. As for the Base Licensing and Testing Department, LBM contends that, while all government personnel operating vehicles over 10,000 pounds gross vehicle weight (GVW) are required to be issued a government license, contractor personnel may not be issued a government license, so this cost would be inapplicable to LBM.

The Navy maintains that it properly treated both of these support costs as "wash" costs, that is, costs that would be incurred whether the requirement is performed in-house or by contract. DOD A-76 Costing Manual at 16. The Navy states that the Base Safety Department will continue to issue safety directives and ensure compliance management (in the form of performing periodic safety inspections of the service provider's workspace and equipment, and by providing escort services for various federal or state inspectors) whether the function is performed in-house

or by a contractor. As for the Licensing and Testing Department, the agency states that all drivers, whether contractor or agency personnel, will require testing, even if DOD-issued driver's licenses are not provided to contractor drivers.

The agency properly treated these support costs as "wash" costs. LBM has not introduced information or evidence to show that the Base Safety Department's role in issuing safety directives will vary depending on whether performance is in-house or by contract; thus, we are left to conclude that any costs associated with the issuance of safety directives would be the same for LBM and the MEO. The Performance Work Statement also references the other activities that the agency states will be performed by the Base Safety Department—it provides for periodic inspections of the service provider's workspace and equipment, and also refers to the safety office escort that would accompany any state or federal inspector. RFP, amend. No. 1, at 13. It is not clear—and LBM has not shown—why the cost of these Base Safety Department activities would not be the same regardless of which entity performs the requirement. In addition, contrary to LBM's assertion, the record shows that the MEO's motor transportation supervisor is specifically responsible for administering the required safety program. AR, exh. 4, at 3. Since both the MEO and LBM included an individual responsible for managing each group's respective safety program, there is no basis to conclude that the Base Safety Department will assume a more active role for the MEO than it would for LBM. We conclude that the agency properly treated the cost associated with the Base Safety Department as a wash cost.

As for the costs associated with the Base Licensing and Testing Department, the record confirms the agency's position that, regardless of whether a driver is a contractor employee or part of the MEO, he or she will be required to pass government-administered tests in order to be authorized to operate vehicles over 10,000 pounds GVW. RFP, amend. No. 1, at 32. LBM's assertion that contractor personnel will not require support from this department because they cannot be issued a government license ignores this requirement for testing that would be administered by the Base Licensing and Testing Department. Accordingly, we again have no basis for questioning the agency's treatment of this support cost as a wash cost.

ADDITIONAL ASSERTIONS

LBM raises three additional assertions. First, LBM asserts that the agency improperly used Heavy Mobile Equipment Repairers (wage grade (WG) 08) as opposed to more costly Heavy Mobile Equipment Mechanics (WG 10) in preparing the IHCE. In its initial protest, LBM asserted (without supporting calculations) that the dollar value of this alleged error was \$92,222. In its agency report, the agency maintained that it properly used the less expensive employees and also presented detailed calculations showing that, even if the protester were correct, the actual cost impact was only \$55,907. AR at 14. In its comments responding to the report, LBM did not challenge the agency's calculations. Accordingly, we assume for purposes of our analysis here that the impact of this alleged error is \$55,907.

Second, LBM alleged in its initial protest that the agency improperly classified its proposed motor vehicle operator leader as a “work leader,” rather than as a more costly “work supervisor,” and that the alleged cost impact was \$74,730. The agency responded in its report that the protester’s assertion lacked merit, and also presented detailed calculations showing a cost impact of only \$16,336. AR at 18. LBM did not challenge the agency’s calculations in its comments on the report. Accordingly, we will assume here that the impact of this alleged error is only \$16,336.

Finally, LBM asserted in its initial protest that the agency improperly failed to include the cost of 6/10 of a full-time equivalent (FTE) in the IHCE; LBM asserted that the agency should have “rounded this up” to 1 FTE, and that the cost associated with this was \$278,366. In response, the agency conceded that it had failed to include the cost of 4/10 of an FTE, at a cost of \$97,889 (this amount is included in the \$123,089.87 that the agency concedes was not included in its IHCE). AR at 16-17. Even if LBM is correct that the agency improperly failed to cost 6/10 of a FTE, there is no basis to round this up, since to do so would result in an overstatement of the IHCE by 4/10 of a FTE. Accordingly, even if LBM were correct that the IHCE fails to include 6/10 of a FTE, the potential cost impact for the remaining 2/10 of an FTE that the agency has not conceded amounts to only \$48,944.

In sum, the potential cost impact of the alleged errors amounts to \$121,187, which is less than the outstanding difference between the IHCE and LBM’s adjusted price of \$176,942.83. Thus, even if LBM were correct in all three of its assertions, it was not prejudiced by the agency’s alleged errors. Prejudice is an element of every viable protest, and where none is shown, our Office will not sustain a protest, even where the agency’s actions may have been improper. Amcare Med. Servs., Inc., B-271595, July 11, 1996, 96-2 CPD ¶10 at 3.

The protest is denied.

Anthony H. Gamboa
General Counsel