

Section VII. The Cost Comparison Process

3-39. Preparation of the Government's In-House Cost Estimate.

a. FOA will use ENG Form 4843A-R, Cost Comparison of In-House and Contract Performance (RCS CSCOA-116), to document the cost to the Government of performing the functions and work in the PWS using the in-house organization proposed in the management study. The Government's in-house cost estimate also establishes some of the costs to be added to the contract price to arrive at the full cost of contract performance. Procedures for developing the Government's in-house cost estimate are in Appendix E. Guidance on computation of severance pay is contained in paragraph 3-52. The cost of performing Governmental, excepted or exempted functions, or the cost of the residual organization which would be implemented in case of a contract decision, will not be included.

b. The management study, to include a draft change to the TDA or other manpower manning document for the MEO, and position structures of the in-house organization and the residual staff necessary to manage the function under contract must be approved before the Government's in-house cost estimate can be completed. Those documents are procurement sensitive and should be protected.

c. Preparation of the Government's in-house cost estimate should be a team project. The team should be composed of CA program, resource, and functional managers; the Personnel Officer; technical experts for the function(s) under study; and cost engineers. No person who may benefit or may be affected adversely by the results of a CA study will take part in developing the Government's in-house cost estimate or evaluation and selection of contractors' bids or offers. No person will take part in calculating the Government's in-house cost estimate or evaluation and selection of contractors' bids or offers until he has reviewed his responsibilities under AR 600-50.

d. Persons involved in calculating the Government's in-house cost estimate will not discuss their activities or findings with unauthorized persons. Unauthorized persons include persons outside the Government and Government personnel involved in acquisition duties or the evaluation of contractors' bids or proposals related to the CA study. Also included is anyone whose knowledge of the Government's in-house cost estimate could compromise the confidentiality

of the in-house costs and the independence of potential contractors' bids or offers. This restriction on discussion remains in effect until announcement of the initial decision and release of the Government's in-house cost estimate and related material to the interested parties.

e. Standard cost factors to be used in the cost comparison process are prescribed in the CCH, in this regulation, and in periodic guidance issued by letters and messages. Deviation from prescribed factors is permitted only under certain circumstances, must be documented carefully, and receive HQUSACE approval in most cases. Most deviations in studies with DOD-funded employees must gain final approval of HQDA (see AR 5-20 dated 20 October 1986, paragraph D-2). USAAA requires these MACOM waivers in their audits of studies involving more than ten FTE and CEAO, which is responsible for auditing Corps CA studies of activities with ten or fewer FTE, also requires these waivers. Standard cost factors result in consistent application of rules on all studies and minimize the frequency and probable success of employee or private company appeals that studies were not carried out in compliance with those rules. The most fertile grounds for such appeals exist when there are deviations from standard factors.

f. In-house cost elements will be based on the most current, relevant data that can be obtained. The cost of future years' performance will be projected based on this data. Personnel costs will be based on the general schedule (GS) and wage board (WB) rates that will be in effect, according to current assumptions, at the time of bid opening or closing dates for receipt of best and final offers. Estimates of non-personnel costs that are based on historical information generally will be estimated by using the last 6 to 12 months of available accounting reports. Fewer than 12 months will be used only with seasonal work for which there are no significant costs for some months. Documented exceptions to this policy may be made if current cost data is not available or does not reflect a normal operating level to project CA costs. (See paragraph E-4 on documentation of the Government's in-house cost estimate.)

g. If mandated changes to inflation factors, pay rates, and other relevant factors occur after USAAA or CEAO review but before bid opening or closing date for best and final offers, then the cost data must be revised. The revisions to the original estimate should be prepared on a

separate schedule showing the revised costs and the authority for change (for example, new inflation factors or new GS pay rates transmitted by the Comptroller of the Army (COA)). The mathematical computation of these changes should then be verified by an independent party such as the FOA Audit Office/Internal Review Office. A schedule showing the revisions should be attached to the original ENG Form 4843A-R used at bid opening and delivered to the Contracting Officer. Reverification by USAAA or CEAO is not required.

h. The person preparing the estimate (or the team chief) signs and dates ENG Form 4843A-R in the "In-house Estimate Prepared By" item of the estimate. The completed estimate, supporting documents, the PWS, the management study, and the solicitation and all amendments are then provided to USAAA for review of activities involving over ten FTE or to CDR USACE (CEAO) WASH DC 20314-1000 for review of smaller activities.

3-40. Independent Review of the Government's In-House Estimate.

a. USAAA or CEAO will be notified when work begins on the Government's in-house cost estimate. The completed estimate for a single function activity must be provided to USAAA or CEAO at least 60 days before it is due to be submitted to the Contracting Officer for bid opening/conduct of the cost comparison. If the estimate is for a multifunctional activity, the estimate must be provided to USAAA or CEAO at least 120 days before it is due to the Contracting Officer for the cost comparison/bid opening.

b. The time and effort required for the independent review of a Government in-house cost estimate is determined by the auditor, taking into consideration the adequacy of the supporting documentation provided. The study team should develop a table cross-referencing the MEO and the PWS to identify any work not included in both documents. The documentation provided should be sufficient to require no additional interpretation by the independent reviewers. Therefore, the FOA should furnish, for preliminary review, the PWS, management study, ENG Form 4843A-R, and the completed CA Audit Checklist, Figure 3-6 (RCS exempt: AR 335-15, paragraph 5-2e(1)) to the regional USAAA office for studies of activities with over ten FTE, or to CEAO for studies of ten or fewer employees. The use of the Commercial Activities System (CAS) for generation of the

cost comparison form is mandatory for all studies requiring review beginning after 1 November 1986. For studies of ten and under FTE, the FOA may request a HQUSACE waiver of this requirement. The independent reviewers will schedule an audit after completing the preliminary review of the required material.

c. USAAA or CEAO substantiates the currency, reasonableness, accuracy, and completeness of costs that can be determined before bid opening. These reviewers also ensure that the Government's in-house cost estimate is based on the same PWS as is contained in the solicitation. If USAAA or CEAO notes any discrepancies not involving management decisions or interpretation in its review of the Government's in-house cost estimate, these discrepancies will be resolved with the preparer of the estimate. If the discrepancies cannot be resolved at the FOA, they are referred to HQUSACE. Correspondence on discrepancies will include only the cost elements in question, not the entire estimate. In no case will the Government's in-house cost estimate be submitted to the Contracting Officer with unresolved discrepancies that affect any of the cost elements.

d. After completing its review of the Government's in-house cost estimate, PWS, and management study, USAAA or CEAO will prepare a report noting the reviewing agency's opinion on the reasonableness of the estimated costs. The audit entity will sign the ENG Form 4843A-R and attach a signed copy of the report. The preparer of the Government's in-house cost estimate will deliver the estimate, the independent audit report, and summarized supporting data to the Contracting Officer in a sealed envelope. The estimate must be given to the Contracting Officer by the required submission date for bids or initial proposals from contractors.

e. Changes in workload and mission requirements may require changes to be made in the PWS. If so, PWS changes that cause changes in the Government's in-house cost estimate require a subsequent review by the original auditing activity.

3-41. Completion of the Cost Comparison/Initial Decision.

a. Sealed bidding and competitive negotiation.

(1) FOA will keep CDR USACE (CERM-MC) informed of the currently scheduled bid opening date/cost comparison

date at all times. HQUSACE confirms this date with the FOA one week prior to the scheduled date. FOA will inform HQUSACE the day the initial decision is made whether the outcome is to go contract or to keep the function in-house. This is accomplished by telephone (RCS exempt: AR 335-15, paragraph 5-2c(3)).

(2) An appeal may be filed under either type of procurement within the 15-day time period. If a decision of the appeal board or resolution of protests changes the cost of in-house or contract performance, the cost comparison will be recomputed. If this recomputation reverses the original decision, the directly affected parties will be given another chance to submit appeals. After all appeals and protests are resolved, the FOA will prepare the final decision documentation according to paragraph 3-55. When HQUSACE issues clearance to end the CA study, the Contracting Officer will, depending on the final decision, authorize the contractor to proceed on the conditioned award contract, or cancel the conditioned award contract or cancel the solicitation if a contract was not awarded.

(3) A complete record of the CA study will be made available to interested parties upon request. The record will be retained in the FOA files for five years or until completion of a later CA study of the activity, whichever occurs first.

(4) For studies involving DOD funded CAs, the information specified in AR 5-20 dated 20 October 1986, paragraph 4-32a(1)(a) through (h) must be supplied at the time of initial decision.

b. Sealed bidding.

(1) The sealed envelope containing the Government's in-house cost estimate will be opened and announced at the public bid opening after all bids are recorded. The cost comparison computation will be performed using the apparent low bid. The computations will be verified by a qualified person assigned to the FOA who did not take part in preparing the Government's in-house cost estimate. The Contracting Officer will announce to the interested parties the initial decision, which is subject to the evaluation of bids, to convert or remain in-house. The abstract of bids, completed cost comparison, and supporting data related to the Government's in-house cost estimate will immediately be made available to interested parties

for review. The interested parties will be informed of the appeal procedures in Section VIII of this chapter and told that they have 15 working days to submit appeals. All of these actions should take place at the public bid opening if possible. Any delay of any of these actions beyond the day of public bid opening must receive prior approval from CERM-MC.

(2) If no clearly acceptable bids are received, neither the Government's estimated cost of in-house performance computed using Appendix E nor the independent Government estimate will be revealed. The confidentiality of the Government's in-house cost estimate will be safeguarded until it is decided that no further solicitation will be issued (see paragraph 3-43 on the confidentiality of the Government's in-house cost estimate and see paragraph 3-42 on resolicitations).

(3) The final decision is reached after all appeals and protests have been resolved. The FOA will report the decision to HQUSACE per paragraph 3-55. HQUSACE will give clearance to end the CA study; the Contracting Officer will either award a contract or cancel the solicitation.

(4) The announcement procedures in AFARS 5.303 will be followed.

c. Competitive negotiation.

(1) Contracting Officers or their designees are responsible for source selection unless another official is designated as the source selection authority (see FAR 15.6).

(2) Once the source selection process is completed and all pre-award approvals and clearances required by procurement regulations have been obtained, the Contracting Officer and the preparer of the Government's in-house cost estimate will compute the cost comparison. A qualified person assigned to the FOA who did not take part in preparing the Government's in-house cost estimate will review and verify the cost comparison computations. The FOA Commander or a designated representative having authority over all activities in the CA study will approve the initial decision. Cost comparison, verification, and approval are conducted in private.

(3) There may be no acceptable proposals. If so, the Government's in-house cost estimate will not be opened. The decision to resolicit or cancel the CA study will be made according to paragraph 3-42.

(4) If the cost comparison is in favor of contract, the initial decision to award a contract will be reported to HQUSACE by telephone (RCS exempt: AR 335-15, paragraph 5-2c(3)). Besides award clearance from HQUSACE (CERM-MC), other procedures may be necessary through acquisition channels before award of a conditioned contract. These procedures must be followed before any release of information. After clearance has been provided by HQUSACE, the Contracting Officer will award a conditioned contract. As soon as the conditioned award has been made, the Contracting Officer will announce the results of the cost comparison to all interested parties. The cost comparison, supporting documents, and name of the contractor will be made available to the interested parties. They will be told that the contract award is conditioned on the outcome of the appeals process and that they have 15 working days to submit appeals.

(5) If the cost comparison is in favor of in-house performance, the initial decision will be reported to HQUSACE by telephone (RCS exempt: AR 335-15, paragraph 5-2c(3)). The Contracting Officer will announce the initial decision to the interested parties. The cost comparison and supporting documents will be made available to the interested parties according to procurement regulations. The interested parties will be told they have 15 working days to submit appeals.

3-42. Resolicitations after Unsuccessful Initial Solicitations.

a. A solicitation set aside for small business may fail to produce a responsive bid or offer from a responsible firm to compare to the Government's in-house cost estimate. If so, the solicitation should be reissued on an unrestricted basis in accordance with FAR sections 19.506 and 19.507.

b. When a responsive bid or offer from a responsible firm cannot be obtained through an unrestricted solicitation or resolicitation, FOA will assess the possibility of obtaining responsive bids through repackaging of the functions, expanded advertising, or other means to attract responsive and responsible private

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firms. The assessment may indicate that further solicitation is unwarranted. If so, FOA may request permission through channels to CDR USACE (CERM-MC) WASH DC 20314-1000 to cancel the solicitation. HQUSACE will then issue clearance to end the CA study and retain the function in-house (see paragraph 2-5b).

3-43. Confidentiality of the Government's In-house Cost Estimate.

a. Confidentiality of the Government's in-house cost estimate will be protected until the CA study is ended. If another CA study might be made within two years of the conclusion of the study in which no valid bids or offers were received, the Government's in-house cost estimate will not be released. Its confidentiality will be maintained until announcement of the initial decision and release of documents in the second study (see AR 340-17 and FOIA, section 552, Title 5, U.S.C. for additional guidance on release of information).

b. A previously studied CA may be included in a package of activities for CA study if required for economic or operational reasons. However, a new CA study should not be made until the Government's in-house cost data made public during the first study has changed enough to preclude compromising the confidentiality of the Government's in-house cost estimate and independence of commercial bids. Proposals to conduct a CA study before the fifth fiscal year must be justified in the CPAS (paragraph 3-10).

Section VIII. Appealing the Initial Decision

3-44. Appeals Procedures.

a. Who may appeal. Any interested party may appeal the initial decision made in a CA study. "Interested party" includes employees of the activity under study, unions and other employee organizations representing affected Federal employees, and bidders or offerors who responded to the solicitation.

b. How to appeal. Appeals must be in writing and are to be filed with the Contracting Officer.