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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

PROCUREMENT AND SYSTEMS ACQUISITION DIVISION

B-186072

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JUNE 13, 1979

RELEASED

The Honorable Thomas A. Luken
House of Representatives

Dear Mr. Luken:

At your request, we reviewed a study on using the Feed Materials Production Center, Fernald, Ohio, as a potential producer of depleted uranium penetrators (GAU-8/A) for the Air Force. As the study shows, several million dollars can be saved by combining production of Department of Energy (DOE) items with production of the Air Force penetrators at the Fernald facility.

The Air Force penetrators are currently produced under subcontracts awarded by the prime contractors, Aerojet Ordnance Manufacturing Company of Aerojet-General Corporation and Honeywell Defense System Division of Honeywell Inc. These prime contractors, who do some finishing work on penetrators, are primarily assemblers of about 15 components which make up the 30-millimeter ammunition used in the GAU-8/A Gun System.

DLG 01922
DLG 01923

NATIONAL LEAD'S STUDY

DLG 01921

The National Lead Company of Ohio, the operator of the facility for DOE and a subsidiary of NL Industries, Inc., prepared a study for the Air Force under the direction of DOE.

This study, dated February 15, 1978, showed that millions of dollars could be saved if National Lead could use the Fernald facility for producing the GAU-8/A penetrators. These savings are possible because the production of the penetrators can be integrated with current DOE production without proportionate increases in overhead and labor costs and with no increase in the contractor's fee. However, the contractor pointed out to the Air Force that the fee was subject to negotiation.

[Comments on ~~USING~~ See 115 Letter Report 005692 109729

PSAD-79-88
(950446)

AIR FORCE REPORT

After evaluating National Lead's study, the Air Force reported, on November 22, 1978, that based on DOE policies requiring full-cost reimbursement and restricting Government facility use, it was recommending that the GAU-8/A penetrators continue to be purchased from the private sector. The Air Force contended that, except in one category, the National Lead prices were higher than those of commercial competitors if full-cost reimbursement were required. If only incremental costs were charged, however, the Government could realize large savings if the penetrators were produced at the Fernald facility.

In its criteria for the cost study, DOE (then the Energy Research and Development Administration) instructed the National Lead staff to use full costing in producing 10 million and 20 million penetrators over a 4-year period. These penetrators were to meet Aerojet and Honeywell designs. The National Lead study also estimated production costs of the penetrators on an incremental cost basis. The full-costing concept provides for allocating to cost of penetrators a portion of the overhead and labor costs already being borne by other DOE production at the Fernald facility. The incremental cost basis provides for allocating only the additional out-of-pocket costs that would result from adding penetrator production to the existing DOE production. Stated another way, if DOE were producing the penetrators for itself, it would incur only incremental costs over and above costs already being incurred.

To support its conclusion that it would be cheaper to purchase penetrators from its commercial sources, the Air Force compared the National Lead's unit prices under the full-costing concept with estimated unit prices for Aerojet and Honeywell. The following chart compares estimated unit prices, including National Lead unit prices based on the incremental cost basis.

Comparison of Estimated Unit Prices

Quantity	National Lead		Aerojet	Honeywell
	Full cost	Incremental cost	Probable range	Probable range
(millions)				
10	$4.30	$2.29	$3.69 to $3.88	$3.27 to $3.43
20	$3.63	$1.93	$3.28 to $3.64	$2.73 to $3.10

If National Lead would produce the 10 million penetrators, its costs would be from $14.0 to $15.9 million less than Aerojet's costs and from $9.8 to $11.4 million less than Honeywell's costs. If 20 million penetrators were produced, National Lead's costs would range from $27.0 to $34.2 million less than Aerojet's costs and from $16.0 to $23.4 million less than Honeywell's costs. These savings are based on use of the incremental cost concept.

In addition, Army procurement of the penetrators for fiscal year 1979 is 60,000 units. The Army plans procurement of about 70,000 units each for fiscal years 1980, 1981, and beyond. Combining the Air Force and Army penetrator requirements, the savings could be even greater than the amounts previously discussed if the items were produced by National Lead at the Fernald facility.

Despite the potential savings to the Government, the Air Force recommended that no change be made in its current plan to continue to purchase all GAU-8/A penetrators from the private sector because (1) DOE generally restricts the use of its facilities if similar services can be obtained from private industry, (2) DOE requires that cost comparisons be made on a full-cost recovery basis, (3) on a full-cost recovery basis, National Lead's cost estimates are more than industry's cost estimates based on actual experience, and (4) private sector capability is available to produce the penetrators required by the Air Force to fill war mobilization requirements.

Also, according to the Air Force, the Department of the Army had sought to produce penetrators at the Fernald facility but gave up because of the above DOE policy restricting use of its property and the Department of Defense policy that an order shall not be placed with a Defense agency or any other Government agency when such services can be performed as conveniently or more cheaply by private contractors.

GAO COMMENTS

In our opinion, under the Air Force Arsenal Statute, 1/ the Air Force may use a Government-owned/contractor-operated

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1/10 U.S.C. §9532(a).

facility for producing its GAU-8/A depleted uranium penetrators provided that the facility can make the items economically. Also, in our opinion, DOE cannot use the Economy Act as a basis for charging the full cost of production without showing some congressional goal or policy justifying such action.

DOE's stated position for charging Air Force full cost is based on its not wishing to be a party to unfair competition with private industry. This position appears to be based on a provision of the Atomic Energy Act of 1954, as amended, 1/ requiring DOE to foster development of private enterprise in the nuclear field. Section 1b of that act declares it to be U.S. policy to strengthen free competition in private enterprise with respect to nuclear energy. However, nothing in the act or its legislative history suggests that the type of procurement involved here, that is, using DOE facilities for producing a nonnuclear product, would be in conflict with the policy on developing competition in the nuclear energy field. (See enc. I for the full text of our legal opinion.)

Another consideration is that by transferring the production of penetrators to the Fernald project, the Air Force would still be using a private company to produce the item. Also, Honeywell and Aerojet have Defense-furnished plant equipment amounting to $34.2 million and $1.5 million, respectively. Even with production of penetrators at Fernald, Aerojet and Honeywell could still continue to assemble components (at least six of which are Government furnished) into the 30-millimeter ammunition used in the GAU-8/A Gun System.

CONCLUSION

In this instance, several million dollars can be saved by producing both DOE items and the Air Force penetrators at the Fernald facility. In our opinion, the Secretary of DOE and the Secretary of the Air Force should agree to produce the penetrators at the Fernald facility at reduced costs to the Government. The Department of the Army should also obtain its penetrators from the Fernald facility. In this regard, DOE is not restricted to charging only out-of-pocket costs if it can demonstrate some recognizable goal or policy which supports a greater recovery.

1/42 U.S.C. §2011 et seq.

RECOMMENDATIONS

We recommend that the Secretary of DOE reconsider the rationale for charging Air Force the full cost for producing the penetrators. We also recommend that the Director, Office of Management and Budget, review the matter with the Secretary of DOE and the Secretaries of the Air Force and Army and arrange to produce the penetrators at the Fernald facility.

We are sending copies of this report to the Secretary of Defense; the Secretaries of DOE, the Air Force, and the Army; and the Director, Office of Management and Budget. In accordance with our policy, we also plan to distribute this report 10 days from the date of the report, or earlier if you publicly announce its contents. At that time we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,

J. H. Stolarow
Director

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B-186072-O.M.

ATTACHMENT

Use of "Full Cost Recovery" Instead of "Out-of-Pocket Cost" in Evaluating Bid Prices from Government-Owned Contractor-Operated Facilities

DIGESTS:

1. An examination of decisions of this Office and legislative history of Air Force Arsenal Statute, 10 U.S.C. §9532(a), supports view that cost comparisons required by that statute for determination whether supplies can be obtained from GOCO facilities on economical basis may be made by comparing fixed priced offers from COCO facilities with out-of-pocket cost estimates from GOCO facilities and such comparisons are not prohibited by either the Economy Act, 31 U.S.C. §686(a), or our decisions thereunder or the policies of the Atomic Energy Act of 1954, as amended.

2. Department of Energy (DOE) may neither require a full cost comparison between its GOCO facility and COCO facilities for production of Air Force penetrators nor charge Air Force full cost of such production at its facilities where it does not show congressional goal or policy justifying such actions, as required by Economy Act.

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DISCUSSION:

Use of "Full Cost Recovery" versus "Out-of-Pocket Cost" Analysis of Arsenal Statute and Related Decisions. 1/

In B-186072-O.M., June 14, 1976, we endorsed the view that the Air Force, in making a decision whether to procure items under the Air Force Arsenal Statute, 10 U.S.C. §9532(a), has discretion to use either out-of-pocket costs of a Government-owned-Contractor-operated (GOCO) operator or other than out-of-pocket costs in its cost comparison analysis. We stated at page 2 of that memorandum:

> "Similarly, the Air Force Arsenal Statute permits, but does not require the Air Force to procure from U.S.-owned plants. Under our decisions 53 Comp. Gen. 43 (1973) and B-143232, December 15, 1960, if the Air Force

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1/ In each of our prior decisions involving the Arsenal Statutes, 10 U.S.C. §§4532(a), 9532(a), we passed upon the application of those provisions to military-owned plants and facilities. See B-143232, December 15, 1960, (letters to the Chairman, Subcommittee for Special Investigations, House Committee on Armed Services, and the Secretary of Defense); 53 Comp. Gen. 40 (1973); and 57 Comp. Gen. 209 (1978). Apart from the present case, we have never been asked to pass on the application of the Arsenal Statutes to non-military owned facilities i.e., facilities owned by a civilian agency. Although there is little indication in the legislative history of the Army Arsenal Statute as to what is meant by facilities "owned by the United States," the hearings on the Air Force Arsenal Statute suggests that the statute was viewed in the context of military-owned plants and facilities. See Hearings before Subcommittee No. 2 of the House Committee on Armed Services on H.R. 399, 82d Cong. 1st Sess. 30-31, 69-71 (1951). However, the discussion in these hearings is not determinative of the interpretation of the statute. Absent any clear expression to the contrary, we believe that both Arsenal Statutes apply to non-military civilian facilities where such facilities are used for those activities contemplated under the Arsenal Statutes.

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> decides that it will procure from a Government plant under that statute, the out-of-pocket cost of doing so cannot exceed that of procuring from a commercial source. But because of the permissive nature of the Air Force Arsenal Statute, it could procure from a commercial source even if the cost of doing so exceeds the out-of-pocket cost of going to the GOCO operator. Thus, in this case, if the Air Force uses other than out-of-pocket GOCO costs as the basis for comparison, it is not violating the statute. And, inasmuch as OMB Circular A-76 is established government policy and the criteria set forth therein are virtually the only other available, we have no substantial basis for criticizing the Air Force's optional use of them." (Emphasis added.)

Under this view, use of full cost recovery for a GOCO facility in competition with contractor-owned-contractor-operated (COCO) facilities would not be mandatory under 10 U.S.C. §9532(a) where the Air Force utilizes a GOCO facility.

It should be noted, that the two decisions cited in our prior memorandum--53 Comp. Gen. 40 (1973) and a letter decision to the Secretary of Defense, B-143232, December 15, 1960--involve the Army Arsenal Statute, 10 U.S.C. §4532(a). In 53 Comp. Gen. 40, we held that where GOCO plants are operated under cost-reimbursement type contracts, precluding direct fixed price competition among GOCO and COCO sources which are operated on that basis, cost comparisons may be utilized in selecting a potential supplier under 10 U.S.C. §4532(a). In B-143232, we held that the term "economical basis," as used in 10 U.S.C. §4532(a), means at a "cost to the Government which is equal to or less than the cost if produced in privately owned facilities, and [such cost must] be computed on the basis of actual out-of-pocket cost to the Government."

We feel that our position in B-186072-O.M. is sound and can be supported by a comparison of the Army and Air

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Force Arsenal Statutes and an examination of the history of the latter legislation.

The Army Arsenal Statute, 10 U.S.C. §4532(a), provides that:

> "The Secretary of the Army shall have supplies needed for the Department of the Army made in factories or arsenals owned by the United States, so far as those factories or arsenals can make those supplies on an economical basis." (Emphasis added.)

The Air Force Arsenal Statute, 10 U.S.C. §9532(a), provides that:

> "The Secretary of the Air Force may have supplies needed for the Department of the Air Force made in factories, arsenals, or depots owned by the United States, so far as those factories, arsenals, or depots can make those supplies on an economical basis." (Emphasis added.)

The only significant difference in the terms of these two statutes is use of the word "may" in the Air Force Arsenal Statute as opposed to "shall." In explanation of this difference, we note that the organization of the Air Force at one time was based on the provisions of the National Security Act of 1947, as amended, July 26, 1947, c. 343, 61 Stat. 495, until enactment of the Air Force Reorganization Act of 1951, Pub. L. No. 82-150, Sept. 19, 1951, 65 Stat. 326, 10 U.S.C. §8010 et seq. (1970). This latter Act repealed and replaced the pertinent provisions of the National Security Act of 1947, which, among other things, had made the Secretary of the Air Force subject to the mandatory requirement of the Army Arsenal Statute. Under section 101(e) of the Air Force Reorganization Act, the word "shall" as used in the Army Arsenal Statute was replaced by the word "may," making it permissive with the Secretary of the Air Force to utilize Government-owned factories or arsenals.

The legislative history of the Air Force Arsenal Statute sheds light on the reason for this change in granting the Secretary of the Air Force such permissive

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authority. The hearings on H.R. 399, a version of a bill eventually enacted as the Air Force Reorganization Act of 1951, contains the following pertinent exchange between Chairman Vinson, and then Secretary of the Air Force, Mr. Finletter:

> "Secretary Finletter. * * *
> Now, on page 4, line 3 we are changing 'shall' to 'may,' and I would like to talk about that for one moment, if I may, Mr. Chairman, because that is a change which I think the committee will wish to consider.
>
> "As the language stood before our change, it meant that we were compelled to manufacture at Government arsenals, and so forth, all those supplies which we need which can be manufactured or produced on an economical basis at such arsenals, and so forth.
>
> "Now Mr. Chairman, we are in a period of expansion, and one of the policies that we are trying to follow out is to see to it that we have the best possible mobilization base.
>
> "For example, if factory A could do the entire job in supplying certain equipment, we do not necessarily put the entire job in factory A, but we also bring in factory B, and maybe factory C. We put them on a low-shift basis. We do not fill them to complete capacity. Now, why? Because we want to have a base from which we can expand very rapidly in time of need.
>
> "The Chairman. So that you can make it if it is practical to do it in these United States arsenals; and, if not, you have latitude.
>
> "Secretary Finletter. Yes, sir; that is what we are recommending, Mr. Chairman.
>
> "The Chairman. That is right."
> Hearings before Subcommittee No. 2 of the House Committee on Armed Services on H.R. 399, 82d Cong., 1st Sess. 30 (1951).

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The Subcommittee hearings thus demonstrate that the change in the law giving discretionary authority to the Secretary of the Air Force was made in order to support the Air Force's policy of maintaining a flexible mobilization base in time of need.

Since all significant terms other than "shall" were left unchanged in providing support for this policy, we believe that it was the intent of Congress that the same considerations with respect to such unchanged terms be applicable under the Air Force Arsenal Statute in the same manner as under the Army Arsenal Statute. Such unchanged terms include "economical basis," which Congress could easily have changed had there been a need to do so to effectuate the stated Air Force policy.

We held in B-143232, December 15, 1960, that the term "economical basis" as used in 10 U.S.C. §4532(a) means at a cost to the Government which is equal to or less than the cost of such supplies to the Government if produced in privately owned facilities, and that the statute requires the cost of production in a Government plant to be computed on the basis of actual out-of-pocket cost to the Government. Relying on B-143232, we held in a recent decision, Matter of Olin Corporation, 57 Comp. Gen. 209, B-189604, January 18, 1978, that cost comparisons required by the Army Arsenal Statute, for determination of whether supplies can be obtained from GOCO operators on an economical basis may be made by comparing fixed price offers from COCO operators with out-of-pocket estimates for GOCO operators.

Therefore, since Congress neither changed the term "economical basis" nor manifested an intention to alter the considerations involved in the application of that term, we believe that the rationale of our decisions construing that term for cost comparison purposes are applicable by analogy to determinations under 10 U.S.C. §9532(a). In this respect, we believe that where the Air Force exercises its discretion under the Arsenal Statute to make out-of-pocket cost comparisons, DOE's GOCO operator is not required to compete with COCO operators on a full cost basis, but may have its out-of-pocket cost used in evaluating its bid prices, as contemplated in the Olin case.

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Applicability of the Economy Act

DOE had earlier relied on our decision in 56 Comp. Gen. 275 (1977) in support of its position that it has discretion to require full costing as a basis of comparison between its GOCO facility and COCO facilities for production of the Air Force penetrator. In that decision, we held that administrative overhead applicable to provision of services by one Federal agency to another Federal agency is required to be included as part of "actual costs" under section 601 of the Economy Act, 31 U.S.C. §686(a). In so holding, that decision established a "full costing" requirement which required a performing agency to add together all substantial cost elements in fixing the charges for an item or service.

That decision has been modified by our more recent decision in 57 Comp. Gen. 674, B-136318, August 14, 1978. In this later decision, we state at pages 681-683 that:

> "* * * The Economy Act's overall goal is to effect economy in the Government as a whole. All that would be necessary to accomplish this would be to compute the additional costs to the agency performing the work or providing the service and permit it to execute the order when its additional costs are equal to or less than the cost of having the work or service performed or the material provided by a private source. To use a cost basis that included elements of cost that would be incurred by the agency (and hence the Government) regardless of whether the order for materials or work is placed within the Government or with a private source would distort the comparison required by 31 U.S.C. §686. When a cost comparison between procurement from a private source and procurement from another Government agency is made on this basis--including in the cost of procurement within the Government elements of indirect cost which

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will be incurred regardless of where the order is placed--it is hard to conceive how economy would be effected by placing the order with the private source; in addition to the cost of the private procurement, the Government would then still incur all indirect costs not affected by receipt or non-receipt of the order. In such a situation the amount of money available for carrying out the various purposes for which appropriations are available is reduced and, in the end, while the total outlay by the Government might not be increased, the total amount of goods or services acquired for the money available is reduced.

"The Economy Act clearly requires the inclusion as actual cost of all direct costs attributable to the performance of a service or the furnishing of materials, regardless of whether expenditures by the performing agency were thereby increased. Otherwise, the performing agency would be penalized to the extent that its funds are used to finance the cost of performing another agency's work, while the requisitioning agency's appropriations are augmented to the extent that they now may be used for some other purpose.

"For the same reasons, certain indirect costs are recoverable as actual costs. However, for the reasons given below, only those indirect costs which are funded out of the performing agency's currently available appropriations and which bear a significant relationship to the performing of the service or work or the furnishing

of materials are recoverable. To be recoverable, indirect costs must be shown either actually or by reasonable implication, to have benefited the requisitioning agency, and that they would not otherwise have been incurred by the performing agency. If an item of indirect cost does not bear a significant relationship to the service or work performed or the materials furnished, and is not furnished from currently available appropriations, it should not be included as an element of actual cost for the purposes of 31 U.S.C. §686 (absent some other overriding consideration). Recovery in these circumstances would not restore to the performing agency amounts which it expended on the requisitioning agency's work which it would otherwise have expended on its own work and hence would not serve the statutory purpose of preventing the performing agency from being financially penalized for transactions under 31 U.S.C. §686. Recovery for such items of indirect cost--normally small in relation to direct costs--would probably have minimal impact on the decision of the performing agency to agree to perform the work or services or furnish the material involved and thus would have minimal impact in accomplishing one of the goals Congress sought to be achieved in adopting the Economy Act.

"Furthermore, recovery and retention of such indirect cost items by the performing agency would augment the performing agency's appropriation since, in fact, these cost items had not financed the service, work or material. Thus, unless otherwise necessary to accomplish some

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> recognizable goal or policy, billings under the Economy Act to requisitioning agencies should not include items of indirect cost which are not significantly related to costs incurred by the performing agency in executing the requisitioning agency's work and are not funded from currently available appropriations." (Emphasis added.)

This decision establishes the rule that both cost comparisons and billings under the Economy Act should not include items of indirect costs which are not significantly related to costs incurred by a performing agency and which are not funded from currently available appropriations, unless otherwise necessary to accomplish some recognizable congressional goal or policy.

DOE asserts that such a policy may be found in the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2011 et seq., the basic authority of DOE's predecessor agencies, the Atomic Energy Commission (AEC) and the Energy Research and Development Administration (ERDA). DOE states that that policy requires it to foster the development of private enterprise in the nuclear field. While we note that section 1b of the Act declares it to be the policy of the United States to strengthen free competition in private enterprise with respect to nuclear energy, the production of the penetrators in this case involves use of only depleted uranium which is not radioactive and does not produce nuclear energy in any form. We have found nothing in the Act or its legislative history to suggest that the type of procurement involved here for production of nonnuclear items would be in conflict with the policy on development of competition in the nuclear energy field. Therefore, we do not believe that this policy of the Atomic Energy Act supports DOE's position in this case.

Since DOE has not demonstrated a convincing policy interest in making a full cost comparison between its GOCO facility and COCO facilities, such a comparison would be improper under the Economy Act as including unjustified indirect costs.

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For these same reasons, we believe that DOE could not require reimbursement on a full cost basis under the Economy Act if it were selected to produce the penetrator for the Air Force. 2/ Our decision in 57 Comp. Gen. 674 (1978) clearly provides that a requisitioned agency should not be reimbursed for indirect costs for work done where no recognizable congressional policy can be shown to justify such reimbursement.

It should be pointed out, however, that section 649(b) of the Department of Energy Organization Act, 42 U.S.C.A. §7529(b), grants broad discretion to DOE to charge government agencies and private parties for use of its facilities, and provides that:

> "(b) In carrying out his functions, the Secretary, under such terms, at such rates, and for such periods not exceeding five years, as he may deem to be in the public interest, is authorized to permit the use by public and private agencies, corporations, associations, or other organizations or by individuals of any real property, or any facility, structure, or other improvement thereon, under the custody of the Secretary for Department purposes. The Secretary may require permittees under this section to recondition and maintain, at their own expense, the real property, facilities, structures, and improvements

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2/ Regulations governing the use of ERDA (now DOE) facilities, equipment and personnel in the performance of reimbursable work done by ERDA for other Federal agencies were contained in ERDA Manual ERDAM 0214, April 22, 1975, as supplemented. Under Part IA.1 of Appendix 0214, ERDA's use of its facilities in the performance of such work was subject to the requirements of the Economy Act. Section 0214-058 of those regulations stated in that regard that generally, charges for such services were to be on an "actual cost" basis. There are no regulations promulgated under 10 U.S.C. §9532(a).

> involved to a satisfactory standard. This section shall not apply to excess property as defined in 472(e) of Title 40." (Emphasis added.)

If section 649(b) were considered applicable to DOE's production of the penetrators in this case, the determination to charge the Air Force full costs under that provision would have to be made "in the public interest." Thus, DOE would still have to show that some congressional goal or public policy existed to justify such full cost reimbursement.

[GAO note: Names deleted.]

JUNE 14, 1976

Memorandum of Record

[See GAO note p. 12.]

Cost Comparisons Between National Lead of Ohio (GOCO Operator) and Commercial Firms, GAU-8/A Penetrator (B-186072)

This is in reply to a request by Mr. Bensen of your office for our views in connection with the work you are doing on the subject cost comparison. We were requested to address (1) the legal memo submitted by NLO's (the GOCO Operator) attorney, including the question of whether GAO decision B-175703 (July 23, 1973) applies to this matter, and (2) whether cost estimates for work done by GOCO facilities may or may not include other than out-of-pocket costs when being compared to cost estimates from private industry.

We have reviewed the NLO legal memo, and the cited materials therein. The thrust of the memo is that the Air Force may not impute to the GOCO operator those cost elements discussed in OMB Circular A-76. We cannot agree with that conclusion.

We agree that OMB Circular A-76 does not apply to GOCO facilities; in other worlds there is no requirement that its terms be applied to this situation. That is clear both from A-76 itself, and our 1973 decision. That is not to say, however, that the Air Force cannot use the imputed cost factors outlined in A-76 in making its decision whether to go to NLO or private commercial firms. We believe that it may, if it so chooses. If it does so, we have no basis for saying that the comparison is in violation of law.

It is important to note that the Air Force is not required to utilize the GOCO facility, even if it is cheaper (by whatever cost standard) than private commercial sources, either under the Economy Act (31 U.S.C. §686) or the Air Force Arsenal Statute (10 U.S.C. §9532). This is unlike the situation under the Army Arsenal Statute (10 U.S.C. §4532(a)), discussed in our decision B-175703.

Thus, the Economy Act permits, but does not require the Air Force to obtain the desired material from ERDA. Noteworthy here is the DOD policy, expressed in section 5-701 of the Armed Services Procurement Regulations, "not to place Government agencies in direct competition with commercial sources."

Similarly, the Air Force Arsenal statute permits, but does not require the Air Force to procure from U.S.-owned plants. Under our decisions 53 Comp. Gen. 43 (1973) and B-143232, December 15, 1960, if the Air Force decides that it will procure from a Government plant under that statute, the out-of-pocket cost of doing so cannot exceed that of procuring from a commercial source. But because of the permissive nature of the Air Force Arsenal statute, it could procure from a commercial source even if the cost of doing so exceeds the out-of-pocket cost of going to the GOCO operator. Thus, in this case, if the Air Force uses other than out-of-pocket GOCO costs as the basis for comparison, it is not violating the statute. And, inasmuch as OMB Circular A-76 is established government policy and the criteria set forth therein are virtually the only ones available, we have no substantial basis for criticizing the Air Force's optional use of them.

I hope this meet your needs. If we may be of any further help, please let us know.

cc:

[See GAO note p. 12.]

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