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Santa Barbara Applied Research Inc. Loses Air Force Insourcing Challenge

By Martin Bricketto

Law360, New York (May 2, 2011) -- The U.S. Court of Federal Claims on Friday ruled against Santa Barbara Applied Research Inc. in its lawsuit challenging a U.S. Air Force decision to insource logistics and other services at several military bases.

In a sealed ruling, Judge Nancy B. Firestone granted the government judgment on the administrative record, despite SBAR's protests that the Air Force's reaffirmed decision to insource services under a so-called multiwing logistics support contract wasn't based on cost savings but was "a retroactive attempt to justify a fait accompli."

Before any analysis was conducted, the Air Force in 2009 deleted \$304 million from the contract budget of the Air Force Space Command, which oversees the bases, and increased its civilian pay account by that same amount as part of a broader military insourcing initiative, SBAR said in its April 15 motion for judgment on the administrative record.

The MWLS contract was a convenient target because the budget cut made it difficult to fund, SBAR argued.

"This 'ready, fire, aim' approach to insourcing decisions has led to a [reaffirmation decision] that is arbitrary on its face," SBAR said in its motion.

The government filed its own motion seeking dismissal or judgment on the administrative record on April 21.

"Contrary to SBAR's allegations, the record demonstrates that, after extensive analysis, the Air Force made a reasonable, good-faith determination that the insourcing is likely to save the Air Force money and, thus, decided to reaffirm the initial decision to insource," the government said.

Additional information about the ruling was not immediately available on Monday, and representatives for the parties did not immediately return requests for comment.

The insourcing decision covered eight Air Force bases and another location within the AFSPC for which SBAR provided services such as logistics, refueling and supplies under the MWLS contract.

But SBAR contended it was only challenging the decision with respect to four bases — Patrick, Peterson, Schriever and Vandenberg, according to court documents. The company initially filed suit in February, after four other bases — Minot, Malmstrom, FE Warren and Buckley — had been converted.

Noting significant data and errors calculations, the Air Force opted to reconsider its insourcing decision shortly after the litigation started, but it included all nine locations in a new cost-comparison analysis, not just the four bases SBAR said it was contesting, court documents say.

The government on April 5 again decided to insource the entire, nonfuels portion of the MWLS contract at an estimated savings of \$8.8 million, according to court documents.

Among other allegations, SBAR said in its motion that the decision to include the other bases in the analysis arbitrarily increased the gap between the in-house and contract approaches, arguing that, based on the government's own numbers, insourcing at the four bases at issue only saves \$1.2 million over five years.

SBAR further argued that the government arrived at those "minuscule purported 'savings'" through a series of errors that artificially lowered the projected in-house cost and increased the projected contractor cost.

In its motion, the government said the decision to include all the bases in the cost re-evaluation was rational because the original decision covered the insourcing of the entire nonfuels portions of the MWLS contract, "regardless of whether certain individual locations showed that contractor performance was cheaper."

The government also noted instances in the litigation of SBAR challenging insourcing calculations at the previously converted bases.

"Accordingly, since SBAR was challenging the cost calculations at bases that had already been insourced, it was prudent for the Air Force to re-evaluate these calculations as well, to ensure that the decision to insource the entire nonfuels portion of the MWLS contract was correct," the government said.

The U.S. Department of Justice declined to comment on the case.

Wiley Rein LLP represents SBAR.

The case is Santa Barbara Applied Research Inc. v. USA, case number 1:11-cv-00086, in the U.S. Court of Federal Claims.

--Editing by John Williams.
