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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Career Quest, a division of Syllan Careers, Inc.

File: B-293435.4

Date: March 31, 2005

Darcy Hennessy, Esq., Moore Hennessy & Freeman, PC, for the protester.
John E. Cornell, Esq., General Services Administration, 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

Protest raising various challenges to agency's conduct of a cost comparison study pursuant to Office of Management and Budget Circular A-76 is denied where record shows that preparation of agency's most efficient organization, and evaluation thereof, were reasonable and consistent with solicitation's performance work statement and applicable guidance.

DECISION

Career Quest, a division of Syllan Careers, Inc. (CQ) protests the General Services Administration's (GSA) determination that it would be more economical to continue to perform services in-house at the agency's National Customer Support Center for Federal Supply Schedule users (NCSC) than to contract for the services with CQ under request for proposals (RFP) No. TFTP-MN-03-R-0001, issued pursuant to Office of Management and Budget (OMB) Circular A-76.¹ CQ maintains that the agency's cost comparison improperly failed to account for all of the costs that will be required for in-house performance.

We deny the protest.

This is the second occasion where we have considered GSA's actions in connection with this A-76 cost comparison study. The agency announced in August 2002 that it

¹ The procedures applicable for determining whether the government should perform an activity in-house or by a contractor are set forth in OMB Circular A-76 and that Circular's Revised Supplemental Handbook (RSH) (March 1996). Although the Circular was revised in May 2003, that revision was not applicable to this cost comparison.

would perform an A-76 study regarding its NCSC operations and, pursuant to that announcement, issued the RFP in April 2003. In response to the solicitation, the agency received three proposals, two of which were found to be in the competitive range. After engaging in discussions with the competitive range offerors and obtaining final proposal revisions, GSA selected CQ's proposal as the private sector proposal offering the best overall value to the government. The agency then performed its cost comparison and determined that performance in-house by the agency's most efficient organization (MEO) would cost \$11,604,402, compared to an evaluated cost of \$12,501,638 for contracting with CQ.² Agency Report (AR), exh. 51, at 1. The agency concluded that it would save \$897,236 by keeping the requirement in-house. *Id.* CQ appealed the matter to the agency appeal authority (AAA), which affirmed GSA's decision to keep the requirement in-house (although in so doing it added \$327,000 to the MEO's cost of performance, increasing it to \$11,931,402, which was still \$570,236 less than the evaluated cost of contracting with CQ).

CQ then protested to our Office, maintaining that the agency had improperly failed to account for all of the costs of performing the requirement in-house. In the course of that protest, the agency conceded several issues that it maintained would have added \$324,968 to the cost of in-house performance; the agency nonetheless maintained that the cost of in-house performance continued to be less expensive than CQ's evaluated cost by \$245,268. We sustained CQ's protest, however, finding that there were two issues that could potentially affect the outcome of the cost comparison. Career Quest, a division of Syllan Careers, Inc., B-293435.2, B-293435.3, Aug. 2, 2004, 2004 CPD ¶ 152. First, the record showed that there was an apparent discrepancy between the number of full-time equivalents (FTE) accounted for in the MEO technical performance plan (TPP) (38.5 FTEs) versus the cost calculations for the MEO (34.5 FTEs). This discrepancy had a potential cost impact of \$1,236,524 in upward adjustments to the cost of in-house performance, and therefore could have resulted in the cost of in-house performance being higher than CQ's evaluated cost. *Id.* at 2-4. Second, we found an apparent inconsistency in that the MEO TPP had referenced a particular American National Standards Institute/American Society for Quality (ANSI/ASQ) standard for purposes of meeting the PWS's quality control call monitoring requirement, but the MEO appeared not to have included adequate staff to perform in accordance with that standard; again, the cost of additional personnel necessary to meet the standard could have affected the outcome of the cost comparison. *Id.* at 4-5. Accordingly, we recommended that the agency obtain clarification or revision of the MEO's intended level of staffing (including quality control personnel), reevaluate the MEO's TPP to determine whether it included staffing adequate to meet the performance work statement (PWS) requirements,

² The total evaluated cost for CQ includes the addition of a one-time conversion differential of 10 percent of the MEO's personnel cost. A-76 RSH, part II, at 28. In this instance, the conversion differential amounted to the addition of \$895,139 to CQ's evaluated cost. AR, exh. 51, at 1.

perform a new cost comparison, and award a contract to CQ if its evaluated cost was found to be lower than the MEO's cost estimate.

In response to our decision, GSA sought and obtained a revised TPP and cost estimate from the MEO. For purposes of this protest, two considerations are relevant. First, the MEO adjusted and clarified its TPP and cost estimate so that both unequivocally reflected a staffing level of 34.915 FTEs. Second, the MEO removed the reference to the ANSI/ASQ standard previously included in its TPP as it related to conducting the quality control call monitoring function, and clarified that it intended to perform the requirement with only one quality control FTE. Based on these clarifications, the agency conducted another cost comparison, and again determined that the cost of in-house performance would be less than CQ's evaluated cost. Specifically, the agency found that performance of the requirement in-house would be \$633,877 less costly than CQ's evaluated cost. Agency Report (AR), exh. 54, at 4. This protest followed the agency's announcement of its decision to retain the function in-house.

REVISION OPPORTUNITY

CQ asserts that the MEO should not have been afforded an opportunity to revise and clarify its TPP and in-house cost estimate in response to our initial decision. According to the protester, this opportunity essentially provided the MEO with "two bites at the apple," and was fundamentally unfair because the MEO knew CQ's staffing and cost information at the time it revised its TPP and cost estimate. CQ asserts that, at minimum, CQ should have been afforded the same opportunity.

Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (2004), require protesters to file within 10 days of when they knew or should have known of their basis for protest. Our prior decision contained the express recommendation that the agency obtain revision or clarification of the MEO's staffing levels generally, and also, more specifically, to have the TPP revised or clarified as it pertained to meeting the quality control aspect of the PWS.³ Accordingly, at the time we issued our decision, the protester knew or should have known that the agency might obtain revisions to the TPP without seeking revisions from CQ. CQ therefore was required to file any objection that it may have had within 10 days of receiving our previous decision.

³ The protester has made much of the specific language included in our recommendation, maintaining that we recommended only that the agency clarify, as opposed to obtain revisions of, the TPP. While the protester is correct regarding the wording of the recommendation portion of our decision, elsewhere in the decision, we specifically stated "we recommend that the agency reopen the acquisition and obtain TPP revisions or clarifications from the MEO . . ." Career Quest, a division of Syllan Careers, Inc., *supra*, at 5 n.5. Thus, it was clear from our decision that the agency could permit revisions to the TPP.

Since CQ did not submit its protest on this basis within the required 10-day timeframe, it is untimely and will not be considered.

QUALITY CONTROL STAFFING

CQ asserts that the MEO does not include adequate staffing to meet the quality control call monitoring aspect of the PWS. As noted in our prior decision, the MEO originally proposed a particular ANSI/ASQ standard as the basis for establishing the number of calls that would be monitored per month for quality control purposes, and we found that the MEO's staffing appeared inconsistent with this standard—the standard would have required the MEO to monitor approximately 10 times the number of calls that the MEO stated would be monitored in its TPP. In response to our decision, the MEO modified its TPP to eliminate the ANSI/ASQ standard as the basis for its call monitoring quality control, and essentially kept its staffing unchanged (1 FTE) from the prior TPP.⁴ CQ asserts that this staffing is insufficient to meet the PWS requirements for an effective quality control program.

We have no basis to object to the sufficiency of the MEO's staffing in this area. While the solicitation required a quality control plan that includes a call monitoring program, AR, exh. 2, at 8; AR, exh. 7, technical exhibit (TE) 1-002, nothing in the solicitation required that a particular quality control standard be used, or that any particular quantity of call monitoring be performed. The evaluators were aware of the elimination of the reference to the ANSI/ASQ standard from the revised TPP for purposes of performing call monitoring, and nonetheless concluded that the MEO's proposed quality control program and staffing were adequate to meet the requirements of the solicitation. AR, exh. 55, at 1-2. Additionally, the agency's independent review officer (IRO) reviewed the sufficiency of the MEO's proposed staffing against the requirements of the PWS, and concluded as follows:

The revised in-house cost estimate was based on the workload requirements stated in the performance work statement. In our opinion, the estimate[d] in-house costs were based on the workload requirements prescribed in the performance work statement, and the revised in-house estimate was generally prepared in accordance with OMB Circular A-76[,] and in conformity with that guidance[,] provide[s] a reasonable estimate of government cost.

AR, exh. 56, at 2. While CQ proposed more staffing than the MEO for call monitoring, this was a business judgment and does not establish that the MEO's staffing level was inadequate. Given the absence from the PWS of any specified

⁴ The TPP continues to use the ANSI/ASQ standard as the basis for establishing other aspects of the quality control program such as the inspection of data entries made by employees.

staffing level for call monitoring and the elimination of the ANSI/ASQ standard from the MEO TPP (as well as the corresponding resolution of the apparent staffing inconsistency identified in our prior decision), we have no basis to object to the agency's conclusion that the MEO's call monitoring program staffing is sufficient to meet the PWS.

CALL CENTER STAFFING

CQ asserts that the MEO does not include adequate staffing to meet the PWS's NCSC call center operations requirement. According to the protester, while the MEO's staffing may be marginally adequate to meet the number of calls coming in during the center's 11-hour operating day, it will be inadequate to meet surge and peak volumes.

We have no basis to object to the agency's conclusion that the MEO proposed adequate staff to perform call center operations. The PWS contained detailed information regarding the workload of the call center, in terms of both volume and types of calls. AR, exh. 7, TE 5.1-002. The PWS also included information presented in a variety of formats relating to the effectiveness of call center operations at various prior points in time, AR, exh. 7, TE 5.1-012, 5.1-013; the data in these exhibits are expressed principally as averages (such as the average time to answer a call, the average duration of a call and the average number of staff positions at given points in time). The record shows that the MEO chose not to use historical methods for assigning staff to the call center operation, and instead established its proposed staffing based primarily on its independent analysis of the workload at the call center. The MEO's analysis included direct staff observations, an analysis of staff work logs, and a technical analysis based on staff surveys. AR, exh. 42, at 10-12. The MEO then prepared a "grid staffing analysis" that first divided each work day into hour-long segments and then arrived at an average number of staff hours required for each hour of the center's business day. *Id.*; AR, exh. 57, at app. G-1. Referring to this analysis, the MEO assigned its staffing based on the number of FTEs that would be required to provide the average staff hours required for each hour of call center operations (with the number of staff performing call center operations varying depending upon the hour of the day and day of the week). AR, exh. 57, at app. G-2.

Both the agency's source selection evaluation board and the IRO determined on the basis of the information presented in the TPP that the MEO staffing was adequate. AR, exhs. 55, 56. We think this conclusion was reasonable. As with the quality control staffing discussed above, the PWS did not specify a particular required level of call center staffing; rather, competitors were left to determine the best means of satisfying the PWS. The MEO's methodology for calculating the necessary staffing appears reasonable; the MEO was focused on ensuring that there would be sufficient staffing, on average, to meet the demand that it charted in its studies, which is consistent with the data presented in the PWS relating to the call center workload. While CQ asserts that the MEO's staffing is inadequate to meet peak or surge

demand situations, the fact of the matter is that the data in the PWS were presented in terms of averages; consistent with that information, the MEO proposed staffing adequate to meet the average demand outlined in the PWS. (In fact, there was no peak or surge information even included in the PWS.) We therefore have no basis to object to the agency's finding that the MEO's proposed staffing for call center operations was sufficient.

UNDERSTATED HOURS FOR CERTAIN PERSONNEL

CQ asserts that, in several instances, the MEO improperly reduced its cost by omitting hours for certain personnel.⁵ By way of example, CQ challenges the MEO's calculation of its in-house cost for the program management officer, maintaining that the MEO improperly attributed only .046 of an FTE for his time to the in-house cost estimate; according to the protester, the MEO should have allocated at least .5 of an FTE for this individual. In support of its position, CQ notes that this individual has numerous duties specified in the MEO's TPP that, CQ maintains, cannot possibly be performed in the allotted time.

This aspect of the protest is without merit. To the extent that the MEO attributes only partial FTEs to certain positions, it appears that those partial FTEs reflect the amount of time necessary for those positions to perform their PWS functions under the MEO TPP. For example, the record does not support CQ's position regarding the

⁵ Underlying CQ's assertions in this respect is an argument that these hours were omitted by the MEO through its calculation of activities performed by various personnel that were determined to be inherently governmental, or "governmental in nature" (GIN); CQ seems to suggest that the MEO first determined the staffing necessary to meet the PWS, and then reduced the staff hours used to calculate the MEO's cost estimate by hours deemed necessary to perform functions that are GIN. This is incorrect. Office of Federal Procurement Policy (OFPP) Policy Letter 92-1 (September 23, 1992) addresses in detail the question of how to determine those organizational functions susceptible to contracting out versus those which are GIN functions. That guidance requires agencies to establish, prior to the issuance of a solicitation for a cost comparison study, whether the functions being considered for contracting out are GIN functions and, if so, further requires their exclusion from the cost comparison study. Circular A-76 RSH, at 55-59. This results in the PWS being limited solely to the functions covered by the cost comparison study. Id.

The record shows that, consistent with this guidance, the agency arrived at its determination regarding which functions could potentially be contracted out (that is, not GIN) during the preparation of the management study leading up to the issuance of the PWS, AR, exhs. 46, 48, 49, and that the GIN functions were established before the MEO was certified, reviewed by the IRO, and submitted to the contracting officer. AR, exh. 27.

duties of the program management officer. Specifically, CQ's argument in this regard was presented during the prior protest, and the MEO made changes to its TPP that significantly altered the duties of the program management officer. Under the earlier version of the TPP, the program management officer was to serve, for example, as the phase-in team leader for the MEO, AR, exh. 28, at TPP-6, while under the current version of the TPP, the program management officer has only very limited planning activities for the phase-in period. AR, exh. 57, at TPP-6. Indeed, under the earlier TPP, the program management officer was specified as one of the MEO's key personnel with significant responsibilities, AR, exh. 28 at TPP-13, whereas under the current TPP, the program management officer is specifically excluded from the MEO's list of key personnel, with the TPP stating:

For the sake of clarity, the Program Management Officer (PMO) position has been removed as a key position. The reasoning is that only a very small portion of the PMO's activities are contractible and therefore related and attributable to the MEO and its costs. The few contractible activities are: 1) Subcontract Management, 2) Personnel-related for 3 staff, 3) Interacting on a periodic basis with the quality control analyst. The MEO was directed to make this position a direct report to the PMO despite the fact that operationally, the Quality Control Analyst will frequently and almost entirely interact with other MEO staff.

AR, exh. 57, at TPP-13. In light of these changes, we find that the protester's arguments no longer reflect the staffing profile of the MEO. We conclude that there is no basis for finding that the hours or cost of the program management officer, or any other proposed position in the MEO, have been understated for the reasons asserted by the protester.

BIAS

CQ asserts that the contracting officer improperly has favored the MEO throughout the cost comparison. In support of this aspect of its protest, CQ refers to a litany of events (some of which are discussed above, others of which were discussed in our prior decision) that have occurred during the various agency appeals and protests to our Office. Where a protester alleges bias on the part of contracting officials, it must present credible evidence that clearly demonstrates bias. See Wilcox Indus. Corp., B-281437.2 et al., June 30, 1999, 99-2 CPD ¶ 3 at 4. CQ's protest does not meet this standard. Rather, CQ merely points to events--such as the agency's acceptance of the MEO's staffing in the quality control call monitoring program in light of the MEO's decision to remove any reference to the ANSI/ASQ standard--and concludes

that they were motivated by bias; we have found that the agency's evaluation conclusions in this area were reasonable. We conclude that there is no showing of agency bias here.

The protest is denied.

Anthony H. Gamboa
General Counsel