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Comptroller General
of the United States

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Decision

Matter of: BAE Systems Technical Services, Inc.

File: B-293070

Date: January 28, 2004

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Crowell & Moring, for the protester.

Philip Adams, Esq., and Kevin A. Storey, Esq., Department of the Navy, for the
agency.

Glenn G. Wolcott, Esq., and Michael R. Golden, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

In competition conducted pursuant to Office of Management and Budget Circular A-76, where in-house cost estimate (IHCE) for performance by the government's most efficient organization (MEO) fails to include costs for various performance work statement (PWS) requirements, and the additional costs required for the MEO to meet all PWS requirements are greater than the marginal difference between the protester's evaluated cost and the IHCE, General Accounting Office recommends that agency award a contract to the protester based on its lower-cost proposal.

DECISION

BAE Systems Technical Services, Inc. protests the Department of the Navy's decision, pursuant to Office of Management and Budget (OMB) Circular A-76, that it would be more economical to perform retail supply operations for the Fleet Industrial Supply Center (FISC) at Jacksonville, Florida, in-house, rather than to contract for these services with BAE under request for proposals (RFP) No. N68836-03-R-0001.¹ BAE challenges the agency's decision on the basis that, in its

¹ The procedures applicable here for determining whether the government should perform an activity in-house, or have the activity performed by a contractor, are set forth in OMB Circular A-76, and that Circular's Revised Supplemental Handbook (RSH) (March 1996), which have been made applicable to the Department of Defense and its military departments and agencies. 32 C.F.R. § 169a.15(d)(2003). Although the Circular and RSH were revised in May 2003, those revisions were not applicable to this competition.

cost comparison determination, the agency failed to consider all of the costs that will be required for in-house performance of the competed requirements. Among other things, BAE protests that the cost estimate for in-house performance fails to reflect the costs associated with the solicitation's minimum staffing requirements for the FISC facilities at Mayport and Key West, Florida.

We sustain the protest.

BACKGROUND

In July 2000, the agency announced that it would perform an A-76 commercial activities study regarding 192 positions associated with the FISC retail supply operations for the southeastern United States.² Pursuant to the study, the agency issued the RFP in March 2003, seeking private-sector proposals for a base contract period and four 1-year option periods.³

The solicitation incorporated a Performance Work Statement (PWS) that identified all activities the service provider (SP) will be required to perform--regardless of whether the SP is a private-sector contractor or the government's MEO--and identified various locations where performance must take place, including: Mayport, Key West, and Jacksonville, Florida; Corpus Christi, Kingsville, and Ingleside, Texas; and Charleston, South Carolina. Functions to be performed include warehouse operations, material delivery, customer service, inventory management and program management. The PWS also provided technical exhibits containing historical workload data, by functional area, for each of the various locations; however, the PWS expressly cautioned that this functional workload data was provided only to assist in proposal preparation and "shall not be a limiting factor on the SP's obligation to perform all services described in this PWS to the required level of effort." Agency Report, Tab 3, PWS, at 6.

The PWS listed the normal operating hours at the various facilities, including those at Mayport and Key West, and stated:

The SP shall provide the full range of services during the hours indicated.^[4] This requirement shall not be satisfied by the use of

² The number of positions was subsequently reduced to 148.

³ Private sector offerors were advised that the agency intended to select the lowest-cost technically acceptable proposal to compete against the government's most efficient organization (MEO).

⁴ The operating hours for the Mayport facility were listed as 7:00 a.m. through 4:00 p.m., Monday through Friday; that is, 9 hours per day. The operating hours for
(continued...)

recording devices, pagers or other remote methods unless otherwise specified in C-5⁵. . . . Normal hours of operation represent the minimum standard for system and customer support.

Agency Report, Tab 3, PWS § C.1.10.1, at 10.

In short, the PWS required that the SP provide on-site staff at the Mayport and Key West facilities for a minimum of 2,250 and 2,125 hours per year, respectively,⁶ and expressly precluded “remote methods” of performance.

On or before the July 16 closing date, the agency received proposals from two private-sector offerors, including BAE;⁷ these proposals were subsequently evaluated and discussions were conducted with each offeror. With regard to staffing the Mayport facility, BAE’s initial proposal provided a full time, on-site supply technician for the base contract period, but proposed to eliminate that position in the option periods. By letter dated August 8, 2003, the agency opened discussions with BAE, stating:

(...continued)

the Key West facility were listed as 7:30 a.m. through 4:00 p.m., Monday through Friday; that is, 8½ hours per day. Agency Report, Tab 3, PWS § C.1.10.1, at 10.

⁵ Section C-5 of the PWS does not provide any exception to the prohibition regarding remote methods of performance at the Mayport or Key West facilities.

⁶ As calculated by the protester, and not challenged by the agency, the minimum total operating hours per year for the Mayport and Key West facilities are as follows:
5 (days per week) x 52 (weeks per year) = 260 (days per year) - 10 (federal holidays)
= 250 (days per year) x 9 or 8 ½ (hours per day for Mayport or Key West, respectively) = 2,250 and 2,125 (hours per year).

⁷ Prior to this time, the government submitted its management plan for its most efficient organization (MEO), Agency Report, Tab 11 (3030); its technical performance plan (TPP), Agency Report, Tab 11 (3040); and its in-house cost estimate (IHCE), Agency Report, Tab 11 (3080).

The following deficiencies were identified . . .

Proposal eliminates supply technician position at Mayport in Year 2 and on, but does not explain how the workload will be accomplished.

Agency Report, Tab 20, at 1.

Subsequently, the agency conducted oral discussions with BAE, during which BAE was advised that its proposal to eliminate staffing at Mayport “didn’t comply” with the PWS requirements. Hearing Transcript (Tr.) (Dec. 10, 2003) at 69.⁸ At the GAO hearing, BAE’s vice president for administration and finance testified that, during oral discussions, BAE personnel explained to the agency that BAE “wanted to consolidate Jax [Jacksonville] Central with Mayport because of the—small amount of work that was being done at Mayport.” Tr. (Dec. 10, 2003) at 73. This witness further testified that the agency advised BAE during discussions that its proposed approach to performing the Mayport requirements was not acceptable and that, based on these discussions, BAE concluded: “We had to go back and add staffing. We had to cover these operating hours [called] out in the solicitation. We had to man and be ready at all times for anybody to walk in the door during these nine hours of [the] day.” Tr. (Dec. 10, 2003) at 73-74.

Following discussions, the agency sought revised proposals from both private-sector offerors. Based on the directions provided during discussions, and consistent with the PWS’s stated requirements, BAE increased its proposed staffing for the Mayport facility to reflect 2,250 annual hours to be performed on-site at that facility.⁹ Thereafter, the agency evaluated BAE’s proposal as technically acceptable;¹⁰ BAE’s proposal offered a lower cost than that of the other private-sector offeror and was selected for comparison to the government’s IHCE.

⁸ In resolving this protest, GAO conducted a two-day hearing, during which testimony was provided by six witnesses: the agency’s contract specialist, contracting officer, MEO manager, administrative appeal authority, and independent review officer, and the protester’s vice president for administration and finance.

⁹ BAE’s final revised proposal also included the costs for 2,125 staff hours to be performed on-site at the Key West facility.

¹⁰ The agency summarized BAE’s final proposal as follows: “BAE’s price proposal clearly outlined the direct labor and burden rates, by sites and supported the Section B prices. The proposed manpower, 71 FTE[,] was consistent with the proposed labor categories, rates and hours found in the price element summary. Their manning approach, involving cross training, cross-utilization and combining multiple functions, was found adequate to support this requirement.” Agency Report at 9.

On August 15, the agency conducted the cost comparison between BAE's evaluated cost and the MEO's IHCE. After adding a required "conversion differential" to BAE's proposal,¹¹ the cost associated with BAE's proposal for comparison purposes was \$18,907,297; the MEO's IHCE was \$18,655,789—a difference of \$251,508. Agency Report, Tab 26(2), at 11. On August 20, the agency announced that it intended to retain performance of the PWS requirements in-house.

Thereafter, BAE was given an opportunity to review the MEO documents. This review revealed that the MEO did not include any on-site staff at the Mayport facility, and included costs for only 446 annual hours (to be performed by Jacksonville personnel) to perform the functional requirements directly related to the Mayport facility.¹² Agency Report, Tab 11 (3040), at 13. BAE's review also revealed that the IHCE only included costs for 1,421 hours to staff the Key West facility.

On September 12, BAE filed an appeal with the Navy's administrative appeal authority (AAA), identifying 17 specific areas of the MEO's IHCE that BAE believed were inconsistent with the PWS requirements and/or reflected costs that were erroneously calculated. Agency Report, Tab 24. BAE's appeal specifically included assertions that the MEO failed to comply with the PWS staffing requirements for the Mayport and Key West facilities.¹³

¹¹ Under the A-76 cost comparison procedures, a 10-percent conversion differential is added to the private sector's proposed personnel costs in order to "ensure that the Government will not convert for marginal estimated savings." OMB Circular A-76, Revised Supplemental Handbook, Part II, Ch. 4, ¶A(1).

¹² The historical workload data for the Mayport facility indicate that, in addition to the operating hours requirement, there have historically been approximately 446 annual hours required to prepare invoices and respond to customer inquiries. Agency Report, Tab 11 (51-60), at 19. As noted above, however, the solicitation specifically directed that the historical workload data "shall not be a limiting factor on the SP's obligation to perform . . . to the required level of effort." Agency Report, Tab 3, at 6.

¹³ BAE's appeal stated that "the PWS requires a total of . . . 2,250 hours . . . for the Mayport site," noting that the MEO did not provide any on-site Mayport staffing and the IHCE only reflected costs for 446 hours relating to the Mayport facility's requirements. Agency Report, Tab 24, at 2-3. Similarly, BAE's appeal stated that "the PWS requires a total of . . . 2,125 hours . . . for the Key West site," noting that the MEO's IHCE reflected costs for only 1,421 hours. Agency Report, Tab 24, at 3.

The agency defended against BAE's appeal, generally arguing that the MEO was fully compliant with all the PWS requirements.¹⁴ Agency Report, Tab 26 (10). By decision dated October 10, 2003, the AAA denied or dismissed 14 of BAE's 17 bases for appeal.¹⁵ Agency Report, Tab 25. With regard to three appeal issues, the AAA increased the IHCE costs, or decreased BAE's evaluated costs, by a combined total of \$63,787, thereby decreasing the margin between the IHCE and BAE's evaluated cost from \$251,508 to \$187,721. Agency Report at 10; Tab 25 at 13. Following the AAA's adjustments, BAE's evaluated cost, including the 10-percent conversion differential, was \$18,895,894; the total IHCE was \$18,708,173. Agency Report, Tab 25, at 3. On October 20, BAE filed this protest with our Office, essentially repeating the arguments previously made in its appeal to the AAA.

DISCUSSION

Upon receipt of BAE's protest, and in anticipation of having to submit a report to our Office, the contracting officer sent a letter to the MEO Manager stating:

¹⁴ Specifically, with regard to staffing the Mayport facility, the agency argued that: "[T]he MEO team combined the [v]oucher [p]ayment functions at Mayport and at FISC Jacksonville. Thus Mayport no longer requires staffing." Agency Report, Tab 26(10), at 1. That is, the agency expressly acknowledged that the MEO proposed to address the Mayport requirements in a manner virtually identical to that contemplated by BAE's initial proposal—an approach the agency advised BAE during discussions constituted a proposal deficiency. Similarly, in defending against BAE's appeal regarding the Key West facility, the agency argued that the IHCE need only reflect the functional workload requirements that had historically been performed at Key West, effectively acknowledging that the IHCE did not cover the costs associated with staffing to the PWS's required operating hours. Id.

¹⁵ With regard to the MEO's staffing at Mayport, the AAA denied BAE's appeal on the following basis: "I have reviewed the PWS operating policy and functional requirements for the Mayport location. The MEO included staffing requirements based on the Technical Exhibits (TEs) identifying historical and projected workload." Agency Report, Tab 25, at 3. While thus reaching a conclusion on the merits, the AAA also stated: "I have determined that the issue . . . is not within the scope of review provided by the A-76 administrative appeal procedures." Id. With regard to Key West staffing, the AAA decision similarly denied the appeal on essentially the same basis, first stating that the MEO had staffed to the historical functional workload, then maintaining that the issue "is not within the scope of review." Id. at 3-4. Nothing in the AAA decision addresses the PWS requirement that "[t]he SP shall provide the full range of services during the [normal operating hours]," nor the prohibition on "remote methods" to satisfy the requirements, nor the PWS provision that the historical workload data "shall not be a limiting factor on the SP's obligation to perform all services." See Agency Report, Tab 3, PWS, at 6, 10.

While reviewing the protest, I noted two elements of the protest [that] raise some concerns as to whether the Technical Evaluation Board, and myself as the Source Selection Authority, evaluated the MEO offer as meeting the requirements of the performance work statement . . . [quoting the following from section headings in BAE's protest]

A. The In-House Entity's Staffing for the Mayport and Key West Sites Fails to Comply with the PWS Requirements.

E. The IHCE fails to include Full-Time Site Managers at FISC Jacksonville NADEP [Naval Aviation Depot] and Ingleside.

Letter from Contracting Officer to MEO Manager (Nov. 5, 2003).¹⁶

On November 17, the MEO manager responded to the contracting officer's letter. Notwithstanding the agency's earlier position, in defending against the appeal, that the MEO was fully compliant, the MEO manager stated:

The requirements of the PWS, as set forth in C1.10.1, were not fully met in the MEO's staffing [W]e agree with the Protester that the PWS calls for a site presence [at Mayport] during the normal operating hours.

Agency Report, Tab 29, at 2.

Subsequently, in responding to our Office, the contracting officer similarly acknowledged that the MEO "was non-compliant with the PWS requirements, in that it had proposed to perform the Mayport effort remotely (i.e. at FISC Jacksonville Central)." Agency Report at 10.

In short, after the contracting officer purported to have performed an objective assessment of the MEO and, thereafter, represented to the agency's internal AAA that the MEO complied with the PWS requirements, once a protest was filed with our Office, the agency immediately acknowledged the obvious—that is, that the MEO was "non-compliant."¹⁷

¹⁶ Since these identical issues were raised in BAE's appeal to the agency's internal AAA, it is not clear why that appeal did not similarly "raise some concerns" with the contracting officer.

¹⁷ In addition to the inconsistent positions taken by the agency, discussed above, our review of the record reveals that the agency failed to properly perform the independent review function mandated by the A-76 procedures. Specifically, pursuant to the required procedures, an independent review officer (IRO) must be
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Notwithstanding the preceding facts, in responding to BAE's protest, the agency asserts that, after completing the cost comparison and the administrative appeal

(...continued)

appointed, prior to the cost comparison, to "ensure that the data contained in the [MEO's] Management Plan reasonably establish the Government's ability to perform the PWS within the resources provided by the MEO." OMB Circular A-76 Revised Supplemental Handbook, Part I, Ch. 3 ¶ I. At the GAO hearing, the IRO testified that his review of the PWS was limited to the provisions of only one PWS section—that is, section C5; specifically, the following colloquy occurred:

GAO: Is your review limited to the provisions of [PWS section] C5?

IRO: Of C5, yes. . . . [W]e used to do 100 percent review of all [the] solicitation, C1 through the whole thing.

* * * * *

GAO: It's your view [that] in performing the . . . independent review function that you don't look at [PWS] Section[s] C1 through C4?

IRO: Well . . . not that long ago, we were told to stay out of that part

GAO: And what was the authority that you cited for that approach?

IRO: There was a study . . . where a Three Star got upset that we were ripping up their whole solicitation . . . and then N124 [described by the witness as the "Navy Policy Office"] came out and said [that] . . . what we were doing was outside the scope of our work.

Tr. (Dec. 10, 2003) at 10-12.

The PWS is comprised of five sections, labeled C-1 through C-5. Clearly, the entire PWS is applicable to the private-sector offerors, as well as to the MEO. While it may be true that PWS section C-5 contains the majority of the performance requirements, it is equally clear that the requirements are not limited to that section. Here, for example, the requirement that "[t]he SP shall provide the full range of services during the [normal operating] hours" was contained in PWS section C-1. Similarly, section C-1 contained subsections titled "Transition Periods," "Quality Control," "Personnel Requirements," "Meetings and Briefings," and "Operating Policy,"—all of which contained material performance requirements. Since the entire PWS is clearly applicable to private-sector proposals, as well as to the MEO, there can be no rational basis for excluding consideration of any portion of the PWS when performing the IRO function.

process, the MEO team can now rearrange its proposed staffing in a manner that—the agency maintains—will comply with the PWS requirements. Specifically, the agency argues that the MEO should, now, be permitted to reshuffle its personnel by increasing the Mayport staffing to the PWS-required level and, simultaneously, decreasing the staffing level at the Jacksonville facility by an offsetting amount. Agency Report at 10; Agency Post-Hearing Brief, Dec. 22, 2003, at 4-7. On the basis of this proposed “corrective action,” the agency requests that we deny BAE’s protest.

BAE responds that, for multiple reasons, the agency’s post-protest revisions should not be permitted, among other things characterizing the agency’s actions as a “shell game.” Protester’s Post-Hearing Comments at 14. We agree that the agency’s post-appeal, post-protest attempts to revise the MEO’s approach to meeting the PWS requirements do not provide a basis for denying BAE’s protest; further, even if we were to consider the agency’s proposed MEO modifications, the agency’s attempts to modify its proposed staffing fail to support the agency’s decision to continue performance of the competed requirements in-house.

As the agency points out, in reviewing bid protests challenging an agency’s cost comparison, our Office has previously considered revisions to an MEO that are made at some point after the MEO and the private sector proposals have been submitted. See, e.g., Symvionics, Inc., B-281199.2, Mar. 4, 1999, 99-1 CPD ¶ 48; BAE Sys., B-287189, B-287189.2, May 14, 2001, 2001 CPD ¶ 86. However, these cases address situations where the agency made cost adjustments to the MEO during the course of initially reviewing the MEO for compliance with the PWS, or during the course of the administrative appeal. Such adjustments are anticipated and authorized by the A-76 Revised Supplemental Handbook. Additionally, in performing our Office’s bid protest function, we have considered whether the addition of costs, improperly omitted from an IHCE, would alter an agency’s cost comparison decision, thereby providing a basis for our determination regarding prejudice to the protester. Trajen, Inc., B- 284310, B-284310.2, March 28, 2000, 2000 CPD ¶ 61. We have never considered an agency’s post-protest MEO revisions which contemplate addition of improperly omitted costs, along with offsetting deletions of costs which the agency, in the process of defending against the protest, for the first time asserts are not required.

Under the circumstances presented here, we conclude that it would not be appropriate to permit the agency’s post-appeal, post protest modifications to the MEO’s performance approach. Here, the Navy seeks to materially revise the MEO, after the cost comparison with BAE has been completed, in a manner that appears designed to maintain a purported cost advantage that the record shows was based on the MEO’s failure to cost all of the PWS requirements. We view the integrity of the A-76 process as precluding such material revisions to the proposed performance

approach at this stage of the process.¹⁸ This is particularly true where, as here, the agency has declined to comply with the PWS requirements—despite having been presented, through the appeal process, with the precise aspects of its proposed approach that it now acknowledges are noncompliant. More specifically, the record shows that the contracting officer, the MEO manager, the IRO, and the AAA all failed to properly perform their required functions. We view these combined, multiple failures as damaging the integrity of the A-76 process, and allowing revisions to the MEO now would only compound that damage. Moreover, the failure of the various government officials to properly perform their respective roles has unduly prolonged the A-76 process, thereby improperly extending the agency’s in-house performance.¹⁹

In any event, even if we were to consider the agency’s post-appeal, post-protest rearrangement of the MEO staffing, the revisions proposed by the agency in response to BAE’s protest fail to provide a basis for denying the protest or for retaining performance in-house.

Specifically, with regard to the Mayport facility, we reject the agency’s assertion that it can comply with the PWS’s substantially higher Mayport staffing requirements by shifting personnel to Mayport from Jacksonville—with no increase to its overall cost. The agency maintains that the Jacksonville personnel it intends to reassign will perform all of the tasks they would have performed at Jacksonville—while stationed at the Mayport facility.²⁰ As discussed above, the PWS prohibited “remote methods” of performance. Agency Report, Tab 3, PWS § C.1.10.1, at 10. Here, the agency’s post-appeal, post-protest proposal to reshuffle personnel contemplates remote performance of the Jacksonville requirements which the PWS precludes.²¹ As

¹⁸ As the protester points out, a private-sector offeror would not be permitted to materially modify its proposed approach following the cost comparison. In this regard, we note that, here, the solicitation expressly stated: “A cost estimate for Government performance is considered a proposal for purposes of this solicitation’s Late Submission, Modifications, and Withdrawal of Proposals or Quotations provision.” Agency Report, Tab 2, at 37. Thus, it appears that the agency’s proposed revision is directly contrary to the express provisions of the solicitation.

¹⁹ As noted above, the process regarding this A-76 competition began in July 2000, more than 3½ years ago.

²⁰ At the GAO hearing, various agency personnel asserted that this would be accomplished primarily by faxing invoices, vouchers and other documents to the reassigned Mayport personnel.

²¹ Even if such remote performance were permitted, it could well result in a lower level of efficiency, effectively requiring more personnel resources than the level previously proposed. See Agency’s White Paper on Consolidation of Voucher Payment, Dec. 10, 2002.

discussed previously, during discussions the agency advised BAE that similar remote performance was not permissible. Accordingly, we conclude that, in order to comply with the PWS requirements regarding the Mayport facility, the costs associated with 1,804 additional annual staff hours must be added to the IHCE;²² the record shows that the costs associated with these additional hours, which augment the total cost for in-house performance, must be, at least, \$193,970.²³

Additionally, it is clear that the MEO's proposed staffing of the Key West facility fails to properly reflect all required costs. As noted above, the PWS required a minimum of 2,150 annual hours to staff that facility; yet the MEO's IHCE reflected costs for only .8 FTE, that is, 1,421 annual hours.²⁴ At the GAO hearing, the MEO manager testified that, with regard to periods when the MEO staffer was unavailable to meet

²² This number is calculated as follows: 2,250 (minimum hours required on-site at Mayport) - 446 (hours previously proposed by MEO related to Mayport) = 1,804.

²³ In calculating personnel costs for the IHCE, the government assumed that a full time equivalent (FTE) staff year provided 1,776 productive hours. Tr. (Dec. 9, 2003) at 86. Accordingly, in order to provide an additional 1,804 hours for the Mayport facility, the costs associated with slightly more than one FTE must be added to the IHCE. The IHCE establishes that the lowest level of costs associated with any of the personnel assigned to Jacksonville (where the Mayport requirements were proposed to be met) are, at least, \$38,794 per year. Agency Report, Tab 11 (3080), Personnel Cost Worksheet, at 66. The solicitation contemplated a 1-year base period and four 1-year option periods; accordingly, total costs associated with one FTE at the Mayport facility are, at least, \$193,970 (5 x \$38,794). Since our calculations here are based on the lowest possible costs associated with any proposed personnel, and do not reflect any cost escalation throughout the contract performance periods, the actual costs associated with meeting the Mayport requirements are likely to be considerably higher.

²⁴ As noted above, the agency assumed that 1,776 productive hours are provided by one FTE. The agency maintains that, although only .8 FTE (1,421 hours) was charged to the IHCE in connection with the Key West requirements, the MEO should receive credit for a full FTE (1,776 hours) because it intends to provide one on-site staff, full time, at the Key West facility; however, this staff member will devote a portion of his time (.2 FTE) to performing non-MEO activities. In short, the agency maintains that this staff member's time can simultaneously be applied to meeting the PWS's operating hours requirement for the Key West facility, while also being charged to another, non-MEO activity. We need not resolve this issue since, even accepting the agency's assertion that a full FTE (1,776 hours) is properly credited to the MEO, the agency intended, as explained in the following text, to augment the MEO with non-MEO resources in order to meet the requirements for 2,125 on-site annual hours.

the operating hours requirements at Key West (2,125 annual hours), the government intended for the PWS requirements to be performed by government employees from another Navy organization located at Key West with which the MEO has a “partnership”; the costs of these Navy employees were not reflected in the MEO’s IHCE. Tr. (Dec. 9, 2003) at 108-17. The MEO manager asserted that, because the PWS requirements were being performed by non-MEO personnel, there was “no cost to us [the MEO].” Tr. (Dec. 9, 2003) at 111.

The A-76 process requires that an MEO’s IHCE reflect all costs associated with performance of the PWS requirements. OMB Circular A-76 Revised Supplemental Handbook, part I, ch. 3, ¶ I; part II, ch. 2; see also The Jones/Hill Joint Venture--Costs, B-286194.3, March 27, 2001, 2001 CPD ¶ 62, at 13. Failure to include the costs associated with performance by government employees outside the MEO obfuscates the true cost of in-house performance and renders the resulting cost comparison inaccurate and unfair. The Jones/Hill Joint Venture, B- 286194.4 et al., Dec. 5, 2001, 2001 CPD ¶ 194 at 18-19; Imaging Sys. Tech., B-283817.3, Dec. 19, 2000, 2001 CPD ¶ 2 at 9.

Accordingly, the IHCE must be augmented by the costs associated with performance of PWS requirements at Key West by non-MEO personnel for, at least, 349 annual hours;²⁵ the additional cost associated with these 349 hours is, at least, \$39,455.²⁶ Overall, at least \$233,425 (\$193,970 + \$39,455) must be added to the IHCE to reflect the cost of in-house performance of the PWS requirements.²⁷ Accordingly, the costs for in-house performance should be increased to, at least, \$18,941,598,²⁸ which

²⁵ This number of hours reflects the difference between 2,125 hours (the required operating hours for the Key West facility) and 1,776 hours (the productive hours associated with 1 FTE).

²⁶ The IHCE reflects an annual cost for the proposed Key West hours of \$32,133; that is, \$22.61 per hour. Agency Report, Tab 11(3080), Personnel Costs Worksheet (Key West), at 78. Accordingly, \$22.61 x 349 hours = \$7,891 (per year) x 5 (years of performance) = \$39,455.

²⁷ Our review of the record leads us to conclude that there are, likely, additional costs that should be added to the IHCE. The above calculations are all based on assumptions most favorable to the MEO, such as lowest possible salary levels and number of additional hours required. Further, the record reflects additional apparent omissions in the IHCE, including the failure to reflect any costs for a quality control technician that was proposed by the agency in its technical performance plan. In light of our decision sustaining the protest and recommending award to BAE, we need not resolve these and other issues raised by the protester.

²⁸ This amount is calculated as follows: \$18,708,173 (total IHCE, as adjusted by the AAA) + \$233,425 (minimum level of additional costs discussed above) = \$18,941,598.

exceeds the \$18,895, 894 evaluated costs associated with BAE's proposal (including the 10-percent conversion differential).

The protest is sustained.

RECOMMENDATION

As discussed above, when the costs associated with meeting all of the PWS requirements are properly added to the IHCE, it is clear that the expected cost of performance by BAE, even after the conversion differential is applied, will be lower than the expected cost of performance by the MEO. Accordingly, we recommend that the agency award a contract to BAE under the RFP. We also recommend that BAE be reimbursed the reasonable costs of filing and pursuing the protest, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1)(2003). BAE's certified claim for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days of receiving this decision.

Anthony H. Gamboa
General Counsel