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**Comptroller General
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**United States General Accounting Office
Washington, DC 20548**

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Decision

Matter of: Remtech Services, Inc.

File: B-292182

Date: July 17, 2003

John S. Pachter, Esq., Jonathan D. Shaffer, Esq., Richard C. Johnson, Esq., and Edmund M. Amorosi, Esq., Smith, Pachter, McWhorter & Allen, for the protester. Capt. Gregory A. Moritz, Capt. Peter D. DiPaola, and Raymond M. Saunders, Esq., Department of the Army, for the agency. Susan K. McAuliffe, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency decision to retain certain services in-house as a result of a cost comparison conducted pursuant to Office of Management and Budget Circular A-76 on the basis that government's "most efficient organization" (MEO) plan improperly failed to include sufficient staffing to meet performance work statement (PWS) requirements is denied where record supports reasonableness of agency's determination, confirmed by independent reviewing official and administrative appeals board, that MEO included adequate staffing to meet PWS requirements.

DECISION

Remtech Services, Inc. protests the determination of the Department of the Army to retain in-house Directorate of Information Management (DOIM) information resource management services at Fort Monroe, Virginia.¹ Remtech contends that the agency should have determined that award of a contract to Remtech to perform the services would be more economical. Remtech contends that the agency's cost comparison under Office of Management and Budget (OMB) Circular A-76,

¹ The DOIM provides information services (including information management, automation, network and server operations, desktop computing data, telephone and video communications, records management, database administration, application sustainment, printing and mail distribution) to the U.S. Army Training and Doctrine Command and other installation headquarters at Fort Monroe. PWS §C-1.1.3; Source Selection Plan at 1.

comparing Remtech's proposal to perform the services to the government's "most efficient organization" (MEO) plan for the services, was flawed, since, according to Remtech, the MEO plan is insufficiently staffed to meet the solicitation's performance work statement (PWS), and, consequently, is understated in cost.²

We deny the protest.

The Army issued request for proposals (RFP) No. DABT60-01-R-3027 on March 15, 2002, for a private-sector competition, as part of a Circular A-76 commercial activities study to determine whether it would be more economical to perform the DOIM services at Fort Monroe in-house, using government employees, or under a contract with a private-sector firm.³ The RFP advised that the lowest-cost technically acceptable private-sector proposal would be selected for a cost comparison with the MEO plan; if the private-sector offeror ultimately won the cost comparison, a cost-plus-award-fee contract for a base year, with up to four 1-year options, and phase-in/phase-out transition periods, was contemplated. RFP amend. 10, at 16, 18. The RFP's PWS set out the services to be provided by the contractor or the MEO at the conclusion of the study.⁴ Private-sector firms and the

² The MEO refers to the government's in-house organization to perform a commercial activity; it is the product of the government's management plan that details what changes will be made by the agency in performing the commercial activity in-house. It is the basis for all government costs entered on the cost comparison form used by the agency to compare the MEO's costs to the private contractor's proposed costs. OMB Circular A-76, Revised Supplemental Handbook (RSH), app. 1, Definition of Terms, at 36.

³ OMB's recent revision to Circular A-76 does not apply here, since the challenged cost comparison study was conducted prior to its effective date. See 68 Fed. Reg. 32,134 (May 29, 2003). The A-76 provisions applicable here encompass the following steps for a public/private competition to determine whether the commercial activity should be performed in-house or by a private-sector contractor. First, after the PWS has been drafted, the agency ensures, through certification by an independent reviewing official, that the government's in-house management plan satisfies the requirements of the PWS. See RSH, part I, ch. 3, ¶ I. Second, there is a competition among private-sector offerors, which is conducted much as any competitive federal procurement. Where, as here, the private-sector competition is based on selection of the technically acceptable, low cost offer, the last step is to conduct a cost comparison (after certain cost adjustments are made) between the private-sector offer and the in-house plan to determine which provides the more economical approach to performance. Id. ¶¶ H, J.

⁴ The PWS, section C of the RFP, was set out in six parts. As relevant here, section C-1, "Introduction," among other things, set out the history of Fort Monroe, specified administrative responsibilities under the RFP, such as quality control,
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MEO were to propose costs to perform all of the PWS requirements in order to provide for a fair comparison between the private sector and government submissions.

The source selection evaluation board evaluated the technical proposals received from the private sector offerors; discussions were conducted with two of those offerors, including Remtech. Based upon the revised proposals received, Remtech was found to have submitted the lowest-cost technically acceptable proposal under the RFP.

An official of the U.S. Army Audit Agency (USAAA), who served as the independent reviewing official (IRO) of the government's in-house plan, reviewed the MEO's management plan and supporting documentation (including the PWS, the MEO's technical performance plan, and the in-house cost estimate (IHCE)) to confirm the MEO's ability to meet the PWS requirements as submitted. Hearing Transcript (Tr.) at 149-54.⁵ As part of the review, the IRO interviewed Fort Monroe representatives, evaluated the methodology and rationale for anticipated efficiencies (*vis-à-vis* current procedures), and reviewed the management plan for consistency with the PWS. Based on this review, the IRO certified that the management plan costs were consistent with the workload in the PWS and the resources in the management study. The IRO concluded that the management study reasonably established the government's ability to perform the PWS's requirements with the resources identified in the MEO management and technical performance plans.

On November 15, 2002, Remtech was notified by the agency that it had been successful in the private-sector competition, and that its proposal had been selected as the private-sector offer for the cost comparison with the MEO plan. The firm also was notified that, on the basis of that cost comparison, the agency had issued its tentative decision that the MEO provided the most economical approach to meeting the agency's requirements. Accordingly, the firm was advised that the agency intended to retain the DOIM services in-house.

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management, and participation in meetings, briefings and tours, and explained to offerors that the annual workload data (set out in PWS § C-5) were work estimates to be used by offerors and the MEO in their technical responses. Section C-5, "Specific Tasks," also relevant to this protest, included the functional requirements (and provided historical workload data to each requirement) for the types of technical services to be provided by the contractor or MEO. Technical exhibits included in the PWS provided supporting documentation, for example, providing identification of customers and applications to be supported.

⁵ Our Office conducted a hearing during which we received testimony from contracting agency officials relevant to the issues raised in the protest.

Remtech filed an administrative appeal on December 30, challenging numerous aspects of the agency's Circular A-76 study. Remtech primarily challenged that the MEO plan was insufficiently staffed, which, Remtech contended, led to an understatement of costs in the IHCE. By decision of April 1, the administrative appeals board (AAB) found some merit to parts of the firm's appeal and requested adjustment to the MEO's pricing. The adjustment, which increased the MEO's cost slightly, was verified by the IRO as adequate to meet the PWS requirements. The amended overall evaluated MEO cost (\$14,457,074, for a staff of 34.502 full time equivalents (FTE)), was slightly higher than Remtech's cost (\$13,579,196, for [deleted] FTEs) to do the work. However, the addition of the required minimum cost differential (\$1,282,793) to Remtech's proposed cost resulted in an overall evaluated cost of \$14,861,989 for purposes of the cost comparison.⁶ Since the adjustment to the MEO's cost did not affect the outcome of the earlier cost comparison, the AAB ratified the agency's decision in favor of the MEO over Remtech. This protest followed.

Remtech primarily contends that the government's cost estimate does not include sufficient staffing to meet PWS requirements for quality control and program management.⁷ We have reviewed the protester's challenges and find them to be without merit.

⁶ The minimum cost differential (here, 10 percent of the MEO's personnel costs) is required to convert in-house performance to a private contract (or vice-versa) to ensure that the government does not convert between sectors for only marginal estimated savings. See RSH, Part II, ch. 4, § A.1.chap. 2(A)(8)(b).

⁷ The protester also generally contends that the MEO's cost is understated because "residual organization" personnel will be performing commercial work included in the PWS. The residual organization, a group of government personnel separate from the MEO, will perform certain work regardless of whether the MEO or contractor is successful in the cost comparison. Remtech's argument is that the agency failed to conduct the cost comparison on an equal basis if the MEO assumes that the residual organization will do some of the PWS work that Remtech included in its costs. In this regard, Remtech argues that the PWS technical exhibits identify potential customers and applications to be serviced, but, by their own terms, anticipate different customers or applications may be required, since they advise that potential work is "not limited to" the listed information. Regardless of this "not limited to" language in the technical exhibits of the PWS, we cannot conclude that the competition was conducted unfairly or on an unequal basis, as Remtech alleges. Although the exhibits were provided as supporting documentation for proposal preparation, the MEO and offerors were specifically advised by the PWS that the comprehensive workload data (*i.e.*, the historical annual number of iterations or occurrences required under each specific task of the PWS to be priced) was provided for offerors to use in the preparation of their proposals. PWS §§ C-1.0 and
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Circular A-76 describes the executive branch policy on the operation of commercial activities that are incidental to performance of government functions. It outlines procedures for determining whether commercial activities should be operated under contract by private companies or in-house using government personnel. Where, as here, an agency has issued a solicitation as part of an A-76 study, thereby using the procurement system to determine whether to contract out or to perform work in-house, our Office will consider a protest alleging that the agency has not complied with the applicable procedures in its selection process, or has conducted an evaluation that is inconsistent with the solicitation criteria or applicable statutes and regulations. See Trajen, Inc., B-284310, B-284310.2, Mar. 28, 2000, 2000 CPD ¶ 61 at 3.

We have reviewed the record before us, and have conducted a hearing to obtain testimony to better understand the record, including testimony from a technical writer of the MEO plan who had a pivotal role in the preparation of the government's management and technical performance plan, as well as from the USAAA auditor (the IRO) who reviewed the MEO plan for compliance with the PWS. Based on our review of the record, we find no basis to question either the reasonableness of the IRO's determination that the MEO management plan adequately demonstrated compliance with the PWS requirements, or the agency's decision to retain the DOIM services in-house.

As stated above, Remtech initially argues that the government's IHCE fails to include adequate staffing to provide quality control services required by the PWS. In this regard, the PWS advised that performance measurement procedures, preventive corrective actions, customer comment/complaint programs, identification and notice of quality problems, and performance evaluation meetings were matters to be discussed in the quality control plans. PWS § C-1.4.5. Manpower matrices were to be provided to show proposed staffing (by work years and labor category) for the

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C-2.2.2; Tr. at 36, 47-48 and 119-21. Thus, to the extent Remtech now complains that it prepared its proposal on a higher workload than stated in order to limit its risk (if additional work ultimately was required under a resulting contract with the firm), it did so in an exercise of its own business judgment and not in response to a defective solicitation or any improper agency action. In any event, as to the type of work Remtech alleges is to be performed by the residual organization instead of the MEO, (e.g., application sustainment), our review of the record shows that, although the same type of work may be performed by the residual organization and MEO, the parallel effort is to meet separate needs of each entity, so that the residual organization would not be performing work included in the PWS workload data. Tr. at 41-44, 118-23.

quality control function. Id. However, no minimum or suggested staffing levels for the quality control function were provided in the PWS.

Compared to the MEO, Remtech proposed more staff to conduct its relatively extensive quality control efforts. For example, the protester's quality control plan and pricing contemplated almost 1,700 annual inspections and audits of its own services. Remtech Administrative Appeal, Dec. 30, 2002, attach. 4 at 4-2. The protester argues that the MEO plan's lower number of FTEs and lower cost for quality control work, without a manpower matrix identifying the specific hours intended for quality control work, should be found insufficient to meet the PWS requirements.

The MEO's organizational structure includes a Unified Service Center (with a staff of 3 FTEs), providing a central facility for the intake and administration of customer requests for services, and six subject-matter technical teams, ranging in size from two to eight technicians; the Unified Service Center forwards work to the appropriate team for review and performance. Each team is supervised by its senior member, who has "point of contact" (POC) responsibilities regarding quality control, program management, and participation in meetings, briefings, and tours. The "crosswalk" documentation included in the management study, which matches PWS requirements to associated MEO staffing and costs, specifically identifies one FTE (1,776 hours annually) for these POC duties; the one FTE is shared equally among the six POCs (so that each team assumes 1/6 of an FTE for its POC's duties). The POCs are responsible for performance of the PWS, management of the MEO structure and adherence to performance standards. Tr. at 17, 63-64, 128.

The senior team members' non-POC time is spent as subject-matter experts/lead technicians for their teams, working closely with and supervising the team's technicians in performance of the PWS requirements. While program management duties rest primarily with the six POCs, the DOIM Director oversees certain aspects and overall policies of the MEO. Other than the higher-level oversight of the DOIM Director, the MEO has a linear ("flat") organizational approach: six subject-matter teams with six managers of equal authority who resolve management issues for their individual teams and, collectively, for the MEO. The DOIM Director may assign work to the POCs, serve as final arbiter in unresolved POC disagreements, and prepare performance reviews for the POCs. (In light of the program management tasks of the DOIM Director, pertinent to our discussion of program management later in this decision, the AAB, with the IRO's concurrence, added .25 FTE to the MEO's costs for the DOIM Director's time spent supporting the MEO.) The POCs will report MEO quality control information to the residual organization, including the DOIM Director.

The management plan does not provide a firm number of POC hours for quality control; rather, as stated above, one FTE was set aside for “POC duties,” to include quality control work.⁸ The IRO, recognizing that the PWS did not require any specific amount of time for quality control work, found the MEO plan acceptable mainly because quality control is inherent in the POCs’ functions. Spreading the quality control responsibilities among the POCs, who are directly familiar with the work and the responsibilities of the subject matter groups they oversee, was considered to be more effective than having a single quality control individual monitoring diverse work requirements spread over six technical teams. The IRO reasoned that the MEO’s proposed quality control effort would be sufficient in light of the MEO’s limited size and its well-trained, experienced work force, which has performed the requirements for years with only minimal supervision. The MEO’s plan set forth a philosophy of problem prevention, proposed certain measures of performance quality, and offered quality control software to track and report the status of performance and reported problems. Tr. at 129-32 and 146; Management Plan at 32-33; Technical Performance Plan at 3, 8, 17, 19.

Remtech asserts that the IRO’s and AAB’s acceptance of the MEO’s quality control plan is unreasonable because, according to Remtech, insufficient staff hours have been proposed for the PWS quality control requirements. In examining the quality control plan, to deduce the number of hours available under the MEO plan for quality control work, the IRO reasoned that 606 annual hours of one FTE would be available for the POCs’ quality control and program management functions.⁹ Given

⁸ We note that, although Remtech now concedes that the MEO plan mentions quality control efforts by the POCs, the protester continues to argue that because the installation’s response to Remtech’s administrative appeal stated that a quality control plan was not required or included in the management plan, the plan should be found to be lacking any staff or costs for quality control, and the IHCE should be adjusted to account for such costs. The agency has explained, however, that the installation’s response to the administrative appeal is not the agency’s official position on the matter. Tr. at 72-74. The installation’s response was authored by costing personnel, not by the technical writer who authored the management plan (who has since retired). At a hearing held on the matter, the retired technical writer (the former official responsible for DOIM operations at Fort Monroe) unequivocally confirmed that the quality control plan included in the MEO management and technical performance plans was reflected in the IHCE. Tr. at 12-13. Since our review of the management and technical performance plans supports this testimony, including the costing of the POCs’ time (one FTE) for POC duties, including quality control work, we reject the protester’s argument that the agency should not be able to rely on an explanation of the matter different from its apparently mistaken administrative appeal response.

⁹ Specifically, of the 1,776 hours represented by one FTE, the PWS estimated that a total of 1,170 hours (22.5 hours per week x 52 weeks) would be needed for one of the
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the high quality of performance by the MEO's highly-experienced staff, and the close working relationship between the POCs and staff, including their direct involvement and familiarity with the work to be performed and assessed for quality control, the IRO found the MEO's quality control plan, and the hours available to accomplish that plan, sufficient to meet the PWS's requirements for quality control.¹⁰

Our review of the record provides no basis to question the reasonableness of the MEO's proposed approach to meeting the quality control requirements of the PWS, or the IRO's acceptance of the hours available under the MEO plan for those requirements. While we recognize that the MEO staffing plan does not provide many hours for quality control separate from other tasks, the PWS here, as stated above, simply did not set forth any minimal or suggested staffing requirement for that function. Remtech has not shown that a higher level of staffing, like its own, was required in order to be technically acceptable under the PWS. Just as two competing private sector offerors may reasonably propose different levels of staffing, depending on each offeror's technical approach and proposed efficiencies, so, too, the in-house plan may be based on a level of staffing different from that offered by the private sector proposal. BAE Sys., B-287189, B-287189.2, May 14, 2001, 2001 CPD ¶ 86 at 20. Clearly, it was an exercise of Remtech's business judgment to propose the substantial staffing it put forth for this function.

Our review supports the reasonableness of the IRO's acceptance of the plan as meeting PWS minimum requirements. The MEO plan set out its quality control philosophy (of prevention versus problem-solving), as well as its methods to measure performance (using automation and reporting software, sampling, and audits) and to meet reporting requirements (with technicians reporting to the POC, who report to agency officials). Tr. at 68-71. As to staffing the quality control function, the MEO plan clearly set forth the role and responsibilities of the POCs in meeting the PWS quality control requirements. In sum, in light of the MEO's use of well-trained, highly experienced staff known to have performed the required services for years at a high level of quality; the preventative and corrective measures in the plan; the close working relationship of the POCs charged with monitoring the quality of the performance of the technicians with whom they work; the POCs' substantial familiarity with all work processes and required services; the use of specialized

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functions (referred to as meetings, briefings and tours) to be performed by the POCs. Accordingly, 606 hours remain for the other POC functions, quality control and program management (1,776 total hours – 1,170 hours for meetings, briefings and tours).

¹⁰ At the hearing held on this issue, the technical writer of the MEO and technical performance plans explained that approximately 20 percent of the POCs' time (or 355 hours) was anticipated for the quality control function. Tr. at 17, 134.

software and automated procedures for work requests and quality control reports; the very infrequent occurrence of past service complaints; and the limited size of the MEO organization here, we have no basis to question the reasonableness of the IRO's and AAB's determinations that the MEO adequately anticipated and costed its quality control function, clearly inherent in the POCs' stated duties, to meet the PWS's quality control requirements. Tr. at 17-19, 38-39, 151-53 and 163-64.

Remtech next argues that the MEO does not include sufficient program management staffing to meet the PWS's requirements for an adequate management plan. In support of its argument, Remtech cites PWS § C-1.4.3.1, which required offerors to submit a draft management plan for evaluation (with a final plan to be submitted prior to performance). The management plan was to set out the intended management personnel, operations (e.g., scheduling, work flow, and adherence to standards), overall management, including cost control, and staffing matrix showing management interactions within the organization.

As stated above, the MEO presented a linear organizational structure of six subject-matter groups, each managed by a team leader POC who was to assign and monitor PWS work for the team; each POC was to spend 1/6 of an FTE performing supervisory functions, including program management. The DOIM Director was to serve as the overseeing manager responsible for overall policy and planning and forwarding tasks to the six POCs. The DOIM Director was to complete performance reviews for the POCs, and, if needed, resolve disagreements among them. For these duties, the DOIM Director's time (.25 FTE) was added to the IHCE.

The MEO believed that this management structure removed duplication of subject-matter efforts, as well as duplication in terms of layers of managerial review and supervision over a highly experienced, relatively small group of MEO technicians currently performing the tasks with little supervision. This approach also was expected to consolidate branches of operations so individuals could reasonably do more than one function. Management Plan at 24-25, and 36. Under this management plan, each POC would also work side-by-side with the team members he or she supervised, and would coordinate the team's efforts, and implement plans and policies. *Id.* at 32-33; Technical Performance Plan at 4, 17, and 19.

The protester's proposal, on the other hand, presented a more hierarchical management framework, including five subject-matter groups with team supervisors having only limited management authority. The five subject-matter groups were to be managed [deleted].

The protester argues that the MEO's management structure, providing only minimal overall oversight to the project, is understated in terms of management personnel and their associated costs. In this regard, the protester argues that it proposed [deleted] employees to function in senior management positions for the project and

that, because its staffing was found acceptable, the MEO should be adjusted to add the same level of managerial oversight as proposed by Remtech.

As with quality control, we recognize that the MEO plan did not include many hours for program management; in fact, it included far fewer hours than Remtech proposed for that function. The PWS, however, did not require any minimum management framework, staffing, or number of hours for the management function. Further, as stated above, the successful private-sector offeror's staffing approach to meet the management needs of a project does not govern the acceptability of the MEO's staffing approach to meet the same needs. See BAE Sys., supra. Accordingly, the protester's offer of [deleted] higher-level managers to supervise performance of the contract it anticipated under the PWS does not establish a threshold of acceptability, as Remtech argues.

We have no reason to question the reasonableness of the determination of the sufficiency of the MEO's management plan. As stated above, the cost of the DOIM Director's time expected to be spent on MEO oversight was added to the IHCE; this adjustment was found to be adequate by the IRO. Remtech has not provided any persuasive basis to question the adequacy of the cost of this fraction of the Director's time for functions he performs for the MEO. Further, we find reasonable the agency's position that the experience and subject-matter expertise of the POCs, who are familiar with the PWS requirements and the work and personnel to be managed, allow for effective management of the relatively small organization here with the supervisory personnel hours included in the technical performance plan and IHCE.¹¹ Tr. at 150-55, 163-64. Accordingly, our review of the record presents no basis to question the reasonableness of the determination that the MEO provides the lower cost approach to meeting the agency's requirements.

The protest is denied.

Anthony H. Gamboa
General Counsel

¹¹ Remtech contends that because, during discussions, the agency questioned the adequacy of Remtech's offer of [deleted] managers, the MEO should be required to add more managers. We disagree. Our review of the record confirms that discussions question posed to Remtech did not focus on the number of managers the firm proposed, but rather, the skills of its managers in terms of the wide span of subject matter areas they were supposed to supervise.