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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-293435.2; B-293435.3

Date: August 2, 2004

Darcy Hennessy, Esq., Moore Hennessy & Freeman, 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 is sustained where, under Office of Management and Budget Circular A-76 cost comparison, record shows that in-house “most efficient organization” was misevaluated regarding key aspects of intended in-house staffing levels, and this could have affected the decision to continue to perform the requirement in-house rather than to contract out.

DECISION

Career Quest, a division of Syllan Careers, Inc. protests the General Services Administration’s (GSA) decision under request for proposals (RFP) No. TFTP-MN-03-R-0001, issued pursuant to Office of Management and Budget Circular A-76,¹ 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 Career Quest. Career Quest 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 sustain the protest.

¹ The procedures applicable 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). Although the Circular was revised in May 2003, that revision was not applicable to this cost comparison.

The agency announced in August 2002 that it would perform an A-76 commercial activity 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, the agency obtained final proposal revisions and selected Career Quest as the firm whose proposal represented 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 Career Quest.² Agency Report (AR), exh. 51, at 1. The agency concluded that it would save \$897,238 by keeping the requirement in-house. Id.

After being advised of the agency's conclusion, Career Quest appealed the matter to the agency appeal authority (AAA). The AAA 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, bringing it to a total of \$11,931,402, or \$570,236 less than the evaluated cost of contracting with Career Quest.

Career Quest raises numerous arguments, and the agency has conceded certain issues--the MEO improperly failed to include the cost of a full-time site manager, some costs associated with its proposed project manager, and certain phase-in costs. The agency calculates that that the additional cost associated with these issues amounts to \$324,968, thereby reducing the cost difference between the MEO and Career Quest's proposal to \$245,268. AR, exh. 42, at 7, 15. We find errors in the evaluation that could potentially offset this MEO cost advantage, and sustain the protest on this basis. We discuss the relevant issues below.

STAFFING DISCREPANCY

Career Quest asserts that the MEO's technical performance plan (TPP) conflicted with its cost proposal, since it stated that it would perform the requirement with 38.5 full time equivalent (FTE) staff, while its direct personnel costs reflected only 34.5 FTEs. Career Quest maintains (and the agency does not dispute) that the direct personnel cost for the additional four FTEs amounts to \$1,236,524, the addition of which to the MEO cost would make Career Quest's offer low.

² The total evaluated cost for Career Quest 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 the Career Quest price proposal. AR, exh. 51, at 1.

The agency's response on this issue includes conflicting representations. On the one hand, the agency asserts in its legal memoranda that the approximately \$1.2 million cost associated with the four FTEs was added by the AAA in connection with Career Quest's agency-level appeal. Agency Legal Memorandum, May 26, 2004, at 2 ("The proposal, as amended by the Administrative Appeal Authority in his decision of April 4, 2004 reflects that the final FTE count was indeed 38.5 FTE, which added \$1,236,524 to the MEO's cost proposal."); Agency Legal Memorandum, June 25, 2004, at 3 ("The adjustment was made by the Administrative Appeal Authority in response to Career Quest's request for internal review."). This position is inconsistent with the record, which shows that, as described above, the AAA did not increase the MEO's cost by \$1.2 million.³

In contrast to the agency's legal memoranda, a document apparently prepared by members of the MEO in response to Career Quest's protest states that, while the wording of the TPP should have been clearer, the MEO at all times included only 34.5 FTEs for purposes of performing the requirements of the performance work statement (PWS). It explains that the 38.5 FTE figure represents the overall staffing required for the NCSC, which includes 4 FTEs performing inherently governmental functions, the cost of which properly was omitted from the MEO's costs. AR, exh. 42, at 2.

Notwithstanding this document indicating the MEO's intended staffing levels, the record shows that the MEO affirmatively represented to the technical evaluators⁴ that it was using 38.5 FTEs to perform the requirement, which was inconsistent with the 34.5 FTEs used to calculate the MEO's cost (there is no dispute that, at least in the initial cost comparison, only 34.5 FTEs were used to calculate the MEO's cost). In this connection, the narrative portion of the TPP specifically describes the MEO's proposed staffing as including 38.5 employees. AR, exh. 28, at 9-10. In addition, the agency report includes what appear to be briefing slides that were presented to the evaluators; two of these slides portray the proposed staffing of the MEO (each slide is entitled "III. Personnel cont. Most Efficient Organization (MEO)"), and at the bottom of the second slide the total number of employees is shown as 38.5. AR, exh. 40, at 17-18.

³ Had the AAA added \$1.2 million to the cost of the MEO, it would have found that Career Quest was entitled to award.

⁴ We note that, although ordinarily in a cost comparison study, the independent review officer is responsible for evaluating the sufficiency of the government's technical performance plan and other materials, A-76 RSH at 12, here the record shows that the agency's source selection evaluation board reviewed the MEO and engaged in negotiations with the MEO. AR, exh. 18.

There was other information in the TPP that made the proposed staffing unclear. For example, appendix B of the TPP includes a chart portraying the proposed new organization as including only 34.73 FTEs, but this chart does not include the program director. AR, exh. 29, at 2. This lack of clarity led the evaluators to ask the MEO during discussions, “What is the total number of contract employees and FTEs in the proposed MEO?” AR, exh. 18, at 4. The MEO’s response was unequivocal: “The total staffing proposed in the MEO is 38.5 FTE. This constitutes 32 Government Associates and 6.5 contract associates.” AR, exh. 27, at 2. The record thus shows that the evaluators were affirmatively led by the MEO to conclude that its proposed staffing consisted of 38.5 FTEs, even though only 34.5 FTEs were reflected in the MEO’s cost. Likewise, the record shows that the evaluators relied on the MEO’s representation that it required 38.5 FTEs to perform. In this regard, the evaluation of the MEO’s final TPP revisions specifically found that the MEO had addressed the question of how many FTEs the government planned to use to perform the requirement. AR, exh. 18, at 5.

Since the technical evaluation was based on staffing of 38.5 FTEs, but the MEO cost was based on only 34.5 FTEs, the evaluation was materially flawed; it is not clear that the agency would have evaluated the MEO’s TPP as satisfying the PWS requirements had it been based on the lower staffing. We therefore sustain this aspect of Career Quest’s protest.

QUALITY CONTROL STAFFING

Career Quest asserts that the MEO did not propose adequate staffing to perform quality control activities in its TPP. In this regard, the PWS required various quality control activities to be performed, including a call monitoring program. AR, exh. 2, at C-1-8. In response to this requirement, the MEO proposed a call monitoring program that required its quality control analyst to monitor at least 30 calls per month (3 for each of the 10 proposed supply service representatives, to be increased only in the event that there is an increase in call volume). AR, exh. 28, at 15. The record shows that the agency evaluators were concerned about the statistical significance of this level of call monitoring in light of the volume of calls (on average, approximately 23,000 per month) received at the NCSC. AR, exh. 18, at 4-5. As with the MEO’s proposed staffing, the evaluators asked a discussion question about the matter, specifically asking the MEO to identify the basis for its sample size. *Id.* In response, the MEO advised the agency that it had established its sample size based on application of American National Standards Institute/American Society for Quality (ANSI/ASQ) Standard Z1.4, with an acceptable quality level of 2.5. AR, exh. 27, at 2.

Career Quest asserts that the cited ANSI/ASQ standard and quality level require the MEO to monitor 315 calls per month, as opposed to the minimum of 30 the MEO proposed to monitor. Career Quest asserts that the MEO cannot possibly monitor 315 calls per month with the single quality control analyst proposed in the MEO.

Career Quest notes that, in comparison, it proposed three FTEs to perform its quality control activities. The agency responds that, since the PWS did not call out a particular sampling level for purposes of quality control, there is no basis to question the adequacy of the MEO's proposed quality control plan.

As with the staffing issue discussed above, we are concerned that the agency's evaluators may have formed judgments about the adequacy of the MEO's proposed quality control plan based on the MEO's representations. In this regard, as the protester points out, the applicable ANSI/ASQ standard calls for a sample size much larger than the sample size identified by the MEO in its TPP (315 versus the minimum of 30 provided for in the TPP). ANSI/ASQ Z1.4, Tables I and II-A. Given the approximately tenfold difference in the sample size required under the standard identified by the MEO versus the sample size it proposed and represented was consistent with the ANSI/ASQ standard, there is a legitimate basis to question whether the evaluators properly considered whether the MEO proposed adequate staffing to perform the quality control activities on which the TPP was based. We are not persuaded by the agency's position that there is nothing problematic in the MEO's proposed sample size because there was no requirement in the PWS relating to sample size. In order to meet the PWS requirement for a call monitoring program, the MEO proposed a program purportedly based on meeting the ANSI/ASQ standard, and in doing so created the impression that its proposed sample size was consistent with that standard, when this in fact was apparently not the case. Had the evaluators been aware that the proposed sample size was significantly below that called for under the ANSI/ASQ standard, they may not have found that the MEO's proposed quality control program met the requirements of the PWS. We therefore sustain this aspect of Career Quest's protest.

ADDITIONAL ISSUES

Career Quest raises a large number of additional protest bases. In light of our conclusions above (and our recommendation, set out below), we find that a number of these issues are premature.⁵ Additionally, Career Quest abandoned a number of

⁵ These issues all relate to aspects of the agency's evaluation of the MEO's proposed staffing, and staffing-related costs. Since we recommend that the agency reopen the acquisition and obtain TPP revisions or clarifications from the MEO, these assertions are premature; the MEO may change its TPP, the evaluators may change their conclusions, or both. These issues include Career Quest's assertions that the MEO's staffing level of 34.5 FTEs is inadequate to perform the requirement (as well as its related argument that the MEO has overstated the amount of time its employees will perform activities that are inherently governmental); that the MEO did not include an adequate number of hours for the proposed program manager to perform all the functions for which he is responsible; that the MEO's staffing should be adjusted upward to perform the quality control aspects of the PWS; and that the MEO's

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the issues it originally raised, and we find Career Quest's remaining arguments are without merit.⁶

RECOMMENDATION

In view of the foregoing, we sustain Career Quest's protest. As noted, we find that the agency unreasonably evaluated the MEO's TPP based on a higher level of staffing than was included in the calculation of the cost of in-house performance, and also may not have properly considered the adequacy of the proposed level of staffing for the MEO's quality control program. On the record before us, we cannot determine the precise effect that these flaws had on the evaluation, but since additional staffing, if found to be required, could increase the MEO's cost above the protester's, we find that the protester has been prejudiced by the agency's errors. Accordingly, we recommend that the agency obtain clarification of the MEO's intended level of staffing. The agency should then reevaluate the MEO to determine whether it includes staffing adequate to meet the PWS requirements. Assuming that the MEO as clarified or revised is found to satisfy the PWS requirements, the agency should

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overhead costs were improperly calculated because they were based on an understated amount for direct labor costs.

⁶ In both its initial and supplemental protests, Career Quest raised a number of arguments to which the agency provided a detailed response, and Career Quest either makes no mention of these arguments in its subsequent filings, or states merely that it stands on arguments made in its earlier filings. Where a protester makes no further mention of an issue, or merely references an issue but does not substantively reply to the agency's detailed position, we deem the issues abandoned. Citrus College; KEI Pearson, Inc., B-293543 et al., Apr. 9, 2004, 2004 CPD ¶104 at 8. These issues include Career Quest's assertions that the agency improperly calculated federal employee severance pay (which was added to Career Quest's proposed cost); that the agency failed to add MEO costs associated with modifying a contract with another concern that will be used in connection with government performance of the requirement; the MEO did not include adequate costs to cover overtime that it will use to perform the requirement; that the MEO did not include costs associated with business support that is included in the MEO's approach; that the MEO relied on two software programs that were not made available to the private-sector offerors; and that the agency did not provide detailed workload information used by the MEO but not available to the private-sector offerors. As for the issues we find without merit, these arguments include Career Quest's assertions that the agency overstated the costs associated with contract administration that would be necessary should the work be contracted out; that the MEO understated costs associated with phase-in operations; and that the agency used the wrong federal income tax category in calculating Career Quest's cost.

perform a new cost comparison and award a contract to Career Quest if its evaluated cost is lower than the MEO's. We further recommend that Career Quest be reimbursed the costs associated with its filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d) (2004). Career Quest's certified claim for costs, detailing the time spent and the costs incurred must be submitted to the agency within 60 days of its receiving our decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Anthony H. Gamboa
General Counsel