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**Comptroller General
of the United States**

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

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Decision

Matter of: Integrity Management Enterprises, Inc.

File: B-290193; B-290193.2

Date: June 25, 2002

Robert E. Korroch, Esq., Michael J. Gardner, Esq., Francis E. Purcell, Jr., Esq., and James J. Reid, Esq., Williams Mullen Clark & Dobbins, for the protester.

Robert J. McMullen, Esq., Department of the Navy, for the agency.

John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency conducting a commercial activities study under Office of Management and Budget Circular A-76 did not act improperly in amending the performance work statement (PWS) during its review of the in-house management plan where the agency determined at that time that the PWS did not accurately reflect its minimum needs and the changes to the PWS were provided to the private-sector offerors through amendment of the request for proposals.

2. Agency reasonably determined, during a commercial activities study under Office of Management and Budget Circular A-76, that the in-house management plan reasonably established the ability of the government to perform the requirements of the performance work statement (PWS), and identified and included all costs necessary to perform the PWS requirements.

3. Agency, which during its evaluation of private-sector proposals submitted as part of a commercial activities study under Office of Management and Budget Circular A-76 found that the selected "best value" proposal merely met the requirements of the request for proposal's performance work statement (PWS) and did not identify any strengths in the proposal, was not required to make any adjustments to the in-house management plan, which also was found to meet the minimum PWS requirements.

DECISION

Integrity Management Enterprises, Inc. (IME) protests the Department of the Navy's determination, pursuant to Office of Management and Budget (OMB) Circular A-76, that it would be more economical to retain the performance of central support

services for the Pensacola Naval Regional Complex (PNRC) in-house, rather than contract for these services with IME under request for proposals (RFP) No. N00140-00-R-G514.¹

We deny the protest.

BACKGROUND

The RFP, issued February 24, 2000 as a small business set-aside, provided for the award of a fixed-price contract, with certain cost reimbursement provisions, for a base period with four 1-year options. Offerors were informed that the solicitation was issued as part of a Circular A-76 commercial activities study to determine whether accomplishing the support services set forth in the solicitation's PWS under contract or by government performance was more economical. If government performance was determined to be more economical, then no award under the RFP would be made and the solicitation would be canceled.² RFP amend. No. 0011, at 29. The solicited central support services included general, central administrative, supply, postal, and emergency dispatch services. The PWS specified the

¹ The PNRC includes Naval Air Station Pensacola (NASP), Saufley Field, Corry Station, Naval Air Station Whiting Field (NASWF), and tenant commands. Performance Work Statement (PWS) at 1.

² The procedures for determining whether the government should perform an activity in-house or by a contractor are set forth in Circular A-76 and the Revised Supplemental Handbook (RSH) to it, which have been made expressly applicable to the Department of Defense (DOD) and its military departments. See 32 C.F.R. § 169a.15(d) (2002). The process set out in the Circular and the RSH broadly encompasses the following steps in conducting the public/private competition. First, after the PWS has been drafted, agency officials develop an in-house management plan describing how the government can most efficiently perform the work required by the PWS. The agency's Independent Review Officer (IRO) then ensures that the in-house plan has been prepared based on the PWS, and that the in-house plan reasonably establishes the government's ability to perform the PWS with the resources provided. RSH, part I, ch. 3, ¶¶ E.3., I. Second, there is a competition among private-sector offerors, which is conducted much as any competed federal procurement is conducted. Third, if that competition is done on the basis of a comparative evaluation (that is, a cost/technical tradeoff is contemplated), the government's in-house management plan is compared with the winning private-sector offer to assess whether or not they are based on a comparable level of performance and performance quality--and if not, to make all changes necessary to make the level of the in-house plan comparable to that of the private-sector proposal. Id. ¶¶ H.3.d, e. Finally, once the playing field is leveled, there is a cost comparison between the private-sector offer and the in-house plan. Id. ¶¶ H, J.

requirements for each of these service areas, and set forth estimated average annual workloads and minimum performance standards.

The RFP provided that the successful private-sector offeror would be selected on the basis of which offeror's proposal represented the best value to the government. The solicitation informed offerors that technical merit would be considered more important than price in determining which proposal represented the best value to the government, and listed the following technical evaluation factors in descending order of importance:

- (a) Past Performance
- (b) Management Plan
 - (i) Staffing Plan
 - (ii) Quality Control Overview
- (c) Corporate Experience

The quality control overview subfactor to the management plan factor was to be "evaluated on a pass/fail basis." Id. at 33.

The RFP provided detailed proposal preparation instructions, and requested that offerors submit separate technical and price proposals. With regard to technical proposals, the solicitation requested that each offeror provide, for example, a management plan, consisting in part of a staffing plan demonstrating the firm's ability to perform the work set forth in the PWS. The solicitation also specified that while a quality control plan would not be required until 45 days after award, offerors were to submit a quality control overview, providing "examples of critical quality processes, process metrics, service delivery metrics, and flow-charting or other graphical techniques to be utilized in effecting the offeror[']s Quality Control Plan." Id. at 32.

Certain Navy personnel, with contractor support (hereinafter the management plan (MP) team), were tasked with the development of the in-house management plan, including the development of the in-house plan's most efficient organization (MEO), technical performance plan (TPP), in-house cost estimate (IHCE), and transition plan. The in-house plan was developed, and forwarded to the IRO for certification. To assist the IRO in reviewing and certifying the in-house plan, the Navy contracted with a private-sector contractor that performed much of the analysis on which the IRO based his judgment. The record reflects that during this review process, the Navy issued 206 "Action Item Transmittal Forms" (AITF), each of which posed a question or questions regarding the in-house plan. Agency Report (AR), vols. 8-9.

Although many of the AITFs resulted in an explanation from the MP team as to how or why the in-house plan satisfied the PWS requirements, the Navy responded to some of the AITFs by amending the PWS as well as the RFP issued to the private sector offerors. Id.; Agency Supplemental Report (ASR) at 2. For example, in

response to an AITF that questioned whether the in-house plan provided for the drug testing of employees, as required by the PWS, the agency found that none of the positions under study “were drug testing positions.” Accordingly, the requirement for drug testing was deleted from the PWS (and the RFP was so amended). AR, vol. 8, AITF 0048; compare PWS (as initially issued) at 6 with PWS, as amended, and included in RFP amend. no. 11 (Aug.17, 2000).

The IRO ultimately certified that the in-house plan, which provided for a staffing level of 47.1 full-time equivalents (FTE) at a total cost of \$9,756,320, was in accordance with Circular A-76 and reasonably established the ability of the in-house plan to satisfy the PWS requirements. AR, Tab 17, IRO Certification (Sept. 12, 2000); Tab 18, Revised In-House Plan, at 2, 7; Tab 20, Revised IRO Certification (June 11, 2001).

The agency received eight proposals, including IME’s, by the RFP’s closing date of September 29, 2000. AR, Tab 5, Technical Evaluation Board (TEB) Report for Initial Proposals, at 1. IME’s initial proposal received ratings of “acceptable” under the past performance factor, “unacceptable” under the management plan and corporate experience factors, and “unacceptable” overall, at an evaluated price of \$10,853,810.³ Id. at 1, 10-15; Tab 6, Pre-Negotiation Contract Review Board Presentation, at 4. Under the management plan factor, IME’s proposal received ratings of “unacceptable” and “pass” under, respectively, the staffing plan and quality control overview subfactors. AR, Tab 5, TEB Report for Initial Proposals, at 1. The proposals of IME and another offeror were included in the competitive range.⁴ AR, Tab 6, Pre-Negotiation Contract Review Board Presentation (July 25, 2001), at 17.

The agency conducted oral discussions with IME on July 24 and 25, 2001. By letter dated July 25, the agency confirmed these discussions, informed IME that its proposal was considered capable of being made acceptable “if additional information is provided,” and requested that IME submit its final proposal revisions (FPR) by August 6. The agency’s letter also provided IME with a detailed explanation of the agency’s evaluation of IME’s initial proposal. AR, Tab 7, Contracting Officer’s Letter to IME (July 25, 2001).

³ The following adjectival ratings were used in the evaluation of proposals: highly acceptable, acceptable, unacceptable (a) (capable of being made acceptable through discussions without extensive changes), unacceptable (b) (not capable of being made acceptable without the submission of what would constitute a new proposal), and neutral (for past performance). AR, Tab 5, Source Selection Plan at 10. As indicated above, the quality control subfactor was rated on a pass/fail basis.

⁴ Each of the eight initial proposals received was evaluated as “unacceptable” overall, with evaluated prices that ranged from \$3.8 million to \$20.8 million. AR, Tab 6, Pre-Negotiation Contract Review Board Presentation (July 25, 2001), at 4.

The protester timely submitted its FPR. The agency upgraded its evaluation of IME's proposal under the staffing plan subfactor to acceptable, and accordingly, found IME's proposal acceptable under the management plan evaluation factor. However, because the agency again found IME's proposal unacceptable under the corporate experience factor, it evaluated IME's revised proposal as unacceptable overall. AR, Tab 9, Supplemental TEB Report, at 1-6. The agency nevertheless again determined that IME's proposal, at its revised evaluated price of \$12,237,320, was susceptible of being made acceptable if additional information regarding its corporate experience was provided. AR, Tab 10, Pre-Negotiation Contract Review Board Presentation (Sept. 27, 2001), at 4, 12.

The agency conducted a second round of oral discussions with IME on October 4, and IME submitted additional information regarding its corporate experience on October 4 and 5. By letter dated October 10, the agency confirmed these discussions, and informed IME that its proposal, as revised, was "considered acceptable." This letter added that in evaluating IME's proposal, the agency had found "nothing notable with respect to any of the [evaluation] factors that would contribute to a rating higher than acceptable." The agency's letter included a summary of its evaluation of IME's proposal as revised, and concluded, consistent with the previous statements in the letter, that "[t]here is nothing in your proposal to indicate that you are offering performance or performance quality that differs from that required by the PWS." The letter finally advised IME that it was being "afforded an opportunity to improve any aspect of [its] technical proposal and to submit a revised FPR." AR, Tab 11, Contracting Officer's letter to IME (Oct. 10, 2001), at 3. IME responded to the agency, by letter dated that same day, confirming that the agency had evaluated its proposal as acceptable overall, and that IME had "elected to have" its technical and price proposals "remain the same." AR, Tab 12, IME's Letter to the Contracting Officer (Oct. 10, 2001).

The contracting officer, acting as the source selection authority (SSA), selected IME's proposal as the only acceptable proposal for use in the cost comparison. AR, Tab 13, SSA's Memorandum for File (Oct. 17, 2001). The record contains a detailed memorandum written by the SSA, noting among other things that IME's "proposal was rated acceptable overall based on acceptable ratings in each of the evaluation factors," and specifically concurring with the TEB's findings that the proposal did not provide for "improvements to the level of performance and performance quality beyond that which is required by the PWS." AR, Tab 21, SSA's Memorandum for Record (Nov. 14, 2001), at 1. The SSA proceeded to describe the minimum standards set forth in the RFP in each of the required PWS service areas, and concluded that IME's proposal did not provide that any of these services would be performed at a level exceeding that required by the RFP's PWS. *Id.* at 2.

In the memorandum, the SSA noted that the in-house plan did not provide for "improvements to the level of performance and performance quality beyond that

which is required by the PWS.” Id. at 1. However, the memorandum further provided that the SSA “reviewed the [in-house plan] to ensure that it has accounted for the workload established by the RFP,” forwarded “a list of concerns regarding the [in-house plan] to the [MP] team for comment,” and requested that the TEB review the “process times established in the Government’s MEO to determine if they are reasonable.” Id. at 2-3.

As a result of these reviews, a number of minor errors were found in the in-house plan. For example, the SSA found during this review that although the PWS estimated the time to process each travel order at 1 hour, the in-house plan was based upon an estimated time to process each travel order of 40 minutes; this concern was forwarded to the MP team, which concurred that the in-house plan was in error and that the impact on the in-house plan would be an increase of approximately 360 hours. Id. at 3.

The reviews also found that the in-house plan was based in some instances upon workload estimates that were in excess of those set forth in the PWS. For example, the SSA found that the section of the in-house plan addressing the provision of central administrative services was based, in part, upon an estimated workload of 41,000 incoming messages whereas the PWS provided for an estimated 22,000 messages. Id. The net result of these reviews was a finding that the in-house plan had overstated the hours required to perform the services set forth in the PWS by 1,350 hours. However, the MP team declined the SSA’s offer to amend the IHCE to reflect the reduced number of hours required, citing the time necessary to perform the change and the minimal overall effect it would have on the IHCE. Id. at 3-4.

The SSA stated in the memorandum that he “considered that the [in-house plan] and IME[’s proposal] have very different staffing levels,” with IME’s proposal offering “a total of 76.3 full-time equivalents, while the [in-house plan] offers 47.1 FTE[s].” The SSA noted here that, in his view, differing proposed staffing levels were “not unusual in response to a performance-based statement of work,” and that the seven other private sector offerors proposed staffing levels that ranged from a low of 22 FTEs to a high of 116 FTEs. Id. at 1.

Based upon the above reviews and analyses, the IRO’s certification of the in-house plan’s ability to perform the requirements of the PWS, and the fact that IME’s proposal had been found only capable of meeting (and not exceeding) the requirements of the PWS, the SSA ultimately concluded in the memorandum “that the [in-house plan] will achieve the same level of performance and performance quality as the contractor proposal, albeit with differing staffing complements.” Id. at 4.

The agency completed its study by comparing the in-house plan’s estimated cost of \$9,756,320 to IME’s proposed price, with adjustments for contract administration costs, one-time conversion costs, and the minimum conversion differential, of

\$14,395,817. Because of the \$4,639,497 difference, the agency determined to perform the requirements in-house. AR, Tab 22, Cost Comparison (Nov. 15, 2001). By letter dated November 15, the agency notified IME of the outcome of the cost comparison, and that the agency would make the cost comparison form and supporting documentation (including the MEO) available for IME's review. AR at 8; ASR at 7.

IME reviewed the available information, and timely filed an administrative appeal. AR, Tabs 24, IME's Administrative Appeal. The agency's administrative appeal authority made minimal adjustments to both the in-house plan's costs (adding \$49,875) and the costs of contracting with IME (subtracting \$32,284), but ratified the determination to perform the requirements in-house, given the now \$4,557,338 difference. AR, Tab 25, Final Decision of on the Administrative Appeal of A-76 for Administrative, Central Supply, Postal and Emergency Dispatch Services, PNRC, at 29. This protest followed.

PROTEST

IME protests that the agency erred in allowing changes to be made to the PWS during and as a result of the IRO's review of the in-house plan. The protester also argues that the in-house plan fails to meet certain PWS requirements and fails to include certain required costs, and that the in-house plan does not provide for a level of performance and performance quality that is comparable to that provided for by IME's proposal.

ANALYSIS

Where, as here, an agency has conducted a cost comparison under Circular A-76, thus using the procurement system to determine whether to contract out or to perform the 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 is otherwise unreasonable. To succeed in its protest, the protester must demonstrate not only that the agency failed to follow established procedures, but also that its failure could have materially affected the outcome of the cost comparison. BAE Sys., B-287189, B-287189.2, May 14, 2001, 2001 CPD ¶ 86 at 19. As explained below, we believe that the agency's actions were neither inconsistent with Circular A-76 nor inappropriate under the circumstances.

Propriety of Amending the PWS/RFP During the IRO's Review of In-House Plan

The protester points to the sections of the record that reflect that while many of the AITFs issued by the IRO resulted in an explanation from the MP team, the Navy responded to some of the AITFs by amending the PWS (and amending the RFP issued to the private sector offerors). The protester complains that the AITFs "identified a number of significant shortcomings in the [in-house plan]," and that the

agency “often resolved those shortcomings by . . . amending the PWS so that the [in-house plan] solution was acceptable.” Protester’s Comments at 5. As a specific example, the protester points out that, as discussed previously, the AITF questioning whether the in-house plan provided for drug testing resulted in the deletion of the drug testing requirement from the PWS. *Id.* at 6. The protester notes (without explanation) that although this requirement was deleted from the RFP, its proposal nevertheless provided for the drug testing of its employees. The protester concludes that the agency’s actions were inconsistent with Circular A-76, and appears to argue that they reflected agency bias towards the in-house plan. *Id.* at 5; Protester’s Supplemental Comments at 2-3.

However, the record simply does not indicate that the agency deleted requirements from the PWS (and RFP) during its evaluation of the in-house plan because of any bias. Rather, the record reflects that the agency amended the PWS because it learned, during its evaluation of the in-house plan, that certain sections of the PWS did not adequately state the agency’s minimum needs. The deletion of the PWS’s requirement that employees be drug tested is an example of this. In this regard, and as discussed previously, the IRO found when reviewing the in-house plan that it did not provide for the drug testing of employees. When questioned about this, the MP team checked and found that none of the positions that were subject to the commercial activity study were positions for which drug testing was required. Accordingly, the agency deleted the drug-testing requirement from the PWS (and RFP).

The fact that the agency deleted a provision in the PWS that was both unnecessary and potentially costly (to the selected private-sector offeror, the in-house plan, and thus the government) cannot be construed, in our view, as evidence that the agency was biased in favor of retaining the performance of the services in-house. See RONCO Consulting Corp., B-280113, Aug. 11, 1998, 98-2 CPD ¶ 41 at 5 (government officials are presumed to act in good faith; we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition). Rather, it appears to reflect sound judgment on the part of the agency and a desire to comply with procurement law and regulations, by ensuring not only that its minimum needs were met, but also that the private-sector offerors and the MP team competed on the basis of the same scope of work.⁵ See RSH, part I, ch. 3, ¶ H.3.e; BAE Sys., *supra*, at 19-20.

⁵ Where an agency discovers that a solicitation overstates its needs, the proper remedy generally is revision of the solicitation to reflect the agency’s actual needs, affording offerors an opportunity to respond to the revision. Brisk Waterproofing Co., Inc., B-256138.3, June 30, 1994, 94-1 CPD ¶ 394 at 3-4; California Bus. Interiors, B-250963.2, Apr. 19, 1993, 93-1 CPD ¶ 331 at 3.

Another example raised by the protester of the agency's amending the PWS (and RFP) because of the IRO's discussions with the MP team relates to the PWS provision regarding central administrative services that requires that the service provider "process, provide, and track vehicle gate passes and base identification cards to eligible military and civilian personnel for the [PNRC] excluding NASWF."⁶ PWS at 18; PWS, as amended, at 28. The protester complains here that the agency "changed the PWS requirement for processing and tracking vehicle gate passes and base identification cards to match the [in-house plan's] proposal to track and maintain the databases." Protester's Comments at 7.

The record reflects that the IRO, upon reviewing the in-house plan, questioned the in-house plan's statement that it "will continue to maintain and update database that tracks the status of vehicles registered and passes issued." AR, vol. 10, Final AITF, at 36. The IRO was informed that although the PWS did not reference this database, one was indeed in use by the government. Accordingly, the PWS was amended to ensure that the service provider maintained the database and underlying systems. *Id.*; PWS, as amended, at 36. The agency explains that this change was made simply to "reflect the realities at the PNRC." ASR at 3. The protester does not assert, and there is nothing in the record to suggest, that the maintenance of the database and underlying systems is not an actual agency requirement. As such, we fail to see how the agency's actions here--amending the PWS to more accurately reflect its needs--can be viewed as somehow improper or indicative of bias; indeed, it was the proper action for the agency to take in the circumstances. BAE Sys., supra.

We note that the protester makes no mention (with the exception of its apparent argument regarding bias) as to how it was prejudiced by the agency's amendment of the PWS during the IRO's review of the in-house plan. For example, while the protester refers to the fact although the PWS was amended, its proposal nevertheless provided for the drug testing of its employees, it fails to state the impact of this on its proposal, or otherwise explain how the amendment of the RFP in this regard, or any other regard, adversely affected it in the cost comparison. Again, as pointed out by the agency, IME and the MP team "proposed on the same requirements," so no prejudice is apparent, and it was incumbent upon IME, when pursuing this basis of protest, to establish how it was prejudiced.⁷ BAE Systems, supra, at 19; Symvionics,

⁶ The agency used the "neutral" term "service provider" in the PWS to avoid the appearance that it was biased towards either "contractor" or "in-house" performance. AR, vol. 8, AITF No. 0055; vol. 10, Final AITF at 19.

⁷ As we begin to address the remainder of the protester's contentions, we are mindful of the agency's arguments that the protester has failed to show how, if the protester is correct, the agency's alleged failures could have materially affected the outcome of the cost comparison in light of the \$4.5 million difference between the costs associated with the in-house plan's and IME's proposed price. Agency Request for Summary Dismissal; AR at 22, 27-28. In this regard, whereas the agency has provided
(continued...)

Inc., B-281199.2, Mar. 4, 1999, 99-1 CPD ¶ 48 at 5-6 (protester not prejudiced where it failed to show, and the record did not reflect, how it was prejudiced by the agency's failure to seal the in-house plan prior to its receipt of private-sector proposals as required by the RSH, part I, ch. 3, ¶ F.2).

IRO's Certification of the Government's Ability to Perform the PWS

The protester argues that the government cannot satisfy the minimum requirements of the PWS with the resources set forth in the in-house plan. In reviewing an agency's evaluation of whether the in-house offer establishes the ability to perform the PWS within the resources provided by the plan, we will not reevaluate the in-house plan, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with applicable procedures. Jones/Hill Joint Venture, B-286194.4 et al., Dec. 5, 2001, 2001 CPD ¶ 194 at 17.

For example, the protester contends that the IRO unreasonably determined that the in-house plan included sufficient resources to accomplish the work set forth in the PWS regarding the sorting, slotting, picking-up and distributing of official mail. The PWS provided as follows:

The [service provider] shall sort, slot, pick-up and distribute official mail directly to [service provider] operating sites and PWC [public works center]. Mail includes letter mail, [United States Postal Service] parcels, courier packages, and registered mail picked-up or delivered to the [consolidated mail facility] or [service provider] operating sites. Less than 1% of average workload is parcel or courier packages.

PWS at 33-34. The PWS continued by setting forth average annual workloads for administrative (39,000 pieces), security (5,200 pieces), fire (18,500 pieces), supply (20,000 pieces) and PWC (2,000 pieces). Id.

The in-house plan included, for each of the service areas listed above, a table that in relevant part provided the work required (sort, slot, pick-up and distribute official mail), estimated time to perform the work required, workload, and total time to

(...continued)

detailed cost breakdowns and calculated what are, in its view, the potential cost impacts to the in-house plan if we were to find in the protester's favor, the protester has responded with little more than the general assertion that "[t]he cumulative [e]ffect of the agency's failures materially have affected the outcome of the competition." Protester's Supplemental Comments at 10. Nevertheless, all of the protester's contentions have been considered, even if not specifically addressed in this decision, and the majority of these contentions, particularly those that would have the greatest impact on the cost comparison, are addressed.

perform the work based upon the total workload. AR, Tab 14, In-house Plan, MEO, attaches. 1-1 through 1-4. The protester argues that the in-house plan “has enormously understated the PWS workload requirements for [the] Administration and Supply operations.” Protest at 11. In this regard, the protester points out that according to the tables in the in-house plan, the in-house plan used workloads of “248” for both the central administrative and supply service areas, rather than the workloads provided in the PWS of 39,000 and 20,000 pieces, respectively. The protester calculates that “[b]ased on the MEO’s staffing standard of 1776 [hours] per FTE, the MEO is short more than 27 FTEs just in relation to this one task.” Protest at 12.

The agency, while essentially conceding that the disputed tables in the in-house plan are not models of clarity, explains that the “248” entry under “workload” refers to “number of workdays per year,” and argues that the in-house plan is, in fact, adequately staffed, in that the in-house plan provides for 60 minutes and 30 minutes per day to perform, respectively, the central administration and supply mail workloads. The agency justifies the in-house plan’s staffing in this regard by explaining that the estimated annual workloads of 39,000 and 20,000 pieces of mail for, respectively, central administration and supply, divided by 248 workdays per year, results in daily workloads of 157 and 81 pieces of mail. The daily estimates, divided by the time allotted in the in-house plan to perform the mail function, provide for the processing of approximately 2.7 pieces of mail every minute or a piece of mail every 22 seconds. AR at 19. The agency maintains that this is a sufficient amount of time to process the mail. The agency also points out that IME’s proposal provided for a total of 7 FTEs to perform the required mail function (while the in-house plan provided for 5 FTEs), and that if the tables were read as IME’s argues in its protest, the tables would provide for the in-house plan’s staffing of the mail function with 32 FTEs. AR at 18.

In our view, the agency’s explanation regarding the methodology used to determine the number of FTEs required (essentially, the time required to process each piece of mail multiplied by the estimated workload) is reasonable, and we note, as does the agency, that IME, at no point during this protest, argues otherwise. Rather, IME simply continues to argue that the MP team erred by basing its estimates on annual workloads of 248 pieces of mail for the central administrative and supply functions as indicated in the in-house plan’s tables, and that the in-house plan’s staffing must be raised to 32 FTEs. Given the agency’s credible explanation here, and what we view as IME’s overly simplistic, unpersuasive position, we find no basis to object to the agency’s conclusion that the in-house plan provided for adequate staffing to perform the requirements of the PWS regarding the processing of mail.

The protester also asserts that the in-house plan fails to comply with the requirements of the PWS because it does not include a quality control plan. The protester contends that what appears to be the in-house plan’s quality control plan is

actually a “representation[] regarding what attributes ‘will’ be included in a future plan.” Protest at 18.

As mentioned previously, the PWS required the submission of only a quality control overview, with the submission of the actual quality control plan not being required until 45 days after award (or completion of the cost comparison). RFP amend. 11, at 32. The record reflects that the in-house plan included a quality control overview as required, regarding which the IRO issued a number of AITFs. The AITFs resulted in the MP team’s submission of a considerably revised quality control overview that was reasonably accepted as adequate by the IRO.⁸ AR vol. 9, AITFs 0142-0149; vol. 10, Final AITF at 42-43.

The protester, while apparently conceding that the solicitation did not require the submission of a quality control plan, nevertheless complains in its comments (without reference to anything specific in the record) that the “[in-house plan’s] approach appears to have been the result of coaching from the IRO.” Protester’s Comments at 18. This argument reflects a misunderstanding of the Circular A-76 process.

According to the RSH, the IRO, among other things, is to review the in-house plan and supporting documentation to reasonably ensure the in-house plan’s compliance with the requirements of the PWS. RSH, part II, ch. 2, ¶ A.1.b; BAE Sys., supra. This process contemplates that, should the IRO have questions concerning the adequacy of the in-house plan, the IRO may communicate these questions to the MP team for resolution, given that it is the IRO’s responsibility to ensure that the in-house plan satisfies the minimum PWS requirements and that any adjustments necessary to satisfy the PWS requirements are made. BAE Sys., supra, at 19-20; see RSH, part I, ch. 3, ¶¶ H, I, J. The record here provides that the IRO did nothing more than pose questions to the MP team regarding its quality control overview, or inform the team of the sections of the overview that, in the IRO’s view, did not meet the requirements of the PWS. In sum, our review of the record indicates that the IRO’s actions were consistent with the requirements of the RSH by reasonably ensuring that the in-house plan, as certified, met the requirements of the PWS.

Costs Associated with the Government’s Performance of the PWS Requirements

The protester argues that the in-house plan did not include all costs associated with its performance of the work required. The RSH requires that the in-house plan include all labor and costs associated with the performance of the tasks required, and the agency is to ensure, during its review of the in-house plan, that those costs

⁸ The document ultimately submitted by the MP team and accepted by the IRO appears to be a quality assurance surveillance plan, containing more detail than would be expected in a quality control overview.

are completely and properly accounted for. RSH, part I, ch. 3, ¶ I; part II, ch. 2; Jones/Hill Joint Venture-Costs, B-286194.3, Mar. 27, 2001, 2001 CPD ¶ 62 at 13.

Specifically, IME points out here that the MEO states the following with regard to its “mission:”

To provide quality Administrative, Supply, Postal and Emergency Dispatch services to the [PNRC]. In doing so, the Central Support Business Unit will continually reinvent itself through innovations in business practices and technology. The organization will focus on the needs of the customer and strive to achieve 100% customer satisfaction in every aspect of its operations and services.

AR, Tab 14, In-House Plan, MEO, at 22 (emphasis added). The protester argues that the agency erred in not requiring that the IHCE identify specific costs associated with the MEO’s intended use of “innovations in business practices and technology.” The protester points out in this regard that when the IRO questioned “what technology” would be used with regard to another general reference set forth in the in-house plan that provided for the use of “technology” to reduce staffing, the MP team responded by deleting the reference. Protest at 19; Protester’s Comments at 18-19.

The protester also points out that the in-house plan elsewhere refers to the “cross-utilization of personnel” in introducing its technical approach to accomplishing the requirements of the PWS. The protester argues here that the IHCE was deficient in that it assumed “that multifunctional skills may be gotten without any associated costs.” Protest at 21. The protester concludes here that the MP team “simply cannot ‘design’ its force of super workers without implementing an extensive and expensive training program.” Id. at 21-22.

The Navy responds by arguing that “[w]hile better use of technology and re-engineering processes should improve efficiency of either the MEO or IME’s proposed workforce, the amounts cannot be quantified.” The agency asserts that in its view “[e]very part of the PWS is accounted for” with the in-house plan’s proposed staffing. AR at 23. The agency further notes that, as found during IME’s administrative appeal, “initial training costs to implement the MEO are non-existent because all personnel will need to meet the requirements required by the Position Description . . . that they are to fill.” AR at 25; Tab 25, Final Decision on the Administrative Appeal of A-76 for Administrative, Central Supply, Postal and Emergency Dispatch Services, PNRC, at 26. The agency explains that, notwithstanding IME’s assertions in its protest, the in-house plan “does not require a ‘force of super workers,’” and “[t]here simply is no government provided training required to meet the requirements of the PWS.” AR at 25.

We find reasonable the IRO's certification of the in-house plan without requiring detailed costs to account for the in-house plan's general references to "innovations in business practices and technology" and "cross-utilization." Although the protester asserts that the IRO's position was not sufficiently documented, the record reflects that the IRO conducted a detailed and thorough review of the in-house plan, and ultimately concluded that the in-house plan, as revised, reasonably established the government's ability to perform the PWS with the resources provided.⁹ In our view, the protester has failed to establish that any aspect of the IRO's judgment in this regard was unreasonable or inadequately documented. Specifically, the protester has not pointed to any specific technological or business practice innovations set forth in the in-house plan that were not costed in the IHCE. Moreover, although IME clearly disagrees with the agency's view that the in-house plan is not based upon the employment of "super workers," but on retaining certain current agency personnel, the protester simply has not shown that the in-house plan's position descriptions are unrealistic with regard to the skills required.¹⁰

Comparable Level and Quality of Performance

The protester argues that the in-house plan does not provide a level of performance that is comparable to that offered by IME's proposal. Specifically, the protester points to the TEB's evaluation of IME's proposal under the staffing plan subfactor to the management plan factor, where the TEB found, for example, that "IME's proposed staffing plan reflected a complete understanding of Supply staffing structure and functional grouping." The TEB noted here that IME proposed to "cross-train/cross-utilize personnel from other functional areas/geographic sites," and that "[t]his was considered an acceptable approach." The protester quotes another section of the TEB report in support of its argument that the in-house plan

⁹ An agency is required to adequately document its evaluation of whether the government can perform the PWS with resources provided in the in-house offer. Jones/Hill Joint Venture, *supra*, at 18. Here, the IRO's determinations in this respect were thoroughly documented.

¹⁰ The protester also complains for the first time in its comments on the agency report that the in-house plan's "use of intermittent [workers] . . . is not vaguely realistic and presents a substantive risk for the government in terms of workforce availability and stability." Protester's Comments at 21. Our Bid Protest Regulations do not contemplate the piecemeal presentation of protest issues, and in this regard, a protester may not delay raising additional protest issues where, as here, the protester should have been aware of those grounds at the time of filing its initial protest. Robbins-Gioia, Inc., B-274318 *et al.*, Dec. 4, 1996, 96-2 CPD ¶ 222 at 19 n.20; Hung Myung (USQ) Ltd., Inc.; Containertechnik Hamburg GmbH & Co., B-244686 *et al.*, Nov. 7, 1991, 91-2 CPD ¶ 434 at 7. Accordingly, we decline to consider this protest basis on the merits.

does not provide a level of performance that is comparable to that offered by IME's proposal, where the TEB found that IME's "innovative approach [with regard to supply staffing] is considered acceptable." Protester's Comments at 12-13; AR, Tab 5, TEB Report, Initial Proposals, at 11.

The RSH provides that where, as here, a best-value approach is taken in evaluating private-sector proposals, the agency must compare the in-house plan to the successful private-sector proposal to determine "whether or not the same level of performance and performance quality will be achieved," and, if not, make "all changes necessary to meet the performance standards accepted [in the private sector proposal]." RSH, part 1, ch. 3, ¶¶ H.3.d, e. This "leveling of the playing field" is necessary because a best-value solicitation invites submission of proposals that exceed the RFP requirements, together with the higher prices that often accompany a technically superior approach. Failure to ensure that the in-house plan offers the same level of performance as the best-value private-sector proposal selected to be compared with the in-house plan can lead to the unfair situation where the very technical superiority that led to the private-sector proposal's selection would cause it to lose the public/private cost comparison. Jones/Hill Joint Venture--Costs, *supra*, at 10. The starting point for this analysis is the agency's own evaluation, during the private-sector competition, of the proposal that is ultimately selected for comparison with the in-house plan. If an agency identifies strengths in that proposal, or if it identifies areas in which that proposal exceeds the RFP requirements, the agency should consider those strengths in comparing that proposal with the in-house plan. RSH, part I, ch. 3, ¶¶ H.3.d, e; BAE Sys., *supra*, at 27.

Here, contrary to IME's assertions, any reasoned review of the agency's evaluation of IME's proposal under the staffing plan subfactor to the management plan factor demonstrates that the agency did not identify any strengths for IME's staffing plan. First, it is notable that the statements of the TEB, referred to by IME in support of its assertion that the agency failed to account for the evaluated strengths in IME's proposal, appear in the TEB's evaluation of IME's initial proposal that was evaluated as unacceptable under the staffing plan subfactor. More importantly, the statements referenced by IME, as set forth above, provide that the most positive comments made by the TEB with regard to IME's staffing plan were that its "innovative approach [with regard to supply staffing] is considered acceptable," and that its proposal to "cross-train/cross-utilize personnel from other functional areas/geographic sites . . . was considered an acceptable approach." AR, Tab 5, TEB Report, Initial Proposals, at 11-12 (emphasis added). We simply fail to see how IME can claim that the agency erred because it failed to account for the evaluated strengths in IME's staffing plan, where the record reflects that the agency simply did not evaluate IME's staffing plan as having any strengths.¹¹

¹¹ IME also complains that the in-house plan does not provide a level of performance comparable to that offered in IME's proposal with regard to IME's proposed use of:
(continued...)

Contentions That Do Not Affect the Cost Comparison Result

IME asserts that the agency overstated the number and grade levels of the contract administrators that would be required to administer IME's contract in performing the cost comparison (the cost of which was added to IME's contract price for purposes of the cost comparison), arguing that "the proper estimate for the costs of administering the commercial contract should be the cost of one GS-12 and one GS-11," rather than "a GS-13 Contracting Officer and a GS-12 Contract Negotiator/Administrator" as estimated by the agency for the purposes of the cost comparison. Protester's Comments at 19; AR at 24. The protester also contends that the in-house plan failed to provide adequate staffing with regard to the PWS requirements that the service provider create, edit, proofread and formalize certain written material, or to provide certain "Storefront Operations."

The agency has provided detailed responses to each of these arguments, explaining why in its view its estimate that it would need one GS-12 and one GS-13 to administer IME's contract was reasonable, and why in its view the IRO reasonably determined that the in-house plan met the PWS's written material and storefront

(...continued)

(1) an "illustrator," rather than a management assistant as proposed by the in-house plan, to perform the design and printing/reproduction support services required by the PWS; (2) two FTEs, rather than one as proposed by the in-house plan, to provide certain safety, security and quality control services required by the PWS; and (3) the overall greater number of FTEs provided by IME's proposal (76.3) (particularly in certain areas) in comparison to the number of FTEs set forth in the in-house plan (47.1). Protester's Comments at 11-13. In contrast to IME's argument (discussed above) regarding the alleged "strengths" identified by the TEB with regard to IME's staffing plan, the bases of which only became apparent upon the protester's receipt of the agency report, IME's arguments based upon IME's review of its own proposal and the in-house plan could and should have been raised in its initial protest to our Office. As mentioned previously, our Bid Protest Regulations do not contemplate the piecemeal presentation of protest issues, and we decline to consider these protest bases on the merits. Robbins-Gioia, Inc., supra; Hung Myung (USQ) Ltd., Inc.' Containertechnik Hamburg GmbH & Co., supra. In any event, with regard to the protester's second and third arguments here, we note that a higher level of staffing does not necessarily offer any commensurate increase in performance or performance quality. 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. Accordingly, an agency should not impose the private-sector proposal's staffing level on the in-house team as IME appears to argue was required here. BAE Sys., supra, at 20.

operations requirements. AR at 15-17, 24; ASR at 6. Additionally, the agency calculated, based upon IME's arguments, the adjustments that would have to be made to the cost comparison if IME were to prevail with regard to each of these arguments (as well as certain other arguments raised by the protester that we have discussed and denied previously in this decision) would be approximately \$2.8 million. AR at 27-28. Given the agency's calculations, which appear reasonable and have not been challenged by the protester, we need not address the protester's arguments here in view of the in-house plan's approximate \$4.5 million cost advantage.

Conflict of Interest

Finally, IME argues that, according to the record, at least one Navy and one employee of a private-sector contractor participated in writing the PWS and then the in-house plan. The protester argues that the procurement is fatally flawed by these conflicts of interest, and cites, as support, our decision in Jones/Hill Joint Venture, supra, at 7-14 (conflict of interest existed in a Circular A-76 study where a Navy employee and a private sector consultant wrote and edited the PWS and prepared the in-house plan).¹²

In Department of the Navy-Recon., B-286194.7, May 29, 2002, 2002 CPD ¶ ____, we affirmed our view that having the same agency and contractor employees write both the PWS and in-house plan creates an impermissible conflict of interest under Federal Acquisition Regulation § 3.101. We found in this regard that

where one competitor [the agency] has established the ground rules applicable to all competitors by developing and drafting the PWS, there is a significant risk of at least a perception that the ground rules were written in a manner that skews the competition

¹² The protester also argues that, according to its view of the record, an agency employee served on the TEB and also participated in writing the in-house plan. However, the record includes the Conflict of Interest and NonDisclosure Certificate executed by the Navy employee in which he certified, among other things, that he "did not participate[] in the development of the Government's Management Plan (which includes the [MEO], [TPP], [IHCE] and Transition Plan) and [has] not had access to the [in-house plan]." Agency Request for Summary Dismissal (May 31, 2002), attach. The Navy has also explained that the entries in the record upon which the protester's allegations are based reflect only that the employee participated in drafting the PWS. In our view, the protester's assertion here is based entirely on inference and supposition, not substantial facts or hard evidence, and accordingly, will not be considered further. RMG Sys., Ltd., B-281006, Dec. 18, 1998, 98-2 CPD ¶ 153 at 4.

or that . . . the unique access to information required to develop the PWS provides the competitor with an unfair advantage.

Department of the Navy-Recon., supra, at 10. However, we recognized the practical reality that without prospective application of our decision in Jones/Hill Joint Venture, supra, multiple ongoing A-76 studies (such as this one) may have to be cancelled, and that the disruption or cancellation of large numbers of studies would not serve the interests of the private-sector firms, the agencies conducting the A-76 studies, or the A-76 process overall. Department of the Navy-Recon., supra, at 13. Accordingly, we stated that:

[w]ith regard to an A-76 study in which, prior to the public release of our initial decision, an agency had already completed the PWS or invested substantial time and/or resources (a determination that we leave to the agency's reasonable exercise of discretion) in preparing the MEO in-house plan, we will not consider a protest ground alleging a conflict of interest based on the Jones/Hill decision.

Department of the Navy-Recon., supra, at 14 (footnote omitted). Because the Jones/Hill decision was publicly released on December 10, 2001, and the agency here, by that date, had completed its PWS, the in-house plan, the private-sector proposal selection and evaluation, and cost comparison, we will not consider this aspect of IME's protest further.

The protest is denied.

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General Counsel