



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: PMS, Inc.
File: B-228014.2
Date: January 26, 1988

DIGEST

1. Protest that in-house cost estimate prepared for comparison with commercial proposals under Office of Management and Budget (OMB) Circular A-76 was based on a staffing level that the Source Selection Evaluation Board (SSEB), which was to evaluate the commercial proposals, would have found unacceptable is dismissed. SSEB did not evaluate or consider the government estimate, and its judgment as to the merits of that estimate is therefore irrelevant.
2. Protest that level of staffing in the government's estimate is inadequate to perform the workload described in the solicitation's performance work statement is denied where protester fails to demonstrate that the agency's determination of the requisite level of staffing was made in a manner tantamount to fraud or bad faith.

DECISION

PMS, Inc., protests the Department of the Army's determination to retain in-house automated data processing (ADP) services for the Toole Army Depot Complex in Utah. This determination, made in accordance with Office of Management and Budget (OMB) Circular A-76 procedures, was based on a comparison of the Army's in-house cost estimate with PMS's proposal submitted in response to request for proposals (RFP) No. DAAC89-86-R-0007. The cost comparison showed that continuing in-house performance would cost the Army \$668,101 less than contracting with PMS. The protest to our Office follows PMS's unsuccessful appeal of the protest issues to an Administrative Appeals Board set up by the Army. We deny the protest in part and dismiss it in part.

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The RFP sought offers for the ADP services on a fixed-price basis. The solicitation informed offerors that after the selection of the lowest priced acceptable offeror, its price would be compared with a previously prepared government cost estimate for the performance of the work specified in the RFP work statement. The agency would award a contract only if the comparison indicated that contractor performance would be more economical. The solicitation provided that to be considered acceptable proposals must be rated as acceptable in accordance with the evaluation factors listed in the solicitation. The two major factors were Management and Technical.

The agency received two proposals by the April 30, 1987, closing date; both were included in the competitive range. After discussions, and the submission of best and final offers, PMS's final offer, in the amount of \$8,063,220, was selected as that most advantageous to the government and subjected to the unsuccessful cost comparison with the agency's cost estimate.

PMS's protest is grounded on its contention that the government's cost estimate is based on a staffing level that is inadequate to perform the workload described in the solicitation's performance work statement. From this, the protester concludes that the Source Selection Evaluation Board (SSEB), which evaluated the commercial proposals, would have rejected as unacceptable any proposal based on the government's proposed staffing. Further, the protester states that the cost comparison conducted between its proposal and the government's in-house cost estimate was unfair because the government's inadequate staffing resulted in an unrealistically low cost estimate.

We dismiss the protester's initial argument that the government's in-house estimate, in essence, constituted a proposal that did not meet the standards for performance under the RFP and therefore would have been rejected by the SSEB. Since the SSEB only evaluated the proposals from the commercial offerors and did not see or evaluate the government estimate, its judgment of the merits of that estimate is not relevant.

In a related argument, the protester also objects to the fact that the SSEB evaluators requested it to increase its staffing levels when its staffing, as submitted in its initial proposal, was already higher than the staffing used to compute the government estimate. The preparation of the government estimate and the evaluation of the commercial proposals were performed by different groups who were deliberately not informed by each other's activities. Although this strict separation of functions may on

occasion result in inconsistent judgments as to the adequacy of staffing levels by the SSEB evaluators and the government officials who prepare the in-house estimate, it is necessary to protect the objectivity of both groups. Moreover, it appears that PMS's initial proposal was slightly higher in price than its final offer; thus, to the extent that the protester is suggesting that the SSEB improperly induced it to raise its price (by inducing it to raise its staffing levels), the record does not support this argument.

In any event, PMS's protest essentially is based on its position that the government's cost estimate was too low because it proposed inadequate staffing to perform the work required. The protester makes two arguments in this regard. PMS contends that the in-house estimate contained inadequate staffing for Sunday operations. Specifically, PMS alleges that the Army estimated that 1,064 hours of overtime would be required to provide Sunday staffing over the 5-year contract term. PMS contends that 1,064 hours of overtime to cover 5 years of Sunday operation is inadequate. PMS further argues that the overall level of staffing in the in-house estimate is inadequate to perform the workload described in the performance work statement successfully. More specifically, the protester complains of inadequate government staffing for second and third shift operations as well as for remote sites.

Generally, a management study is mandatory under the provisions of OMB Circular A-76. See OMB Cir. No. A-76 Supp., Pt. III-1 (Aug. 1983). The in-house staffing estimate is a part of the management study and represents the most efficient and effective in-house organization to accomplish the requirements. The study must form the basis for the government cost estimate, Dynateria, Inc., B-221089, Mar. 31, 1986, 86-1 CPD ¶ 302, and its estimated staffing plan must be implemented if the work is to be performed in-house.

The determination of the estimated number of employees required to accomplish the tasks described in the RFP work statement is largely a management decision involving subjective judgments that generally are inappropriate for our review. It is our view that an agency should be free to make its own management decisions on staffing levels so long as they are not made in a manner tantamount to fraud or bad faith and so long as the subsequent cost comparison is performed in accordance with established procedures. Bay Tankers, Inc., B-227965.3, Nov. 23, 1987, 87-2 CPD ¶ 500.

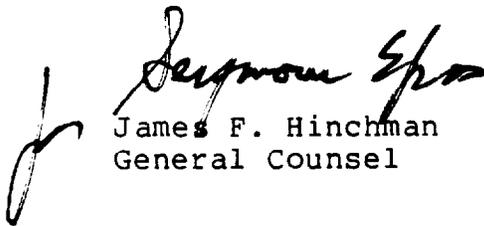
Concerning the Sunday overtime staffing, the agency notes that the appeals board pointed out that the government

estimate had provided for 1,064 hours of overtime per year, and not, as PMS argues, a total of 1,064 hours over the 5-year contract term. PMS does not dispute this nor contend that 1,064 hours of overtime per year is inadequate to satisfy the workload described in the solicitation's statement of work. We therefore have no basis upon which to object to the agency's estimate in this regard.

Regarding the staffing for the second and third shifts and the remote locations, the agency responds that its management study showed that it could combine tasks because of the proximity of the equipment including the equipment constituting the remote sites. The study found one operator could operate several pieces of equipment and/or perform clerical tasks since much of the equipment, once started, can produce with little operator intervention. Based on this study, the agency determined its staffing levels. There is nothing in the record or in the protest that shows that these estimates were the result of bad faith.

PMS also asserts that many of the current staff positions have been decreased in grade level in the in-house estimate and contends that the agency's work sampling is invalid if the sampling used work units performed by the current grade level staff rather than the proposed lower grade level staff. Here, the protester simply disagrees with the agency's conclusion as to the level of output it can reasonably expect from employees of a particular grade. This does not provide us with a basis upon which to conclude that the agency's judgment was the result of bad faith.

The protest is dismissed in part and denied in part.


James F. Hinchman
General Counsel