

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-221089.2      **DATE:** June 16, 1986  
**MATTER OF:** General Services Administration--Request  
for Reconsideration

**DIGEST:**

Decision is affirmed on reconsideration where agency fails to establish the existence of an error of law or fact in the decision.

The General Services Administration (GSA) requests reconsideration of our decision in Dynateria, Inc., B-221089, Mar. 31, 1986, 86-1 C.P.D. ¶     , in which we sustained the protest of Dynateria, Inc. against GSA's decision to cancel solicitation No. AT/TC 19797. The solicitation was issued for the purposes of a cost comparison under Office of Management and Budget (OMB) Circular No. A-76 to determine whether vehicle maintenance and dispatch services at the Kennedy Space Center Fleet Management Center could be performed at a lower cost in-house or by contract.

We affirm our decision.

Dynateria had protested that GSA had understated the cost of supervision of certain in-house performance. We sustained the protest because while GSA's management study required four WS-08 supervisory employees to be staffed in the maintenance section full-time, GSA included the costs for less than one supervisor in the in-house estimate on the basis that the four employees would be spending the majority of their time on duties not associated with this contract effort. We also found that GSA failed to document the basis for the supervisory staffing level it used. We recommended that if a contract was not awarded to Dynateria, the firm should be reimbursed its proposal preparation costs and the costs of pursuing the protest.

GSA complains that our decision is based on erroneous factual and legal conclusions. GSA states that its decision to assign four employees to the maintenance section but only cost part of their time was proper because the management study contains only recommendations as to the most efficient organization (MEO) for performing the needed function. OMB Circular No. A-76 procedures, GSA argues, do not prohibit

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the agency from modifying the study's recommendations; in support of this argument, GSA notes that the Supplement to OMB Circular No. A-76 grants the freedom to develop a new organization to individuals performing the management study at the local level and allows senior management to "impose restrictions after evaluating the original concept."

GSA states that the duties the WS-08 supervisors perform outside the scope of the performance work schedule (PWS), and the method used to reflect those duties, were reviewed within the agency; were set forth in the administrative decision that responded to an appeal Dynateria filed with GSA before protesting to our Office; and were contained in GSA's protest report. In further support of its position, GSA has included an affidavit from the Regional Labor Relations Officer in Atlanta, Georgia, which attests to the fact that incumbents in one WS-10 and two WS-08 supervisory positions spent only 15 to 20 percent of their time during the last 2 years supervising subordinates.

Our Office reviews protests concerning agency decisions that in-house performance will be more economical than performance by contract to ascertain whether the agency adhered to the procedures, or ground rules, for determining comparative costs. See Pan Am World Services, Inc., B-215829, June 24, 1985, 85-1 C.P.D. ¶ 712. We do so because it would be detrimental to the procurement system if, after the agency induced the submission of offers, there was a faulty or misleading cost comparison which affected the decision to a material degree. Id.

The management study is not, as GSA suggests, merely a recommendation. As the Supplement states, and as we pointed out in our original decision, the management study is "the definition of what must be done . . . and the best way of doing it . . . ." Supplement at III-2(E)(1). Moreover, the organization proposed in the study is the basis for the government's bid in the cost comparison. Id. at III-1(A).

GSA's report in response to Dynateria's protest simply did not support GSA's deviation from the management study the agency provided our Office. The management study expressly identified four individuals required to manage the facility and associated 6,976 annual hours and 4.00 FTE<sup>1/</sup>

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<sup>1/</sup> Full-time equivalent. The FTE calculation is the means for determining, generally, the number of employees necessary to perform specified work. This number is derived by dividing the total estimated person-hours needed to perform the work by the annual productive hours for a single employee.

with the task. Contrary to GSA's suggestion, we did review the breakdown of duties for the four WS-08 supervisors which were outside the scope of the PWS and described in the administrative appeal decision. Notwithstanding that breakdown of duties, however, we could not ignore the fact that the allocation of 0.60 FTE to this contract effort represented a significant departure from the management study's express finding that 4 FTE were needed for the MEO. Since it was not our province to select which of the two approaches to staffing the function was the better one, we were constrained to base our decision on what, according to OMB Circular No. A-76 procedures, represented the definition of what must be done and the best way to do it, and the organization on which the government's bid was supposed to be based.

In its reconsideration request, GSA states that "the task force which conducted the management study was consulted during the [administrative] appeals process, and agreed with the appeal decision." In its responses to Dynateria's protest, however, GSA never advised our Office that the management study team had been involved in the decision to include the cost of only 0.60 FTE, so that in our view the decision only reflected an approach to the contract work significantly different from the MEO arrived at by agency experts.

We have held that parties to a bid protest, including contracting agencies, that fail to submit all relevant evidence to our Office do so at their peril, because it is not our function to prepare parties' defenses to allegations raised in the record. Thus, we will not reconsider a decision on the basis of an argument previously presented but supported for the first time in a request for reconsideration by evidence that could have been furnished at the time of the original consideration. / See J. R. Youngdale Constr. Co., Inc.--Request for Reconsideration, B-219439.2, Feb. 20, 1986, 86-1 C.P.D. ¶ 176.

GSA's staffing/costing structure for the four WS-08 supervisors was in contention from the outset of Dynateria's protest. Yet there was no evidence in the record to suggest that GSA's management study team had significantly changed its view as to required staffing, despite GSA's opportunity to submit evidence to that effect in its report, in its comments to the protest conference, and in its submission of the management study that we requested subsequent to the protest conference. In these circumstances, we do not think it fair to permit GSA a fourth opportunity to submit

evidence it could have submitted in the course of the original protest.

Moreover, even if we were to consider GSA's argument on this ground, we fail to see what it proves. By merely asserting that the management study team was consulted during the administrative appeal process and agreed with the appeal decision, GSA fails to show whether the staffing structure in question was considered or approved by the management study team, or whether the team simply endorsed the bottom-line of the cost comparison. In short, GSA still is missing the intermediate step in the Circular No. A-76 process: the agency simply has offered nothing to show that the findings of the management study were modified at all so as to prompt the conclusions of the administrative appeal board. Furthermore, the affidavit of the Regional Labor Relations Office involves only two of the four supervisors in question in our original decision, and does not address the issue on which the case turned. Under these circumstances, we cannot say that GSA has met its burden on reconsideration.

GSA next argues that its adherence or failure to adhere to the management study is beyond our purview because, as GSA explains, the study is an internal document, not relevant to the preparation of a potential contractor's offer. GSA states that the solicitation's performance work statement is the essential document in the preparation of agency and contractor offers. Dynateria and GSA submitted offers on the same work statement. Thus, concludes GSA, Dynateria could not have been prejudiced by GSA's actions.

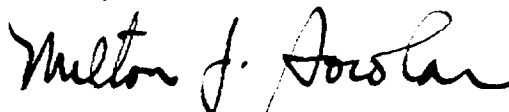
We agree that the study is not relevant to the preparation of a potential contractor's offer, and that the performance work statement is the common basis on which the government and a potential contractor offer. As set out above and in our original decision, however, the management study generates the MEO and serves as the basis for the government's in-house cost estimate. Our review of OMB Circular No. A-76 procedures requires our review of the consistency between the study and the government's in-house cost estimate because an agency's failure to adhere to the MEO could prejudice a prospective offeror by understating the agency's cost for the activity, thereby displacing that offeror from the rightful award of a contract. Consequently, we find no merit to this aspect of GSA's request.

GSA next appears to object to what we, in our original decision, thought to be an inconsistency in the GSA's

report. Specifically, we noted that the statements of the technical review panel that the number of supervisors designated by Dynateria on its personnel phase-in chart was inadequate appeared to have prompted Dynateria's addition of one supervisor in its best and final offer. GSA states that in no way did it coerce Dynateria into adding a supervisor and explains that the technical review panel was only clarifying a potential staffing problem. GSA reiterates that both it and Dynateria competed on an equal basis, i.e., against the same work statement, and that the differences in the two offers amounts to nothing more than a different mix and use of staff. In this regard, GSA asserts that the staffing of employees is a management decision not reviewed by our Office, except in cases of fraud or bad faith. Because there has been no finding of fraud or bad faith, GSA argues, our decision that GSA's staffing levels are inadequate merely second-guesses the agency and thus is improper.

GSA's arguments are inapposite. We sustained Dynateria's protest because GSA failed to follow the supervisory staffing/costing structure set forth in its management study, which resulted in an understatement of GSA's costs. Aside from a review of its consistency with the management study, we did not engage in an independent review of GSA's staffing mix. Thus, these grounds of GSA's request are denied.

Our Bid Protest Regulations require that a request for reconsideration contain a detailed statement of the factual and legal grounds upon which reversal or modification is warranted and that it specify errors of law made or information not considered previously. 4 C.F.R. § 21.12(a) (1985). GSA has failed to demonstrate such error, and, thus, our original decision is affirmed.



Acting Comptroller General  
of the United States