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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: Frontier Technology, Inc.

File: B-294061

Date: August 12, 2004

Johnathan M. Bailey, Esq., Bailey & Bailey, for the protester.
Capt. Charles K. Bucknor, Jr., and Maj. Gregory R. Bockin, Department of the Army,
for the agency.
Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest of agency appeal authority's cost comparison decision made pursuant to Office of Management and Budget Circular A-76 is denied where the appeal authority reasonably determined that the cost of in-house performance would be lower than the evaluated cost of contractor performance.

DECISION

Frontier Technology, Inc. protests the decision of the Department of the Army's appeal authority, pursuant to Office of Management and Budget (OMB) Circular A-76, that it would be more economical to perform in-house the requirements of the Directorate of Information Management at the United States Military Academy (USMA) at West Point, New York, rather than to contract for these services under request for proposals (RFP) No. DABJ45-03-R-0003. Frontier challenges the appeal authority's cost comparison decision, essentially arguing that if various errors in the government's in-house cost estimate were corrected, the evaluated cost of performance under a contract with Frontier would be lower than the cost of in-house performance.

We deny the protest.

BACKGROUND

On December 20, 2002, the Army issued the RFP as a competitive small business set-aside for the provision of information management support services at the USMA. The RFP contemplated the award of a fixed-price contract for a base period and four 1-year option periods. Offerors were advised that the procurement would

be conducted in accordance with OMB Circular A-76, under which a cost comparison would be made to determine whether accomplishing the work with a commercial offeror or in-house by the government's "most efficient organization" (MEO) would be more economical.¹ Offerors were advised that if in-house performance was determined to be more economical, then the RFP would be canceled and no contract would be awarded.

The RFP contained a detailed performance work statement (PWS) that described each of the services and tasks that would be required to be performed by the "service provider," defined as "the offeror selected to perform th[e] [PWS], whether federal government or commercial contractor." PWS ¶ C-1.1, at C-1-1. The PWS also included "output tables" that reflected the workload estimated to be performed during each of the five performance periods. According to the PWS, the workload estimates were to be used by the private-sector offerors and the MEO in developing their respective approaches and costs. PWS ¶ C-2, at C-2-50.

In December 2003, the Army selected Frontier's low-priced, technically acceptable proposal for purposes of the cost comparison with the government's in-house cost estimate. On January 21, 2004, the Army announced its tentative cost comparison decision that the cost of in-house performance by the MEO would be lower than the evaluated cost associated with contracting with Frontier. More specifically, the cost comparison form showed that the adjusted total cost of in-house performance was \$896,167 lower than the adjusted total cost for Frontier to perform the contract. Cost Comparison Form at Line 17. Frontier's proposed cost was adjusted upward to an evaluated cost of \$37,549,941, taking into account contract administration costs, one-time conversion costs, and a minimum 10-percent conversion differential (based on 10 percent of the government's personnel costs) to ensure that the government would not be converting for marginal estimated savings; Frontier's proposed cost was also reduced to reflect estimated future tax payments to the government. *Id.* at Lines 7-14, 16. The adjusted total cost for in-house performance was \$36,653,774. The in-house cost estimate consisted of costs for personnel, materials and supplies, other specifically attributable costs, overhead, and additional costs. *Id.* at Lines 1-6, 15. After announcing the tentative cost comparison decision, the Army, as part of the public review, gave Frontier access to the cost comparison form and supporting documentation, including the MEO's technical performance plan and its

¹ The procedures applicable here 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 the Circular's Revised Supplemental Handbook (RSH) (March 1996). Although the Circular and the RSH were revised on May 29, 2003, those revisions were not applicable here as this RFP was issued before the May 2003 revisions were issued. *Federal Mgmt. Sys., Inc.*, B-293336, Feb. 20, 2004, 2004 CPD ¶ 41 at 2 n.2.

management plan, the government's in-house cost estimate, and various spreadsheets showing how the MEO proposed to staff the PWS requirements.

By letter dated February 14, 2004, Frontier filed an administrative appeal in which it challenged the Army's tentative cost comparison decision. Frontier raised numerous issues, generally contending that there were mathematical and/or clerical errors in the government's in-house cost estimate; that the MEO improperly shifted work to other government personnel without accounting for associated costs; that the MEO failed to account for the cost of major changes in organization and function; that the MEO staffing was not sufficient to meet the PWS requirements; and that there were other unrealistic aspects of the MEO's approach. The administrative appeal board (AAB) denied most of Frontier's issues. However, with respect to the issues sustained, the AAB directed the MEO to make upward adjustments to its proposed staffing. The MEO made the required staffing adjustments, but contended that these adjustments did not increase the cost of in-house performance based on its staffing approach. The Army Audit Agency (AAA), serving as the independent review authority, concluded that the staffing adjustments made by the MEO did not affect the in-house cost estimate and, therefore, did not warrant any changes to the cost comparison decision. The AAB agreed, again concluding, as stated above, that the cost of in-house performance by the MEO would be lower than the evaluated cost associated with contracting with Frontier. This protest followed.²

Frontier basically argues that it was prejudiced in the cost comparison process because various aspects of the MEO's proposed approach for satisfying the PWS requirements were not reasonably staffed and/or costed. Frontier contends that if the MEO reasonably staffed and/or costed these areas, Frontier's evaluated cost would be lower than the MEO's evaluated cost, thereby placing Frontier's proposal in line for award. However, based on our review of the contemporaneous record, as well as our consideration of the hearing testimony, we conclude that the MEO reasonably staffed and accounted for all costs associated with its proposed approach and that the AAB reasonably determined that the cost of in-house performance was lower than the evaluated cost associated with contracting with Frontier.

² Our Office conducted a hearing in which the three primary witnesses on behalf of the Army were the Director of Information Management at the USMA (an Army colonel) who testified as the representative of the MEO, the audit supervisor from the AAA, and an AAB member. In addition, the protester's vice president of information technology testified on various issues. In this decision, references to a hearing transcript (Tr.) relate to the hearing conducted by our Office. We also note that, as a result of the hearing, the protest issues were narrowed; this decision addresses the issues pursued by the protester in its post-hearing comments.

STANDARD OF REVIEW

Where, as here, an agency has conducted a cost comparison under OMB Circular A-76, thus 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 is otherwise unreasonable. Trajen, Inc., B-284310, B-284310.2, Mar. 28, 2000, 2000 CPD ¶ 61 at 3. 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. Id. This is consistent with our position that our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996).

ANALYSIS

Underutilized Staffing Capacity

For three PWS requirements--providing classroom training services (PWS ¶ C-5.7.2), providing multimedia support, specifically website design and web hosting support services (PWS ¶ C-5.11.5), and providing television/video cable wiring services, including splitter maintenance (PWS ¶ C-5.12.2)--Frontier notes that the AAB sustained the issues it raised in its administrative appeal regarding these requirements and that the AAB directed the MEO to upwardly adjust its proposed staffing, which was described in terms of full-time equivalent (FTE) personnel assigned to perform these requirements.³ AR, Vol. III, Tab 7, AAB Adjustment Guidance to MEO, Apr. 12, 2004, at 1497-98; AR, Vol. IV, Tab 8, AAB Annotated Response to Protest, June 9, 2004, at 34-41, 91-93. While the MEO made the required upward staffing adjustments, Frontier complains that costs were not added to the government's in-house cost estimate to cover the costs associated with these staffing increases. Frontier estimates that the following amounts must be added to the in-house cost estimate to reflect the costs associated with these additional FTEs: \$69,395 for classroom training services; \$234,067 for multimedia support; and \$97,376 for splitter maintenance. Protester's Post-Hearing Comments at 4. The Army argues that for these three PWS requirements, the MEO complied with the direction of the AAB by upwardly adjusting its staffing, but that this additional staffing did not

³ The MEO calculated that 1 FTE was equal to 1,776 hours. Agency Report (AR), Vol. III, Tab 5, MEO Documentation, at 951. The MEO was based on a total of 81 FTEs, while Frontier's staffing was based on slightly more than 91 FTEs. Tr. at 10.

necessitate any increase in the government's in-house cost estimate. As explained by the Army in the contemporaneous record,

[a]fter a thorough review of the appeal, issues and available data, the AAB concluded that adjustments were required. However, implementation of the directed adjustments resulted in no change to either the original staffing plans or the resulting cost estimate. West Point management's decision to employ full-time permanent positions in the original staffing plans when the calculated work requirement was less than a full-time position allowed the additional requirements to be absorbed into the original staffing plans without affecting the previously certified cost proposal. The initial cost comparison decision [is] not reversed. It remains more cost effective for the work to be accomplished in-house.

AR, Vol. III, Tab 7, AAB Response to Administrative Appeal, Apr. 23, 2004, at 1520; see also AR, Vol. III, Tab 7, AAA Review of MEO Adjustments, Apr. 14, 2004, at 1461-62.

The following example involving classroom training services supports the Army's conclusion that the MEO's upward staffing adjustments did not necessitate any increase in the government's in-house cost estimate because the MEO staffing plan, as originally developed and costed, contained underutilized staffing capacity that enabled the MEO to absorb the FTE increases mandated by the AAB.

PWS ¶ C-5.7.2 described classroom training services and included language that the computer center classroom "is typical of computer learning centers with individual computers provided for each student and the instructor presenting an imaged picture on his or her computer screen. Instructors shall be knowledgeable of their course areas and experienced in course presentation." PWS ¶ C-5.7.2, at C-5-26. In its administrative appeal, Frontier basically complained that the MEO did not adequately staff the classroom training requirements and did not include costs associated with an instructor being present in the classroom at all times. (The MEO essentially proposed to use computer-based training and did not read the PWS as requiring an instructor to be present in the classroom at all times when training was being conducted.) The AAB sustained this issue and ultimately directed the MEO to add 329 hours, or .185 FTEs (approximately 329 hours divided by 1,776 hours), for the classroom training requirements. The MEO made this adjustment by allocating the additional FTEs to the help desk operation, but it did not increase the government's in-house cost estimate to account for this staffing adjustment. AR, Vol. III, Tab 7, MEO Implementation of AAB Decision, Apr. 14, 2004, at 1499.

The contemporaneous record shows that while the MEO, in its original staffing plan, had a documented help desk workload capacity of .6716 FTEs (i.e., “work to keep this body busy for .67 of the time,” Tr. at 64), the MEO actually staffed and costed the help desk with 2 FTEs, each of whom was a “GS-05 335/Computer Operator (Help Desk).” Spreadsheet 050503; Tr. at 14-15. In other words, in costing its original staffing plan, the MEO costed whole (as a result of generally rounding up), not fractional, FTEs, thus leaving the MEO with underutilized capacity in its original staffing plan. This underutilized staffing capacity, which already was accounted for in the government’s in-house cost estimate, allowed the MEO to absorb the staffing adjustments required by the AAB without having to incur additional costs. See Tr. at 29, 38, 41, 62. As explained at the hearing by the Army,

[t]here’s different ways that you can handle say a fractional number. . . . You can handle it by overtime, by part-time or by hiring an additional individual. Now, due to the high cost of living area at West Point, we didn’t utilize the part-time idea. Then it comes down to overtime, which we would use in some cases, or if senior management analysis deemed it best . . . if you pay overtime for .6 [FTEs], you’re paying almost equal to a full [FTE]. . . . If you pay for that additional [FTE], you’ve given yourself the ability to grow, you’re very efficient, and it’s in the best interest of the government.

Tr. at 29.

Moreover, the Army explained that, with respect to the help desk operation,

this task was .67, with two [FTEs] against it. So we had the ability to absorb that. There was discussion before, why would .67 be manned with two [FTEs], and that was because [the MEO] was unwilling to accept one person as a help desk operator, because of reasons such as leave, sick time, et cetera.

Tr. at 61.

Accordingly, the contemporaneous record shows, as confirmed by the Army during the hearing, that the MEO had an underutilized capacity of approximately 1.33 FTEs for the help desk operation, Tr. at 41, 43, which allowed the MEO to absorb the additional .185 FTEs mandated by the AAB without incurring any additional costs. More specifically, the contemporaneous record shows that when the additional FTEs for classroom training are added to the originally documented workload capacity for the help desk operation, the total staffing remains within the 2 FTEs originally staffed and costed by the MEO for the help desk requirements.

At the hearing, the Army summarized its position by stating:

You needed two bodies [for the help desk], in order to have coverage for when someone is sick, contingency purposes. . . . There's multiple ways [the MEO] could have satisfied the requirement. [The MEO] elected to say, ['we believe it's best to have two help desk individuals here. We know that work required, at this point, [.]67 [FTEs] of effort. We're going to have these individuals that have had some excess time or capacity. We can shift work to them, as we find it.['] And then, basically, when the AAB came up with the training, that was where [the MEO was] doing it. [The MEO is] . . . going to cross[-]utilize these help desk individuals, because they're going to be qualified for the providing [of] this [training]. They'll have a screen. They could look at the screen and provide this subject training.

Tr. at 106-07.

The Army continued by stating:

The thing is there is excess time. There is one requirement for a person to answer the telephone. . . . The excess time would go to the location of teaching the class. Now, the second thing is, you know, just qualifications. This individual is fully trained as a help desk monitor in Microsoft Office applications. If you look at [technical exhibit] 20, these are Microsoft Office applications. We're not talking about server instructor or other things. So, not only is the time available on the record, but the qualifications are, also, there.

Tr. at 107.

At the hearing, the Army affirmatively responded to our Office's summary of its position that "[i]n effect, [the MEO] had an additional--at least an additional FTE floating time, as a backup for the one, who is sitting at the help desk. [The MEO is] saying that that person can pursue the training." Tr. at 109.

Other than questioning whether the MEO's "underutilized capacity" position is consistent with the concept of an "MEO," see, e.g., Tr. at 42, Frontier has failed to meaningfully challenge the Army's underutilized capacity position in terms of the MEO being able to absorb staffing increases mandated by the AAB without also having to increase the cost of in-house performance. On this record, we have no basis to question the reasonableness of the AAB's conclusion that the MEO had a sufficient number of personnel who would be available not only to staff the help desk, but also to provide classroom training at no additional cost to the government.

The analysis described above for the classroom training requirements is equally applicable with respect to the multimedia support and splitter maintenance issues raised by Frontier in its administrative appeal and sustained by the AAB.

With respect to multimedia support, PWS ¶ C-5.11 required the service provider to provide photographic, graphic arts, visual information and production, interactive multimedia, and website design and web hosting support services. The contemporaneous record shows that while the MEO, in its original staffing plan, had a documented multimedia workload capacity of 18.2558 FTEs, the MEO actually staffed and costed the multimedia requirements with 20 FTEs. Spreadsheet 050503. In its administrative appeal, Frontier pointed out that, as a result of discussions during the private-sector phase of the competition, it increased its staffing for PWS ¶ C-5.11.5--website design and web hosting support services--from 1 FTE to 1.75 FTEs. Frontier also pointed out that the MEO staffed this requirement with less than 1 FTE. To the extent it increased its staffing in response to the Army's concern raised during discussions that it was understaffed for this requirement, Frontier essentially argued that the MEO was equally understaffed and should be required to increase its staffing for this requirement. The AAB sustained this issue and directed the MEO to cost this task at 1.75 FTEs, which constituted an overall increase of .89 FTEs. AR, Vol. III, Tab 7, MEO Implementation of AAB Decision, supra, at 1500.

The contemporaneous record shows that the MEO had an underutilized capacity of approximately 1.74 FTEs for the multimedia requirement, which allowed the MEO to absorb the additional .89 FTEs mandated by the AAB among its existing underutilized staff without incurring any additional costs. In other words, when the additional .89 FTEs are added to the originally documented workload capacity for the multimedia requirement, the total staffing remains within the 20 FTEs originally staffed and costed by the MEO. Again, we conclude that Frontier has failed to meaningfully challenge the Army's underutilized capacity argument for the referenced requirement.

With respect to splitter maintenance, PWS ¶ C-5.12.2 required the service provider to provide television/video cable wiring services, which included the maintenance of cables, amplifiers, and splitters. As relevant to this issue, the PWS stated that 200 splitters would be maintained annually. The MEO initially calculated that performing maintenance for 200 splitters per year would only require 120 hours, or .067 FTEs (approximately 120 hours divided by 1,776 hours), because, while 200 splitters were to be maintained on an annual basis, the MEO estimated that only 30 splitters would require repairs on an annual basis. In its administrative appeal, Frontier challenged this aspect of the government's in-house cost estimate, arguing that the MEO did not use the workload data contained in the PWS. The AAB sustained this issue, stating:

Board has reviewed PWS [¶] C-5.12.2 and determined that the maintenance of 200 splitters is required. There is no reference to a 15% failure/maintenance requirement per year, in the PWS and therefore no way the contractor would have known this. The installation must re-cost this function based on 200 occurrences per year. This changes the labor hour calculation per year from 120 to 800 hours, an increase of 680 hours.

AR, Vol. IV, Tab 8, AAB Annotated Response to Protest, supra, at 91.

The MEO made the required adjustment by adding an additional 680 hours, or approximately .383 additional FTEs, for the splitter maintenance requirement. AR, Vol. III, Tab 7, MEO Implementation of AAB Decision, supra, at 1501.

The contemporaneous record shows that the MEO had an underutilized capacity of approximately .92 FTEs for the electronic maintenance requirement, which allowed the MEO to absorb the additional .383 FTEs mandated by the AAB among its existing underutilized staff without incurring any additional costs. In other words, when the additional .92 FTEs are added to the originally documented workload capacity for the electronic maintenance requirement, the total staffing remains within the 5 FTEs originally staffed and costed by the MEO. As with the two previous Army examples, we conclude that Frontier has failed to meaningfully challenge the Army's analysis.

On this record, we conclude that the AAB reasonably found that the MEO had costed all FTEs. Accordingly, we deny those issues in Frontier's protest where the firm argued that the MEO failed to include costs (totaling \$400,838) for the PWS requirements involving classroom training, website design and web hosting, and splitter maintenance.⁴

Exhaustion of Administrative Appeal Process

In addition to challenging the underutilized staffing capacity in the MEO's help desk operation, as discussed above, Frontier also questions, for the first time in its post-hearing comments, the qualifications of the two individuals staffing the help desk, arguing that they should be GS-11s, not GS-05s. Frontier calculates that if two GS-11s, as opposed to two GS-05s, staffed the help desk, this would result in an additional \$354,130 being added to the cost of in-house performance (*i.e.*, the difference between the salaries of two GS-11 personnel versus the salaries of two GS-05 personnel, as currently reflected in the in-house cost estimate). Protester's

⁴ Even after the MEO made the required staffing adjustments, as discussed above, it appears that underutilized staffing capacity still exists for each of the three challenged PWS requirements.

Post-Hearing Comments at 19-22. However, we will not address the merits of this issue because Frontier failed to exhaust the administrative appeal process.

With respect to challenges to cost comparisons under Circular A-76 procedures, we have adopted a policy, for the sake of comity and efficiency, of requiring protesters to exhaust the available administrative appeal process. Thus, we have held that where, as here, there is a relatively speedy appeal process for the review of an agency's cost comparison decision, we will not consider objections to the cost comparison that were not appealed to the agency. See Johnson Controls World Servs., Inc., B-288636, B-288636.2, Nov. 23, 2001, 2001 CPD ¶ 191 at 18; Professional Servs. Unified, Inc., B-257360.2, July 21, 1994, 94-2 CPD ¶ 39 at 3. Nevertheless, there is no statutory or regulatory requirement that an offeror exhaust available agency-level remedies before protesting to our Office, and we retain the discretion to waive the policy requiring the exhaustion of the Circular A-76 appeal process where good cause is shown. Johnson Controls World Servs., Inc., supra.

Here, there is no dispute that various spreadsheets were provided to Frontier during the public review period after the Army's announcement of the tentative cost comparison decision, but prior to Frontier's filing of its administrative appeal. These spreadsheets clearly showed that the MEO staffed the help desk with GS-05 personnel, specifically "GS-05 335/Computer Operator (Help Desk)." See, e.g., Spreadsheets 050503, 041103. In addition, the MEO's technical performance plan and its management plan, as well as the government's in-house cost estimate, showed that the central operations center would be staffed with "GS-05 (2) Computer Asst. (Help Desk) Total = 2." AR, Vol. III, Tab 5, MEO Documentation, at 962, 965, 1017-18, 1190. Thus, it is clear from this record that Frontier had sufficient information at the time it filed its administrative appeal to have argued that the GS-05 personnel assigned by the MEO to staff the help desk did not have the requisite qualifications, and there is nothing in the record that would warrant waiving our policy requiring the exhaustion of the administrative appeal process.

The exhaustion principle also applies to another issue raised by Frontier during its pursuit of its protest with our Office, that is, that \$300,793 must be added to the government's in-house cost estimate to account for the MEO's failure to calculate amplifier maintenance costs using the PWS workload estimate of 400 amplifiers. Protest at 48; Protester's Post-Hearing Comments at 13-19. In this regard, Frontier acknowledges that it did not raise the amplifier maintenance issue in its administrative appeal. Nonetheless, Frontier contends that amplifier maintenance costs, just like splitter maintenance costs, had to be calculated by the MEO using the workload estimates contained in the PWS.

The record shows that Frontier raised the splitter maintenance issue in its administrative appeal based on inconsistencies in the following two spreadsheet notations: "200 splitters installed; average of 30 repairs are done annually at 4 hours each = 120 [hours]" and "200 X Annually at 4 hours (Mean) = 800 hours." AR, Vol. III,

Tab 5, Workload Data for PWS ¶ C-5.12.2, at 1172. As discussed above, the AAB determined that the MEO's use of 120 hours to repair 30 splitters did not cover the PWS workload estimate of 200 splitters and, accordingly, the AAB directed the MEO to make a staffing adjustment. The record further shows that on this same spreadsheet, one line above the line containing the two splitter maintenance notations, there were the following two notations regarding amplifier maintenance: "400 amplifiers--average is 50 repairs per year at 6 hours each = 300 annual hours" and "50 repairs X 6 [hours] = 300 [hours]." Id. It is clear from the record that Frontier had sufficient information at the time it filed its administrative appeal to have challenged the government's in-house cost estimate, which was based on making 50, as opposed to 400, amplifier repairs per year. In other words, Frontier could have timely argued that the MEO's use of 300 hours to repair 50 amplifiers did not cover the PWS workload estimate of 400 amplifiers and that the MEO should be required to provide staff to maintain an additional 350 amplifiers. Again, there is nothing in the record that would warrant waiving our policy requiring the exhaustion of the administrative appeal process.

CONCLUSION

In sum, we have no basis to question the reasonableness of the AAB's decision that the cost of in-house performance by the MEO would be lower than the evaluated cost of performance under a contract with Frontier.

The protest is denied.⁵

Anthony H. Gamboa
General Counsel

⁵ Frontier also argues that the MEO's calculation of overtime is understated by \$478,356. However, in light of the fact that Frontier did not prevail on any of the issues discussed above, even if we were to sustain Frontier's overtime issue, Frontier could not demonstrate prejudice because the reduction in the differential between the cost of in-house performance and the evaluated cost of contractor performance, taking into account the amount Frontier alleges that the MEO understated overtime costs, still would favor in-house performance as being lower in cost than performance under a contract with Frontier.