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DECISION

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

FILE: B-200756

DATE: September 14, 1981

MATTER OF: Monitor International, Inc.

DIGEST:

1. Where agency failed to analyze adequately low costs proposed by offeror receiving highest technical score under solicitation for cost reimbursement contract, agency's decision to exclude all offerors but that one from competitive range because of their high costs was unreasonable.
2. Where protester has not shown that it had substantial chance of receiving award had it properly been included in competitive range, claim for proposal preparation costs is denied.

Monitor International, Inc., protests its exclusion from the competitive range for negotiations under Request for Proposals (RFP) No. 80-19 issued by ACTION to obtain training for Peace Corps volunteers in Paraguay. Monitor contends that its exclusion from the competitive range, and the resultant restriction of the competitive range to only one offeror, which ultimately received award, was improper. For the following reasons, we agree with Monitor and sustain the protest.

FACTS

The RFP indicated that a cost reimbursement contract was contemplated and requested the submission of separate technical and cost proposals. The solicitation was issued to approximately 100 firms and educational institutions, and four proposals were received.

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Technical proposals were evaluated for quality on a 0 to 100 point scale, and were ranked as follows:

CHP International, Inc.	77.2
Studium - ASESORES Profesionales	58.3
Monitor	56.8
Northern Arizona University	39.8

On the basis of this technical evaluation, the Northern Arizona proposal was found to be technically unacceptable and was removed from further award consideration. Subsequently, the proposed costs of the three remaining technically acceptable offerors were factored into the RFP's evaluation formula to determine a competitive range for negotiation purposes. In accordance with the RFP's evaluation formula, the lowest cost proposed by a technically qualified offeror, in this case CHP's \$235,752, was divided by 100 to determine the dollar value of an evaluation point (\$2,357). The cost proposed by the offeror receiving the highest technical rating, also CHP, was used as a base against which the other two cost proposals were adjusted upward for evaluation purposes. The differences in technical scores between CHP and Studium, and between CHP and Monitor, multiplied by the established evaluation point dollar value of \$2,357, provided dollar amounts to be added to the proposed costs of Studium and Monitor. The following is a summary of the relative standing of the three technically acceptable offerors after completion of both the technical and cost evaluations:

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Company	Cost	Technical	Difference	Total	Evaluated
	Proposed	Scores	in Tech. Scores	Adjustment	Cost
CHP	\$235,752	77.2	0	0	\$235,752
Monitor	\$361,807	56.8	20.4	\$48,083	\$409,983
				(20.4 X \$2,357)	
Stadium	\$391,807	58.3	18.9	\$44,547	\$436,354
				(18.9 X \$2,357)	

ACTION noted that the difference in CHP's and Monitor's proposed costs was approximately \$126,000, and that the difference in their evaluated costs was approximately \$174,000. Accordingly, and since the other technically acceptable offeror, Studium, proposed costs even higher than Monitor's, ACTION determined that neither Monitor nor Studium was susceptible of becoming a successful offeror, and thus found both to be outside the competitive range for negotiations. Consequently, negotiations were conducted only with CHP, and the contract was awarded to that firm.

ACTION'S COMPETITIVE RANGE DETERMINATION

Generally, negotiations only need be conducted with offerors whose proposals are deemed by the contracting agency to be within a competitive range, price and other factors considered. Federal Procurement Regulations (FPR) § 1-3.805-1(a) (1964 ed.). However, in view of the regulatory preference for competition, we have held that a proposal must be considered to be within the competitive range so as to require discussions unless the proposal is so technically inferior or out of line as to price that any discussions would be meaningless. 53 Comp. Gen. 1 (1973). Moreover, our Office will look very closely at a determination such as the one made by ACTION in the instant case that leaves only one proposal within the competitive range. Comten-Comress, B-183379, June 30, 1975, 75-1 CPD 400.

Although the determination whether a proposal falls within the competitive range is a matter of agency discretion, it must have a reasonable basis. 48 Comp. Gen. 314 (1968). In this case, where ACTION based its competitive range determination on the final results of the combined technical and cost evaluation formula discussed above, we cannot conclude that a reasonable basis for the competitive range determination existed because, as we discuss below, we believe these results were tainted by ACTION'S failure to conduct an adequate or accurate analysis of proposed costs.

In this regard, FPR § 1-3.807-2(a) provides that generally some form of price or cost analysis should be made in connection with every negotiated procurement action. The method and degree of analysis, however, depends on the facts surrounding the particular procurement and pricing situation. The regulation also states that "the extent of the cost analysis should be that necessary to assure reasonableness of the pricing result, taking into consideration the amount of the proposed contract and the cost and time needed to accumulate the necessary data for analysis."

Further, FPR § 1-3.805-2 recognizes that proposed costs should not be considered controlling in selecting a contractor for a cost reimbursement type contract, since they are merely estimates, and award based on estimated costs without analysis may encourage the submission of unrealistically low estimates and increase the likelihood of cost overruns. In this connection, the Government is obligated under a cost reimbursement type contract to reimburse the contractor its allowable costs. Moshman Associates, Inc., B-192008, January 16, 1979, 79-1 CPD 23. Thus, an agency should make an independent cost projection of an offeror's estimated costs to ensure that they are examined in terms of their realism. PRC Computer Center, Inc., et al., 55 Comp. Gen. 60 (1975), 75-2 CPD 35.

We recognize that cost realism analyses generally are performed after the competitive range is established, on those offers included in the range. See, e.g., PRC Computer Center, Inc., et al., *supra*. Nonetheless, where an agency places as great an emphasis on cost as ACTION did to define the field of competition for a cost reimbursement contract, we believe that it is incumbent on that agency to analyze in some reasonable manner the realism of the costs proposed. Otherwise, the agency may well establish a competitive range of technically capable firms without any assurance that the costs proposed by those firms are realistic, while excluding technically capable firms proposing higher, but realistic, costs.

Although ACTION reports that a cost analysis was performed by "a contract negotiator with several years of experience in training contracts," it appears from the record that the extent of this analysis was (1) a comparison of CHP's estimated cost with the cost of a previous Peace Corps training contract; (2) ACTION's reliance on CHP's "history of tight costs on similar contracts"; and (3) a comparison of CHP's cost with those proposed by other offerors under this solicitation.

In our view, ACTION's cost analysis was inaccurate and inadequate. In the first place, it is inaccurate to compare as equals CHP's proposed cost under this solicitation with the costs of a previously completed contract where, as ACTION reports, this RFP added significant new training requirements not included in prior contracts. Secondly, we have held that taking cognizance of a history of no cost overruns or of "tight costs" is insufficient to satisfy the requirement for a cost

analysis. University Research Corporation, B-196246, January 8, 1981, 81-1 CPD 50. Finally, and most important, we do not believe that ACTION's direct comparison of the estimated costs proposed by CHP and Monitor either presented an accurate picture of the difference in the two costs or provided sufficient indication that CHP's offer was realistic.

A comparison of the proposed costs of CHP and Monitor shows:

	<u>CHP</u>	<u>Monitor</u>
Direct Costs	\$194,402	\$250,374
Indirect Costs	25,927 (14 percent of direct costs less subcontract costs)	83,163 (33.215 percent of direct costs)
Fixed Fee	<u>15,423</u>	<u>28,363</u>
Total	\$235,752	\$361,900

As indicated, there is a difference of approximately \$126,000 in the total figures. However, the most significant difference, \$57,000, is in indirect costs. CHP stated that its indirect costs were 14 percent of direct costs less subcontract costs. Monitor, which did not indicate that it was going to subcontract, stated that its indirect costs were 33.215 percent of direct costs. Since the RFP contained a "Negotiated Overhead Rates" clause providing that overhead rates ultimately would be based on actual overhead figures submitted by the contractor during performance, these estimated overhead rates submitted by CHP and Monitor in response to the RFP were provisional in nature, and subject to variation during final post-contract award negotiation between agency and awardee. Certainly, a cost difference derived from a provisional overhead rate is one factor among many which may be considered in an analysis of proposed costs. There is nothing in the instant record, however, to indicate that ACTION analyzed the bases for the provisional overhead rates as submitted with the proposals. In establishing a competitive range, where the regulatory preference is to include rather than exclude competitors, we believe that it is unreasonable to place the great weight that ACTION did on the difference in indirect costs stemming from CHP's and Monitor's provisional overhead rates without examining the bases for the rates.

It also appears that CHP's proposed direct costs were accepted by ACTION at face value without adequate cost analysis. The inadequacy of ACTION's analysis of the realism of CHP's direct costs before establishing the competitive range is evidenced by the fact that more than \$30,000 in direct costs was added to CHP's proposal during pre-award negotiations between CHP and ACTION and immediately after award.

While we are unable to determine what the results of an adequate cost analysis of CHP's costs would have revealed in this case, we believe it is clear from the record that due to a lack of adequate analysis, ACTION factored unanalyzed and potentially unrealistic cost estimates into the RFP's evaluation formula, the results of which were used as a basis to determine a competitive range of one firm. Therefore, we conclude that ACTION had no reasonable basis to exclude Monitor from the competitive range. We sustain the protest on this issue.

OTHER MATTERS

Monitor challenges ACTION'S technical evaluation of its proposal, alleging that it should have received more technical points than it did, which would have placed it in the competitive range. However, in view of our findings that Monitor improperly was excluded from the competitive range for the reason discussed above, we need not address the issue of technical evaluation.

Monitor also complains that after it lodged its pre-award protest, ACTION failed to respond in a timely manner to the issues raised and awarded the contract to CHP prior to resolution of the protest by our Office.

ACTION's determination to award prior to the resolution of the protest, however, accorded with the provisions of FPR § 1-2.407-8(b) on the basis of the contracting officer's finding that urgently required performance would have been unduly delayed by failure to make an immediate award. Furthermore, during the conduct of this protest, ACTION has been timely in submitting required agency reports in accordance with the guidelines set forth in our Bid Protest Procedures, 4 C.F.R. § 21.3 (1981), and properly notified our Office of its intent to award a contract prior to resolution of the protest as required by our rules, 4 C.F.R. § 21.4.

REMEDY

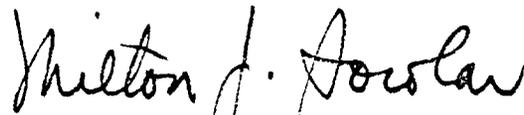
Monitor requests that it be compensated for its costs in responding to the RFP, which it estimates to be approximately \$15,000. Also, Monitor requests that the present contract award to CHP be terminated and that a new competitive procurement for the training requirements take place.

Proposal preparation costs can be paid only upon a showing that the contracting agency's actions were arbitrary or capricious and that there was a substantial chance that the claimant would have received the award but for those actions. Decision Sciences Corporation-Claim for Proposal Preparation Costs, B-196100.2, October 20, 1980, 80-2 CPD 298. Here, we cannot say that Monitor had a substantial chance to receive award.

Monitor has argued exclusively and successfully that it should have been included in ACTION's competitive range for negotiations. Monitor, however, has not shown that it had a substantial chance of receiving award once in the competitive range. See Morgan Business Associates, Inc. v. United States, 619 F.2d 892, 896 (Ct. Cl. 1980). For purposes of recovery of proposal preparation costs, we do not automatically equate a firm's unreasonable exclusion from the competitive range with that firm's having a substantial chance to receive award; it often happens that a proposal, once included in a competitive range, later is removed from further negotiation or award consideration in light of matters which become apparent or clarified only after discussions begin. See, e.g., 52 Comp. Gen. 198 (1972). Moreover, as indicated above, we do not know what the results of an adequate cost analysis of proposals would have revealed. Thus we cannot say that Monitor had a substantial chance to receive the award. Consequently, the claim for proposal preparation costs is denied.

For the same reason, as well as because of the obvious difficulties that would be involved in a mid-contract termination of performance in a foreign country, we believe it would not be appropriate or in the Government's best interests to recommend termination here. However, we do recommend that ACTION not exercise the option to extend the CHP contract after completion of the initial year of performance, and that ACTION take steps to avoid recurrence of the procurement deficiencies we have noted.

By separate letter, we are advising the Director of ACTION
of our recommendations.

A handwritten signature in cursive script that reads "Milton J. Fowler". The signature is written in dark ink and is positioned above the typed name.

Acting Comptroller General
of the United States