



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Tracor Marine, Inc.

File: B-222484

Date: August 5, 1986

DIGEST

1. A technically acceptable proposal may be excluded from the competitive range under a solicitation for a cost-reimbursement contract when the offeror's proposed cost is substantially higher than both the cost proposals of other offerors submitting technically acceptable proposals and the agency's estimate and the agency determines that the higher cost proposal has no reasonable chance for award.

2. Protester's contention that the agency erred in excluding its technically acceptable proposal from the competitive range without discussions is denied, since the record shows that the agency had a reasonable basis for its belief that the protester's proposed cost (approximately \$14.5 million), which was more than \$10 million higher than the two other technically acceptable proposals, was so far out of line that the protester's proposal did not have a reasonable chance for award.

DECISION

Tracor Marine, Inc., protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. NCI-CM-57740-16, issued by the National Cancer Institute (NCI) for deep sea marine organism collection. Tracor's proposal was found to be technically acceptable but was so far out of line with the other offers with respect to its proposed cost that it was not included in the competitive range. Tracor contends that NCI misapplied the evaluation criteria in rejecting its proposal and that its proposed costs could have been reduced during discussions. We deny the protest.

The solicitation was for a cost-plus-fixed-fee contract for the collection of marine organisms for screening for future NCI cancer research. The statement of work said that the contractor is to collect 1,000 marine organisms per year for 5 years at ocean depths exceeding 100 feet, although this number could be reduced after the first year by recollections required by NCI. The contractor is to prepare voucher specimens and photographs of each species collected and also is to

provide, for each organism, extensive information, such as habitat, taxonomy (biological classification: phyla, class, etc.), toxicity and the conditions of collection. According to the RFP, areas of collection are to be finally determined by agreement between the NCI project officer and the contractor.

The solicitation advised that technical considerations were paramount in the award selection but warned that cost will be the deciding factor if two or more offers are judged technically equal. The technical evaluation factors and their relative weights were; (1) Personnel (40 percent), (2) Understanding of Project and Technical Approach (35 percent), and (3) Facilities and Equipment (25 percent). The RFP also cautioned offerors that initial offers should contain offerors' best technical and cost terms since the government reserved the right to make award on the basis of initial proposals without discussions.

NCI received five proposals by the October 15, 1985, closing date. An Ad Hoc Technical Review group, consisting of independent nongovernment personnel initially evaluated the technical proposals. The technical scores, with each offeror's proposed cost, were as follows:

<u>Organization</u>	<u>Average Technical Score</u>	<u>Proposed Cost (5 years)</u>
Tracor	896	\$14,485,998
Offeror B	780	3,022,763
Offeror C	747	1,873,763*
Offeror D	368	6,075,640
Offeror E	364	3,752,460

*This represents cost to the government as a result of proposed cost sharing; estimated total before cost sharing is \$5,500,454.

Subsequently, an NCI Source Evaluation Group (SEG) reviewed the initial technical evaluation and the cost proposals and made recommendations to the contracting officer with respect to the competitive range. Although the SEG found the three highest rated proposals acceptable, it recommended a competitive range of only two firms and excluded Tracor's proposal because of its excessive proposed cost. The SEG noted that Tracor's proposed cost was more than seven times the government's estimate of \$1,381,407. Although Tracor's proposal could be rewritten, the SEG determined that it was unlikely that the proposal could be made cost competitive without adversely affecting its high technical score. Finally, the SEG concluded that the difference in technical scores between Tracor and the other two acceptable proposals did not justify the cost difference. The contracting officer, agreed with the SEG's

competitive range determination concluding that Tracor's proposal did not offer "any significant scientific advantages to the government to warrant further consideration."

Since no award has been made NCI has only disclosed limited information to the protester and our discussion here must be general as to the technical proposals and NCI's technical evaluation. We have, however, examined the record in camera to determine whether NCI's actions had a reasonable basis. See B&B Records Center, Inc., B-215232, Mar. 27, 1985, 85-1 CPD ¶ 354.

Tracor contends that under the terms of the solicitation's evaluation and award provisions, its proposal should not have been excluded from the competitive range solely on the basis of its proposed cost. In this respect, Tracor points out that the evaluation criteria in the solicitation all relate to technical factors and that the solicitation states that technical considerations are paramount. Tracor further notes that, under the terms of the solicitation, cost is only to be considered if two or more proposals are judged technically equal.

Generally, discussions in negotiated procurements need be held only with those offerors whose proposals are determined to be in the competitive range, that is, whose proposals have a reasonable chance of being selected for award. JDR Systems Corp., B-214639, Sept. 19, 1984, 84-2 CPD ¶ 325. A contracting officer necessarily has a considerable range of discretion in making a competitive range determination and we therefore will not question such a determination unless it is without a reasonable basis. Documentation Associates, B-190238, Mar. 23, 1978, 78-1 CPD ¶ 228.

A technically acceptable proposal may be excluded from the competitive range when the offeror's proposed cost is substantially higher than both the cost proposals of other offerors submitting technically acceptable proposals, and the agency's cost estimate, when the agency determines that the higher-cost proposal has no reasonable chance of being selected for award. See 41 U.S.C. § 253(b)(d)(2) (Supp. II 1984); Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.609(a), stating in part that: "The competitive range shall be determined on the basis of cost or price and other factors that were stated in the solicitation", and Pan Am World Services, Inc., B-215308.5, Dec. 10, 1984, 84-2 CPD ¶ 641. Although the solicitation stated that paramount consideration would be given to technical factors, it also warned offerors that cost could become a factor and informed them that since award could be made on the basis of initial proposals, initial offers should contain the offeror's best cost and technical terms. The solicitation did emphasize the technical aspects of the evaluation, but it did not waive the agency's right to consider costs in determining the competitive range. 41 U.S.C. § 253(b)(d)(2); FAR, 48 C.F.R. § 15.609(a). Consequently, we think that

the contracting officer could properly make his competitive range determination based on his conclusion that Tracor's proposed costs were so high that the firm did not have a reasonable chance of receiving the award. See Informatics General Corp., B-210709, June 30, 1983, 83-2 CPD ¶ 47.

Tracor further contends that in this particular case there was no basis for excluding its proposal from the competitive range. The protester emphasizes that the RFP described the requirements in very general terms and that it contained no information regarding the level of effort required. The protester states that its proposal, which received the highest technical score, was a reasonable response to the broad requirements set forth in the RFP. In this regard, Tracor maintains that its cost estimates were related to factors not clearly defined in the RFP, such as the collection sites, the number of days at sea and recollection, all of which need to be clarified through discussions. The protester concludes that it could have scaled back its effort and significantly reduced its proposed costs during these discussions.

Tracor's exclusion from the competitive range was based on NCI's determination that it did not have a reasonable chance for award since Tracor's proposed cost was seven times the available funding and also far in excess of the cost proposals of the other two technically acceptable offerors. While recognizing that Tracor received the highest technical score, NCI concluded that Tracor could not reduce its cost even 50 percent without rewriting its entire technical proposal and jeopardizing its technical rating. NCI points out that Tracor's high costs were due primarily to the firm's high overhead rate, "expensive" subcontracts, its proposed submersibles, the costs of mobilization and demobilization of the vessels and other high costs for Tracor's vessels and crews.

While Tracor argues that its cost proposal was based on its expert assessment of the magnitude of the project and that its outstanding technical score reflects the technical evaluators' agreement with Tracor's judgment, it is clear that NCI will not have anywhere near the funding necessary to support Tracor's proposed approach. Further, although Tracor did receive the highest technical score, NCI also concluded that its proposal did not represent a significant scientific advantage over the other two lower rated, but acceptable proposals, included in the competitive range.

We think that there is support in the record for NCI's determination that Tracor's proposal, with its estimated cost of \$14,485,998, had no realistic chance of being selected for award on a project for which the agency estimates it will have no more than about \$2 million to spend.^{1/}

^{1/} The record shows that the agency expects to have available about \$350,000 more than the government's initial estimate.

We recognize that the RFP did not precisely detail the scope-of-work needed and called for a cost-type rather than a fixed-price contract. Nevertheless, the fact that NCI had two offerors in the competitive range with acceptable proposals whose cost estimates were at least \$10 million less than Tracor's makes it highly unlikely that the lack of precision which is necessarily involved in cost estimates for a project of this type would have affected the determination. In view of these factors and considering the wide range of discretion the agency has in making its competitive range determination we conclude that NCI has not abused its discretion by excluding Tracor from the competitive range based on its conclusion that Tracor's proposed approach is just too expensive to be made acceptable without radically changing its character. Informatics General Corp., B-210709, supra.

Finally, Tracor notes that one of the offerors in the competitive range proposes to perform the contract on a cost sharing basis. Tracor questions the propriety of award to this firm since this procurement is not classified by NCI as research and development. The firm in question apparently has arranged with a private foundation for funding to defray some of its costs in the event that firm is awarded the contract. We know of no legal prohibition against such an arrangement.

The protest is denied.

for Seymour Efron
Harry R. Van Cleve
General Counsel