TL2

The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Jack Faucett Associates

File: B-224414

Date: September 16, 1986

DIGEST

1. Agency may exclude proposal from the competitive range where the agency reasonably determines that because of the proposal's high price it has no reasonable chance of being selected for award.

2. An agency's evaluation must be based on the proposal submitted and an offeror that does not submit its lowest proposed costs at the first opportunity runs the risk of being excluded from further competition for the award.

DECISION

Jack Faucett Associates (JFA) protests its exclusion from the competitive range under request for proposals (RFP) No. DTFH61-86-R-00083 issued by the Federal Highway Administration (FHWA).

We deny the protest.

The RFP called for the development of benefit/cost procedures to be incorporated into the highway performance monitoring system (HPMS) analytical process. Offerors were advised that proposals would be evaluated based on their technical competence and understanding of the HPMS process, responsiveness to the RFP's technical requirements and ability to complete the contract requirements satisfactorily and on schedule. Award of a cost-plus-fixed-fee contract was contemplated and the RFP indicated that relative costs would be considered in the ultimate award decision.

Five proposals were received by FHWA by the RFP's closing date, which then were scored in accordance with the stated evaluation criteria. Three proposals, including

036753

JFA's, were found to be technically acceptable, and two proposals were deemed technically unacceptable. The scores of the three technically acceptable offers were as follows:

	Technical Score
Texas Research and Development Foundation (TRDF)	78.8
Texas Transportation Institute (TTI)	77.1
JFA	70.2

Thereafter, FHWA reviewed the cost proposals submitted by these offerors. JFA's proposed costs were significantly higher than the costs proposed by either TRDF and TTI. A cost analysis was conducted, and FHWA concluded that the reasonable cost of JFA's proposal was approximately 35 percent higher than the more costly of the other two proposals. Based on the cost analysis, FHWA determined that the additional reductions necessary to make JFA's proposal competitive could not be obtained without sacrificing the objectives of the project. Because JFA's costs were significantly higher than the other two offerors', FHWA concluded that no useful purpose would be served by negotiating with JFA, and the firm was excluded from further consideration.

Discussions were then held with TRDF and TTI, and best and final offers were submitted on June 26. FHWA awarded the contract to TRDF on June 30.

JFA argues that had it been afforded the opportunity to revise its proposal, it could have improved its technical score and also significantly reduced its cost. JFA contends that under the RFP's evaluation scheme, cost was to be considered only in the ultimate award decision and FHA should therefore not have utilized cost in selecting proposals for oral or written discussions. JFA argues that all offerors with a reasonable chance for award should be included in the competitive range and that FHWA has failed to show that JFA was not a potential awardee.

Initially, we point out that the competitive range is determined by comparing all of the acceptable proposals and proposals reasonably susceptible of being made acceptable in a particular procurement, 52 Comp. Gen. 718 (1973), and an acceptable proposal may be eliminated by comparing the relative ranking of the higher ranked proposals to the proposal in question. JDR Systems Corp., B-214639, Sept. 19, 1984, 84-2 CPD ¶ 325. Consequently, a proposal need not be included in the competitive range simply because it is technically acceptable when it is determined that it has no reasonable chance for award. The Liberty Consortium, B-215042, Apr. 12, 1985, 85-1 CPD ¶ 416; JDR Sys. Corp., B-214639, supra.

Here, the record shows that JFA's proposal was compared to two proposals that were both higher ranked technically and substantially lower in cost. In determining the proposals that fall within the competitive range, we have held that cost is a proper factor to consider so that, in our view, the fact that this RFP advised offerors that cost will be utilized in the ultimate award decision did not prohibit FHWA from evaluating cost to determine which proposals had a reasonable chance of being selected for award. Communication Mfg. Co., B-215978, Nov. 5, 1984, 84-2 CPD ¶ 497. Moreover, the fact that the cost of JFA's proposal significantly exceeded the costs of two proposals, both of which were at least technically equal to JFA's, provided a proper basis for the agency's determination that JFA had no reasonable chance for award. FHWA's decision to eliminate JFA's proposal from the competitive range therefore was proper. See Cosmos Engineers, Inc., B-218318, May 1, 1985, 85-1 CPD ¶ 491.

Further, while JFA may be ready to reduce its price substantially, we point out that at the time of the competitive range determination, FHWA had no reason to believe that JFA could make such a significant reduction and still have a reasonable chance for award. An agency's evaluation must be based on the proposal submitted so that a firm that does not submit its best price at the first opportunity always runs the risk of being excluded from further competition for the award. Informatics General Corp., B-210709, June 30, 19834, CPD ¶ 47.

The protest is denied.

for Seymour Efros
Harry R. Van Cleve
General Counsel