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The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of:      Coopers & Lybrand

File:            B-224213.2

Date:            August 6, 1987

## DIGEST

1. Protester may recover its proposal preparation costs where the contracting agency wrongfully excluded it from the competition and no other remedy is available because the procurement was canceled after available funding lapsed during the pendency of the protest.
2. Protester may recover the costs it incurred in filing and pursuing its protest where the agency unreasonably excluded the protester from competition.

## DECISION

Coopers & Lybrand has submitted a claim for reimbursement of its preparation costs and the costs of filing and pursuing its protest which we sustained in Coopers & Lybrand, B-224213, Jan. 30, 1987, 66 Comp. Gen. \_\_\_\_, 87-1 CPD ¶ 100. The protest involved request for proposals (RFP) No. EMW-86-R-2389, issued by the Federal Emergency Management Agency (FEMA) for services relating to the evaluation of industrial preparedness for national defense. We held that although FEMA adhered to the stated evaluation criteria and properly determined the protester's proposal to be technically inferior to the only other proposal submitted, it unreasonably determined the protester's proposal to be technically unacceptable without giving the protester an opportunity to cure the deficiencies through reasonable discussions. We therefore recommended that FEMA conduct discussions with both offerors. FEMA subsequently informed our Office and the protester, by letter of April 1, 1987, that the procurement would be canceled because it had been approved for fiscal year 1986 funding and adequate fiscal year 1987 funds were not available.

A protester may recover proposal preparation costs where it has been unreasonably excluded from the competition and no other remedy is appropriate. 4 C.F.R. § 21.6(d)(2) and (e) (1987). To qualify under this standard, the protester must have had a substantial chance of obtaining the award but for

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the agency's improper action. Motorola, Inc., B-222181, July 11, 1986, 86-2 CPD ¶ 59, aff'd, Department of the Air Force, B-222181.2, Nov. 10, 1986, 86-2 CPD ¶ 542.

Our prior decision establishes that Coopers & Lybrand was unreasonably excluded from the competitive range for discussions, and no other remedy is available since the procurement has been canceled because available funding lapsed while the protest was pending. See Consolidated Bell, Inc., B-220425.2, Aug. 18, 1986, 86-2 CPD ¶ 192. Regarding the protester's chance of obtaining the award, a proposal in the competitive range, by definition, has a reasonable chance for award. Federal Acquisition Regulation, 48 C.F.R. § 15.609(a) (1986). We therefore believe fairness requires a finding that Coopers and Lybrand's chance for award was sufficient to support recovery of its proposal preparation costs. Falcon Systems, Inc., B-2136611, June 22, 1984, 84-1 CPD ¶ 658.

Regarding the recovery of the costs of filing and pursuing a protest, our regulations provide for the recovery of such costs, including attorney's fees, where the contracting agency unreasonably excludes the protester from the procurement except where our Office recommends that the contract be awarded to the protester and the firm receives the award. 4 C.F.R. § 21.6(d)(1) and (e). Since we found that FEMA unreasonably rejected Coopers & Lybrand's proposal without discussions, thus excluding the firm from competition, Coopers & Lybrand is entitled to recover its protest costs, including reasonable attorney's fees. See HCA Government Services, Inc., B-224434, Nov. 25, 1986, 86-2 CPD ¶ 611.

Accordingly, FEMA should reimburse Coopers & Lybrand's proposal preparation costs as well as the costs of filing and pursuing the protest, including reasonable attorney's fees. The firm should submit its claim directly to FEMA.

*for*   
Comptroller General  
of the United States