

Gary



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Monarch Enterprises, Inc.--Request for Reconsideration
File: B-233724.2
Date: May 16, 1989

DIGEST

1. Request for reconsideration of recommended corrective action--reopening competition to permit all offerors in competitive range to submit revised proposals--is denied where, contrary to protester's assertion, reopening competition under original solicitation is permitted as one of several possible remedies under Competition in Contracting Act of 1984 and General Accounting Office's Bid Protest Regulations, and protester has not shown that it is inappropriate under the circumstances.
2. Request for reimbursement of proposal preparation costs is denied where recommended corrective action provides protester opportunity to compete and agency has in fact afforded protester the opportunity to submit a revised proposal.

DECISION

Monarch Enterprises, Inc., requests reconsideration of the corrective action recommended in our decision, Monarch Enterprises, Inc., B-233724, Mar. 16, 1989, 68 Comp. Gen. _____, 89-1 CPD ¶ 281. In that decision, we sustained Monarch's protest of an award of a contract to Edwin Lewis, under request for proposals (RFP) No. 20-00-9-032, issued by the Farmers Home Administration (FmHA) for interest credit renewal services. We deny the request.

We sustained Monarch's protest on the ground that FmHA improperly had made award to Lewis on the basis of initial proposals, without discussions, where the record did not clearly show that the contract awarded would result in the lowest overall cost to the government. We recommended that the agency reopen the competition, hold discussions with the offerors in the competitive range, and request new best and final offers (BAFOs), and also found Monarch entitled to

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recover its costs of filing and pursuing the protest, including attorneys' fees.

In its request for reconsideration, Monarch contends that, contrary to our finding, there is no legal basis for reopening a competition where award has been made and that, to ensure fairness, the contract with Lewis should be terminated for the convenience of the government and the requirement resolicited. In this regard, Monarch questions whether it will receive a "fair shake" at this juncture if the competition is merely reopened, since it views the agency's actions to date as evidencing a predisposition to make award to Lewis. Further, Monarch asks that we grant reimbursement of its proposal preparation costs.

Monarch's assertions provide no basis for modification of our recommendation. The Competition in Contracting Act of 1984 (CICA) provides that where the Comptroller General determines that a contract award does not comply with statute or regulation, he shall recommend that the agency implement certain specified remedies (e.g., recompete the contract), or "implement such other recommendations as the Comptroller General determines to be necessary in order to promote compliance with procurement statutes and regulations." 31 U.S.C. § 3554 (Supp. IV 1986). This mandate is reflected in our Bid Protest Regulations, which provide that if we determine that an award is improper, we may recommend that the contracting agency implement remedies we deem appropriate under the circumstances, including, but not limited to, a recommendation that the agency recompete the contract, issue a new solicitation, or both. See 4 C.F.R. § 21.6(a) (1988).

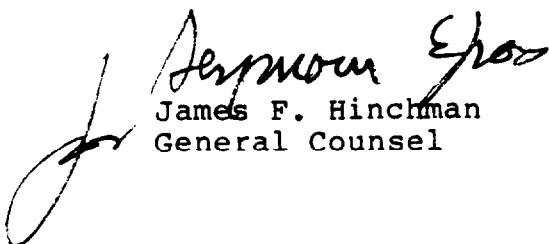
In this case, the procurement was properly conducted up to the point where the agency evaluated initial proposals. We merely found that, instead of making an award at this point to other than the lowest-priced offeror, based on those initial proposals, the agency should have proceeded to hold discussions with, and then accept revised proposals from, all offerors in the competitive range. We thus considered it appropriate to recommend that the agency proceed with corrective action at that point in the procurement process where it deviated from proper procedure; a resolicitation of the requirement would entail costs and delays that we did not think were warranted by the noted deficiency.

This recommendation is consistent with both CICA and our Regulations, notwithstanding that the award will remain in place pending the outcome of the evaluation of revised proposals. Contrary to Monarch's position, the fact that an award has been made in no way implies that the agency will

not properly evaluate the revised proposals or otherwise proceed improperly. In conclusion, we continue to believe reopening the competition to be the most appropriate corrective action under the circumstances. Monarch has not shown otherwise.^{1/}

Further, since Monarch has not been excluded from the competition, but rather has been afforded an opportunity to submit a revised proposal, the firm is not entitled to reimbursement of its proposal preparation costs. Programmatics, Inc.; Telesynetics Corp., B-228916.2, B-228916.3, Jan. 14, 1988, 88-1 CPD ¶ 35.

The request for reconsideration is denied.



James F. Hinchman
General Counsel

^{1/} As for the agency's alleged predisposition in favor of Lewis, there is no evidence in the record that the award to Lewis was based on improper motives, rather than a misunderstanding of procurement procedures. In any case, the evaluation, of course, remains subject to protest based on any alleged improprieties.