



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Telos Corporation

File: B-279493.3

Date: July 27, 1998

Katherine S. Nucci, Esq., and Timothy Sullivan, Esq., Adduci, Mastriani & Schaumberg, for the protester.

Lori S. Chofnas, Esq., Department of the Navy, for the agency.

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DIGEST

1. Agency reasonably evaluated the cost realism of the awardee's proposed direct labor rates for key and non-key personnel by considering a signed letter of commitment in which a proposed key employee agreed to be compensated at a relatively low labor rate and by considering the labor rates currently paid by the awardee under a contract in the same geographic area to individuals with qualifications similar to the qualifications required by the solicitation for non-key personnel.
 2. Agency engaged in meaningful discussions, not technical leveling, in tailoring its discussions to the awardee's proposal by specifying the precise organizational and presentation shortcomings in the firm's key personnel resumes.
 3. Agency was not required to discuss with the protester its higher cost since such cost was consistent with the firm's approach of paying higher direct labor rates to retain the incumbent personnel; the protester's substantially higher cost was a reasonable basis to exclude the firm's proposal from the competitive range.
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DECISION

Telos Corporation protests the award of a contract to ITT Federal Services International Corporation under request for proposals (RFP) No. N00140-97-R-1971, issued by the Department of the Navy for operation, maintenance, technical, and engineering support services for the Kuwait Air Force Communications Network. Telos challenges the agency's evaluation of ITT's cost proposal, the agency's conduct of discussions, and the agency's exclusion of its proposal from the competitive range.

We deny the protest.¹

The RFP contemplated the award of a level-of-effort, cost-plus-fixed-fee contract for the base period and three 1-year option periods. Section C.1.4 of the RFP's performance work statement addressed personnel qualifications. The RFP required offerors to submit one resume for each of the four key personnel positions (senior project manager, installation supervisor, lead field engineer, and PBX engineer) which demonstrated that the individual proposed for a particular key position satisfied the minimum experience requirements described in the RFP. For example, as relevant to these protests, the RFP, as amended on page 2 of amendment No. 0001, required the proposed PBX engineer to have the following experience:

a minimum of ten (10) years experience in installation, test, and maintenance activities of communication systems and equipment, including a minimum total of five (5) years experience on PBX installation and maintenance. Within the past seven (7) years, shall have a minimum total of five (5) years experience in working with and managing military communication networks including system integration services and encryption applications.

The RFP also listed minimum experience requirements for support personnel positions (project management specialist, communication technician, and communication technician assistants), but did not require offerors to submit resumes for these non-key positions.

The RFP provided that the award would be made to the offeror whose proposal was determined most advantageous to the government, with an offeror's technical proposal being considered more important than the offeror's cost proposal. The RFP contained the following technical evaluation factors: (1) technical approach; (2) personnel resources; (3) management approach; (4) corporate experience; and (5) past performance. (These factors were listed in descending order of importance, except that factors 4 and 5 were of equal importance.) Key personnel resumes were evaluated under technical evaluation factor 2. The RFP stated that if an offeror's proposal was determined unacceptable for any of the technical evaluation factors, the proposal might not be considered for award. With respect to an offeror's proposed costs, the RFP stated that these would be evaluated for realism in terms of demonstrating the offeror's ability to project costs which were realistic and reasonable and indicating that the offeror understood the nature and scope of work to be performed. The RFP further stated that the realism of personnel compensation would be evaluated.

¹Our Office conducted a hearing in connection with this protest. All transcript citations in this decision (Tr. at ___) refer to the transcript of this hearing.

Three firms, including ITT and Telos,² submitted initial technical and cost proposals by the stated closing time. As relevant to this protest, the proposals of ITT and Telos were rated technically "unacceptable (a)" because, among other reasons, the firms failed to provide sufficient detail demonstrating that the individuals proposed for key personnel positions satisfied the RFP's minimum experience requirements. According to the agency's source selection plan, an unacceptable (a) technical rating meant that the firm's proposal satisfied most of the RFP requirements; that there was some risk; that proposal deficiencies were considered correctable; and that the proposal could be made acceptable through discussions without extensive changes tantamount to the submission of an entirely new proposal. In addition, the agency upwardly adjusted the proposed direct labor rates for ITT's proposed personnel after determining that these rates were significantly below the rates paid to incumbent personnel. The agency concluded that using higher rates would be more realistic if personnel of a quality equivalent to those of the incumbent contractor were used. The agency determined that the labor rates proposed by Telos were realistic when compared to the incumbent contractor's rates. As proposed and as evaluated, the Telos total costs were significantly higher than ITT's total costs.

The agency included the proposals of ITT and Telos in the competitive range and conducted oral and written discussions with both firms. For both ITT and Telos, the agency explained the deficiencies in the proposed resumes by tracking the key personnel experience requirements listed in the RFP. The agency also advised ITT that its proposed labor rates for each key and non-key personnel position appeared to be understated compared to the rates paid under similar contracts. The agency requested that ITT address through historical cost data or as otherwise appropriate how it intended to hire and retain a capable workforce at the proposed rates without risk to contract performance. The agency advised both ITT and Telos that they had the opportunity to improve any aspect of their technical and/or cost proposals through the submission of a best and final offer (BAFO).

ITT and Telos submitted timely BAFOs. For the key personnel positions of senior project manager and installation supervisor, ITT submitted revised resumes for the previously proposed individuals. For the key personnel positions of lead field engineer and PBX engineer, ITT proposed different individuals and submitted resumes. ITT's resumes were organized by position title and the name of the individual proposed for a particular position. Each resume included a broad summary of the individual's overall experience followed by lines listing the "from/to" period of time the individual served in a particular position, as designated by job title, for a named company or government entity at a specified location and the total number of years in each position. Each resume then included a separate

²The third firm--AT&T Global Communications Services, Inc.--was the incumbent contractor, which subsequently withdrew its proposal.

section listing the individual's qualifications. These qualifications were not linked to any previously listed job title; rather, the qualifications were summarized in one paragraph in a wholesale manner. The resumes also listed the individual's education, security clearance, and language proficiency skills. As an example, after summarizing his overall experience, the proposed PBX engineer (an individual who was a foreign national) included the following information in his resume (contained in volume I, chapter 2, page 8 of ITT's BAFO):

<u>From</u>	<u>To</u>		
1993	Present	Technical Team Leader, Hughes Aircraft Systems Int'l, Riyadh, KSA	5 years
1983	1993	Electronics Technician (Civilian), U.S. Air Force, Philippines	10 years

QUALIFICATIONS: Planned, installed, tested, inspected, and repaired TELEX exchanges, PBX/PABX/EPABX exchanges and equipment, optical fiber communications systems, electronic teleprinters, and Remote Line Units (RLU). Specific types of PBX equipment and switches installed and maintained included: Ericsson and Alcatel OCB switches, and Phillips, Teletra, NEC, Fujitsu, Nokia, and SDH PCMs. Installed, serviced and repaired all model of telephone instruments. Performed cable [splicing/repair]. Maintained a power plant, substation, and battery plant. Maintained operational and maintenance logs and records and maintained repair parts in support of maintenance and repair operations.

In its BAFO, ITT increased the labor rates for its proposed key personnel. ITT did not, however, change the labor rates proposed for non-key personnel. In this respect, ITT stated that these proposed rates were based on rates paid by it on another contract currently being performed in Kuwait to foreign national personnel with skills similar to those required under this RFP. In its BAFO, Telos provided employment commitments from most of the incumbent personnel and the firm adjusted its proposed costs to reflect the use of higher-priced incumbent personnel.

The agency rated the overall ITT BAFO as technically unacceptable (a) based solely on the firm's rating of unacceptable (a) for the personnel resources technical evaluation factor. More specifically, the agency considered ITT's key personnel resumes to be deficient, but correctable, as it did not appear that the proposed individuals lacked qualifications, but rather that the resume deficiencies related to the organization and presentation of the listed information for purposes of demonstrating that these individuals possessed the requisite years of specified experience. The agency rated the overall Telos BAFO at the high end of acceptable, with the firm receiving a highly acceptable rating for the personnel resources technical evaluation factor. The Telos total evaluated cost was approximately 85 percent higher than ITT's total evaluated cost.

The agency determined to reopen discussions and to request a second BAFO from both ITT and Telos. The decision to reopen was based on the agency's view that an award to Telos at an 85 percent cost premium could not be justified in light of the

fact that deficiencies in ITT's resumes appeared correctable, which would make its proposal technically acceptable, without the submission of an essentially new proposal.³

During the second round of discussions, the agency advised ITT that its first BAFO was determined unacceptable due to deficiencies under the personnel resources technical evaluation factor. For each of the key personnel positions, the agency advised that the resumes submitted did not demonstrate in sufficient detail that proposed individuals had the requisite years of specified experience. Tracking the RFP experience requirements language, the agency advised ITT that its resumes did not correlate an individual's years of experience, the various positions held, and how this experience satisfied the specific requirements of the RFP. The agency also advised that individuals, when listing equipment, did not specify what RFP requirement was meant to be satisfied and how listed positions and equipment related to the experience requirements set forth in the RFP. For each key personnel position, and more specifically using the resume of ITT's proposed PBX engineer, the agency stated that the nature of the individual's work assignments should be defined (e.g., installation, test, and maintenance of communications systems and PBX experience), as well as the duration of the work assignments and the equipment involved, including the requirement which was meant to be satisfied (e.g., encryption applications). For all key personnel positions, the agency stated that the resumes had to demonstrate that the total years of experience, the type of experience, the currency of experience, and the equipment involved all satisfied the RFP requirements. The agency also specifically told ITT that this was the second opportunity the firm had been afforded to correct resume deficiencies. The agency advised that the failure of ITT to correct these deficiencies might be considered conclusive evidence that ITT was unable to make its proposal acceptable.

With respect to ITT's proposed direct labor rates for positions to be filled by foreign nationals (the PBX engineer key personnel position and the three non-key personnel positions), the agency requested that ITT provide evidence that the categories being proposed were currently being paid at rates comparable to the understated rates in ITT's proposal. The agency did determine, however, that ITT's labor rates for the three remaining key personnel positions were realistic.

For Telos, the agency concluded that the firm's resumes showed experience meeting or exceeding the amount stated in the RFP for each labor category. The agency noted that three of the proposed key personnel were current employees of the incumbent contractor with direct experience in performing the work described

³The agency also believed it had to discuss with ITT and Telos an amendment to the RFP involving the lease, not purchase, of vehicles necessary for contract performance.

in the RFP, thus ensuring that the required services would continue uninterrupted and without degradation or any learning curve.

In requesting second BAFOs, the agency stated that it was providing both ITT and Telos an opportunity to improve any aspect of their respective technical and/or cost proposals. ITT responded by correcting the deficiencies identified with respect to its key personnel resumes. For example, the resume for the individual proposed for the PBX engineer position was rewritten and reorganized to correlate specific experience to specific job titles. In addition, ITT provided written confirmation from the individual proposed for the PBX engineer position that if ITT were awarded the contract, he would accept employment at the stated, agreed-upon direct labor rate and annual salary. ITT also furnished resume and payroll information showing that on a similar, although not identical, contract it was currently performing in Kuwait, it employed foreign nationals at direct labor rates below those proposed in response to this RFP, thus evidencing that ITT could hire for this contract fully qualified foreign national personnel at stated labor rates. Telos made no changes to its BAFO as previously submitted.

The agency determined that all of ITT's revised key personnel resumes, except that of the proposed PBX engineer, were acceptable. With respect to the latter's resume, the agency stated that this resume included no objective evidence showing that the individual had "manag[ed] military communication networks" in five of the last seven years as required by the RFP. The agency believed that the description of "team leader" included in the individual's resume did not provide enough evidence for the agency to conclude that this individual's responsibilities included managing networks. The agency also believed a more detailed breakdown of the period "1993-Present" was necessary to show 5 full years of PBX experience. Finally, the agency required further information concerning whether this individual's use of the word "secure" necessarily included experience with encryption applications. With respect to proposed labor rates, the agency now determined, based on a signed letter of commitment from ITT's proposed PBX engineer and other resume and payroll information that ITT's proposed labor rates for the PBX engineer and non-key personnel were realistic.

After second BAFOs, the Telos total evaluated cost was 76 percent higher than ITT's total evaluated cost. The agency believed that the organizational and presentation deficiencies remaining in ITT's proposed PBX engineer resume could be corrected. The agency further believed that, but for the PBX engineer resume, ITT had demonstrated that it could perform the RFP requirements. The agency determined that in light of the substantial cost premium associated with the Telos proposal, Telos had no reasonable chance for award. For that reason, the Telos second BAFO was eliminated from the competitive range.

Subsequently, the agency made a written request to ITT that it provide a fuller description of its proposed PBX engineer's duties as a "team leader" to substantiate

his experience in managing networks; that it provide additional information showing this individual had 5 full years, or 60 months, of PBX installation and maintenance experience; and that it more fully explain this individual's encryption experience. The agency also stated that in lieu of correcting this individual's resume, ITT could submit another acceptable resume. The agency advised ITT that the deficiencies in the referenced resume were considered correctable, and if corrected, would render ITT's second BAFO technically acceptable and result in an award to ITT.

ITT provided a revised resume responding to the agency's concerns. The agency determined that this revised resume confirmed that the individual proposed for the PBX engineer position met the requirements of the RFP. Accordingly, having satisfactorily demonstrated that it could perform the RFP requirements, the agency awarded a contract to ITT as the most advantageous offeror.

COST REALISM ANALYSIS

Telos contends that the agency unreasonably determined realistic ITT's proposed labor rates for the PBX engineer key personnel position and for the three non-key personnel positions where ITT's proposed rates were understated in relation to the rates paid by the incumbent contractor.

Where a cost reimbursement contract is to be awarded, an offeror's estimated costs of contract performance should not be considered controlling since the estimates may not provide valid indications of the final actual costs which the government is required to pay. See Federal Acquisition Regulation (FAR) § 15.605(c) (FAC 97-01). Consequently, the contracting agency must perform a cost realism analysis to determine the realism of an offeror's proposed costs and to determine what the costs are likely to be under the offeror's technical approach, assuming reasonable economy and efficiency. Roy F. Weston, Inc., B-274945 et al., Jan. 15, 1997, 97-1 CPD ¶ 92 at 16.

An agency is not required, however, to conduct an in-depth analysis or to verify each item in conducting a cost realism analysis. Hattal & Assocs., B-243357, B-243357.2, July 25, 1991, 91-2 CPD ¶ 90 at 9-10. A cost realism assessment necessarily involves the exercise of informed judgment and the agency is clearly in the best position to make that assessment; therefore, our Office will review such a determination only to ascertain whether it had a reasonable basis. Id.

With respect to the PBX engineer key personnel position, the record shows that the direct labor rate to be paid by ITT was significantly less than the rate paid by the incumbent contractor. However, the individual proposed by ITT for this key position signed a letter of commitment, which ITT furnished in its second BAFO,

agreeing to a stated hourly rate, annual salary, and other benefits.⁴ Because the agency had a written commitment from ITT's proposed PBX engineer that he would work for a stated hourly rate, we think the agency reasonably determined that ITT's proposed labor rate for this key position was realistic. See, e.g., Evaluation Research Corp., B-246869, Apr. 7, 1992, 92-1 CPD ¶ 350 at 6.

With respect to the three non-key personnel positions--all of which were to be filled by foreign nationals at labor rates substantially less than the rates paid by the incumbent contractor--the record shows that ITT based its proposed rates on the rates it was paying under another contract currently being performed in Kuwait to foreign national personnel with qualifications it believed were similar to those required under this RFP. During the second round of discussions, the agency asked ITT to substantiate that the categories being proposed were currently being paid at rates comparable to the relatively low rates in ITT's proposal. In its second BAFO, ITT responded by providing resume and payroll information showing that on the similar, although not identical, contract it was currently performing in Kuwait, it employed qualified foreign nationals at labor rates below those proposed in response to this RFP.

The agency was aware that the individuals performing under ITT's other contract in Kuwait did not have qualifications identical to those qualifications required under this RFP; however, the agency was satisfied that the qualifications of the individuals whose resumes and payroll information were submitted were sufficiently similar to the qualification requirements of this RFP to determine the realism of ITT's proposed labor rates for purposes of hiring qualified foreign national non-key personnel.⁵ Moreover, the agency did not require during discussions substantiation

⁴ITT furnished a letter of commitment from this individual in its first BAFO, but this earlier letter did not contain the hourly rate to be paid to this individual.

⁵Contrary to the position of Telos, we agree with the agency that there were similarities between the qualifications of individuals performing under ITT's other contract in Kuwait and the qualification requirements of this RFP. For example, section 1.4.3.2 of the RFP required the communication technician to have a minimum of 10 years "experience in installation, test, and maintenance activities of communication systems and equipment." To substantiate its proposed labor rate for this position, ITT submitted a resume and payroll information for its communication maintenance technician under its other contract as ITT believed this individual's qualifications were similar to the qualifications required by the RFP for the communication technician position. The resume showed that this individual had more than 10 years experience in installing, testing, and maintaining various communication systems and equipment, including radios, battery charging units, mobile cellular phones, pagers, antennas, and power supplies. In light of the RFP's
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on the basis of individuals with qualifications identical to those required under this RFP. Using the information provided by ITT, we believe the agency could reasonably determine that ITT's proposed rates under this RFP, which were higher than the rates paid under its other contract in Kuwait,⁶ were realistic and that ITT would be able to hire at the rates proposed qualified foreign nationals to staff non-key personnel positions. We have no basis to object to the agency's conclusion that ITT's proposed rates for non-key personnel were realistic based on the information submitted by ITT for a similar contract in the same geographic area.

TECHNICAL LEVELING

Telos argues that the agency's second round of discussions with ITT, in which the agency pointed out specific organizational and presentation deficiencies in ITT's key personnel resumes, as included in its first BAFO, constituted technical leveling. Telos believes that the deficiencies in ITT's resumes should have rendered its first BAFO technically unacceptable, thereby making ITT ineligible for award.

Technical leveling occurs where an agency, through successive rounds of discussions, helps to bring a proposal up to the level of another proposal by pointing out weaknesses that remain in a proposal due to an offeror's lack of diligence, competence, or inventiveness after having been given an opportunity to correct them. FAR § 15.610(d) (June 1997); Battelle Mem'l Inst., B-259571.3, Dec. 8, 1995, 95-2 CPD ¶ 284 at 5. In this regard, our Office has recognized the tension between the requirement for meaningful discussions with all responsible sources whose proposals are within the competitive range, and the admonitions in the FAR against technical leveling, technical transfusion, and auctions. Matrix Int'l Logistics, Inc., B-249285.2, Dec. 30, 1992, 92-2 CPD ¶ 452 at 5. We have held that this is an area where agencies necessarily have considerable discretion, *id.*, and where an agency points out informational deficiencies in an offeror's proposal, this does not constitute technical leveling, because the agency's purpose is to ascertain what the offeror is proposing to furnish. See CBIS Fed. Inc., B-245844.2, Mar. 27, 1992, 92-1 CPD ¶ 308 at 11-12.

⁵(...continued)

broadly stated qualification requirements for each non-key personnel position, as shown by the referenced example, we concur with the agency that the resumes submitted were representative of individuals whose qualifications were similar to those qualifications required under this RFP and that these resumes, along with payroll information, could be used by the agency as a basis for determining the realism of ITT's proposed rates.

⁶Recognizing that the qualifications of its currently employed foreign national personnel were not the same as the qualifications required under this RFP, ITT proposed to pay higher labor rates under this RFP.

Our review of the record supports the agency's position that it did not engage in technical leveling with respect to organizational and presentation deficiencies in ITT's resumes, but rather engaged in detailed and thorough negotiations consistent with its obligation to conduct meaningful discussions. FAR § 15.610(c).

After the first round of discussions, the agency was concerned not that the individuals proposed by ITT for key personnel positions lacked qualifications,⁷ but that ITT had not clearly organized and presented information in its resumes in such a way as to demonstrate which of an individual's qualifications satisfied specific requirements of the RFP. More particularly, in the resumes ITT listed job titles and the dates an individual served in specific capacities, but ITT did not explain the actual work performed by the individual under each job title. Rather, all of an individual's prior work was lumped together in a one paragraph summary. (This can be seen from the resume information provided for ITT's proposed PBX engineer in the firm's first BAFO, as shown above.) When the agency reopened discussions, it did so for at least two reasons: first, it believed the resume deficiencies in ITT's first BAFO were correctable, *i.e.*, the correction of these deficiencies would make ITT's proposal technically acceptable, without the submission of an entirely new proposal and second, if the resume deficiencies were corrected, rendering ITT's proposal acceptable, there were substantial cost savings to be achieved by awarding to ITT, as opposed to Telos, as the most advantageous offeror. During the second round of discussions, the agency tracked the qualification requirements in the RFP and specified the deficiencies in ITT's key personnel resumes. For these key positions, the agency required ITT to define the nature of the individual's work assignments, the duration of the assignments, and the equipment involved, including the requirement the equipment experience satisfied. The agency reminded ITT that the total years, type, and currency of experience had to satisfy the RFP requirements.

For the two reasons stated--the potential correctability of the deficiencies in ITT's resumes and the potential to achieve substantial cost savings if ITT's proposal was determined technically acceptable, we think the agency reasonably exercised its discretion to reopen discussions. In reopening discussions, however, we do not believe the agency engaged in technical leveling with ITT. Although the first round of discussions generally addressed deficiencies in ITT's key personnel resumes, we think the agency, on reopening, simply tailored its discussions to ITT's proposal by specifying the precise organizational and presentation shortcomings in the firm's resumes for purposes of obtaining from ITT amplification of the information previously provided. *See, e.g., Planning Sys. Inc., B-246170.4, Dec. 29, 1992, 92-2*

⁷Telos does not allege that the individuals proposed by ITT for key personnel positions lacked the required qualifications.

CPD ¶ 445 at 7. Requesting correction of such informational deficiencies does not constitute technical leveling.

DISCUSSIONS AND COMPETITIVE RANGE

Telos argues that, since it was not told during the second round of discussions that its cost was considered too high based on its first BAFO, where the firm proposed higher-priced incumbent personnel, the agency could not reasonably exclude its second BAFO from the competitive range based on the fact that its evaluated cost was 76 percent higher than ITT's evaluated cost. We disagree.

The agency did not advise Telos during the second round of discussions that its cost, as reflected in its first BAFO, was too high because the agency concluded that the Telos cost was in line with its proposed technical approach of using higher-priced incumbent personnel to perform the contract. The contracting officer stated that "Telos's numbers were not considered too high, per se[, that is,] vis-a-vis their technical proposal, their technical approach[.]" which was based on proposing higher-priced incumbent personnel. Tr. at 15, 21. More specifically, in explaining why he did not advise Telos during the second round of discussions that its price was considered too high, the contracting officer stated that he never tells a contractor, like Telos, that in comparison to another offer received, *i.e.*, that of ITT, that its cost is significantly higher. Tr. at 91-92. The contracting officer stated that "[a]t the level of pricing that Telos had provided--and it was a supported level of pricing--it was intrinsically cost-realistic." Tr. at 92. In such circumstances, if an offeror's higher cost is not considered excessive for its technical approach, the higher cost is not a deficiency required to be pointed out during discussions. See Textron Marine Sys., B-255580.3, Aug. 2, 1994, 94-2 CPD ¶ 63 at 22. As supported by the written record and as further explained during the hearing, since the Telos higher cost was consistent with the firm's approach of paying higher labor rates to retain the incumbent personnel, the agency was not required to raise this cost issue with Telos during discussions.

Concerning the exclusion of the Telos second BAFO from the competitive range based on the substantial cost premium associated with its proposal, cost is not only a proper factor for consideration but may emerge as the dominant factor in determining whether proposals--even those that are technically acceptable--fall within the competitive range. Even in circumstances where, as here, the competitive range is reduced to the proposal of one offeror, we will not disturb a determination to exclude a technically acceptable proposal from the competitive range unless the record indicates that it was unreasonable.⁸ ToxCo, Inc., B-254912,

⁸Although the agency concedes that it should have contemporaneously notified Telos of its second BAFO's elimination from the competitive range, the failure of
(continued...)

Jan. 26, 1994, 94-1 CPD ¶ 41 at 4. Neither the written record nor the hearing provided any basis to conclude that the determination to establish a competitive range consisting of ITT's proposal only, in the circumstances as described above, was unreasonable.

Telos also questions the legitimacy of the agency's oral competitive range determination because the only place that this determination was documented is in the agency's post-negotiation memorandum, dated April 2, 1998, after the protest was filed. In this memorandum, there is a section captioned "DETERMINATION OF COMPETITIVE RANGE (Confirming Oral Determination made on 23 Feb 98)." Telos essentially asserts that after the protest was filed, the agency conveniently articulated and documented a competitive range determination to justify its decision to have further discussions with ITT only, which ultimately resulted in an award to ITT. In support of this position, Telos points to the fact that the firm was not contemporaneously advised of the elimination of its second BAFO from the competitive range and that the firm was not specifically advised during the post-award debriefing of its proposal's elimination. We held the hearing to fully assess the merits of the protester's position.

The following chronology, as reflected in the written record and as further explained during the hearing, places the agency's competitive range and selection decisions in context for this procurement. AT&T, the incumbent contractor, had advised the agency that the firm was leaving Kuwait on March 31, 1998. Tr. at 108. Because there was a 1-month "ramp-up" requirement, *id.*, the agency had to make an award by March 1 in order to have a contractor in place when AT&T left Kuwait. Tr. at 109. In this regard, the agency made an oral determination to eliminate the second Telos BAFO from the competitive range on February 23. By letter dated February 27, which was telefaxed to Telos on that same day, the agency advised Telos that an award had been made to ITT. The contracting officer explained that while it was his intention that this letter also advise Telos that its second BAFO had been excluded from the competitive range, he was absent when the letter was sent (the letter was drafted by the contract negotiator and signed by another contracting official in the contracting officer's absence) and this information was inadvertently omitted from the letter. Tr. at 32-34, 78-79, 98-99. The contracting officer further explained that Telos was not advised during the debriefing of the elimination of its second BAFO because at that point, "the real story of this procurement [was that Telos] did [not] get the award because of the huge difference in price." Tr. at 34. The contracting officer continued that, at the debriefing, the agency was trying to impart to Telos:

⁸(...continued)

the agency to do so was a procedural deficiency and does not affect the validity of an otherwise properly awarded contract. Cinpac, Inc., B-243366, July 15, 1991, 91-2 CPD ¶ 57.

that this award was made because of, essentially, despite [the Telos] higher technical rating, it was made because the ITT proposal was very significantly lower in cost to the government, and therefore, represented the best value. It was not an issue of we [the agency] made this award to ITT because they [ITT] were the only ones left in the procurement.

Id.

The contracting officer concluded by stating that "[a]ll of the decisions, which were ultimately written in the April 2nd document, were made in time frames that were explained therein . . . prior to an award actually occurring." Tr. at 56. On this record, the agency's actions were consistent with a competitive range determination having been made prior to award, and we conclude that this was the case.

Finally, we believe that the agency did nothing improper in deciding to reopen discussions with ITT regarding three pieces of previously provided information in the resume of its proposed PBX engineer after reasonably narrowing the competitive range to include only ITT's correctable, substantially lower cost second BAFO. Since only ITT's second BAFO remained in the competitive range, it was the only firm entitled to further negotiate with the agency. Once the Telos second BAFO was reasonably excluded from the competitive range based on its substantially higher cost, there was no duty on the agency to conduct discussions with Telos. EER Sys. Corp., B-256383 et al., June 7, 1994, 94-1 CPD ¶ 354 at 19.

On this record, we have no basis to question the agency's decision to award the contract to ITT, whose technically acceptable, substantially lower cost proposal was determined most advantageous to the government.

The protest is denied.

Comptroller General
of the United States