



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: CHP International, Inc.

File: B-266053.2

Date: April 29, 1996

Alan S. Weitz, Esq., and Edward Tolchin, Esq., Ginsburg, Feldman & Bress, for the protester.

Clayton S. Marsh, Esq., and Kurt S. Kusiak, Esq., Ropes & Gray, for World Learning, Inc., an interested party.

Mark P. Lindberg, Esq., and Steven Schwinn, Esq., Peace Corps, for the agency.

Jacqueline Maeder, Esq., Glenn Wolcott, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency conducted inadequate cost realism analysis is denied where the agency considered the realism of the awardee's proposed direct labor costs, the number of labor hours and the mix of labor categories, the fringe benefits, travel and miscellaneous costs, and the indirect rates, and it is clear from the record that the protester was not prejudiced by the agency's failure to make certain adjustments to the labor escalation rate or fringe benefits that the protester believes should have been made.

2. Protest that agency conducted unequal discussions with the protester and the awardee is denied where the record establishes that the agency properly tailored its discussions to the specific weaknesses in each offeror's proposal and gave both offerors an equal opportunity to address these weaknesses.

3. The substitution of personnel after award is not improper where the offeror provided resumes and firm letters of commitment for its proposed individuals and nothing in the record suggests that the names were submitted other than in good faith.

DECISION

CHP International, Inc. protests the award of a contract to World Learning, Inc. under request for proposals (RFP) No. 95-3, issued by the Peace Corps for the pre-service training of Peace Corps volunteers in technical, language, cross-cultural and personal support skills necessary for their assignments in Guatemala and

El Salvador. CHP, the incumbent contractor, challenges various aspects of the proposal evaluation and source selection process, particularly the cost realism evaluation of the awardee's proposed costs.

We deny the protest.

The RFP, issued March 10, 1995, contemplated the award of a cost-plus-fixed-fee contract to provide pre-service and in-service training to Peace Corps volunteers serving in Guatemala and El Salvador for a 1-month pre-training period and a base year with 4 option years. Offerors were required to submit separate technical and cost proposals. In the technical proposal, each offeror was to describe its technical approach for providing the required services. Additionally, the RFP required each offeror to "identify the training staff by name, position, and vita" and to provide letters of intent. The RFP identified required key personnel, including, for example, a training director, master trainers, and language coordinators, but did not specify the exact number of language and technical trainers required. Proposed staff were required to meet the minimum requirements set forth in the statement of work.

The RFP provided that cost proposals would be evaluated to determine if the costs proposed were realistic and appropriate for the required effort. Award was to be made to the offeror whose proposal presented the best combination of features and provided the best value to the government, with technical competence considered more important than cost, and past performance considered the least important evaluation criterion.

The Peace Corps received three proposals, including those of CHP and World Learning, by the May 2 closing date. A four-member technical evaluation panel evaluated the proposals based on four technical competency ratings (exceptional, good, marginal, and poor). After review of initial proposals and costs, all three proposals were included in the competitive range. Discussions were held with the three offerors, all of which submitted best and final offers. The final evaluation results were as follows:

	Technical	Cost	Past Performance	Rank
World Learning	Good	\$3,391,492	Excellent	1
Firm X	Good+	\$4,279,412	Excellent	2
CHP	Good	\$4,206,090	Excellent	3

All offerors provided a Certificate of Current Cost or Pricing Data attesting to the accuracy, currency and completeness of their cost or pricing data. The contracting

officer performed a cost realism analysis and concluded that the proposed costs were reasonable and realistic. Since all three proposals were regarded as essentially technically equal, the determining element in the source selection decision was the substantial difference in evaluated cost. On that basis, World Learning's proposal was selected for award as most advantageous to the government. This protest followed.

CHP contends that the agency failed to conduct a reasonable cost realism analysis of World Learning's proposal, alleging that the awardee improperly proposed a [deleted] trainers, that staff salaries and fringe benefits proposed by World Learning were understated, and that the agency should have normalized the annual salary escalation rates proposed by the offerors. CHP also alleges that World Learning never intended to supply the individuals for whom it submitted resumes for evaluation, and that discussions were unequal.¹

When a cost reimbursement contract is to be awarded, the offerors' estimated costs of contract performance should not be considered as 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 § 15.605(c). 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. CACI, Inc.-Fed., 64 Comp. Gen. 71 (1984), 84-2 CPD ¶ 542. 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., 70 Comp. Gen. 632 (1991), 91-2 CPD ¶ 90. A cost realism assessment necessarily involves the exercise of informed judgment which the agency is clearly in the best position to make; our Office will review such a determination only to ascertain whether it had a reasonable basis. Id.

Here, the record demonstrates that the Peace Corps performed an extensive analysis of the different cost elements for each proposal. Specifically, the contracting officer reviewed each offeror's proposed labor rates, the number of labor hours and the mix of labor categories and concluded that the proposals in these areas were realistic and compatible with the required effort. World Learning's proposed direct labor rates were [deleted] than CHP's because World Learning proposed primarily [deleted] rather than [deleted]. The contracting officer also reviewed the fringe benefits required by United States and Guatemalan law and

¹The protester also challenges the agency's technical evaluation of its proposal. Specifically, CHP argues that ratings for certain proposed staff should have been "excellent" rather than the "good-," "good," or "good+" awarded by the Peace Corps. We have reviewed the record and found that CHP's arguments merely reflect its disagreement with the judgment of the agency's evaluators and are without merit.

concluded that these were appropriate under each proposal. Next, the contracting officer reviewed proposed costs for travel, materials, supplies, communications and support services. While the three offerors' costs for these items were [deleted], World Learning's travel expenses were [deleted] because its proposed staff, as noted above, were [deleted] and travel was therefore [deleted]. The contracting officer also contacted the cognizant government auditors to verify each offeror's proposed indirect rates.² Finally, the contracting officer considered the total proposed costs as one measure of cost realism; in that analysis, he concluded that the total costs of each proposal were realistic.

As a preliminary matter, the protester complains that World Learning supplied [deleted] trainers from which it [deleted] and did not [deleted] trainers it intended to hire. According to the protester, each offeror was required to determine how many trainers would be required for each training cycle and propose the specific individuals by position.

As noted above, the RFP does not specify the exact number of trainers required; rather, it requires that the offeror identify its proposed training staff by name, position, and vita and provide letters of intent. World Learning specifically identified its proposed staff and had firm commitments from each proposed staff member. The fact that this staff made up [deleted] for specific work does not mean that the RFP was ignored--this approach simply was not prohibited by the solicitation. In this regard, nothing in the RFP specifically required offerors to [deleted] and neither CHP nor World Learning provided such breakdowns for all staff for the entire contract period. On this record, we find nothing objectionable about the manner in which World Learning identified its proposed personnel.

CHP points to several components of World Learning's cost proposal as evidence that the agency's cost realism analysis was unreasonable. First, CHP argues that World Learning's proposed salaries for its two master trainers are [deleted]. World Learning proposed a host-country national for the master trainer in Guatemala at an annual salary of [deleted] and an American master trainer for El Salvador at a weekly salary of [deleted] or [deleted] per year. According to the protester, based on these individuals' previous salaries, the proposed salaries are [deleted] because the Guatemalan national was allegedly earning [deleted] per month ([deleted]) in

²Because World Learning is considered an institution of higher education, its overhead rate is set by the Department of Health and Human Services under Office of Management and Budget Circular A-21. CHP's indirect rates were verified by the Peace Corps's Office of Inspector General.

his previous job,³ and CHP paid the American master trainer [deleted] per week in 1993.

The record does not support CHP's allegations. The resume submitted by World Learning for its Guatemalan national shows that he was earning approximately [deleted] per month or [deleted] per year from his previous employer. As for the American master trainer, World Learning states that her [deleted] per week base salary does not include health, dental, retirement and disability benefits which, when added to her base salary, result in total compensation greater than what she earned from CHP. Moreover, CHP's [deleted] salary was for a 6-day workweek; World Learning's proposed [deleted] salary is for a 5-day workweek. On this record, there is no merit in CHP's allegation that World Learning's proposed salaries for these positions are unrealistic.

CHP also alleges that World Learning has violated Guatemalan law by classifying some personnel as "consultants" and not including fringe benefits for them in its cost proposal.⁴ CHP argues that World Learning's alleged violation of Guatemalan law contributed to the agency's improper cost realism analysis.

The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. § 3551-3556 (1994). Our role in resolving bid protests is to ensure that the statutory requirements for full and open competition are met, Brown Assocs. Management Servs., Inc.--Request for Recon., B-235906.3, Mar. 16, 1990, 90-1 CPD ¶ 299, and does not generally include a final determination regarding foreign employment statutes and regulations. Here, both the Peace Corps and the awardee argue that an employer is not required to pay fringe benefits to consultants under Guatemalan law. In any event, we need not resolve this issue because, even if fringe benefits for consultants should have been included in the awardee's costs, these fringe benefits, according to the protester's own calculations, would amount to approximately [deleted] per year. Because all proposals were evaluated as technically equal but World Learning's proposed costs were approximately \$1 million lower, adding fringe benefits for consultants to World Learning's evaluated cost would not affect the award determination.

³CHP stated: "In the course of CHP's proposal preparation, CHP interviewed [the Guatemalan national]. He told CHP that he was earning approximately [deleted] per month."

⁴According to the protester, under Guatemalan law, an employer is responsible for paying fringe benefits for anyone who works for that employer for a specified period of time during the course of a year.

CHP next complains that the Peace Corps failed to normalize the annual salary escalation rates used by the offerors.⁵ In this regard, the record shows that CHP proposed a [deleted]-percent annual increase and World Learning proposed a [deleted]-percent annual escalation. The protester argues that when an agency believes that labor costs will escalate, it should adjust cost proposals in its cost realism analysis to reflect the agency's reasonable projection of anticipated escalation in labor rates over the term of the contract and that, ordinarily, the same percentage multiplier or escalation rate should be employed in normalizing offerors' proposed labor costs. See Infotec Dev., Inc., B-258198 et al., Dec. 27, 1994, 95-1 CPD ¶ 52.

Here, the record shows that the agency did not normalize the rates because it believed that World Learning's rate was a function of private business decisions and salary arrangements between World Learning and its proposed personnel, and that the escalation of labor rates experienced by World Learning could differ from that experienced by CHP. Although agencies are permitted to normalize the escalation rates applied to labor costs, there is no requirement that they do so. See General Research Corp., supra. Here, in light of the substantially different make-up of the labor force proposed by World Learning, we cannot conclude that the agency's action was unreasonable. In any event, the agency's failure to normalize rates had no prejudicial effect on the protester. Specifically, the difference between World Learning's proposed contract costs using its [deleted]-percent salary escalation and its contract costs using the protester's [deleted]-percent escalation applied to all costs (salaries, fringe benefits and indirect costs) amounts to less than [deleted]. As noted above, CHP's and World Learning's proposals were rated technically equal but World Learning proposed costs were nearly \$1 million less than those of CHP. Thus, even if the agency had normalized proposed escalation rates, there would have been no impact on the agency's source selection decision.

CHP also contends that discussions were unequal because the Peace Corps discussed direct labor costs with World Learning but limited discussions with CHP to costs relating to travel and fees. CHP contends that the agency's allegedly inadequate discussions seem "calculated . . . to throw CHP off the track."

In the circumstances presented, the Peace Corps did not engage in unequal discussions by discussing salaries and benefits with World Learning without discussing these specific issues with CHP. The record shows that after initial cost

⁵Labor escalation provides for the increase in labor costs due to inflation or other usual salary increases over the life of a contract, and, as indicated here, is accomplished by the use of a percentage multiplier that is applied to proposed direct labor costs. General Research Corp., 70 Comp. Gen. 279 (1991), 91-1 CPD ¶ 183, aff'd, American Management Sys., Inc.; Department of the Army-Recon., 70 Comp. Gen. 510 (1991), 91-1 CPD ¶ 492.

and technical evaluations, the negotiations with CHP focused on its proposed travel costs and fee because the contracting officer considered these costs [deleted]. Other costs were not discussed because they were consistent with CHP's current work effort and the salaries then being paid to CHP's proposed incumbent staff. Negotiations with World Learning concentrated on salaries because the salaries proposed were [deleted] than those being paid the incumbent staff, and World Learning had not originally provided for any escalation. Thus, the agency tailored its discussions to address the agency's specific concerns regarding each offeror's proposal. Although discussions must provide offerors an equal opportunity to revise their proposals, discussions with each offeror need not be identical; rather, a procuring agency should tailor its discussions to each offer since the need for clarifications or revisions will vary with the proposals. The Pragma Corp., B-255236 et al., Feb. 18, 1994, 94-1 CPD ¶ 124.

Finally, the protester complains that World Learning substituted many of the incumbent personnel following contract award, and that these substitutions demonstrate that World Learning never intended to supply the individuals for whom it submitted resumes for evaluation.

Offeror "bait-and-switch" practices, whereby an offeror proposes the use of personnel that it does not expect to use during contract performance, have an adverse effect on the integrity of the competitive procurement system and generally provide a basis for proposal rejection. Unisys Corp., B-242897, June 18, 1991, 91-1 CPD ¶ 577. This does not mean that an offeror must use the personnel it proposed or risk losing the contract for which it is competing in every case. For example, where, as here, the offeror provides firm letters of commitment from the personnel proposed, but after award additional personnel become available, the contractor is not precluded from substituting such personnel where the agency has no objection to that substitution. Id.

On this record, it is clear that World Learning intended to employ the personnel it proposed. In this regard, World Learning provided individual employee resumes and letters of intent as required by the solicitation for each of the language and technical trainers it proposed. When, however, other trainers became available

because the incumbent contractor did not win the award,⁶ World Learning elected to utilize some these incumbent personnel. These facts do not suggest that World Learning engaged in a "bait and switch" tactic.

The protest is denied.

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⁶World Learning could not have proposed using the incumbent's personnel because, CHP states, "CHP required its proposed trainers, as a condition of submitting them with the CHP proposal, . . . not [to] allow their names to be submitted with any other proposal."