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B-203348

September 9, 1981

Mr. William J. Maraist
Assistant Administrator for Regulations
Office of Federal Procurement Policy
Office of Management and Budget
Executive Office of the President

Dear Mr. Maraist:

You requested our comments on a draft segment of the Federal Acquisition Regulation (FAR) covering Part 15 - Negotiation, Subpart 15.6 - Source Selection.

The draft sets out at section 15.609(a) the factors which must be considered by the contracting officer in determining the competitive range. The proposed FAR provision states the contracting officer shall consider "price and other factors * * *" while the current Defense Acquisition Regulation (DAR) at section 3-805.2 provides that competitive range shall be determined on the basis of "price or cost" and other factors.

We assume that the FAR provision eliminated the word "cost" only to more accurately reflect the language of 10 U.S.C. § 2304(g), which describes competitive range in terms of "price and other factors considered," and not to eliminate proposed cost as a factor in determining competitive range. We believe that the word "price" as used in 10 U.S.C. § 2304(g) is intended to refer to both the price in a procurement leading to a fixed-price type contract and to the proposed cost estimate in a procurement leading to a cost-reimbursement type contract, and we consider both the proposed cost estimate and the proposed fixed price to be critical elements in a competitive range determination. Thus, we would not agree with the proposed FAR provision if the elimination of the word "cost" was intended to preclude the necessity for consideration of an offeror's cost estimate in competitive range determinations.

We appreciate the opportunity to comment.

Sincerely yours,

Harry R. Van Cleve

Harry R. Van Cleve
Acting General Counsel

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GAO assumes the elimination of the word "cost" in proposed FAR 15.609(a) concerning the determination of competitive range was intended to more accurately reflect wording of 10 U.S.C. § 2304(g) and not to eliminate requirement that proposed cost estimates be considered in determining competitive range in cost-type procurements. If intent of drafters of FAR was to eliminate consideration of cost, GAO strongly objects.