

Evaluation of MVM's Proposed Costs

	Description	Amount	Questioned	Accepted Cost		
1	Business Travel	\$2,077,834.58				
			\$1,145,015.16	\$0.00	\$1,145,015.16	Initial Travel for Peruvians & South Africans
			\$498,640.00	\$498,640.00	\$0.00	Charter Flight To Return Employees After T4D
			\$377,995.21	\$377,995.21	\$0.00	Management & U.S. Travel
			\$56,184.21	\$56,184.21	\$0.00	Other Travel Expense
			\$2,077,834.58	\$932,819.42	\$1,145,015.16	Allow 55% of requested costs.
2	Payroll	\$1,394,783.17				
			\$698,493.63	\$104,774.04	\$593,719.59	U.S. Employees (15% Reduction due to inability to assist management in correcting problems.)
			\$292,400.00	\$233,920.00	\$58,480.00	South Africans (80% Not Qualified)
			\$283,507.54	\$141,753.77	\$141,753.77	Peruvians (50% Not Qualified)
			\$120,382.00	\$120,382.00	\$0.00	Management and Corporate Labor (100% Reduction for failure to deliver quality services.)
			\$1,394,783.17	\$600,829.81	\$793,953.36	Allow 57% of requested costs.
3	Training Costs	\$626,887.06				
			\$431,143.07	\$0.00	\$431,143.07	USIS Fees
			\$170,312.50	\$170,312.50	\$0.00	Ammunition
			\$25,431.49	\$25,431.49	\$0.00	Additional Training Supplies
			\$626,887.06	\$195,743.99	\$431,143.07	Allow 69% of requested costs.
4	Recruiting Costs	\$293,431.42				
			\$96,662.00	\$96,662.00	\$0.00	Recruiting Fees
			\$89,273.42	\$89,273.42	\$0.00	Language Testing
			\$59,602.20	\$59,602.20	\$0.00	VISAs & Licenses
			\$44,257.51	\$44,257.51	\$0.00	Medical Exams
			\$3,636.29	\$3,636.29	\$0.00	Background Checks
			\$293,431.42	\$293,431.42	\$0.00	Allow 0% of requested costs.
5	Postage & Delivery	\$220,690.24				Postage & Delivery
			\$220,690.24	\$220,690.24	\$0.00	Allow 0% of requested costs.
6	Legal Fees	\$151,560.00				
			\$100,000.00	\$100,000.00	\$0.00	Charlie Gaba & David nadler
			\$51,560.00	\$51,560.00	\$0.00	Price Waterhouse Cooper
			\$151,560.00	\$151,560.00	\$0.00	Allow 0% of requested costs.
7	Insurance	\$109,118.11				
			\$65,023.20	\$65,023.20	\$0.00	International Liability
			\$37,703.66	\$0.00	\$37,703.66	
			\$6,391.25	\$6,391.25	\$0.00	Kidnap & Ransom
			\$109,118.11	\$71,414.45	\$37,703.66	Allow 35% of requested costs.
8	Other Expenses	\$177,185.55				
			\$79,869.00	\$0.00	\$79,869.00	Contract Administration
			\$42,996.88	\$42,996.88	\$0.00	Miscellaneous Expenses
			\$26,608.20	\$26,608.20	\$0.00	Auto Expenses
			\$17,203.42	\$17,203.42	\$0.00	Contract Supplies
			\$10,508.05	\$10,508.05	\$0.00	Telephone
			\$177,185.55	\$97,316.55	\$79,869.00	Allow 45% of requested costs.
9	Uniforms & Equip	\$989,508.77				
			\$439,070.87	\$439,070.87	\$0.00	Uniforms
			\$384,500.00	\$384,500.00	\$0.00	Body Armor
			\$144,262.55	\$144,262.55	\$0.00	Equipment
			\$21,675.35	\$21,675.35	\$0.00	Warehousing & Other Fees
			\$989,508.77	\$989,508.77	\$0.00	Allow 0% of requested costs.
10	Automobiles	\$868,000.00				
			\$312,000.00	\$312,000.00	\$0.00	Runabouts
			\$556,000.00	\$556,000.00	\$0.00	Troop Transports
			\$868,000.00	\$868,000.00	\$0.00	Allow 0% of requested costs.
	Subtotal	\$6,908,998.90	\$6,908,998.90	\$4,421,314.65	\$2,487,684.25	
	G&A (3.5%)	\$241,814.96	\$241,814.96	\$154,746.01	\$87,068.95	
	Subtotal	\$7,150,813.86			\$2,574,753.19	
	Profit (6.75%)	\$482,679.94	\$482,679.94	\$482,679.94	\$0.00	
	Total	\$7,633,493.80			\$2,574,753.19	Equates to 33.73 % of actual cost incurred.

Proposed Settlement	\$7,633,493.80	
Acceptable Cost	\$2,574,753.19	33.73%
Difference	\$5,058,740.60	66.27%

DOS Settlement Offer	\$2,574,753.19
Value of Uniforms & Equipment	\$989,508.77
Value of Automobiles	\$868,000.00
Potential Rebate On Insurance (International Liability)	\$58,520.88
	\$4,490,782.84

Loss	
Expenses	\$7,150,813.86
DOS Offer, Value of Uniforms & Equipment, Value of Vehicles & Insurance Rebate	\$4,490,782.84
Difference	\$2,660,031.02

MVM T4D.doc.R1.xls

Brown, Douglas J

From: O'Day, William
Sent: Thursday, March 23, 2006 5:07 PM
To: Monteiro, Robyn L
Cc: Brown, Douglas J; Barry, Kevin (DS)
Subject: FW: Settlement Agreement with MVM Contract Number SGE500-05-C-1071

Attachments: MVM Settlement Agreement Contract No SGE500-05-C-1071.pdf; MVM Settlement Proposal.xls

Robyn - The attached memo and spreadsheet is provided to you for John's clearance and then Joe. It concerns information regarding the proposed settlement with MVM. Thanks, Bill

From: Anthony, Tammy L
Sent: Thursday, March 23, 2006 4:00 PM
To: O'Day, William
Subject: Settlement Agreement with MVM Contract Number SGE500-05-C-1071



MVM Settlement MVM Settlement
agreement Contr: Proposal.xls (2...



Document Contains Procurement Sensitive Information

Tammy Anthony
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Fax: 571-345-2400
Executive Assistant, DS/IP/OPO
Support Contractor, Triumph Technologies Inc.



Washington, D.C. 20520

INFORMATION MEMORANDUM

TO: DS/EX – Pat Popovich

THROUGH: DS/DSS – Joe Morton
DS/DSS/IP – John Rendeiro

FROM: DS/IP/OPO – William O’Day, Acting *WO*

SUBJECT: Settlement Agreement With MVM, Inc. - Contract No.
SGE500-05-C-1071 - Guard Services In
Kabul, Afghanistan

Purpose:

The purpose of this memorandum is to advise you that the Contracting Officer (CO) agreed to accept MVM’s proposal to negotiate a settlement agreement at the CO’s level in lieu of entering prolonged litigation on the recently terminated contract. MVM’s revised cost proposal dated February 22, 2006 indicated a settlement amount of \$4,500,000. This figure included payment for approximately \$1,857,508 for uniforms, equipment and vehicles that would become Government Furnished Property (GFP) to be used in support of the follow-on contract. MVM accepted the CO’s offer on March 17, 2006, and the CO will soon issue a contract modification incorporating the settlement agreement which converts the termination for default (T4D) to a termination for convenience (T4C) and pays MVM a lump sum amount of \$3,500,000. The U.S. Government will take possession of uniforms and equipment valued at approximately \$989,508, and MVM will keep seven (7) vehicles acquired at a price of \$868,000.

Discussion:

On December 21, 2005, the Contracting Officer (CO) notified MVM that the contract had been terminated for default per FAR 52.249-8. The letter also contained a stop-work directive and required MVM to remove all staff and employees from the Government provided facility no later than 25 days from this notice.

On January 20, 2006, MVM advised the CO that it desired to have the termination for default (T4D) converted to a termination for convenience (T4C) and to negotiate a fair and reasonable financial settlement instead of entering into litigation. MVM voiced concerned about the profound financial impact of a default termination as well as advised the CO that it had retained outside legal counsel, who believed that the T4D would be converted to a T4C by either the General Services Board of Contract Appeals (GSBCA) or the U.S. Court of Federal Claims. MVM has the option to select which forum it will file its appeal of the CO's termination decision.

MVM stated on January 20, 2006 that it was willing to make substantial financial concessions from the claimed amount of \$5.6 million as advocated by its counsel. Reasons given for financial concessions were as follows: to reflect savings in legal fees, to avoid risk associated with litigation, and to bring about timely resolution of this issue. The CO advised MVM that he was open to discussion relative to their request for his consideration of a conversion of the T4D to a T4C. However, he advised MVM that he would do so in the interest of the Government's program and not because he gave any weight to the defamatory "legal arguments" included in MVM's letter.

On February 9, 2006, the CO and a representative from OPO met with MVM representatives. MVM advised the Government that it was absolutely imperative for them to seek reimbursement of its expenses to date as well as a conversion of the T4D to a T4C through negotiations with the Department or litigation. Failure to obtain both (i.e., reimbursement of some expenses and a conversion of the T4D to T4C) would most likely result in MVM going out of business. MVM provided the Government a draft settlement agreement in the amount of \$7,633,493.80 at this meeting. This figure is \$2,052,291.78 (\$7,633,493.80 - \$5,581,202.01) higher than the cost figure addressed by MVM's outside counsel. The difference is attributed to costs associated with uniforms, equipment, and automobiles.

Until the T4D is converted to a T4C, MVM can submit offers for new government work; however, the possibility of a CO making an award to them is most doubtful due to the requirement to only award a contract to a Contractor with a satisfactory performance record. MVM would have vigorously pursued its claim through litigation had a settlement agreement not been reached. Litigation would have resulted in the Department of State using scarce fiscal and personnel resources to defend its actions before the appellate body.

In accordance with FAR 33.204, it is the Government's policy to try to resolve all contractual issues in controversy by mutual agreement at the CO's level. Therefore, trying to reach a settlement agreement with MVM was not only desirable but in accordance with established guidance. [REDACTED]

Clearly, this is the case in this instance.

One primary reason for declining to settle this claim at the CO's level would be maintaining our right to demand payment from the Contractor of excess procurement costs (i.e., difference in cost of repurchase services). If the repurchase is made at a price over the price of the services terminated, the CO may make written demand on the Contractor for the total amount of the excess. It is highly unlikely that MVM would be able to pay such a judgment in the event that the T4D is sustained due to MVM's current financial condition. L/BA has stated that [REDACTED]

Prior to entering into discussions, L/BA advised the CO per his request for legal advice that [REDACTED]

[REDACTED] Therefore, reaching a settlement agreement in the amount of \$3,500,000 with the U.S. Government taking possession of uniforms and equipment valued at \$989,508 is a very reasonable and prudent

Procurement Sensitive Information Contained In Memorandum
action by the CO. This settlement agreement most likely resulted in the U.S.
Government saving \$5,123,002.57 as depicted on the attached sheet.

Furthermore it should be noted that L/BA provided the CO with a written
legal opinion on February 23, 2006 stating that [REDACTED]
[REDACTED]

Summary

The Contracting Officer has accepted MVM's proposal to negotiate a
settlement agreement in lieu of entering into litigation. The amount of the
settlement agreement is \$3,500,000 with the Government taking possession
of uniforms and equipment valued at approximately \$1,000,000. Had a
settlement agreement not be reached, MVM would have filed a claim before
either the GSBICA or the U.S. Court of Federal Claims. If the appellate body
sustained MVM's claim, the Department of State could have been required
to reimburse MVM its costs, general and administrative expenses, and profit
in the amount \$7,633,493.80. Therefore, this settlement agreement most
likely resulted in the U.S. Government saving \$5,123,002.57.

MVM Settlement Proposal		
Settlement Offer		
	\$5,051,490.13	All expenses except uniforms, equipment, and automobiles.
	\$1,857,508.77	Uniforms, equipment and automobiles.
Cost	\$6,908,998.90	
G&A (3.5%)	\$241,814.96	
Subtotal	\$7,150,813.86	
Profit (6.75%)	\$482,679.94	
Total	\$7,633,493.80	

Contracting Officer's Offer		
Offer	\$3,500,000.00	U.S. Government pays MVM \$3,500,000 and takes possession of uniforms and equipment currently in Kabul, Afghanistan. Value of uniforms and equipment is \$989,508.77. Uniforms and equipment will be provided as Government Furnished Property (GFP) on follow-on contract.
Value of Uniforms and Equipment	\$989,508.77	
Additional Cost to Kabul Local Guard Program	\$2,510,491.23	Had the U.S. Government not terminated the contract for default, it would not have incurred this expense.

Settlement Information		
MVM Proposal	\$7,633,493.80	
CO Offer	\$3,500,000.00	
Difference	\$4,133,493.80	
Percentage of Proposal	45.85%	

MVM Loss		
Assets		
Settlement	\$3,500,000.00	
Value of Vehicles	\$868,000.00	
Total	\$4,368,000.00	
Cost Elements & Loss Analysis		
Cost Proposal Amount	\$7,633,493.80	
Profit	\$482,679.94	
Actual Cost	\$7,150,813.86	Includes all expenses plus G&A.
Settlement Figure & Value of Assets	\$4,368,000.00	Settlement Figure - \$3,500,000 / Value of Uniforms & Equipment - \$989,508.
Loss	\$2,782,813.86	\$7,150,813.86 - \$4,368,000.00 (Settlement figure plus value of vehicles)
Percentage of Loss	38.92%	\$2,782,813.86 / \$7,150,813.86 (Excludes profit of \$482,679.94)

Potential Savings To Government Due To Settlement		
Cost Proposal	\$7,633,493.80	
Additional Cost to Kabul LGP	\$2,510,491.23	Payout of \$3,500,000 plus acceptance of uniforms and equipment valued at \$989,508.77.
Difference	\$5,123,002.57	Should MVM elected to appeal the CO's final determination and the Court ruled in favor of the appellant, not the Government, the Department of State could have been required to reimbursement MVM in the amount of \$7,633,493.80.
Percent Savings	67.11%	\$5,123,022.57 / \$7,633,493.80

Doc. MVM Settlement Proposal.xls