

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

31795

B-216842

**FILE:****DATE:** July 26, 1985

Aurora Associates, Inc.

**MATTER OF:****DIGEST:**

1. Award on the basis of initial proposals is not appropriate where contracting officer has cost concerns regarding all offerors' proposals.
2. Where agency error may have resulted in disclosure of portion of one offeror's proposal to second offeror, but second offeror was not selected for award, first offeror was not prejudiced by the error in present procurement and we know of no remedy for future procurements.

Aurora Associates, Inc., protests the award of a contract for operation of the Brunswick, Georgia, Job Corps Center (BJCC) under request for proposals (RFP) No. 84-RIV-JC-0010, issued by the Office of Job Corps, United States Department of Labor, Employment and Training Administration (DOL/ETA). Aurora contends that the competitive nature and integrity of this procurement were compromised by the release by DOL/ETA of confidential financial and technical information contained in a proposal which Aurora submitted under a prior RFP for the same services. (This initial RFP, No. 84-RIV-JC-0005, was canceled after the contracting officer learned that the offerors' technical and cost rankings might have been disclosed prior to submission of best and final offers.) Aurora requests that the later RFP be canceled and the earlier one reinstated, and that award be based on the initial proposals submitted under the earlier RFP. Subsequent to the filing of Aurora's protest, DOL/ETA awarded a contract for the services to the Management and Training Corporation (MTC).

We deny the protest.

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The initial RFP for continued operation of the Brunswick Job Corps Center, noted above, was issued on March 16, 1984, with proposals due on May 11, 1984. After best and final offers had been submitted, the Director of the Job Corps learned that one of the offerors might have received information regarding the other offerors' technical and cost rankings prior to submission of best and final offers. The contracting officer reviewed the situation and concluded that there was sufficient basis to suspect that the confidentiality of the procurement process had been compromised. (These same events were the subject of our decision in Youth Development Associates, B-216801, Feb. 1, 1985, 85-1 CPD ¶ 126.) He canceled the RFP on August 21, 1984, and issued a second RFP, No. 84-RIV-JC-0010, on October 1, 1984.

Upon cancellation of the original RFP, Aurora and the other two offerors, Singer and TMR, requested return of their proposals. The agency complied, but mistakenly mailed several copies of Aurora's business management proposal to Singer. Singer immediately returned Aurora's materials to the contracting officer along with a statement indicating that no Singer staff had read or copied the Aurora proposal.

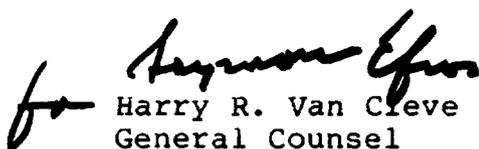
Aurora contends that the situation which led to cancellation of the original RFP was not adequately remedied, and that the improper release of the financial and technical information in its business management proposal placed it at a competitive disadvantage under the second RFP and in other similar procurements. Aurora urges that the offerors should have been returned to the position they occupied before any impropriety occurred, and that award should have been based on evaluation of initial proposals under the original RFP.

In this respect, Aurora asserts that none of the original offerors would be prejudiced by award on the basis of initial proposals, since each was on notice under the original RFP that its initial proposal should be realistic and competitive. In our view, this assertion ignores the fact that the absence of prejudice to the government is also a prerequisite to award on the basis of initial proposals. Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.610(6) (1984). In this case, the contracting officer apparently determined that the conditions of FAR § 15.610-(a)(6) had not been satisfied since the Job Corps had

concerns regarding all offerors' proposed costs and, in fact, conducted negotiations with all offerors. We have previously declined to recommend award on the basis of original proposals where there was evidence that a fair and reasonable price would not be obtained. T.M. System, Inc., B-185715, May 4, 1976, 76-1 CPD ¶ 299. Given the Job Corps' concerns about all offerors' proposed costs, we find the contracting officer's action to be reasonable.

Moreover, we note that although the possible disclosure of a portion of Aurora's proposal to Singer could possibly have placed Aurora at a competitive disadvantage with regard to that company, we find no evidence that it placed Aurora at a competitive disadvantage with respect to the awardee, MTC. Although Aurora speculates that other offerors may have gained access to the portion of its proposal which was erroneously mailed to Singer, there is no evidence--and we see no reason to assume--that Singer disclosed this information to another competitor. Therefore, we find no basis to conclude that Aurora was prejudiced in this procurement by the erroneous transmittal of a portion of its proposal to Singer. Also, to the extent that Aurora alleges that it may have been prejudiced in other procurements by this action, we are aware of no remedy appropriate for these procurements. Youth Development Associates, B-216801, supra.

The protest is denied.

  
for Harry R. Van Cieve  
General Counsel