

Murphy



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Education Development Center, Inc.

File: B-224205

Date: January 30, 1987

DIGEST

1. In a request for best and final offers, an agency properly may omit advice that more than one firm remains in the competitive range and that the technical ranking is sufficiently close that the offerors' cost proposals may become the determinative selection factor, since this information relates to the offerors' relative standing and not the merits of their proposals.

2. The General Accounting Office denies a protest that an agency failed to discuss areas in which the offeror might have overestimated costs where there is no evidence that the agency considered any cost items to have been unreasonably high.

DECISION

Education Development Center, Inc. (EDC) protests the award of a contract to RCA International Service Corporation under request for proposals (RFP) No. 86-007, issued by the Agency for International Development's (AID) Mission to Belize. EDC contends that during discussions, AID misled the firm into raising its proposed costs, which became the determinative factor in selection of RCA.

We deny the protest.

AID issued the RFP on February 25, 1986, seeking offers to help develop an independent management training institute in Belize, and to strengthen local governmental agencies to enable them to conduct training necessary to promote private development, especially enterprises related to tourism and export. The agency received 15 proposals by the April 25 closing date. The agency determined that five offerors were in the competitive range; these included EDC and RCA, which the technical evaluation committee ranked second and third, respectively.

132087-037927

By letters to the offerors on June 12, the contracting officer pointed out weaknesses in the technical and cost proposals and requested best and final offers. After AID interviewed each offeror's proposed staff in Belize, it evaluated the best and final offers. The agency found that EDC and RCA were very close technically, with EDC's proposal scoring slightly higher than RCA's. RCA's proposed costs on the other hand, were approximately 6 percent less than EDC's. The remaining three offerors scored much lower technically, and their proposed costs were much more than those of EDC and RCA. AID decided that only EDC and RCA had a reasonable chance for an award, and, in a second competitive range determination, excluded the other offerors from further consideration.

On July 29, the contracting officer provided additional questions and comments about the firms' proposed costs, primarily addressing areas in which the firms might have underestimated, and requested second best and final offers. Both firms increased their cost estimates. RCA's final proposal was approximately 16 percent less than the protester's. AID concluded that the two proposals were virtually equal technically, and it awarded a contract to RCA based upon its lower costs. EDC protested this decision to our Office. AID found that urgent and compelling circumstances significantly affecting the interests of the United States would not permit delay pending our decision, and it declined to suspend performance of RCA's contract.

EDC's protest centers upon the contracting officer's July 29 letter requesting second best and final offers. This stated that EDC's costs appeared to be underestimated in four areas: salaries for the necessary number of secretaries; travel and transportation (per diem rates, travel for three advisors, shipment of household effects, vacation, consultant travel, per diem for advisors in Belize, home leave travel costs, and shipment of an automobile); gas for vehicle operation in Belize; and costs relating to coordination with subcontractors. The protester argues that AID did not point out areas where costs may have been overestimated and, in effect, led EDC to believe that "additional expenditures would not be held against [EDC] and would be in the best interest of the project." The firm believes that it should have been warned that costs would be the determinative selection factor, or at least that other offers were being considered, in which case it would have sought ways to maintain or lower its costs while responding to AID's concerns.

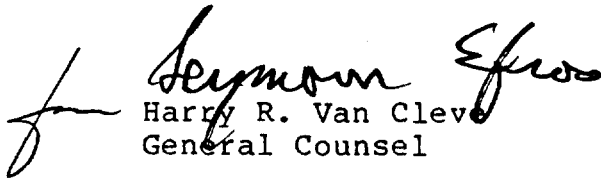
The Competition in Contracting Act of 1984, 41 U.S.C. § 253b(d)(2) (Supp. III 1985), requires that written or oral discussions be held with all responsible sources whose proposals are within the competitive range. Such discussions must be meaningful, and, in order for discussions to be meaningful, agencies must point out weaknesses, excesses, or deficiencies in proposals unless doing so would result either in disclosure of one offeror's approach to another or in technical leveling. Price Waterhouse, 65 Comp. Gen. 205 (1986), 86-1 CPD ¶ 54, aff'd on reconsideration, B-220049.2, Apr. 7, 1986, 86-1 CPD ¶ 333. Once discussions are opened with an offeror, the agency must point out all deficiencies in that offeror's proposal and not merely selected ones.

The Federal Acquisition Regulation (FAR) prohibits agencies from disclosing the number or identity of offerors after receipt of proposals, 48 C.F.R. § 15.413-1 (1986), and AID properly did not disclose to EDC that another offeror remained in the competitive range. Further, the advice to which EDC believes it was entitled--that the technical scores were so close that costs were likely to become the determinative selection factor--does not relate to the merits of EDC's proposal, but to the relative ranking of offerors. The agency was not required to provide such advice to EDC during discussions, since it does not involve weaknesses, deficiencies, or similar aspects of the firm's proposal. See FAR, 48 C.F.R. § 15.610(c). Offerors, in fact, should know that whenever both technical and cost factors are involved, technical ratings may be sufficiently close so that the cost factor becomes more significant or even controlling in the award election. See, e.g., Bunker Ramo Corp., 56 Comp. Gen. 712 (1977), 77-1 CPD ¶ 427.

Finally, AID was not required to point out aspects of EDC's cost proposal that it did not consider to be unreasonably high. Agencies may inform an offeror that its cost is considered to be too high or unrealistic, FAR, 48 C.F.R. § 15.610(d)(3)(ii), and we have held that an agency did not engage in meaningful discussions where it failed to apprise an offeror that its estimated costs were considered unreasonably high. Price Waterhouse, supra. In this case, however, the record contains no evidence that AID believed that EDC's proposal included costs that were unreasonably high, and the protester has not suggested any areas in which AID should have found unreasonably high cost estimates. Rather, AID was concerned that both offerors in the competitive range may

have underestimated certain costs, and it properly informed
the offerors of this fact.

We deny the protest.


Harry R. Van Clev
General Counsel