

Article 121



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Individual Development Associates, Inc.
File: B-225595
Date: March 16, 1987

DIGEST

1. There is no merit in protester's complaint that it was misled into not submitting revised prices with its best and final offer where request for proposals stated that technical factors were only slightly more important than cost; protester itself was aware that its costs were high; and protester was reminded several times of the opportunity to revise its costs.
2. Where protester's initially offered costs, while higher than other offerors', reasonably were not considered a proposal deficiency, it was not necessary for agency to discuss them with the firm during negotiations.
3. Argument that all proposals meeting minimum requirements should receive maximum score in technical evaluation because request for proposals did not provide criteria for assessment of factors in excess of minimum requirements is without merit. Agencies may differentiate among proposals on basis of quality during technical evaluation.
4. Agency could reasonably rely on the resumes and employment agreements offeror submitted with its proposal, since the agency had no reason to believe the offeror did not intend to provide the people involved. Fact that firm did not actually initiate recruitment of all proposed personnel until after award does not prove that offer was submitted in bad faith or that evaluation was unreasonable.

DECISION

Individual Development Associates, Inc. (IDA), protests the Marine Corps' award of contract No. M-00264-87-C-0009 to Zeiders Enterprises, Inc. We deny the protest in part and we dismiss it in part.

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The Marine Corps conducted this negotiated procurement to obtain a contractor to operate the family services center at the Quantico Marine Base outside of Washington, D.C. The staff at the family services center provide support and counseling for Marine Corps members. The solicitation stated that technical factors were slightly more important than cost and identified the technical factors to be evaluated as, in order of importance: understanding of the program requirements; quality of personnel; and the offeror's demonstrated ability, experience, and prior performance of similar services. The Marine Corps estimated that the services would cost approximately \$15,000 per month, based on its experience with the current contract held by the incumbent, IDA.

The Marine Corps received three proposals. After evaluation of technical and cost proposals, the contracting officer determined that price negotiations were not necessary because there was adequate competition and the prices in the initial proposals were close enough to the government's estimate of the cost of the services to assure the Marine Corps of a reasonable price. The contracting officer held technical discussions with all offerors on December 13, 1986, and advised all offerors to submit revised technical proposals by December 19. During these discussions, the contracting officer also advised all offerors that they could submit -- price revisions, if desired, and that if they elected not to do so their initial prices would be considered their best and final offers (BAFOs).

IDA did not revise its cost proposal. Zeiders and the third offeror both submitted BAFOs at reduced prices. After evaluation of BAFOs, Zeiders was the highest ranked, lowest cost offeror, and was awarded the contract. Zeiders' technical score was less than two points better than IDA's; Zeiders' best and final cost offer was approximately 35 percent below IDA's offer.

IDA states that it inquired on at least two occasions whether the opportunity to revise its prices in its BAFO amounted to a suggestion that IDA review its cost proposal, but was told that the Marine Corps was saying only that the opportunity existed. IDA also asserts that the director of the family services center assured IDA that the firm would be awarded the contract and led IDA, through comments and inquiries related to the service center budget, into believing that the Marine Corps was not concerned about cost. IDA asserts that these actions unfairly lulled IDA into believing that it was not necessary to submit revised prices in its BAFO. IDA

further contends that the substantial difference between its offer and that of the awardee, as well as the one-third difference between its offer and the government's estimate, otherwise was an obvious deficiency that the Marine Corps was obligated to point out in discussions. IDA also argues that Zeiders' offered price was unreasonably low.

The Marine Corps disputes IDA's statement that IDA was told that it would be awarded the contract, and argues that the agency was not required to alert IDA to the firm's high costs, relative to the government estimate and the other offers, because the contracting officer did not consider them to be a deficiency. The Marine Corps also notes that the Federal Acquisition Regulation (FAR) prohibits advising an offeror of its price standing compared to other offerors, 48 C.F.R. § 15.610(d)(3)(ii) (1986), and asserts that the agency's actions were in compliance with this prohibition.

The governing provisions in the Competition in Contracting Act (CICA), 10 U.S.C. § 2305(b)(4)(A), (B) (Supp. III 1985), require that discussions be held with all responsible sources whose proposals are within the competitive range. Moreover, discussions must be meaningful, and to be so must include disclosure not only of deficiencies, but also of excesses. Washington School of Psychiatry/The Metropolitan Educational Council for Staff Development, B-192756, Mar. 14, 1979, 79-1 C.P.D. ¶ 178. Although agencies are prohibited by the regulations from advising an offeror during discussions of its price standing relative to other offerors, we have held that discussions cannot be meaningful if an offeror is not apprised that its price exceeds what the agency believes to be reasonable. Price Waterhouse, 65 Comp. Gen. 206 (1986), 86-1 C.P.D. ¶ 54. However, the extent and content of discussions are matters within the judgment of the agency and are not subject to question by our Office unless clearly unreasonable. Chemonics International, B-222793, Aug. 6, 1986, 86-2 C.P.D. ¶ 161.

We find no merit in IDA's complaint that it was misled into not submitting revised prices with its BAFO. Because the RFP stated that technical factors were only slightly more important than cost, it should have been obvious to IDA that cost was an important element of the competition, see, e.g., Indian Community Health Service, Inc., B-217481, May 15, 1985, 85-1 C.P.D. ¶ 547, and we think it unreasonable to infer from only statements by a service center official regarding the availability of funds for the center that the equation was not as specified. IDA, moreover, certainly was

aware that its costs were high since it is apparent that IDA was concerned about its costs; otherwise, we presume, IDA would not have made multiple inquiries about the significance of the opportunity to submit revised costs with its BAFO. In short, the record establishes that IDA knew the importance of cost to the selection decision, knew its costs were high, and was reminded several times of the opportunity to revise its costs. We cannot fault the Marine Corps for IDA's decision not to lower its costs when it submitted the BAFO.

Moreover, although the difference between IDA's costs and the government estimate may appear significant when expressed as a percentage, the actual price difference was not substantial and the contracting officer anticipated price reductions in the BAFO's. Further, as stated above, IDA was itself concerned that its costs were higher than they could be, i.e., the firm knew it might have a problem even without being told so. In these circumstances, we will not question the contracting officer's determination that IDA's higher costs did not amount to a deficiency that had to be pointed out in negotiations. The Marine Corps' request for a BAFO constituted adequate price discussions absent any such deficiency. Action Manufacturing Co., B-222151, June 12, 1986, 86-1 C.P.D. ¶ 546.

We also find no merit in IDA's challenge to the reasonableness of the contract price. The BAFOs of both Zeiders and the other offeror were very close to the Marine Corps' estimate, and even IDA asserts that it could have lowered its costs, presumably bringing them closer to the Corps' estimate and the ultimate price. In our view, this record supports, rather than refutes, the reasonableness of the contract price.

IDA also complains that Zeiders received a higher technical score for offering staff with education and experience beyond that described in the specifications as the minimum qualifications. IDA argues that if an offeror met the minimum qualifications, it should have received the maximum score because there were no criteria for awarding points for education or experience in excess of the specified minimum qualifications.

IDA also contends, in this regard, that Zeiders never intended to provide the higher-qualified people that it proposed. In support of this contention, IDA states that 9 of the 13 people Zeiders now employs at the service center were IDA employees that IDA proposed. IDA argues that the

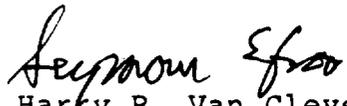
Marine Corps, in scoring Zeiders' offer, should not have relied on the employment agreements in Zeiders' proposal because they were not witnessed and lacked details regarding compensation. IDA contends that the Marine Corps therefore could not assign Zeiders higher scores for personnel.

We find no merit in IDA's position. The Marine Corps' scoring of this factor reflects little more than a differentiation among proposals on the basis of how well they address the requirements in the RFP. We think it reasonable that a proposal that exceeds the minimum requirements receives a higher score than one which merely meets them, and we previously have approved of this method for distinguishing the relative quality of proposals. Mutual of Omaha Insurance Co., B-203338.2, Sept. 24, 1982, 82-2 C.P.D. ¶ 268; Mutual of Omaha Insurance Co., B-201710, Jan. 4, 1982, 82-1 C.P.D. ¶ 2.

With regard to IDA's challenge to Zeiders' intent to provide the staff members described in its proposal, we think the Marine Corps could reasonably rely on the resumes and employment agreements Zeiders submitted with the offer. See Development Alternatives, Inc., B-217010, Feb. 12, 1985, 85-1 C.P.D. ¶ 188. Nothing in the record suggests the Marine Corps should have concluded that Zeiders could not or would not provide those people, and the fact that Zeiders may not actually have initiated recruitment of all proposed personnel until immediately after award of the contract--recruitment that IDA's allegation itself shows was largely successful--does not prove that Zeiders' offer was submitted in bad faith or that the evaluation was unreasonable. See Mantech Services Corp., B-222462, Aug. 5, 1986, 86-2 C.P.D. ¶ 149.

Moreover, we note the contract allows for substitution after award, with the contracting officer's approval, of equally qualified personnel. The administration of this provision is a matter that is not within our bid protest function. Tom Hoch Interior Designs, Inc., B-224291, Sept. 18, 1986, 86-2 C.P.D. ¶ 321. A related contention IDA raises, that the Marine Corps otherwise is being lax in administering the contract and is unable to obtain the services the contractor is supposed to provide, also involves matters of contract administration and therefore will not be considered.

The protest is denied in part and dismissed in part.

for 
Harry R. Van Cleve
General Counsel