

W. J. ...

DECISION



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

FILE: B-220657 **DATE:** December 27, 1985
MATTER OF: Mesa, Inc.

DIGEST:

1. Allegation that awardee will be unable to provide adequately trained instructors within one month after award lacks merit where record shows that qualifications of offered personnel conformed to the agency's stated requirements.
2. Whether awardee can actually provide the services required under the contract is a matter of responsibility which GAO does not generally review.
3. Acceptance of below-cost offer for a fixed-price contract is not improper where contracting officer determines that awardee is responsible.
4. Protest that agency improperly accepted fewer services than was originally solicited is denied where solicitation indicated that stated quantities were merely estimates with no guarantee as to the amount which would actually be required.

Mesa, Inc. protests the award of a contract to Symbiont, Inc. under request for proposals (RFP) No. N60921-85-R-A281 issued by the Department of the Navy to obtain certain training and support services on a fixed-price indefinite-quantity basis for the Navy's Productivity Enhancement Project (PP) Baseline Training Program. The instruction relates to the operation of a computerized system for document handling and word processing.

We deny the protest in part and dismiss it in part.

The solicitation required that offerors demonstrate how they would be able to provide an adequate number of trained personnel within one month after contract award. Mesa, the

prior contractor, contends that Symbiont could not have complied with this requirement because Symbiont needs one month to become familiar with the Navy's current curriculum before assuming full teaching responsibilities. In addition, Mesa argues that Symbiont's offered price is unrealistic and that the number of courses actually being performed under the contract is substantially less than the number listed in the RFP.

Our review of Symbiont's proposal indicates that Symbiont offered four qualified instructors and included letters of commitment from three instructors, not employed by Symbiont, stating that they would be available immediately after award. The proposal explained that Symbiont's senior instructor would design and coordinate all necessary training to prepare Symbiont's key personnel for contract performance. The RFP did not require offerors to possess specific experience with the Navy's system and current curriculum. Rather, the solicitation set forth mandatory minimum education and experience requirements, and advised offerors that award would be made to the offeror that met these requirements at the lowest cost. We note that Mesa has withdrawn its allegation that the experience of the personnel proposed by Symbiont was not properly evaluated by the Navy.

While Mesa basically opines that no one but the incumbent possesses the requisite experience to meet the agency's needs within the required time frame, it has not offered any evidence to show such was the case or that the Navy unreasonably considered Symbiont's proposal as satisfactorily demonstrating how Symbiont would meet the RFP's requirements. The protester's mere disagreement with the Navy's determination does not provide a basis for our Office to question the evaluation. See Troy State Univ., B-212274.2, Aug. 15, 1984, 84-2 CPD ¶ 182. Based on the demonstrated availability of the required instructors and Symbiont's proposed approach to design and provide specific training for them, we find a reasonable basis for the Navy's determination that Symbiont's proposal met the RFP's requirements.

To the extent Mesa is alleging that Symbiont cannot provide the services as required under the contract, such an allegation concerns a matter of responsibility--that is, the offeror's ability to meet the prospective contract's material requirements. See Satellite Services, Inc., B-219679, Aug. 23, 1985, 85-2 CPD ¶ 224. Before awarding the contract the agency had to determine that Symbiont was

responsible. See Federal Acquisition Regulation (FAR), 48 C.F.R. § 9.103(b) (1984). Our Office does not review an agency's affirmative determination of an offeror's responsibility absent a showing of possible fraud on the part of procuring officials or that the solicitation contained definitive responsibility criteria that allegedly were not applied. Clousing Machine Tools, B-216113, May 13, 1985, 85-1 CPD ¶ 533.

Furthermore, it has been the consistent position of this Office that whether or not a contractor performs according to the solicitation's requirements is a matter of contract administration, not reviewable under our Bid Protest Regulations. 4 C.F.R. § 21.3(f)(1) (1985). Whether Symbiont meets its contractual obligations by providing adequately trained instructors within one month after contract award will therefore be for the Navy's consideration in administering the contract, and will not affect the validity of the award, if otherwise proper. Markhurd Aerial Surveys, Inc., B-210108, Jan. 17, 1983, 83-1 CPD ¶ 51.

Mesa's allegation that Symbiont's price is unrealistic does not provide a valid basis for protest where, as here, the contracting officer has affirmatively determined that Symbiont is responsible. A firm fixed-price contract is not subject to adjustment based on the contractor's cost experience during performance and thus places no obligation on the contracting agency to pay more than the contract price. Del-Jen Inc., B-216589, Aug. 1, 1985, 85-2 CPD ¶ 111. Accordingly, in the absence of a nonresponsibility determination, we are aware of no legal basis to withhold contract award merely because an offer is perceived to be unreasonably low, or even below cost, where the contract is not on a cost reimbursement basis. Everhart Appraisal Service, Inc., B-213369, May 1, 1984, 84-1 CPD ¶ 485.

Regarding Mesa's allegation that the number of courses currently being taught under the contract is substantially less than that listed in the RFP, the numbers provided in the RFP were merely estimates with no guarantee as to the amount which would actually be required. All offerors competed on the same scope of work and Mesa has not even alleged that the Navy's estimates were not based on the best information available at the time offers were solicited. See Hero, Inc., 63 Comp. Gen. 117 (1983), 83-2 CPD ¶ 687. Since offerors were advised that the total quantities specified in the solicitation might not be purchased, Mesa's allegation that the Navy has accepted fewer services than were originally solicited is without merit.

Finally, Mesa argues that one of Symbiont's proposed instructors allegedly has a personal conflict of interest since he is a government employee. Mesa points out that FAR, 48 C.F.R. § 3.601, provides that an agency shall not knowingly award a contract to a government employee or to a business concern or other organization owned or substantially controlled by one or more government employees, and contends that this provision precludes the consideration of the government employee as an instructor. We point out, however, that the contract was awarded to Symbiont, not to the federal employee, and the cited regulation does not prohibit an offeror from employing a government employee. Cf. Int'l Alliance of Sports Officials, B-211755, Jan. 25, 1984, 84-1 CPD ¶ 117 (where award to an organization that employed government employees was upheld since there was no evidence that the organization was substantially owned or controlled by government employees). Accordingly, this allegation must be rejected.

The protest is denied in part and dismissed in part.

for *Seymour Efron*
 Harry R. Van Cleve
 General Counsel