

DECISION



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

FILE: B-221358 **DATE:** *March 17, 1986*
MATTER OF: Meridian Junior College

DIGEST:

1. Award based on cost savings represented by the awardee's proposal is proper where contracting agency reasonably found technical proposals of awardee and protester to be essentially equal.
2. Protest that the agency improperly failed to advise the protester during discussions of the competitive nature of the procurement and the importance of cost is denied where protester, in fact, was advised during discussions that the procurement was competitive and that proposed costs could be changed in best and final offer. Agency is not obligated in discussions to advise one offeror of its standing in relation to other offeror or to disclose price/cost necessary to win competition.
3. Agency is not required to equalize competition by considering competitive advantages/disadvantages resulting from particular firm's own incumbency or circumstances so long as they do not result from preferential or unfair government action.
4. Protests based upon alleged improprieties in an RFP which are apparent prior to the closing date for receipt of initial proposals must be filed prior to that time.

Meridian Junior College (Meridian) protests the award of a cost-reimbursement contract to San Diego Community College District (San Diego) under request for proposals (RFP) No. N00612-85-R-0193 issued by the Naval Supply Center (Navy), Charleston, South Carolina, for technical instructor services. Meridian, the incumbent contractor, contends that the current competitive procurement improperly emphasized proposed costs without adequate notice in the RFP and that

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the Navy should have solicited sealed bids instead of competitive proposals.

We deny in part and dismiss in part the protest.

The RFP seeks instructors and support staff to teach technical/administrative courses at the Navy Technical Training Center, Meridian, Mississippi. Offerors were advised by the RFP that award would be made to the offeror submitting the most advantageous offer, conforming to the solicitation, cost and other factors considered. The RFP did not require any specified staffing or salary levels and offerors were free to propose staffing levels which they believed could meet the Navy's needs.

The Navy solicited 71 prospective offerors. Two offers (Meridian's and San Diego's) were received. The Navy conducted a technical and cost evaluation of the two offers and found both offers within the competitive range. Meridian proposed a cost of \$923,752, while San Diego proposed a cost of \$830,426. Both offerors proposed staffs less than, but very close to, the government estimate. The Navy found Meridian's staffing realistic, but was concerned that San Diego's offer might be too low in the areas of instructors' salaries and staffing. The Navy's cost evaluation indicated that San Diego's costs might be understated. Discussions were conducted with both offerors. Meridian was told that its proposal was technically acceptable, that is, no deficiencies were found in its offer, and that it was in a "competitive environment." Meridian was also informed that it could revise its proposed costs in its best and final offer (BAFO). San Diego was told that its proposal was acceptable with the exception of deficiencies in the areas of staffing and salaries, both of which appeared low. San Diego was further told to provide a supporting rationale for its final numbers (staff/salary) in its BAFO.

The Navy conducted a further technical and cost evaluation after BAFO's were submitted. The Navy's questions regarding staffing and salaries were addressed by San Diego in its BAFO. San Diego submitted a salary schedule and explained that instructors would be hired at a starting level. The Navy found that San Diego's proposed salaries were reasonable and that its revised proposed costs were realistic. While San Diego's BAFO revised its costs upward, it remained low. Consequently, the contract was awarded to San Diego.

Meridian argues that the Navy should have warned it more explicitly of the competitive nature of the procurement and the importance of proposed costs. Meridian points out that the Navy and Meridian jointly evolved the current staffing and salary levels, during Meridian's performance as incumbent, and Meridian did not think that it could alter the mutually agreed-upon means of meeting the Navy requirement. Meridian also contends that the Navy "should have informed . . . [Meridian] that its proposal (product) met . . . [Navy] requirements but that [Meridian] now had to beat its competition as to the price for its product." Meridian further complains that award to San Diego is unfair because Meridian was in effect "locked-in" to the existing staff and salary structure which the Navy had audited and approved under the Meridian contract, while San Diego could offer Meridian's employees an entry level salary structure ignoring their prior work experience, step increases and other benefits that the employees had earned during Meridian's incumbency.

Here, the Navy concluded that both offers were technically acceptable and in effect equal. Where the agency reasonably determines that competing proposals are basically equal technically, cost may properly become the determinative factor in award selection. Reliability Sciences, Inc., B-205754.2, June 7, 1983, 83-1 C.P.D. ¶ 612; Cook Inlet Cablecom, B-197458, May 5, 1980, 80-1 C.P.D. ¶ 324. Thus, the Navy's award in this case to San Diego as the low cost offeror was proper under the circumstances.

With regard to Meridian's contention that the Navy essentially did not hold meaningful discussions with the firm, the record indicates that Meridian's proposal was devoid of technical uncertainties and its costs were reasonable, although higher than San Diego's. In such circumstances, a mere request for BAFO's satisfied the requirement (as it applies to Meridian) that an agency electing to conduct discussions with any offeror must conduct discussions with all offerors within the competitive range. Information Management Inc., B-212358, Jan. 17, 1984, 84-1 C.P.D. ¶ 76.

Furthermore, in order to avoid an auction between offerors, generally an agency is under no obligation to inform an offeror that its price may be too high or to indicate to the offeror its relative standing with regard to other offerors. See Federal Acquisition Regulation, 48 C.F.R. § 15.610(d)(3)(ii) (1984); Security Systems, B-217203, Aug. 26, 1985, 85-2 C.P.D. ¶ 229. Griggs and Associates, Inc., B-205266, May 12, 1982, 82-1 C.P.D. ¶ 458.

Meridian's argument that it is unfair to permit competition where one competitor is free to offer lower salaries because it lacks contractual commitments to the current work force while the incumbent is obligated to pay its staff higher salaries does not provide a legal basis to object to the conduct of this procurement. Government contracts are awarded on the basis of the most advantageous offer and, as previously noted, Meridian was not prohibited by the RFP from offering a different, less costly mix of staff or to propose lower costs by offering a different approach than it provided under the prior contract. Also, we have recognized that an agency is not required to equalize competition by taking into consideration competitive advantages/disadvantages resulting from a particular firm's own incumbency or circumstances so long as they are not the result of preferential or unfair government action. John Morris Equipment and Supply Co., B-218592, Aug. 5, 1985, 85-2 C.P.D. ¶ 128; Aerospace Engineering Services Corporation, B-184850, Mar. 9, 1976, 76-1 C.P.D. ¶ 164.

Meridian's final contention that the Navy should have solicited sealed bids instead of competitive proposals was untimely filed. Our Bid Protest Regulations require that protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals be filed prior to that time. 4 C.F.R. § 21.2(a)(1) (1985). Meridian did not protest this issue until after the contract was awarded to San Diego.

The protest is denied in part and dismissed in part.

for Seymour E. Ross
 Harry R. Van Cleve
 General Counsel