



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Meridian Management Corp.

File: B-278099

Date: December 4, 1997

Michael A. Gordon, Esq., and Fran Baskin, Esq., Holmes, Schwartz & Gordon, for the protester.

Kenneth M. Bruntel, Esq., and Ariel R. David, Esq., Crowell & Moring LLP, for Omni Corp., an intervenor.

Lafayette N. Johnson, Esq., Federal Emergency Management Agency, for the agency. Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest alleging that agency improperly requested multiple rounds of best and final offers is denied where the record shows that, in each instance, the contracting officer had a valid reason for doing so.

DECISION

Meridian Management Corporation protests the award of a contract to Omni Corporation pursuant to request for proposals (RFP) No. EME-97-RP-0019, issued by the Federal Emergency Management Agency (FEMA) for maintenance, housekeeping, repairs and minor construction at the agency's National Emergency Training Center in Emmitsburg, Maryland.

We deny the protest.

The RFP for these support services for FEMA was issued March 27, 1997, seeking fixed-price offers for a base year and four 1-year options. The RFP anticipated award to the offeror submitting the lowest-priced technically acceptable offer. RFP § M.3.

By the RFP's initial due date, FEMA received several proposals, including those submitted by Meridian and Omni. Upon completion of the initial evaluation, one proposal was found unacceptable; the remaining proposals were found capable of being made acceptable. After a round of written discussion questions, the agency requested best and final offers (BAFO) by July 9. After evaluation of the BAFOs, the agency concluded that all of the remaining offerors were technically acceptable, and that Meridian had submitted the lowest price.

According to the Source Evaluation Board (SEB) report, during the review of BAFOs the contract specialist noticed that offerors were using different Department of Labor wage rates for one of the labor categories identified in the RFP. Because the agency decided that misleading information in the RFP was the source of the ambiguity, the contracting officer issued amendment 006 to the RFP changing the title of one position from Laborer/Grounds Maintenance to Laborer. SEB Report, Sept. 9, 1997, at 2. The corresponding wage rate change was an increase from \$7.89 per hour for the position, to \$9.71 per hour. Offerors were then requested to submit a second BAFO by July 17, 1997. RFP, Amend. 006.

Upon receipt and evaluation of the second BAFO, Omni's price was the lowest of all the offerors'; Meridian's price was second low. However, prior to making award to Omni, the agency discovered what it viewed as an ambiguity in the RFP regarding the treatment of transition costs. After concluding that the offerors should be given specific instructions on those costs, FEMA provided such instructions by letter dated August 20. The letter also requested that offerors submit a third BAFO by August 25.

Upon conclusion of its review of the third round of BAFOs, FEMA decided that Omni's was the lowest-priced, technically acceptable offer, and on September 9, FEMA awarded the contract to Omni at a price of \$16,782,672.

Meridian argues that FEMA improperly requested multiple BAFOs from the offerors in order to permit Omni to prevail in the competition by lowering its price and improving its standing among the competitors. Meridian's challenge is premised upon the assumption that agency officials have conducted this procurement with a desire to favor only one offeror. Not only does our review of the record indicate that there is no evidence of improper motive on the part of agency officials, but Meridian itself acknowledges that "there appears to be no evidence of a direct price disclosure or technical leveling." Meridian's Comments on the Agency Report, Oct. 31, 1997, at 1. Without such evidence, we will not attribute prejudicial motives to agency contracting officials on the basis of mere inference or supposition. Meridian Management Corp., Inc.: NAA Servs. Corp., B-254797, B-254797.2, Jan. 21, 1994, 94-1 CPD ¶ 167 at 6.

Meridian also argues that the agency violated Federal Acquisition Regulation (FAR) § 15.611(c) when it requested a second and third round of BAFOs in this procurement. We disagree. Although the FAR clearly discourages agencies from reopening discussions after receipt of BAFOs, the contracting officer is not without discretion in this matter. Specifically, the provision states, in relevant part, that the contracting officer should not reopen discussions

unless it is clearly in the Government's interest to do so (e.g., it is clear that information available at that time is inadequate to

reasonably justify contractor selection and award based on the best and final offers received).

FAR § 15.611(c) (FAC 90-44).

As stated above, in both the second and third BAFO requests here, the contracting officer had concerns that making a selection decision, without remedying underlying problems, could lead to a conclusion that the selection decision was not reasonably justified. Our decisions recognize that there is nothing wrong with requesting more than one round of BAFOs where a valid reason exists to do so. Warren Elec. Constr. Corp., B-236173.4, B-236173.5, July 16, 1990, 90-2 CPD ¶ 34 at 11; HLJ Management Group, Inc., B-225843.3, Oct. 20, 1988, 88-2 CPD ¶ 375 at 7. For the reasons below, we agree that the agency had a valid reason in both instances.

In the first instance--i.e., in the second request for BAFOs--the agency became concerned that offerors were misled by the solicitation into using different wage rates. In support of this conclusion, the record shows that different offerors used one or the other of the two applicable wage rates. In addition, there is no dispute that the difference in the wage rates for these two positions--\$7.89 per hour versus \$9.71 per hour--would have a significant impact on the proposed price of an offeror whose proposal relied on the wrong rate to calculate its price for five years worth of labor. Similarly, in the second instance--the third request for BAFOs--the contracting officer reasonably elected to correct an apparent ambiguity with respect to the treatment of transition costs, based on advice from the agency's legal counsel that failure to do so could result in a successful challenge to the award decision. Under these circumstances, we conclude the agency had valid bases for both its decisions to reopen discussions.

The protest is denied.

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