



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Pride Computer Service, Inc.

File: B-227805

Date: September 25, 1987

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### DIGEST

After reviewing procurement in response to the protest, agency concedes that award was improper. Thus, the protester is entitled to recover the costs of preparing its proposal and of filing and pursuing the protest since it was unreasonably excluded from the competition for the base contract period.

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### DECISION

Pride Computer Service, Inc. protests the award of a contract to NSA Computer Maintenance Corporation under request for proposals (RFP) No. F41800-86-R-8526, issued by the Air Force for maintenance of government-owned, Wang Laboratories, Inc. computer equipment. Pride also claims its protest costs and the cost of preparing its proposal. We sustain the protest and the claims for costs.

Pride contends that the award to NSA was improper since Pride submitted a lower price and NSA received the award only because it misrepresented in its proposal that the firm owns, and has the right to use, Wang diagnostics (which detect and isolate malfunctions), that the firm has a Dallas office and that it has maintained Wang equipment since 1978.

In its report on the protest, the Air Force denies that NSA's proposal contained misrepresentations which resulted in an improper evaluation. Nonetheless, the agency concedes that the procurement was flawed and the award to NSA was improper. The Air Force says that the solicitation was unclear as to whether options were to be evaluated and that the solicitation's price evaluation formula was not followed. The agency also notes that, although award was made

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on the basis of initial proposals, the proposals of both Pride and NSA failed to meet a mandatory solicitation requirement for monthly preventive maintenance.

Finally, the agency says that the award violated the Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.610(a)(3) (1986), which allows award without discussions only when such an award results in the lowest overall cost to the government. Here, there were no discussions although the awardee's proposal was only third low.

As a result of these errors, the Air Force reports that when NSA's base contract period ends on September 30, 1987, options for the following 2 years will not be exercised and the requirement will be recompeteted.

Here, the agency admits that it made award to the third low offeror without conducting discussions. The Competition in Contracting Act of 1984 prohibits an agency from accepting for award an initial proposal without discussions which would not result in the lowest overall cost to the government. Pan Am Support Services, Inc.--Request for Reconsideration, B-225964.2, May 14, 1984, 66 Comp. Gen. \_\_\_, 87-1 CPD ¶ 512. Thus the award to NSA was improper and we sustain the protest.

Our Bid Protest Regulations permit the recovery of the costs of filing and pursuing a protest where the protester has been unreasonably excluded from the procurement, unless we recommend that the contract be awarded to the protester and the protester receives the award. Bid Protest Regulations, 4 C.F.R. § 21.6(e) (1987). Additionally, the recovery of costs for proposal preparation may be allowed where the protester was unreasonably excluded from the competition and no other practicable remedy is available. Leland Limited, Inc.--Reconsideration, B-224175.2, Feb. 17, 1987, 87-1 CPD ¶ 168. Since, as noted above, the base contract period is almost completed, Pride will not be given the opportunity to compete for that portion of the award. In view of the fact that the protester was unreasonably excluded from the competition here because of the Air Force's improper action the protester is entitled to its costs of preparing its proposal and of filing and pursuing the protest, including

attorney's fees. The Racal Corp., B-222511, June 17, 1986,  
86-1 CPD ¶ 558. Pride should submit its claim for costs  
directly to the agency. 4 C.F.R. § 21.6(f).

The protest is sustained.

*for* *Harry R. Jan*  
Comptroller General  
of the United States