

17326

DECISION



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

[Protest of Evaluation Procedure]

FILE: B-199939

DATE: March 13, 1981

MATTER OF: Pikes Peak Community College

DIGEST:

Since protester knew before submitting proposal that agency did not know what incumbent had paid professional employees in the past and agency thus did not intend to use RFP evaluation procedure requiring comparison of proposed compensation levels for professional employees with those paid by incumbent, protest that procedure is defective unless agency releases incumbent's rate data is denied.

Pikes Peak Community College protests the evaluation procedure established in Department of the Army request for proposals DAKF57-80-R-0106 to furnish a Basic Skills Education Program of instruction at Fort Lewis, Washington.

Proposals were to be evaluated on the basis of price (including the cost-related factors discussed below) and technical merit, with price to be given the greater weight. The protester complains of the Army's inclusion in the solicitation of the clause set out at Defense Acquisition Regulation (DAR) § 7-2003.79 (1976 ed.), "Evaluation of Compensation for Professional Employees." The clause is required by DAR § 12-1007.3 for use where, as here, a proposed contract is to be negotiated for services to be furnished in the United States in excess of \$250,000 and a "meaningful number" of professional employees will be employed to perform the services who are not protected by the Service Contract Act. It states:

"(b) * * * Proposals offering total compensation levels less than currently being paid by the predecessor contractor, if any, for the same work will be evaluated, in addition to the above, on the basis of maintaining program continuity, uninterrupted work of high

~~015962~~ **114589**

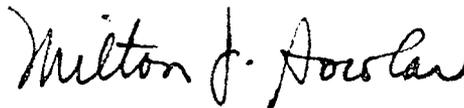
quality, and availability of required competent professional employees. Offerors are cautioned that instances of lowered compensation for essentially the same professional work may be considered a lack of sound management judgment in addition to indicating a lack of understanding of the requirement.

"(c) * * * The compensation data required will be used in evaluation of the offeror's understanding of the contract requirements."

The protester argues that offerors cannot compete on an equal basis unless the Army provides data regarding the incumbent's compensation rate structure, which the Army has not done. Consequently, the protester believes the Army should either provide the compensation data or amend its solicitation to delete the evaluation factor.

However, the record indicates that the Army itself does not have the incumbent's compensation data and that it advised Pike's Peak of this fact prior to proposal submission. In the course of this protest, the Army confirmed that in the absence of such data it would be unable to make any evaluation based on the incumbent's rate schedule and, consequently, that the portion of the clause complained of could not be implemented. Further, the protester in fact submitted a proposal after being assured by the Army that any of the Army's concerns regarding Pikes Peak's proposed compensation scale would be considered during discussions. Under the circumstances, the inclusion of the clause in the solicitation was not prejudicial to the protester.

The protest is therefore denied.



Acting Comptroller General
of the United States