

12547 *Lower Proc II*

**DECISION**



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

*[Protest Alleging Deficiency in RFP]*

FILE: B-194829

DATE: January 16, 1980

MATTER OF: Meldick Services, Inc.

**DIGEST:**

1. Allegations concerning failure of request for proposals (RFP) for mess attendant services at base in Bermuda to incorporate "Base Leasing Agreement" between United States and United Kingdom and union agreement between United States and local union are untimely where filed after closing date for receipt of offers.
2. Agency's failure to give unsuccessful offeror advance notice of award as required by regulations is procedural deficiency not affecting validity of award since Small Business Administration, in response to protest filed by unsuccessful offeror, ruled awardee was small business and thus no prejudice resulted from such failure.

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*HHC 2*

*CNW-2231*

Meldick Services, Inc. (Meldick) protests the award of a contract to Space Services of Georgia (Space Services) under Request for Proposals (RFP) No. N00189-79-R-0004. The RFP was issued by the Department of the Navy (Navy) for the procurement of mess attendant services at the Naval Air Station, Bermuda, and was set aside for small businesses.

Meldick maintains the RFP improperly failed to incorporate the "Base Leasing Agreement" between the United States and the United Kingdom as required by Defense Acquisition Regulation (DAR) § 6-902(c) (1976 ed.) and also failed to incorporate a union agreement between the Naval Air Station and the Bermuda Industrial Union.

According to Meldick, the union agreement contains a fringe benefit package far in excess of that required by the solicitation. Meldick contends the contracting

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officer assured it that the union agreement would be incorporated into the RFP. Therefore, the protester insists that it was at a competitive disadvantage because it was the only offeror to incorporate the high fringe benefit costs required by the agreement.

The Navy argues that these allegations are untimely under our Bid Protest Procedures since they concern "deficiencies" which were apparent on the face of the RFP and were not protested until after the closing date for receipt of offers. See 4 C.F.R. § 20.2(b)(1) (1979). The Navy also maintains Meldick's contentions are without merit. In this regard, the Navy states that the "Base Leasing Agreement \* \* \* contains nothing pertinent to labor relations of the U.S. in Bermuda" and "[n]o useful purpose could have been served by a reference in the solicitation to such an international agreement." The Navy further states that DAR § 6-902(c) only requires that international agreements affecting a procurement be enforced and that incorporation was not required by the regulation. The Navy also contends that since the agreement between the Naval Air Station and the union applied only to non-U.S. citizen employees of the Navy and not to contractor employees, incorporation into the RFP was unnecessary and the agreement was referenced by the RFP solely for informational purposes.

Meldick disagrees that its allegations are untimely. Meldick contends its protest to this Office was just an "extension" of protests made to the contracting officer. Nevertheless, we believe Meldick's allegations are untimely.

Our Bid Protest Procedures require that a protest based on alleged improprieties contained in an RFP be filed prior to the closing date for receipt of offers. See 4 C.F.R. § 20.2(b)(1). Although the record indicates that Meldick brought the failure of the RFP to incorporate the union agreement to the attention of the contracting officer, who subsequently amended the RFP to advise offerors of the wage rates paid by the Navy under the union agreement, the record does not indicate Meldick protested the failure to incorporate the agreement prior to the revised closing date.

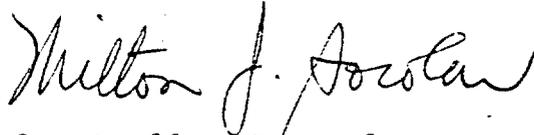
Furthermore, there is nothing in the record to indicate that Meldick protested the failure to incorporate the "Base Leasing Agreement." Accordingly, Meldick's allegations are untimely and will not be considered.

Meldick also maintains the Navy failed to give it advance notice of the proposed award to Space Services as required by DAR § 3-508.2(b) which provides that in procurements set aside for small business the contracting officer shall, before award is made, notify unsuccessful offerors of the name and location of the apparently successful offeror.

The Navy asserts it was not required to give Meldick advance notice of the award under DAR § 3-508.2(b) because the procurement, negotiated pursuant to 10 U.S.C. § 2304(a)(6) (1976) and DAR 3-206 (Defense Acquisition Circular 76-20, September 17, 1979), was not subject to the requirements of DAR 3-508.2(b).

We have held that the failure to comply with the notice requirements such as those in DAR § 3-508.2(b) is a procedural deficiency not affecting the validity of an otherwise proper award, unless a party can show it was prejudiced by the agency's failure to give the required notice. Duroyd Manufacturing Company, Inc., B-195762, November 16, 1979, 79-2 CPD 359. Since the record indicates the Atlanta Regional Office of the Small Business Administration (SBA) ruled, as a result of a protest by Meldick, that Space Services was a small business concern, and since Meldick did not appeal that decision to the SBA Size Appeals Board, Meldick could not have been prejudiced by the lack of notice. Thus, even if we were to agree with the protester that the notice provisions of DAR § 3-508.2(b) are applicable, there would be no reason to question the award on this basis.

The protest is dismissed in part and denied in part.



For The Comptroller General  
of the United States