BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

In The Appeal of	**)**	
Meridian Management	**)**	
Corporation, Inc.	**)**	**Docket No. MSBCA 2678**
	)	
Under	**)**	
MPA Contract No. 270030-S	**)**	

APPEARANCE FOR APPELLANT: **Michael A. Gordon, Esq.**
Washington, D.C.

APPEARANCE FOR RESPONDENT: **Philip P. Whaling**
Assistant Attorney General
Baltimore, Maryland

OPINION BY BOARD MEMBER DEMBROW

This contract claim concerns whether appellant is entitled to receive a 20% mark-up for certain maintenance services performed pursuant to an agreement for which detailed pricing was firmly established as a part of the procurement, but the allowance of mark-up remained ambiguous for some of the work components. Application of the totality of the contractual provisions and pre-award negotiations between the parties compels the Board to conclude that appellant's request for payment of additional overhead and profit is not permitted.

Findings of Fact

1. On or about December 14, 2007, the Maryland Port Administration (MPA) issued a certain Request for Proposals (RFP) in order to identify and retain a suitable contractor to provide a variety of building leasing, operational, and repair services needed at the Word Trade Center (WTC), a

substantial commercial waterfront building owned by the State of Maryland, located at 401 East Pratt Street in downtown Baltimore, and managed by MPA.

2. The "Scope of Work" section of the subject RFP stated:

> **"3.8 Payment for Services and Parts**
>
> **3.8.1**
> Except as otherwise provided in this RFP, *all costs* for providing services required by this contract, including all labor costs, as well as costs for necessary tools, machines and equipment and all consumable components thereof, *must be borne by the Contractor at no additional cost to the MPA*.
>
> **3.8.2**
> *Costs of all repairs* and/or replacement parts for Building equipment and fixtures *must be approved by MPA* and upon approval will be paid for the MPA (other than costs incurred as a result of the negligence or other fault of the contractor or breach of this Contract by the Contractor)." (Emphasis supplied.) (State's Ex. G, pg. 436.)

3. The initial RFP further stated:

> "34. **Force Account Work**
> When the Contractor is required to perform Work *as a result of additions or changes* to the Contract *for which there are no applicable unit prices* in the contract, the Jurisdiction and Contractor shall make every effort to come to an agreed upon price for the performance of such work. If an agreement cannot be reached, the Jurisdiction may require the Contractor to do such work on a force account basis to be compensated in accordance with the following:
>
> A. **Labor** For all labor and for foremen in direct charge of the specific operations, the contractor shall receive the *actual wages* for each and every hour that said labor and foremen are actually engaged in such work.
> B. **Materials** For materials accepted by the Procurement Officer and used, the

Contractor shall receive the *actual cost* of such materials delivered to the work site, including transportation charges paid by the Contractor (exclusive of machinery rentals as hereinafter set forth).

C. **Equipment** For any machinery or special equipment (other than small tools, whether rented or owned), the use of which has been authorized by the Procurement Officer, the Contractor shall receive the rates agreed upon in writing before such work is begun, or the contractor shall receive those rates which may be specified elsewhere…

D. **Materials and Supplies Not Incorporated in the Work** For materials and supplies expended in the performance of the Work (excluding those required for rented equipment) and approved by the Procurement Officer, the Contractor shall receive the actual cost of such materials and supplies used. The Contractor shall receive a reasonable allowance for materials used but not expended in the performance of the Work.

E. **Subcontractors** The contractor shall receive the actual cost of Work performed by a subcontractor. Subcontractor's cost is to be determined as in A., B., C. and D. above, *plus the fixed fee for overhead and profit* allowance computed as in G.

F. **Superintendence** *No additional allowance shall be made for general superintendence*, the use of small tools, or other costs for which no specific allowance is herein provided

G. **Contractor's Fixed Fee** The Procurement Officer and the Contractor shall negotiate a fixed fee for force account work performed pursuant to this Paragraph 34 by the Contractor and any subcontractor(s), as *compensation for overhead and profit for the Work performed…"* (Emphasis supplied.) (State's Ex. F, pgs. 530-531.)

4. The foregoing original version of the Force Account Provision thereafter prescribed a method for determining

compensation for fixed fee work, but the process initially specified in Subsection G was deleted as more fully set forth in the following Finding of Fact.

5. Amendment No. 2 to the RFP, issued on January 2, 2008, supplanted Subsection G of the Force Account Provision with the following paragraph:

> "34.[G] **Contractor's Compensation for Force Account Work**
> For all work provided under these force account provisions of the Contract, the Contractor *shall be allowed a reasonable amount as overhead and profit* on work provided by its own forces and by subcontractors and suppliers. Prices stated in the Contractor's Price Proposal and applicable to work provided under these force account provisions shall apply to such work." (Emphasis supplied.) (State's Ex. F, pg. 568.)

6. In response to the subject RFP, appellant Meridian Management Corporation, Inc. on March 6, 2008 submitted a certain Price Proposal to MPA itemizing its various charges in considerable detail, using the pricing forms provided to bidders as a part of the RFP.

7. Part A of Meridian's Price Proposal itemized its annual charges for specified categories of work over the five (5) year term of the contract for which its total cost for those categories amounted to $10,212,616.00. (State's Ex. A, pg. 531.)

8. The categories of work itemized in Part A of the Price Proposal included routine maintenance, building maintenance, preventive maintenance, electrical service, HVAC (heating, ventilation, and air conditioning) service, plumbing service, fire protection service, utility work, lot & landscaping maintenance, and security services, each of which categories carried a specified total annual cost.

9. Part B of Meridian's Price Proposal set forth certain annual costs related to leasing and included a project management fee of five per cent (5%) of the specified annual work allowance of two million dollars ($2,000,000.00) per year, amounting to a management fee of $100,000.00 per year, or a total of $500,000.00 over the five (5) year term of the contract. (State's Ex. A, pg. 337.)
10. Part C of Meridian's Price Proposal set forth for each of the five (5) years of the contract, certain hourly labor rates for security personnel and for emergency repair work for four (4) classes of three (3) skilled trades professionals, namely, plumbing, electrical, and mechanical, such hourly rates being further itemized into three (3) separate rate categories, namely, regular, overtime, and holiday rates of pay. (State's Ex. A, pgs. 339-343.)
11. Elliott Horne (Horne), President of Meridian, testified at his deposition that the labor rates set forth in Meridian's Price Proposal included Meridian's overhead and profit and that Meridian is not entitled to mark-up its overhead and profit on its invoices for those rates because overhead and profit are pre-priced into the specified labor rates. (Tr., pg. 49)
12. John H. Thornton (Thornton), Management of Procurement for MPA and Procurement Officer for the subject RFP, understood that the hourly prices stated in Part C of Meridian's Price Proposal included overhead and profit. (Tr. Pg. 47.)
13. It is undisputed that the RFP included an allowance of 5% overhead for tenant-requested renovations and improvements, and Thornton stated in his deposition, "We [MPA] understood them [Meridian] to be confirming that the only time we were going to be charged a mark-up, Meridian's mark-up would be

the five percent (5%) allowed for…renovations and tenant improvements." (Tr. Pg. 129.)

14. Section "O" of Meridian's Technical Proposal submitted to MPA in response to the RFP explained its repair management approach in pertinent part as follows:

> "The Project Manager identifies the availability of Meridian employees with the skills necessary to perform each repair. We also pre-qualify subcontractors for assignment to emergency repairs as required. The most recent edition of R.S. Means for facility maintenance and repair, the cost of materials and supplies *and overhead* shall be used to estimate the cost of contractor repair services. The bid price of vendors *plus contractor markup* shall be used when a specialty subcontractor is required. Because event driven work is paid for by the MPA, *cost estimates are provided to the MPA for approval* and, except for emergency repairs, the work will be completed upon final agreement." (Emphasis supplied.) (State's Ex. E, App. Ex. 22, pg. 236.)

15. Meridian asserts that the foregoing makes clear that the pricing intent of its bid was to charge MPA for emergency repairs outside of the stated job categories based upon the following: (1) for work done by Meridian employees, the R.S. Means estimate plus overhead, and (2) for work done by subcontractors, the actual subcontractor cost plus mark-up; while MPA on the other hand contends that the word "contractor" above actually refers to Meridian subcontractors, for which R.S. Means is to be used to estimate emergency repair costs.

16. In this regard Thornton testified at his deposition, "We understood this to refer to Meridian's subcontractors, because we were – wanted to make sure Meridian had the same understanding, we asked them in a meeting we had with them, and they told us it would refer to their contractors" but

later in the same deposition, in response to the question, "So basically there was still a question in your mind, and in the [procurement] team's mind, after receiving this answer whether or not Meridian was intending to mark up anything other than the renovation work?" Thornton answered, "Yes, that's right." (Tr. pg. 111, 132.)

17. Meridian's Technical Proposal further stated:

> **"Unscheduled Maintenance (Event-driven Work)** We receive requests for event-driven, non-scheduled work from a number of sources. These work requests may come from the MPA Building Manager or her representatives. Many are called-in directly by the WTC occupants or by Meridian workers or our subcontractors performing recurring or preventive maintenance when they discover a problem. When an event-driven work request is received (by telephone or in person), the AA [administrative assistant] determines the work category and its priority and assigns the work to a worker or supervisor for action.
>
> The AA generates a Service Call Work Order if the request is for an emergency or a simple task. A simple task is defined as limited in scope and can be accomplished quickly with readily available resources and no significant impact upon or disruption of occupancy activities. It does not require extensive prior planning or coordination. For historical data management purposes, we recommend that requests that can be completed for less than $400 in labor, parts and materials and that do not require a specialty subcontractor are classified as Service Calls." (Appellant's Ex. 19, pg. 235)

18. By correspondence dated March 14, 2008, MPA sought clarification of Meridian's pricing by inquiring,

> "8. *Please confirm* that when invoicing for additional work for either MPA or WTC tenants, *your charges will not include a mark-up fee* (other than the Renovation Project management Fee allowed on tenant

> renovation ([sic] under Section 4.4.2J of the RP [sic] and Line B-2 of the Price Proposal form." (Emphasis supplied.) (State's Ex. I, pg. 1009.)

19. Meridian responded to the above question by correspondence dated March 20, 2008 in which it stated:

> "Answer: All renovation/alteration work performed under the Leasing Services provisions of the contract *will not be marked up by Meridian* with anything other than with the Project Management Fee included in the price proposal." (Emphasis supplied.) (State's Ex. I, App. Ex. 30, pg. 1009.)

20. In preparation for a scheduled March 24, 2008 pre-award meeting with MPA, Douglas Brown (Brown), Regional Vice President for Meridian, wrote the following notation as a reminder to himself: "→ Repair mark-ups? Check MDOT's Contract."

21. Appellant now argues that a 20% mark-up is afforded by the Maryland Department of Transportation (MDOT), though there is not further conclusive evidence that MDOT practices nor any mark-up issues at all were actually discussed at the March 24, 2008 meeting, nor is there any evidence at all that the specific figure of 20% was discussed at any time. (App. Ex. 32; App. Reply Brief, pg. 9.)

22. On March 24, 2008, Meridian and MPA representatives attended a pre-award meeting, but disparate recollections of what issues were discussed at that meeting are unreliably vague and as a consequence the only definitive factual finding that can fairly be derived from credible evidence is that there was no meeting of the minds on that occasion with respect to whether contractor mark-up was to be allowed for certain emergency repair work at WTC.

23. On June 10, 2008, Meridian entered into the subject contract with MPA by which Meridian promised to perform routine maintenance and leasing services as well as emergency unscheduled maintenance and repairs to WTC building systems, including elevators, plumbing, electrical, mechanical, fire alarms and chiller, and for which Meridian promised to charge MPA certain hourly rates for various categories of labor for such work and MPA agreed to pay Meridian those established rates.

24. Some of Meridian's invoices to MPA for emergency repairs prepared and transmitted subsequent to contract award contain a 20% mark-up, including 10% overhead and 10% profit on amounts billed for unscheduled maintenance in excess of the $400 threshold, including for work using Meridian's own employees as well as for work charged by Meridian's subcontractors.

25. Meridian's Price Summary explains its bills as follows:

> **"I. ESTIMATING:**
> **A. Repairs:** Repairs at the WTC are included in our fixed-price responsibility for repairs if the total cost of labor, parts, and materials, and subcontractors' cost is $400.00 or less (Ref. Technical Proposal, section O, Paragraph entitled "Unscheduled Maintenance."). For repairs greater than $400.00 or ones requiring a specialty subcontractor, the WTC is responsible for the total costs plus mark-up (see Exhibit 8, Paragraph 34.G [a portion of the Force Account Provision]. When building your estimate, use the repair labor rates listed in the Price Sheet C-1. For repairs set up your estimating percentages in Pyramid [Meridian's Computerized Maintenance Management System or CMMS] as follows: **(NOTE; THIS IS CURRENTLY IN DISPUTE WITH MPA.)** [Thereafter two (2) of Meridian's pricing rows reflect the addition of 10(%) overhead and 10(%) profit.]" (State's Ex. H.)

26. The parties' June 10, 2008 contract does not set forth any particular rate or amount as an allowance for the charging of a mark-up for emergency repairs, but instead specifies only a 5% mark-up for overhead for tenant-requested building renovation as well as a 5% mark-up as a handling fee to be applied to incidental purchases made by Meridian at the request of MPA for items like common area flags and furniture.

27. Relying upon federal authority, Meridian claims that its 20% mark-up is a reasonable rate, though the federal authority it cites does not actually directly address whether a 20% total mark-up is reasonable, but instead "limits fee or profit to 15% on cost-type contracts" in accordance with Federal Acquisition Regulations (FAR) §15.404(c)(4)(i)4 as set forth in Meridian's own argument, and appellant also proffers that the "Defense Contract Audit Agency…found the applicable overhead rates for [Meridian] for the years 1996-2000 were between 9.47 to 17.55%." (App. Reply Brief, pgs. 9-10.)

28. MPA denied liability for Meridian's 20% mark-up, as a result of which Meridian on March 4, 2009 filed a claim with MPA for the total sum of $9,389.39, which represents the dollar amount of the 20% mark-up alleges to be due and therefore billed to MPA by Meridian at that time.

29. MPA denied Meridian's claim, and Meridian thereafter appealed that determination to the Maryland State Board of Contract Appeals (Board) by filing the instant appeal.

30. On August 13, 2010 each party through counsel filed a Motion for Summary Disposition/Decision, which Cross-Motions were thoroughly presented at a hearing before the Maryland State Board of Contract Appeals (Board) on September 1, 2010.

Decision

Notwithstanding the voluminous documents and extensive legal argument submitted to this Board for resolution of appellant's contract claim, the underlying question is relatively simple. Does Meridian have the right to collect from MPA a 20% mark-up for certain of its work performed pursuant to the parties' contract for building services at WTC? One might argue that the answer to that question is equally straightforward. Discussion of a 20% mark-up was absent from the parties' negotiations surrounding contract award. With respect to the contract documents, except as a ceiling for force account work set forth in the initial RFP and thereafter deleted by amendment, the precise mark-up rate of 20% is nowhere stated, other than in Meridian's bills. But in fairness to appellant's right to full evaluation of its claim, a more thorough analysis is necessary.

Two (2) principal tasks are set forth in the RFP: leasing services on the one hand and building operational maintenance on the other. By the express structure of the Price Proposal Section of the RFP, MPA agreed to reimburse the contract awardee in accordance with three (3) separate pricing provisions. Part B of the Price Proposal governs only the cost of leasing services, and is not in dispute in this proceeding. Part A relates to routine and preventive maintenance, and also is not in contest. The instant claim arises solely from Part C of the Price Proposal, which deals with "repair and emergency repair work & extra security personnel" for which Meridian, in accordance with the State's Price Proposal form, itemizes regular, overtime and holiday rates for security personnel as well as for four (4) levels of occupational experience in the skilled trades of plumbing, electrical and mechanical (e.g., master plumber, plumber, journeyman, and apprentice).

Those fully-loaded labor rates are specified by Meridian as all-inclusive and no mark-up for overhead or profit is therefore

allowable beyond the specified rates established by Meridian's bid, for which Meridian also agreed to complete all service calls amounting to less than $400 worth of repair service without further charge to MPA. Meridian does not dispute this conclusion, but argues that it is entitled to a general contractor's mark-up only for certain emergency work performed by Meridian or its subcontractors on labor and materials for repairs above the $400 threshold and outside of the specified job specialty classes. Meridian relies upon Section "O" of its Technical Proposal in support of its claim of entitlement to a 20% mark-up on those limited categories of work, though contract provisions governing Force Account Work are also pertinent to this appeal.

Although the total amount currently in dispute is less than $10,000 on a contract valued well in excess of 1,000 times that sum, because of the import of the instant decision on future rights and obligations, this Board's determination of liability is much more significant than the limited *quantum* stipulated to be at issue in the instant appeal.

The original RFP permitted a mark-up only in the event that MPA imposed "additions or changes to the Contract for which there are no applicable unit prices in the contract." Amendment No. 2 left that condition unchanged but modified a later section of the Force Account Provision as set forth in the original version of the RFP by providing, in the event of an addition or change to the contract for which no unit prices were otherwise specified, that Meridian is entitled to "a reasonable amount as overhead and profit on work provided by its own forces and by subcontractors and suppliers" for such Force Account work.

As to work performed by Meridian's own direct employees, this language from Amendment No. 2 is directly contrary to the preceding language in Subsections 34(A) thru (D), which specifically allows payment only of actual wages paid and cost of

materials used, without mark-up. As to work performed by Meridian subcontractors, however, Subsection 34(E) expressly references the subsequent Subsection G, which was replaced in its entirety by Amendment No. 2. The inference that results applying Subsections E and G together is that the RFP allows mark-up only for Meridian subcontractors.

Moreover, viewing chronologically the parties' negotiations toward development of the contract, it appears that the initial Force Account Provision implied as of December 14, 2007 that there would be no contractor mark-up allowed except for that determined by a complex and convoluted formula which was set forth in the original version of Subsection G and thereafter deleted by Amendment No. 2. By at least one reasonable interpretation of that Amendment, read alone, it appears that as of January 2, 2008 mark-up would be allowed for services performed under the Force Account Provision whether performed by Meridian's direct employees or through a specialty subcontractor (though read in context with the unmodified balance of that Provision, particularly Section 34(A) thru (D), it appears that mark-up is certainly not permitted for work done by Meridian employees). Possibly relying on Amendment No. 2 out of context, but being the most recent statement of MPA's anticipated charging policy, Meridian asserted its intention to include an unspecified rate of charge for mark-up when it submitted its Technical Proposal on March 6, 2008, particularly Section "O". But, changing course on March 14, 2008, MPA plainly sought to secure from Meridian definite confirmation that it would not charge a mark-up. Meridian's response of March 20, 2008 surely seems to provide that assurance, which was not definitively disavowed or reversed at the face-to-face meeting that took place on March 24, 2008. Meridian's written expressions of March 20, 2008 are thus last in time and presently in force to identify the valid and binding provisions of the contract.

In summary, the amended RFP allowed mark-up only for subcontractors performing unscheduled emergency repair work outside of the specified fields of occupational specialty in excess of the $400 valuation threshold, but during the course of contract negotiations Meridian expressly notified MPA that it would not include any mark-up fee.

The sworn deposition testimony of three (3) Meridian employees, namely, Horne, Brown and Meridian Project Manager Seth LeBlond (LeBlond), establishes that the Force Account provisions are inapplicable to tasks that were or should have been components of work performed under the all-inclusive labor rates set forth on an hourly basis for thirteen (13) specified occupational classifications, which rates include overhead and profit. This is not a factual issue over which there exists a genuine dispute between the parties. In this regard, even viewing the evidence in a light most favorable to Meridian, appellant to date fails to establish the existence of job tasks properly classified under the Force Account provision of the contract. Whether or not the Board is correct in this conclusion may be irrelevant because Meridian bases its claim not on the Force Account provision, using as a heading in its Reply Brief, "The Force Account Provisions are Not Relevant to Meridian's Entitlement to Markups."

Meridian's exclusive reliance on Section "O" of its Technical Proposal is misplaced. By appellant's interpretation of the pertinent provision, Meridian promises to use the R.S. Means valuations for facility maintenance and repair as the appropriate authority for estimating the cost of work it performs, while using the bid of its specialty subcontractors as the cost to be passed on to the State for work performed by Meridian's subcontractors. Under the doctrine of *contra proferentem*, ordinarily at trial MPA's interpretation of Meridian's words could reasonably be deemed the correct meaning.

However, at this stage of the proceeding when examining the State's Motion for Summary Disposition, the Board must view the evidence in a light most favorable to appellant. As a result, drawing all inferences in favor of Meridian, the Board must adopt Meridian's explanation of the connotation of its words.

Meridian's view of Section "O" of its Technical Proposal is that it would use R.S. Means to estimate the cost of unscheduled emergency repair work performed by its own personnel outside of the specified trades of plumbing, electrical and mechanical, and that it would be permitted to bill MPA for the total repair cost (including materials and supplies) after adding its "overhead" (i.e., not profit) in an unspecified amount implicitly limited only by the requirement of reasonableness. For specialty subcontractor work, Meridian claims to be able to add "contractor markup," which presumably would permit the aggregate of both overhead *and* profit, though the distinction between the two (2) components of "markup" is not addressed by counsel.

Even if Meridian were to be permitted to charge mark-up (overhead, profit, or both) on its bills, MPA is expressly designated by Meridian's statements in Section "O" to have the right to receive cost estimates and to have advance approval authority except for emergency repairs. There is no evidence offered by Meridian that it provided advance estimates for MPA to approve and authorize work in compliance with this assurance. Furthermore, Meridian admits that it did not use R.S. Means as its estimating guide, as it promised it would.

Most telling in the Board's resolution of this claim in favor of MPA is that at no time prior to issuing its invoices did Meridian apparently seek fairly and fully to inform MPA that it sought to impose a 20% mark-up for any of the services performed pursuant to its contract. Instead, Meridian affirmatively asserted as late as March 20, 2008 that there would be no mark-up, even though that assurance may have been qualified by

conditional references to its stated limitations to its charging practices. If Meridian representatives had come forward forthrightly with full disclosure of their billing intent at the time of contract negotiations, any confusion concerning overhead add-ons would likely have been averted by Meridian prior to award of the contract. Instead, Meridian waited until after the contract was secure before adding a mark-up to its actual out-pocket-expenses related to the hiring of its subcontractors and at least one of its own direct employees, namely, Jonathan Hansen (Hansen). Naturally this came as a surprise to MPA even though the original contract configuration may have contemplated some payment of overhead to Meridian for charges incurred by its subcontractors subject first to further case-by-case negotiation.

Meridian provided extensive numerical responses to MPA's pricing sheets, by rough count completing over 100 blank boxes set forth in the form Price Proposal. Yet at no point did Meridian specify, plainly or otherwise, that it sought to impose a 20% surcharge on certain of its charges not included in that precise and detailed itemization. And on March 14, 2008, when MPA sought written assurance from Meridian in this regard, asking "Please confirm that when invoicing for additional work…your charges will not include a mark-up fee" (other than the 5% mark-up allowed for tenant-requested renovations), Meridian responded by stating, "All renovation/alteration work performed under the Leasing Services provisions of the contract will not be marked up by Meridian with anything other than with the Project Management Fee included in the price proposal." Surely if Meridian had intended at that time to charge for profit and overhead in addition to the Project Management Fee set forth separately in its price proposal, it should have said so.

Because Meridian relies in part upon federal procurement authority in support of its claim, it is appropriate to remind appellant that federal authority also provides a broad range of

severe enforcement sanctions upon government contractors accused of deliberately and falsely certifying an unsupported charge. These include such criminal violations as the False Statements Statute, 18 U.S.C.A. §1001, mail and wire fraud, 18 U.S.C.A. §1341 and 1343, the Major Fraud Act of 1988, 18 U.S.C.A. §1031, the False Claims Act, 18 U.S.C.A. §287, and the general federal conspiracy statute, 18 U.S.C.A. §371. These laws permit the assessment of massive fines, business debarment, and individual incarceration.

In addition, short of criminal prosecution, civil fraud at the federal level is also punishable by treble damage award, administrative penalty, and other heavy fines for procurement abuse. The Civil False Claims Act, U.S.C.A. 31 U.S.C.A. §3729, is the government's primary tool in this arena, in which the *qui tam* provision is increasingly invoked to promote whistle-blowing to prevent contractor billing abuse. These federal statutes are not applicable to the instant contest and their recitation is not in any way to suggest that Meridian here has alleged any falsehood nor committed any crime, fraud, or abuse. Indeed, MPA must share the blame for the parties' confusion over Meridian's eligibility to charge mark-up, in large measure because Amendment No. 2 was conflicting with other extant provisions in the RFP.

The State could and should have done a better job stating plainly and consistently in the Force Account provision whether mark-up would be permitted and if so, when. The foregoing federal statutes are listed only to remind all bidders that the government is entitled to expect contractors to be honest when submitting invoices that are ultimately imposed upon taxpayers. Suffice it to say that the government has a long history of and recent focus on exercising its right to be demanding of private vendors to assure that billing is fair and accurate; but in order fairly to protect that right, the government has an obligation to

use consistent language in its contract documents to avoid any confusion such as that which occurred here.

Accordingly, viewing the evidence and argument in the light most favorable to the appellant, the Board determines that Meridian has not shown by a preponderance of the evidence that the contract here at issue entitles it to collect from MPA its claim for allowance of a mark-up in the stipulated sum of $9,389.39 for overhead and profit. Under the evidence and argument adduced to date and for all of the reasons more fully set forth above and particularly in light of RRP §3.8, the Force Account provision (§34) as amended, Section "O" of Meridian's Technical Proposal, appellant's Pricing Proposal, and the written documented contract negotiations between the parties dated March 14 and 20, 2008, appellant's claim must fail. Therefore it is the determination of the Board that the State's Motion for Summary Disposition should be and hereby is GRANTED.

Wherefore it is Ordered this _____ day of November, 2010 that the above-captioned appeal is DISMISSED.

Dated:

_____
Dana Lee Dembrow
Board Member

I Concur:

_____
Michael J. Collins
Chairman

_____
Ann Marie Doory
Board Member

Certification

COMAR 21.10.01.02 **Judicial Review.**

A decision of the Appeals Board is subject to judicial review in accordance with the provisions of the Administrative Procedure Act governing cases.

Annotated Code of MD Rule 7-203 **Time for Filing Action.**

(a) Generally. - Except as otherwise provided in this Rule or by statute, a petition for judicial review shall be filed within 30 days after the latest of:

(1) the date of the order or action of which review is sought;
(2) the date the administrative agency sent notice of the order or action to the petitioner, if notice was required by law to be sent to the petitioner; or
(3) the date the petitioner received notice of the agency's order or action, if notice was required by law to be received by the petitioner.

(b) Petition by Other Party. - If one party files a timely petition, any other person may file a petition within 10 days after the date the agency mailed notice of the filing of the first petition, or within the period set forth in section (a), whichever is later.

* * *

I certify that the foregoing is a true copy of the Maryland State Board of Contract Appeals decision in MSBCA 2678, appeal of Meridian Management Corporation, Inc. under MPA Contract No. 270030-S.

Dated:

_____
Michael L. Carnahan
Deputy Clerk