The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Institute for Advanced Safety Studies--Request for Reconsideration

File: B-221330.2

Date: July 25, 1986

DIGEST

Prior decision is affirmed where protester has not shown that decision contained errors of fact or law.

DECISION

The Institute for Advanced Safety Studies (Institute) requests reconsideration of our decision in Institute for Advanced Safety Studies, B-221330, Apr. 16, 1986, 86-1 CPD ¶ 372, denying its protest against the award of a contract to the Indiana University Foundation (IUF) under request for proposals (RFP) No. N00164-84-R-0230, issued by the Department of the Navy, Naval Weapons Support Center (Navy), for educational support services for the Naval Sea Systems Command Safety School. The Institute contends that our decision contains errors of fact and law and ignores the evidence it provided of Navy abuses during the procurement process.

We affirm the denial of the protest.

The Institute alleged in its original protest that the Navy engaged in a prejudicial pattern of conduct throughout the procurement. Specifically, the Institute contended that the RFP included provisions which discouraged competition and favored IUF, the incumbent; that, during negotiations, the Navy's actions evidenced a bias in favor of IUF; that the Navy deliberately prolonged the procurement process for 11 months in order to procure educational support services on a sole-source basis from IUF through contract extensions and an interim contract; and that various other deficiencies occurred during the procurement.

We denied the protest because the Institute did not affirmatively establish that the Navy conducted the procurement in a manner that favored IUF. Additionally, we noted that the agency rated the proposals technically equal, and the Institute's cost proposal was higher than the

awardee's by almost $4 million. We also noted the Navy contention that most of the Institute's allegations were untimely, but did not address the timeliness issues because of our denial of the protest on other grounds. Finally, although some of the issues raised by the Institute were considered, we did not specifically address them in our decision because of the substantial competitive advantage possessed by IUF. Thus, the decision's outcome would not have changed.

For example, the Institute alleged that certain information improperly was only available to IUF--clauses contained in IUF's prior contract, the follow-on contract starting date, and the Navy's targeted budget for this procurement. The prior contract clauses involved incumbent contractor assistance to a follow-on contractor during a phasein period. While the Institute alleged that the Navy fraudulently omitted the clauses from the RFP, it did not establish how the absence of these clauses in this RFP resulted in a prejudicial lack of information. In these circumstances, we had no basis to object to the agency's failure to include the clauses. Regarding the contract starting date of January 1, 1985, stated in the RFP, the Institute contended that the information on the contract starting date could affect offerors' cost proposals and their ability to meet the starting date. The record indicates that, on December 10, 1984, the Navy extended the closing date for the receipt of proposals to January 7, 1985. While the agency did not extend, by amendment, the original contract starting date, the Institute should have known, when notified of a closing date later than the sta. ing date, that the starting date had been changed and could have inquired about the new date. With respect to the targeted budget for the contract, the Navy specifically denied providing either offeror with budget data. Since there were only conflicting statements in the record by the Navy and the Institute, the protester did not meet its burden of affirmatively proving its allegation. Intermem Corp., B-217378, Mar. 29, 1985, 85-1 CPD ¶ 378.

The Institute also protested the Navy's award of a sole-source contract to IUF due to the delay in negotiating the protested follow-on contract. This allegation was untimely because the interim contract was awarded on July 19, 1985, and the Institute received a copy of the contract on October 3, 1985, but did not file its protest until December 19, 1985, well beyond the 10-day filing period set forth in our Bid Protest Regulations. See 4 C.F.R. § 21.2(a)(2) (1986).

The Institute alleged that the Navy extended the proposal due date after the closing date for receipt of proposals. The record supported the Institute's contention and indicated that the Navy informed the Institute of the 30-day extension, by phone on December 10, 1984, 3 days after the closing date, followed by written confirmation. While the Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.410(a) (1985), contemplates the issuance of solicitation amendments prior to the closing date, it does not specifically prohibit the issuance of amendments extending the closing date after the closing date. See Impact Instrumentation, Inc.--Reconsideration, B-198704, Oct. 3, 1980, 80-2 CPD ¶ 239. We

also noted that the Institute was not prejudiced by the agency's action because the agency promptly returned the Institute's timely submitted proposal, so that the Institute had sufficient time to resubmit its proposal by the new closing date.

The Institute alleged that the Navy failed to issue a preaward notice and that the Navy was required, but failed, to notify all offerors of contract award on the same day, citing FAR, 48 C.F.R. § 15.1001(b)(1) and (2). However, those provisions only require such notices where a proposal is determined to be unacceptable or where the procurement is set aside for small business in order to enable unsuccessful offerors to challenge the size status of the awardee. Since neither circumstance applied in this case, a preaward notice was not required. While FAR, § 15.1001(a) (FAC 84-13, Feb. 3, 1986) requires that prompt notice of contract award be provided to unsuccessful offerors, it does not require notification of all offerors on the same day or state a particular time. Delphi Mechanical, Inc., B-220879, Nov. 15, 1985, 85-2 CPD ¶ 561.

The Institute again contends that the Navy improperly used lower government salary levels in compiling government cost estimates for purposes of establishing a negotiating base or a targeted budget. In our decision, we considered the allegation and noted that the Navy specifically advised the Institute to use lower pay rates for its proposed personnel, but the Institute failed to do so. Although the Institute disagreed with the Navy as to what constituted reasonable cost, it did not provide evidence establishing that the Navy's evaluation of the cost proposals was unreasonable. The procuring agency's judgment as to the methods used in estimating costs and the conclusions reached in evaluating an offeror's proposed costs is given great weight by our Office. Since the Institute did not meet its burden of showing that the Navy's evaluation was unreasonable, we determined that the selection of IUF's offer was proper. See TRS Design & Consulting Services, B-218668, Aug. 14, 1985, 85-2 CPD ¶ 168.

With regard to the evaluation of the Institute's cost proposal, the Institute now contends that it should have been awarded the contract because its cost proposal was determined to be realistic and reasonable by the Defense Contract Audit Agency (DCAA). The record, contrary to the Institute's contention, indicates that DCAA found the Institute's cost data inadequate in some respects, but, since the cost proposal was prepared in accordance with regulations, determined that it was acceptable for negotiation of a price.

With respect to the $400,000 that the Institute contended was improperly added to its best and final cost proposal, the Navy now concedes that it inadvertently added $340,000 to the Institute's cost proposal and that the corrected amount is $8,786,926. Even with the correction, however, the Institute's proposed cost is still over $3.7 million more than that

of the awardee's. Therefore, the Institute was not prejudiced by the inadvertent addition of the $340,000 to its cost proposal.

Finally, with regard to the Institute's contention relating to our failure to address the Navy Competition Advocate General's alleged report on the protested procurement, our Office was advised by the Navy that the Competition Advocate General did not investigate or issue a report on this procurement because the procurement had gone beyond the presolicitation stage when inquiries were first raised. The Navy stated that the Competition Advocate General's purpose is to increase competition and, in this case, RFP's were mailed to 100 potential offerors.

In view of the fact that the Institute's contentions do not affect the outcome of our prior decision, we affirm our prior decision.

Harry R. Van Cleve
General Counsel