

BACKGROUND

The RFP sought to streamline the administration of several fellowship programs by retaining one contractor to operate the Office of Naval Research Graduate Fellowship Program, the Air Force Laboratory Graduate Fellowship Program, and the National Defense Science and Engineering Graduate (NDSEG) Fellowship Program. Prior to the award of this contract these programs had been administered by the American Society for Engineering Education, the Southeastern Center for Electrical Engineering Education, and Batelle Memorial Institute. In response to the RFP--which anticipated award of a cost-plus-fixed-fee contract to the offeror whose proposal was most advantageous to the government, with technical considerations more important than cost--the Navy received five proposals.

After evaluation of the five proposals, two were found technically unacceptable, two appeared to have a reasonable chance of award, and one--the protester's--was found unrealistically high in cost. As shown below, Oak Ridge's proposal, while acceptable, was priced significantly higher than that of any other offeror:

Company A	Unacceptable	\$1.7 million
SCEEE Services Corp.	Acceptable	\$2.3 million
Company B	Acceptable	\$2.9 million
Company C	Unacceptable	\$4.0 million
Oak Ridge	Acceptable	\$9.8 million

Based on a review of the ratings and proposed costs, the Navy concluded that the proposal of SCEEE Services Corporation offered the best value to the government, and made award to the company on September 29, 1994. On October 3, the Navy notified Oak Ridge of its award decision.

Approximately 2 weeks after award, an employee of Oak Ridge received a telephone call late in the evening of October 20 from an employee of one of the incumbent contractors, which was also an unsuccessful offeror. Oak Ridge's employee states that the caller advised that the three incumbent contractors were told they could use unspent funds from their previous service contracts as forward funding for the future operations of the contract at issue here. The caller also advised the Oak Ridge employee that there may be evidence to conclude that the proposal of SCEEE Services Corporation was nonresponsive, and that the Navy failed to request BAFOs before making award. The caller further requested that his identity not be revealed to the Navy. The Oak Ridge employee memorialized the conversation in a sworn statement, which was provided to our Office in support of the protest.

DISCUSSION

Oak Ridge argues that the Navy created an unfair advantage for incumbent contractors by permitting them to use unspent funds to supplement their proposals here. In general, it is not unusual for incumbents to enjoy a competitive advantage, and such advantage--so long as it is not the result of preferential treatment or other unfair action by the government--need not be discounted or equalized. Automaker, Inc., B-249477, Nov. 24, 1992, 92-2 CPD ¶ 372. Our review of the record in this case leads us to conclude that no unfair competitive advantage accrued, and that all prospective offerors were competing on an equal basis. Wareagle Sys., Inc., B-255751, Mar. 29, 1994, 94-1 CPD ¶ 222.

In the agency report prepared in response to the protest, the Navy denies that incumbent contractors were given the advantage Oak Ridge claims. Specifically, the Navy's contracting officer stated that her office gave no such advice, and explained that she contacted each of the other services with fellowship programs to inquire whether those offices might have advised offerors to use unspent program funds to lower the price of their proposals. The contracting officer was unable to locate any government official who would confirm the protester's allegation.

In addition, the Navy states that the caller whose information provided the basis for Oak Ridge's protest contacted the Navy and explained that he did not make the statements claimed. Specifically, the Navy provided a statement from the Deputy Director of the Corporate Programs Division within the Office of Naval Research wherein she states that during a telephone conversation on an unrelated matter, the individual with whom she was speaking raised the subject of the Oak Ridge protest and identified himself as the originator of the October 20 telephone call to Oak Ridge's employee. According to the Navy official's statement, the individual stated that the Oak Ridge allegations were based on a misinterpretation or misunderstanding of the information relayed in the October 20 telephone call, and denied ever having said that any incumbent had been allowed to use previously awarded funds for future operating expenses.

In its comments, Oak Ridge confirms that the Navy has correctly identified the caller, but replies that our Office should disregard the caller's later statements in favor of Oak Ridge's version of the call because the caller was likely pressured to recant by the Navy.

Based on the record before us, we have no basis to conclude that the agency acted improperly here. In response to the protester's allegations, the Navy attempted to locate any government representatives who might have made the statement Oak Ridge alleged. The Navy found no evidence of such a statement by any of the other service offices that previously administered these programs; the Navy also states that it did not give such advice to incumbent contractors. In addition, the source for the allegation has denied that he made the statements upon which Oak Ridge based its protest. Under these circumstances, and without any other evidence to support Oak Ridge's allegation, we have no basis to reach a contrary conclusion.¹

We note that the RFP at clause L.31 set forth the scheduled dates for making the transition to the new administration of these programs. In addition, the clause includes a footnote explaining that the fellowships associated with the NDSEG Fellowship Program were funded in advance, "so classes of fellows currently on board will stay in the custody of the current contractor until expiration of the [f]ellowships." Since the money for the NDSEG fellows was provided in advance to the contractors handling that program, for disbursement over the life of the fellowship, these funds may have been the funds that Oak Ridge thought would be put to improper use. However, there is no evidence that the funds were misused to reduce proposed costs, and no evidence that government representatives suggested to incumbents that they misuse the funds.

We also note that there is nothing in the record to suggest that the funds at issue here approach the magnitude necessary to account for the difference between Oak Ridge's proposed cost, and the awardee's cost. As shown above, the protester's cost of \$9.8 million was significantly higher than the awardee's cost of \$2.3 million, and significantly above the cost proposed by every other offeror in the competition--even those offerors who, like Oak Ridge, were not incumbent contractors.

Finally, with respect to Oak Ridge's concerns that the awardee's proposal may have been "nonresponsive," and that the agency improperly made award without requesting BAFOs, there is no evidence in the record that the awardee's

¹Oak Ridge cites delays in responding to its Freedom of Information Act (FOIA) requests as further evidence that the agency acted as claimed. The noted delays in preparing FOIA responses provide no support for a conclusion that the agency unfairly favored incumbent contractors.

proposal failed to address the solicitation requirements, and the agency's decision to make an award without requesting BAFOs was consistent with the RFP clause L.12(c) advising potential offerors of the agency's intent to make an award without conducting discussions.

The protest is denied.

for *Paul Lieberman*
Robert P. Murphy
General Counsel