

AMMUSE  
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**DECISION**



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

**FILE:** B-221330 **DATE:** April 16, 1986  
**MATTER OF:** Institute for Advanced Safety Studies

**DIGEST:**

1. Where protester is specifically advised during negotiations that its direct labor rates were excessively high and exceeded the fair and reasonable prices at which contract award could be made, but fails to significantly revise its proposed costs, protest against award to contractor whose costs were determined to be fair and reasonable is without merit.
2. Where there is no evidence in the record, other than the protester's bare allegation, that the contracting agency conducted the procurement in a manner that favored the awardee, the protester has not met its burden of affirmatively proving its case. Unfair or prejudicial motives will not be attributed to procurement officials on the basis of inference or supposition.

The Institute for Advanced Safety Studies (Institute) protests the award of a 3-year, cost-plus-fixed-fee contract under request for proposals (RFP) No. NO0164-84-R-0230 to the Indiana University Foundation (IUF), the incumbent contractor, by the Department of the Navy, Naval Weapons Support Center (Navy), for educational support services for the Naval Sea Systems Command Safety School (Safety School). The Institute contends that the Navy deliberately compromised the competitive negotiation process by violating the Federal Acquisition Regulation in order to award the contract to the IUF.

The protest is denied.

Support services for the Safety School were provided by the IUF on a sole-source basis for 14 years prior to the award of this contract competitively to IUF. Although the decision to procure support services competitively was made

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over 11 months prior to the expiration date of IUF's prior sole-source contract, the Navy states that difficulties encountered in the preparation of the RFP resulted in its issuance on November 7, 1984, just 7 weeks prior to the contract's expiration date. As a result of delays in the procurement process, IUF's sole-source contract was twice extended by contract modification until June 30, 1985. Thereafter, on July 1, 1985, the Navy awarded a 3-month interim sole-source contract to IUF after an oral solicitation justified under 10 U.S.C.A. § 2304(c)(2) (West Supp. 1985), which authorizes noncompetitive procurements of services where the agency's need is of such unusual and compelling urgency that the United States would be seriously injured unless the agency is allowed to limit the sources from which it solicits proposals. The interim contract was subsequently extended by contract modification until December 31, 1985.

In its justification for noncompetitive procurement, the Navy stated that the interim contract was required for the continuation of educational support services for the Safety School. Without safety training, the Navy stated it would not be able to comply with safety regulations of the Navy, Department of Defense and other federal agencies, and the effectiveness of billions of dollars in Navy resources would be compromised, thereby degrading Fleet and Support operations. The Navy also determined that IUF, the incumbent contractor, was the only source that could provide the services in a timely manner, thus enabling the Navy to maintain the continuity of operations.

The RFP, which was issued to 100 potential offerors, advised that the proposals would be evaluated on the basis of three factors: (1) personnel resources and corporate experience; (2) management plan and technical approach, which were of equal importance; and (3) cost, which was slightly less important than the other two factors. Specifically with regard to cost, the RFP advised offerors that cost estimates must be realistic and reasonable in relation to the work to be performed.

Only the Institute and IUF submitted proposals by the closing date. To maximize competition, the agency extended the closing date a month until January 7, 1985. The Institute's cost proposal was \$10,108,928, including a fee, and the IUF proposal, which requested no fee, proposed costs of \$4,301,907. Although the Institute's proposed cost was over two times that of the IUF, the Navy decided to include the Institute's proposal in the competitive range because its elimination would have left only IUF in the competition. In the competitive range determination, the

contracting officer noted that the Institute's proposed direct labor rates, which in some instances were in excess of 800 percent of rates previously paid by the government for the same services, were possibly the result of the Institute's misinterpretation of the government's intent to award the contract on the basis of the greatest value meeting the minimum agency needs.

During negotiations on October 3, 1985, the Navy advised the Institute that its proposed costs, particularly for direct labor, were excessively high and exceeded the government funds available for the procurement. The Navy provided the Institute with copies of prior contracts in order to assist it with estimating costs.

IUF and the Institute submitted best and final offers (BAFOs) by the October 28, 1985 closing date. The IUF's BAFO, with estimated costs of \$5,077,401, was given 70 technical points and 30 cost points; and the Institute's BAFO, with estimated costs of \$9,204,508, was assigned 66.03 technical points and 16.55 cost points.

The contract was awarded to IUF on November 27, 1985. Notice of award was sent on the next working day, December 2, 1985, and was received by the Institute on December 6, 1985.

The Institute alleges that the agency engaged in a prejudicial pattern of conduct throughout the procurement process. More specifically, the protester contends that the RFP included provisions which discouraged competition and favored IUF; 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 modifications and an interim contract; and that the Navy delayed sending the Institute notice of contract award in order to avoid the suspension of contract performance. See 4 C.F.R. § 21.4(b) (1985).

The Navy contends that nearly all of the allegations are untimely. However, the Navy admits that a few of the allegations are timely, and these timely allegations clearly relate to the alleged prejudicial course of conduct. For this reason and in view of what we hold below, we will not address the timeliness issues raised by the Navy.

The protester's basic contention is that because it was prejudiced as a result of the Navy's alleged actions, the IUF contract should be terminated and contract award should be made to the Institute. However, the Institute has provided no evidence to show that it was prejudiced by the Navy's actions in the evaluation of proposals or that the Navy's evaluation was unreasonable.

We do not conduct a de novo review of proposals or make an independent determination of their acceptability or relative merit, as the evaluation of proposals is the function of the contracting agency. See Southwest Regional Laboratory, B-219985, Dec. 16, 1985, 85-2 CPD ¶ 666. The record indicates that the Navy's evaluation of the two proposals was reasonable. The Navy found the Institute's and the IUF's technical proposals to be acceptable and both achieved high technical evaluation scores in all factors and subfactors. The Institute excelled in the technical qualifications of safety training specialist personnel, management plans and technical approach, and quality control procedures, while IUF excelled in personnel resources and corporate experience. The evaluation board and the contracting officer concluded that technically there was no significant difference between the offerors and both were technically capable of providing the required services.

Because of this, award of the contract to IUF was based on cost factors. The Navy found the IUF's proposed cost, which was approximately \$4.2 million less than the Institute's, to be clearly the most advantageous to the government. Although the Institute was advised by the contracting officer during negotiations that its direct labor rates, which averaged \$18.58 per hour, were excessive and exceeded the fair and reasonable prices at which the Navy could award the contract, the Institute ignored the contracting officer's advice. During negotiations, the contracting officer also advised the Institute that its heavy reliance on subcontracting would probably contribute to higher overall costs. Under its subcontracts with two universities, research organizations and safety professionals, the Institute proposed to pay rates that were generally higher than the government schedule (GS)-9 to GS-12 rates suggested by the Navy. The Institute, in its BAFO, stated that it was grossly inappropriate to use GS levels in compiling government cost estimates for purposes of establishing a negotiating base or a targeted budget. The Institute, therefore, used the compensation rates it originally submitted with few revisions. The Institute did reduce its proposed 88,284 subcontractor hours and


\$5,537,400 proposed subcontracting cost by 8,424 hours and \$843,919. Even with the reduction, the Institute's proposed subcontracting cost was over half its final proposed cost of \$9,204,508.

The Navy, on the other hand, found the IUF's direct labor rates, averaging \$10.79 per hour, and its proposed cost of \$484,006 for consultants to be fair, reasonable, and within the available funds for the required services. The contracting officer recommended that award be made to IUF in the amount of \$5,078,025, which amount was also determined to be fair and reasonable.

While the Institute may disagree with the Navy as to what constitutes reasonable cost, the protester has provided no 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 are given great weight by our Office since the procuring agencies are in the best position to determine the realism of costs. TRS Design & Consulting Services, B-218668, Aug. 14, 1985, 85-2 CPD ¶ 168. Mere disagreement with the Navy's evaluation of costs does not meet the protester's burden of showing that the evaluation was unreasonable. ALM, Incorporated; Technology Incorporated, B-216274 et al., Apr. 16, 1985, 85-1 CPD ¶ 433. Since the protester has not established that the Navy's technical or cost evaluation was unreasonable and since the technical proposals were judged essentially equal, the selection of the IUF's offer based on lower evaluated cost was proper. TRS Design & Consulting Services, B-218668, supra.

Finally, we find no evidence in the record, other than the Institute's bare allegations, that the Navy conducted the procurement in a manner that favored IUF. Given the agency's rating the proposals technically equal and the substantial cost difference, the conduct of the procurement, as well the contract extensions and interim award, is not objectionable. The protester has not met its burden of affirmatively proving its case and unfair or prejudicial motives will not be attributed to procurement officials on the basis of inference or supposition. ALM, Incorporated; Technology Incorporated, B-216274 et al., supra.

The protest is denied.

for   
Harry R. Van Cleve  
General Counsel