

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

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FILE: B-213464.2**DATE:** July 24, 1984**MATTER OF:** Northwest Regional Educational Laboratory--
Request for Proposal Preparation Costs**DIGEST:**

Claim for proposal preparation costs is denied since agency's math error, which materially prejudiced protester, resulted from negligence and not arbitrary and capricious conduct.

The Northwest Regional Educational Laboratory (Northwest) requests reimbursement of the costs it allegedly incurred in responding to the National Institute of Education (NIE), Department of Education, request for proposals (RFP) No. NIE-R-830-0011. This procurement was the subject of our decision in Northwest Regional Educational Laboratory, B-213464, Mar. 27, 1984, 84-1 C.P.D. ¶ 357.

In our prior decision, we sustained Northwest's protest against a contract awarded to Far West Laboratory (Far West). We concluded that NIE had failed to provide Northwest and Far West with a common basis to revise their proposals because, in attempting to get the offerors to reduce their cost proposals to correspond with the government estimate, NIE had given each offeror the incorrect percentage by which its proposal exceeded the government estimate. We further concluded that Northwest had been materially prejudiced by NIE's action because NIE's percentage error in regard to Northwest's proposal was significantly higher than its percentage error in regard to Far West's proposal. Despite our conclusion, however, we did not recommend that NIE terminate Far West's contract and reopen discussions with both offerors because performance under the contract was substantially under way.

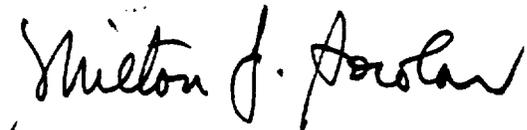
The award of proposal preparation costs is permitted where the protester shows that the government's conduct was arbitrary and capricious and that if the government had

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acted properly, the protester would have had a substantial chance of receiving the contract award. Power Systems-- Claim for Costs, B-210032.2, Mar. 26, 1984, 84-1 C.P.D. ¶ 344.

There is no indication that NIE's action resulted from other than a math error or that NIE had actual notice of the error prior to the protested award. Nor is there any indication that when NIE received the best and final offers, it necessarily should have known that it had given Northwest the wrong percentage figure as alleged by the protester. While Northwest's best and final cost offer exceeded the government estimate by \$82,195, the offer was \$283,335 less than Northwest's original cost proposal. Thus, NIE could have reasonably concluded that Northwest was not willing to further reduce its cost at the risk of lowering the acceptability of its technical proposal. Consequently, since NIE's acts were negligent, rather than arbitrary and capricious, there is no basis on which Northwest may recover its proposal preparation costs. Since we have reached this result, we need not decide whether Northwest had a substantial chance of receiving the contract award.

The claim for proposal preparation costs is denied.

for 
Comptroller General
of the United States