

School Technology Contract Stirs Dispute

A \$7.6-million contract to Harvard has been contested by Bank Street College, whose proposal was \$3 million cheaper yet was rated superior

In September last year, an unusual contract-signing ceremony took place in the office of Representative Silvio O. Conte (R-Mass.). The occasion was the award of a \$7.6-million contract to Harvard by the National Institute of Education (NIE) to establish and operate a School Technology Center. The result of a proposal that Conte shepherded through Congress, the center is intended to help develop and apply new educational technologies based largely on computers. Present at the signing ceremony were Manuel Justiz, the director of NIE; Conte; a representative from Harvard; and an official from a school authority in Conte's district that will participate in the work of the center. The award was clearly a source of satisfaction to everybody present.

Less enthusiastic, however, were officials and researchers at Bank Street College, a graduate education and research college in New York City. Bank Street had put in a proposal for the center that had been rated above Harvard's on its technical merit by a peer review committee, which would have cost nearly \$3 million less. So upset were Bank Street officials that they filed a formal protest with the General Accounting Office (GAO), which referees disputes over federal contracts, seeking to cancel the contract on the grounds that NIE had violated the proper precedures. GAO is expected to rule on the protest in the next few weeks.

The award has been a focus of controversy in the educational research community, and rumors have been rampant. Chief among them is that NIE's decision to overrule the recommendation of the peer review committee, which was made personally by Justiz, was based on political considerations. The suspicion is that the award was made to please Conte, who occupies a key position as the senior Republican on the House Appropriations Committee, and who had made no secret of his wish that the center be located in Massachusetts. The fact that the contract was signed in Conte's office has been regarded as strong circumstantial evidence.

Such suspicions have prompted the National Council on Educational Research, an independent NIE advisory board, to look into the award, and Richard Anderson, the president of the

American Educational Research Association, has conducted his own informal inquiry. Some political pressure has also been applied on Bank Street's behalf. Senator Alphonse D'Amato (R-N.Y.) has written to Justiz for an explanation, and a staff member of the House subcommittee on intergovernmental relations is carrying out an investigation. The subcommittee is chaired by Representative Ted Weiss (D-N.Y.), in whose district Bank Street College resides.

Interviews with several people involved in the controversy indicate, however, that although Bank Street may have reason to feel aggrieved at the way the decision was handled, most of the rumors seem to be without foundation. Anderson, for one, has concluded that "there is no evidence that would warrant any other conclusion than that . . . Justiz made a principled decision." The whole episode provides a revealing glimpse of the workings of the federal procurement process, which in many ways is better suited to buying hardware than establishing research centers.

It began with language inserted at Conte's urging in a House Appropriations Committee report on the Department of Education's budget for fiscal year 1983. The report directed the department, of which NIE is a part, to establish in New England a laboratory or center for educational research. Soon after Justiz took over the directorship of NIE in January 1983, he decided that the center should focus on the development and application of new technologies for education. He also worked out with Congress a formula that would enable institutions outside New England to compete for the contract. Essentially, the center could be anywhere, but the school-based work during its first 3 years would have to be done in New England.

On 6 June 1983, NIE sent 600 requests for proposals to academic institutions around the country and it received six firm bids. Aside from Bank Street and Harvard, the contestants were Massachusetts Institute of Technology (MIT), the University of Massachusetts at Amherst, Lowell College, and the University of Oregon. A peer review committee consisting of five NIE staff members and five outside experts was established to evaluate the technical aspects of the proposals, and in early August it judged the

Bank Street, Harvard, and MIT proposals acceptable. The other three were eliminated from the competition.

That could have presented problems because Conte had expressed support for the proposal of the University of Massachusetts, which is located in his district. Justiz decided, however, to stand by the committee's recommendation, and personally informed Conte of the result. According to Alan Wilson, an aide to Justiz, Conte did not subsequently attempt to influence the outcome of the contract process. Indeed, the suggestion that Conte, a Republican from western Massachusetts would lobby for Harvard is greeted with some derision in Cambridge.

The three finalists were then sent a series of questions based on the peer review committee's report and on their proposed budgets. As is usual in contract negotiations, NIE never publicly stated its estimate of how much it would cost to operate the center. Internal estimates, however, put the figure at \$7.2 million over 5 years. MIT estimated its proposal would cost almost \$11 million, Harvard's came in at a \$9.2 million, and Bank Street's was \$4.5 million. In its questions to Harvard and MIT, NIE indicated by roughly how much their proposals exceeded the cost estimated, but Bank Street was not informed that its proposal was \$2.7 million less than NIE had expected.

Although federal contract regulations prohibit notifying those who bid low that they are below the estimate, Bank Street claims it was put at a disadvantage. But Gregory Jackson, who is heading the project at Harvard, says that, like most of the other contestants, "we had figured out what the cost estimate was well before we got that letter," from information provided in the request for proposals. When the final proposals came in, MIT's estimate was down to \$7.2 million, Harvard's was just under \$7.7 million, and Bank Street's stayed at around \$4.5 million.

The peer review committee met with representatives of all three institutions at the end of August and the committee members presented their final assessments on 14 September. Bank Street's proposal was given the highest technical rating with a score of 88.4. MIT's was scored at 82.1 and Harvard's at 80.9.

When asked to rate the proposals in order of preference without regard to cost, five members voted Bank Street's the best, four voted for Harvard, and one for MIT.

The committee's report went to Victor Westbrook, an NIE official who had recently taken over as contracting officer for the project. But Justiz, who had taken a special interest in the center from the start, decided to review the recommendation. According to an internal memo by Westbrook, Justiz told him on 19 September that he believed Harvard's was the strongest proposal and that Bank Street's seemed deficient in terms of its staffing levels and costs. Westbrook agreed to review Bank Street's cost figures and, according to his memo, told Justiz that if no irregularities were found, the award should go to Bank Street.

At this point, NIE was running into a severe time constraint: the contract had to be signed by 30 September, the end of the fiscal year. On 28 September, Westbrook again met with Justiz to tell him he had found no irregularities in Bank Street's cost estimates, but Justiz said he

had decided that the award should go to Harvard anyway.

In a lengthy decision memorandum written on the same day, Justiz said, in essence, that he believed Harvard's proposal matched the criteria for the center more closely than Bank Street's did because it entailed more resources and covered a broader range of technologies. He also favored Harvard's conceptual and organizational approach.

Justiz also said he found the committee's technical ratings "extremely close and inconclusive for making a judgment" between the two proposals. However, his memo attempted to make the ratings even closer than they actually were by suggesting that the scores of one reviewer who favored Bank Street should be ignored because he provided little written justification for them. In fact, a reviewer who favored Harvard provided even fewer comments.

Bank Street's protest lambasts Justiz on these grounds and takes issue with most of his more substantive arguments. It also points out that if, like Harvard, Bank Street knew roughly what NIE

expected the center's budget to be, Bank Street's proposal would have entailed more resources. NIE officials claim that Bank Street should have figured out the requirements from the request for proposals.

Bank Street officials say they received several anonymous telephone calls and letters from NIE staff members urging them to protest the award. According to Wilson, Justiz was well aware that his selection of Harvard would draw a protest. But he suggests that Harvard would have had grounds for protesting an award to Bank Street because Bank Street's proposal did not adequately match the criteria.

One ironic footnote to this episode is that Justiz is widely credited with strengthening NIE's peer review system, which had been badly politicized in the first 2 years of the Reagan Administration. "It was a mess, basically, when Justiz was appointed," says Roberta Miller, executive director of the Council of Social Science Associations. "By and large, he has done very well in cleaning it up."—COLIN NORMAN

EPA Ends Cut and Paste Toxicology

Pesticide reviewers who leaned too heavily on company assurances and company prose may have missed some health hazards

"I trust with the submission of this report . . . that we can put the issue of 'cut and paste' behind us," writes John Moore, the new assistant administrator for pesticides and toxic substances at the Environmental Protection Agency (EPA). Thus, in a letter to Representative George Brown, Jr. (D-Calif.), on 5 January, Moore seeks to close the book on a small scandal at EPA that never got much attention but engaged the agency in a prolonged debate with Congress over its scientific credibility.

A subcommittee chaired by Brown* discovered that EPA staffers were using "cut and paste" methods in writing up their own analyses of toxicological data submitted by pesticide companies. The data are sent to EPA as proof that a chemical proposed for general use will be safe. Brown's committee found evidence that company submissions, which

do not always stress the worst aspects of a chemical, were being cut, reassembled, and filed by EPA staffers as their own independent work. By parroting company verbiage, it was feared, EPA staffers may have been sloppy, missing problems buried in the data but not highlighted in company write-ups.

At the heart of the controversy is the question of whether or not the EPA can be trusted when it declares a chemical safe, especially if the chemical is a pesticide that will be consumed by millions of people as a residue in foods. Many hazardous pesticides are protected by the fact that they have been in use for decades and are allowed on the market by "grandfather" rights, even though they may not meet current safety standards. However, new chemicals are supposed to undergo strict toxicological reviews in EPA's Office of Pesticide Programs (OPP). For several years, OPP has been under pressure to process these new chemical filings more rapidly.

At Brown's insistence, the EPA inves-

tigated the cut and paste allegations. The inquiry was conducted by the Battelle Columbus Laboratories under contract to the very office suspected of malfeasance (OPP), which also had a hand in drafting the final report. It was released on 5 January along with Moore's letter.

The central conclusion is that there was indeed a lot of cutting and pasting, beginning around 1979. Of 578 staff reviews chosen at random, one third contained some unattributed use of company charts and prose. The worry was that this "borrowing" of company verbiage was just the tip of the iceberg. It suggested that reviewers were not doing their job at all.

When Battelle looked closer, it found a tip but no iceberg. It reported that only 29 of the questionable studies reached challengeable conclusions, possibly affecting regulations on 21 chemicals. According to Battelle, five reviews actually failed to report major health effects because they relied on faulty company descriptions of the data. All 21 chemicals in

*Brown chairs the House agriculture subcommittee on department operations, research, and foreign agriculture, which has responsibility for overseeing EPA's management of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act.