

Carter PL-1

17119

DECISION



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

[Protest of Contract Award Under Negotiated Procurement]

FILE: B-200731

DATE: February 25, 1981

MATTER OF: Courseware, Inc.

DIGEST:

1. Although plan used in technical evaluation, which assigned greater credit to offeror with experts in both Marine Corps and Navy aspects of helicopter aviation, instead of single expert in either Marine or Navy aviation, was not in RFP, agency's evaluation consistent with plan is not improper because importance and experience of experts is reasonably discernible from request for proposals.
2. Protest against use of agency staff-hour estimate in evaluation of proposals is untimely because it was not filed within 10 working days of debriefing.

Courseware, Inc., [protests the award of a contract to another vendor under a negotiated procurement conducted by the Naval Training Equipment Center] (NTEC). We find the protest is without merit.

[The solicitation called for offers on a cost-plus-fixed-fee basis for the design and production of training materials for Navy and Marine Corps CH-46 helicopter pilots. The request for proposals (RFP) (No. N61339-80-R-0105) included a problem analysis reflecting the need for a core training syllabus covering areas common to both Navy and Marine Corps CH-46 aviation and describing the existing fragmented training system with five widely scattered independent training squadrons flying four different models of the aircraft. The problem analysis also clearly indicated that the Navy and Marine Corps have different missions and uses for the CH-46.]

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Technical proposals were to be evaluated on the basis of each offeror's proposed program management, background and experience, personnel, quality of media samples, and examples of instructional systems development (ISD). Each of the last four evaluation criteria were equally weighed and were twice as important as the first criterion. The solicitation placed particular stress on the importance of the experience of an offeror's proposed subject matter experts (SME's). Technical considerations outweighed cost as an evaluation factor. The solicitation advised offerors that award might be made on the basis of initial proposals.

NTEC found four of the eight proposals submitted in response to the solicitation to be "clearly superior," including Courseware's proposal. Courseware was downgraded technically principally because only one SME rather than two was offered and the proposed management plan significantly understated the scope of the project in terms of staff hours. Allen Corporation was the highest rated of all offerors by a significant margin, and its proposed costs were considered reasonable. On September 24, 1980, NTEC awarded the contract to Allen Corporation on the basis of its initial proposal. NTEC debriefed Courseware on October 16, 1980, concerning the evaluation of its proposal.

Courseware contends that NTEC's requirement for two SME's was not discernible from the solicitation and that NTEC therefore used undisclosed criteria in the evaluation of proposals.

NTEC's evaluation plan assigned the highest SME-related scores to offerors proposing to use two aviators with CH-46 experience, one from the Navy and one from the Marine Corps, each with ISD experience; the lowest score was assigned to offerors like Courseware proposing only one SME with CH-46 experience or two SME's with non-CH-46 aviation experience. Intermediate scores were given to offerors proposing the use of SME's with levels of experience falling between these two extremes. While this plan was not explicitly stated in the RFP, we think it was reasonably discernible from the solicitation. As we noted above, the request for proposals clearly

cited the different aviation roles of the Marine Corps and Navy and also stressed the importance of the qualifications and experience of offerors' proposed SME's. Successful performance would require extensive SME travel and coordination among the various training squadrons. [We think NTEC's evaluation plan reflects nothing more than the logical and reasonable conclusion that the benefit to the program resulting from the use of two SME's, providing experienced advice concerning the needs of both the Navy and the Marine Corps and better able to meet the travel requirements, would be greater than the benefit to be derived from the use of only one SME. We think offerors were on notice of and should have anticipated this subcriterion. Consequently, we do not consider NTEC's evaluation of this factor improper.] Roy F. Weston, Inc., B-197866, B-197949, May 14, 1980, 80-1 CPD 340; Thomas G. Gebhard, Jr., P.E., Ph.D., B-196454, February 8, 1980, 80-1 CPD 115.

[Courseware has also suggested that NTEC might have erred in giving the awardee credit for having two CH-46 SME's when neither of the two retiring military personnel [Allen Corporation named as its SME's] was on its payroll at the time proposals were submitted. The record, however, indicates that Allen Corporation had employment commitments from both of these personnel, and we find nothing in the solicitation which would limit NTEC's evaluation to only personnel presently employed by an offeror.]

[Courseware also objects to NTEC's evaluation of its proposed level of effort.] NTEC was critical of proposals which contemplated more than plus or minus one-half staff year from NTEC's own estimate of appropriate staffing. [Courseware's proposed staff levels were below NTEC's acceptable range. Courseware contends that it proposed to use substantial computer effort in this contract which significantly reduced its required staffing and that NTEC should have taken this into account in evaluating Courseware's proposal.]

[Even if we agree with Courseware's position that the application of staff-hour estimates on a pass-fail basis in an evaluation may be inappropriate where significant portions of an effort might also be

amenable to staff-reducing technological solutions, Courseware's assertion is untimely and will not be considered on the merits.) NTEC addressed the subject of Courseware's proposed staff hours in a debriefing on October 16, 1980. Courseware did not protest this until its January 9, 1981, final comments on the agency protest report.

Our Bid Protest Procedures, 4 C.F.R. part 20 (1980), require that protests be filed within 10 working days of the date on which the protester knew or should have known of its basis for protest.) 4 C.F.R. § 20.2(b)(2) (1980). New grounds of protest must independently satisfy this requirement. Annapolis Tennis Limited Partnership, B-189571, June 5, 1978, 78-1 CPD 412. Courseware did not protest NTEC's treatment of its staffing proposal until long after this time period had expired.

The protest is denied in part and dismissed in part.)



For the Comptroller General
of the United States