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DECISION



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

FILE: B-215902.2

DATE: January 22, 1985

MATTER OF: The Communications Network--Request
for Reconsideration

DIGEST:

The evaluation of proposals for a training program must be based on the evaluation criteria contained in the solicitation and not on the criterion of "adequate" as expressed in 5 C.F.R. § 410.501, which is used to determine whether or not government training facilities will be used.

The Communications Network (TCN) requests reconsideration of our decision The Communications Network, B-215902, Dec. 3, 1984, 84-2 CPD ¶ _____, in which we denied the firm's protest of the award of a contract for an employee development training program under a request for proposals issued by the Department of the Navy. TCN had misunderstood the nature of the procurement by characterizing it as an invitation for bids, complaining that the Navy had improperly failed to award it the contract as the low bidder. In denying the protest, we pointed out to TCN that the procurement was in fact negotiated, and that TCN, the low offeror, had not been selected for award because the Navy had evaluated its proposal as technically inferior with respect to quality of training, although acceptable overall. We emphasized that the government is not required to make award to the low offeror in a negotiated procurement unless the solicitation specifies that cost will be the determinative factor. We found nothing in the record to cast doubt upon the reasonableness and propriety of the Navy's evaluation of submitted proposals, and thus concluded that the contract was correctly awarded to a firm other than TCN.

In its request for reconsideration, TCN complains that we failed to consider an issue of major significance which TCN raised in its comments on the Navy's

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administrative report. In those comments, TCN asserted that the contracting officer had improperly used a standard other than the "adequate" standard expressed in 5 C.F.R. § 410.501 (1984) to evaluate the suitability of TCN's training program. Since the Navy had found TCN's proposal to be technically acceptable, that is, "adequate" in TCN's view, the firm asserted that it was entitled to receive the award. Accordingly, TCN urges that our failure to consider this issue warrants reversal of our December 3 decision on legal grounds. We find no merit in TCN's position, and affirm our prior decision.

5 C.F.R. § 410.501 sets forth procedures of the Office of Personnel Management affecting an agency's determination of the source of necessary training for its employees. That section provides that if adequate training is reasonably available from government facilities, then the agency must train its employees in those facilities. If adequate training is not reasonably available from government facilities, then non-government facilities shall be used. The agency will determine that adequate training is not reasonably available within the government if either (1) existing agency programs will not adequately meet its training needs, new programs cannot be timely established, and other suitable and adequate programs within the government are not available; or (2) training programs of government facilities would be more expensive than those of non-government facilities which are adequate to meet the agency's needs. TCN believes that this provision accordingly means that when an agency has determined that use of a non-government training facility is appropriate, the agency, in selecting among competing non-government facilities, must then award to that non-government facility which is "adequate" in meeting its needs and offers the lowest cost. We do not agree.

5 C.F.R. § 410.502(a), provides that:

"An agency shall use as the principal criterion for selection of non-government training facilities the ability of the facilities to meet the training needs of the agency effectively, economically, and in a timely fashion."

Here, in order to determine which non-government source would best meet its training needs, the Navy conducted a negotiated procurement. See generally, Federal Acquisition Regulation, pt. 15, 48 Fed. Reg. 42,102, 42,186-42,219 (1983) (to be codified at 48 C.F.R. pt. 15). The solicitation informed potential offerors that submitted proposals would be evaluated under five listed criteria, including quality of training and cost effectiveness. The Navy never indicated that award would be made to that firm whose proposal was judged to be merely technically acceptable, or "adequate," but which offered the lowest cost. Rather, offerors were clearly on notice that cost would be only one factor in determining the successful firm, and that quality of training would be an equally significant factor as well. In our view, the Navy's evaluation criteria used here fully comported with the requirements of section 410.502(a), since the effectiveness of the training program proposed, with respect to its technical quality, was as important a concern as its offered price.

TCN's reliance upon the frequent use of the word "adequate" in section 410.501, as support for its assertion that it was entitled to the award, is wholly misplaced. We do not believe that such language can reasonably be construed as establishing some sort of dispositive criterion for the selection of a non-government training facility under a negotiated procurement.

Accordingly, since TCN has failed to show that our December 3 decision contains an error of law, that decision is affirmed. See Triad Associates, Inc.--Request for Reconsideration, B-214612.2, May 22, 1984, 84-1 CPD ¶ 550.

for 
Comptroller General
of the United States