



The Comptroller General  
of the United States

Washington, D.C. 20548

*Carter*

## Decision

Matter of: National Council of Teachers of English

File: B-230669

Date: July 5, 1988

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### DIGEST

1. The composition of a technical evaluation panel is within the contracting agency's sound discretion and, as such, will not be reviewed by the General Accounting Office about a showing of possible abuse of that discretion.
2. Contracting agency was justified in excusing from evaluation panel evaluator who provided written endorsement to one of the competitors. Retention on panel of evaluator who was associated with other competitor more than 20 years ago and another who remarked that she had preferred other competitor's proposal in a prior acquisition was neither unreasonable nor inconsistent, given staleness of association and irrelevance of remark to current procurement.
3. Proposal need not be rejected based on deficiencies in initial proposal where such deficiencies were pointed out in negotiations and corrected in best and final offer.
4. Agency could reasonably conclude that one offeror's proposed clearinghouse, which relied heavily on parent organization's existing relationships as conduit for required communications with outside entities, offered less assurance of impartiality and objectivity than that of another offeror, which proposed that its clearinghouse establish its own linkages independent of the parent organization.
5. Protester was not prejudiced by exclusion from final evaluation summary of one evaluator's scores reported by telephone without accompanying narrative, because even with scores, protester would still be lower rated technically and higher in cost.
6. Offerors are responsible for the preparation of their proposals and agencies are not obligated to go in search of omitted information.

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## DECISION

The National Council of Teachers of English (NCTE) protests the Department of Education's selection, under request for proposals (RFP) No. 88-005, of Indiana University (IU) to operate a clearinghouse for educational materials. The Department awarded the contract to IU effective January 4, 1988. We deny the protest.

The Department issued this RFP on August 26, 1987, seeking proposals to operate the 16 educational material clearinghouses which support the Department's Educational Resources Information Center (ERIC). The responsibilities of each clearinghouse are delineated by subject area, such as teacher education, urban education, languages and linguistics, etc. The clearinghouses identify, acquire, review, abstract and index educational documents for entry into the ERIC database, which is made available, by various means, to a variety of users. Each of the clearinghouses also prepares periodic reports, digests, synthesis papers, and other documents covering research and practice within its particular topic area, and provides user products and services, such as database searches and workshops.

In 1986, prior to initiating this procurement, the Department undertook a study to find ways to improve ERIC. As a result of this effort, known as the ERIC redesign study, the Department directed ERIC to shift its focus from an archival function to encompass broader collection efforts and wider dissemination to serve the needs of a far broader educational community, including policymakers, teachers, parents, school boards and the media. In implementing this directive, the RFP stated the Department's intent to establish a new organization, known as ACCESS ERIC, to oversee and coordinate efforts to accomplish a wider dissemination of ERIC products, and proposed the establishment of more specialized adjunct clearinghouses and "ERIC partners," organizations associated with the clearinghouses on a reciprocal basis. The RFP stressed implementation of the redesign study and sought creative ways for clearinghouse contractors to reach a broader audience.

The RFP's scope of work identified six major tasks to be performed by each clearinghouse:

1. Brief the Project Officer
2. Clearinghouse Management, Planning and Evaluation.
3. Build, Maintain and Utilize the ERIC Database.

4. Develop and Maintain Effective Dissemination Procedures,
5. Provide User Services, such as database searches.
6. Attend meetings and provide reports and other specified deliverables.

The statement of work also stated that "Originality and creativity in developing and implementing effective products and strategies for dissemination are key requirements. . . ." The clearinghouses were encouraged to develop other substantial products for dissemination, and could substitute them for the required papers if the offeror made a good case for the substitution.

NCTE and IU were offerors for the ERIC Clearinghouse on Reading and Communications Skills (RCS).<sup>1/</sup> This clearinghouse is responsible for coverage of preschool through college reading, English and communication skills (verbal and non-verbal); educational research in reading, writing, speaking and listening; diagnosis and remediation of reading problems; speech and mass communication; interpersonal and small group interaction, interpretation, rhetorical and communications theory; speech sciences and theater.

NCTE, which had operated RCS for more than 20 years, raises a number of objections to the Department's conduct and the evaluation of proposals, the common charge being that the Department was biased against professional associations vis-a-vis universities and academic institutions. NCTE contends, for instance, that the evaluation panel was not composed of nationally recognized professionals with expertise in all of the RCS scope areas, and argues that the panel was predominantly composed of people with reading backgrounds who were biased in favor of reading at the expense of the other areas within RCS. NCTE also asserts that the Department improperly and inconsistently applied conflict of interest criteria to panel members, and that the evaluation criteria were not applied equally to its proposal and IU's. In further support of its contention of bias, NCTE alleges that the Department failed to take proper steps to find and provide to the evaluators copies of charts that were contained in the copy of NCTE's proposal in the Depart-

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<sup>1/</sup> The contract for the ERIC clearinghouse on rural education and small schools was the subject of our recent bid protest decision in New Mexico State University, B-230669.2, June 2, 1988, 88-1 CPD ¶ \_\_\_\_.

ment's procurement office but which were omitted from the copies of the proposal provided to the evaluators.

The Department contends that the panel was properly composed of people with diverse expertise and education appropriate to the evaluation of RCS proposals, consistent with the Department's policy of using peer review and outside expertise, and asserts that there was no requirement for nationally recognized experts. The Department also contends that its application of conflict of interest criteria was proper, and denies that the evaluation criteria were unevenly applied or that the Department was biased against NCTE or any other association. On the subject of NCTE's missing chart, the RFP required the offeror to furnish a number of copies of the proposal; the Department notes only that the chart appears in some copies of NCTE's proposal, but not in others. The Department suggests that NCTE simply may have made an error in making the copies of its proposal required for submission.

We will not consider NCTE's objection to the composition of the evaluation panel. The composition of technical evaluation teams is within the contracting agency's sound discretion and, as such, does not give rise to review by our Office absent a showing of possible abuse of that discretion by, for example, ignoring a conflict of interest or actual bias on the part of evaluators. See ACRAN, Inc., B-225654, May 14, 1987, 87-1 CPD ¶ 509; ALM, Inc., B-225589, et al., May 7, 1987, 87-1 CPD ¶ 486.

The evidence presented by NCTE falls short of showing either bias or conflict of interest. We will not attribute unfair or prejudicial motives to procurement officials on the basis of mere inference or supposition. See Complere, Inc., B-227832, Sept. 25, 1987, 87-2 CPD ¶ 254. In order to prove bias, a protester must provide hard facts showing undue influence on panel members so as to result in favoritism or antagonism towards a particular offeror. See Conceptual Systems, Inc., B-227018, July 14, 1987, 87-2 CPD ¶ 43.

The record shows that the Department excused an outside evaluator because this individual had written a letter to NCTE, included in NCTE's proposal, enthusiastically endorsing NCTE's continuation as the RCS contractor, but retained on the panel a member employed 20 years ago as an instructor at IU and another member who stated she had been an evaluator in the 1985 RCS procurement and that she had preferred IU's proposal on that occasion. NCTE contends that the former instructor's association with IU was much stronger than anything the excluded evaluator might have had with NCTE, and asserts that the statement by the other evaluator showed a clear bias for IU that should have led to her

exclusion. NCTE contends that the Department's retention of these individuals on the evaluation panel while excluding the individual that endorsed NCTE was inconsistent and improper, as well as evidence of the Department's bias against NCTE.

NCTE ignores the fact that the excluded evaluator's endorsement of NCTE pertained directly to the present procurement, whereas the former instructor's association with IU was 20 years ago and the remark by the other evaluator concerned a prior procurement. Whether the excluded evaluator's endorsement of NCTE falls within the definition of an actual conflict of interest or not, we think it provides sufficient reason for concern about an apparent conflict to justify the Department's exclusion of this evaluator, unlike the long-past association and irrelevant remark about a procurement that lacked the changed direction for the clearinghouses reflected in this RFP.

In support of its contention that the evaluation criteria were not applied equally, NCTE asserts that IU's proposal contained deficiencies which should have precluded its acceptance and argues that the Department's questions in negotiations showed that the Department applied different standards in evaluating the objectivity and independence of NCTE and IU. NCTE argues, for instance, that IU's proposal was based on the 1985 RCS solicitation and used the quantities of documents for input into the ERIC database specified in that RFP rather than the present solicitation. NCTE also charges that the IU proposal failed to address the requirement to provide two "trends and issues" papers annually. NCTE contends that the Department ignored these omissions and even failed to mention them to IU in negotiations. NCTE states that, in contrast, the Department questioned the objectivity of NCTE's proposed RCS clearinghouse, which the protester asserts would provide accessibility through NCTE to thousands of practitioners at diverse institutions, while failing to criticize IU's proposed reliance on other departments within IU which NCTE suggests would not assure institutional objectivity and independence.

Like the companion protest of the Clearinghouse on Rural Education and Small Schools acquisition, also conducted under this solicitation, see New Mexico State University, B-230669.2, June 6, 1988, 88-1 CPD ¶ \_\_\_\_, this protest has been accompanied by expansive voluntary disclosure of documents to the protester. NCTE's arguments, summarized above, are premised on its own reading and interpretation of the details of IU's proposal and best and final offer. As we pointed out in that case, however, contracting agencies have a considerable range of judgment and discretion in

conducting technical evaluations. It therefore is not our function, nor that of the protester, to rescore proposals or to make independent judgments as the scores that should have been assigned. Tichenor & Fiche, B-228325, Dec. 28, 1987, 87-2 CPD ¶ 631. Our review of allegedly improper technical evaluations is limited to a determination of whether the evaluation was fair and reasonable and consistent with the evaluation criteria. We will question a contracting agency's determination of the technical merit of proposals only upon a clear showing of unreasonableness or abuse of discretion. Jones & Company, Natural Resource Engineers, B-228971, Dec. 4, 1987, 87-2 CPD ¶ 555.

Contrary to NCTE's assertions, the RFP did not require that each aspect of clearinghouse operations be treated independently and in exhaustive detail. Instead, the RFP required that offerors provide sufficient information within a general format to demonstrate their understanding of clearinghouse operations and responsibilities and how the offeror proposed to satisfy the requirements of the RFP. As the Department notes, while it may be that IU failed in its initial proposal to respond totally to the format and content requirements of the RFP, IU's discrepancies were pointed out in negotiations--including specific advice that IU should base its cost proposal on the document quantities specified in the RFP--and IU corrected the deficiencies in its best and final offer, in which the required information was readily ascertainable. As an example, IU's proposal included trends and issue papers within a category of products IU called "information analysis products" and IU offered to provide more of them than required. We concur in the Department's assessment and find NCTE's objections to IU's chosen format and informational content, apparently premised on IU's initial proposal, to be without merit.

NCTE's assertion of unequal application of evaluation criteria is also without foundation. For example, NCTE's proposed RCS relied heavily on NCTE's established relationships as the conduit for communications with outside organizations and professionals. The Department's concern that NCTE's proposed clearinghouse was too closely allied with NCTE was identified in negotiations with NCTE through the statement that "the scope of topics, the proposed staff, and the various boards reflect the established priorities and interests of NCTE." NCTE did not directly address this question in its best and final offer by proposing, for example, RCS networks with educational and professional associations, academic, institutions, or practitioners, or other enhanced RCS activities independent of NCTE. IU, in contrast, proposed that its clearinghouse establish linkages independent of IU. Notwithstanding NCTE's assertions to the

contrary, we think the Department was reasonable in concluding that NCTE's approach was less likely to assure impartiality and objectivity than was IU's.

NCTE also asserts that the Department improperly excluded the scores of one of the evaluators from the final technical assessment and report. The Department states that one set of scores--marginally favorable to NCTE--was excluded because it was received by telephone and the accompanying narrative needed in preparation of the evaluation report was not received until after the report was completed. Whether the exclusion was proper or not is largely irrelevant because, even if these scores are included in the evaluation, NCTE would still have a lower technical score and higher costs than IU. NCTE, therefore, was not prejudiced by their omission.

Lastly, by contending the Department had an obligation to search out and locate charts omitted from copies of NCTE's proposal provided to the evaluators, NCTE is suggesting that the Department somehow was responsible for their omission. Of the three copies of NCTE's best and final offer provided to us, however, we note that one contains a full-size double width chart, folded in half so that the blank back of the paper--marked as an attachment--faces the reader; the second contains a single-page reduced copy of the chart; and the last contains a photocopy of the blank page marked as an attachment, but no chart. Given this evidence, we find the Department's statement that NCTE simply may have made an error in copying and assembling copies of its best and final offer to be plausible, particularly in view of the lack of contradicting evidence presented by NCTE. Offerors are responsible for the preparation and content of their proposals, see Complere, Inc., B-227832, supra, and contracting agencies are not obligated to go in search of information needed to complete proposals. Commission on Professional and Hospital Activities, B-228924, Dec. 29, 1987, 87-2 CPD ¶ 637.

The protest is denied.

  
James F. Hinchman  
General Counsel