



Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** National Credit Union Administration--  
Request for Modification of Remedy

**File:** B-240979.2; B-240981.2

**Date:** May 24, 1991

Benny R. Henson, National Credit Union Administration, for the agency.  
Scott H. Riback, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

Prior decision is modified to delete recommendation for corrective action which could have resulted in termination for convenience of two contracts in light of information showing termination is not practical; instead, General Accounting Office concurs in agency recommendation that options under contracts should not be exercised. Protester is entitled to recover its proposal preparation costs, in addition to its previously awarded protest costs.

## DECISION

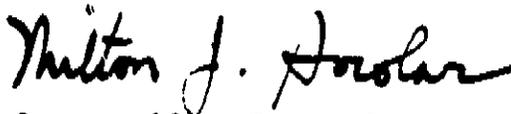
The National Credit Union Administration (NCUA) requests modification of our recommendation in Tolen Information Servs., B-240979; B-240981, Dec. 21, 1990, 90-2 CPD ¶ 518.

Tolen Information Services protested the award of two contracts to Brick & Associates, Inc. by NCUA under request for proposals Nos. NCUA-90-R-0006 and NCUA-90-R-0007, issued for the acquisition of training course services and related software. We found that NCUA had improperly made award to Brick on the basis of initial offers because the firm had submitted other than the lowest overall cost offer to the government and sustained the protests. We recommended that the agency make award to Tolen as the low, technically acceptable offeror on the basis of initial offers. Alternatively, we recommended that NCUA reopen the subject acquisitions, engage in discussions with the competitive range offerors and solicit best and final offers (BAFOs),

terminating for the convenience of the government the contracts awarded to Brick should the evaluation of BAFOs show that another firm was properly in line for award. In making our recommendation, we found that, although the agency had not suspended performance of the contracts awarded to Brick (and was not legally required to do so), only one no-cost delivery order had been issued under either contract.

In its request, the NCUA states that, contrary to what the record showed at the time the original decision was issued, performance on these contracts and on related contracts had been initiated, and that delivery orders had been placed and payments made under the contracts. Also, training classes had been scheduled, related contracts for the lease of space to conduct the training courses had been executed, and all other preparatory arrangements had been made to conduct the training. The agency states that canceling or suspending the training for the current year would result in additional cost to the government and a delay in needed training. Accordingly, the agency has requested that we modify our original recommendation in order to allow Brick to complete the initial year of performance under the contracts. The agency states that it will refrain from exercising the two 1-year options also awarded to Brick under the original RFPs, and reopen negotiations with, and solicit BAFOs from, all firms submitting offers under the original RFPs as permitted by NCUA's procurement procedures. The agency will make appropriate awards for the periods covered by the options after the evaluation of those BAFOs.

Since the new information submitted by NCUA shows that our recommendation is not practical, we modify our recommendation accordingly. The options in the Brick contracts should not be exercised. Since Tolen was improperly precluded from competing for the base-year requirement and will not now be afforded an opportunity to compete for it, we find Tolen entitled to its original proposal preparation costs.<sup>1/</sup> See 4 C.F.R. § 21.6(d) (1991); GMI, Inc., B-239064, July 3, 1990, 90-2 CPD ¶ 8.



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<sup>1/</sup> We point out that our award of proposal preparation costs here is in addition to our earlier award to Tolen of its costs of filing and pursuing its bid protests including attorneys' fees.